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Title 3—

The President

Proclamation 7220 of September 14, 1999

National Hispanic Heritage Month, 1999

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Month, we reflect on the history of a people who were part of this land long before the birth of the United States. Hispanics were among the earliest European settlers in the New World, and Hispanics as a people—like their many cultures—share a rich history and great diversity. Hispanic Americans have roots in Europe, Africa, and South and Central America and close cultural ties to Mexico, the Caribbean, Central America, South America, and Spain. This diversity has brought variety and richness to the mosaic that is America and has strengthened our national character with invaluable perspective, experiences, and values.

Through the years, Hispanic Americans have played an integral role in our Nation's success in science, the arts, business, government, and every other field of endeavor, and their talent, creativity, and achievements continue to energize our national life. For example, Hispanic Americans serve as NASA astronauts, including Dr. Ellen Ochoa, the first Hispanic woman in space. Mario Molina of the Massachusetts Institute of Technology shared a Nobel Prize in chemistry for research that raised awareness of the threat that chlorofluorocarbons pose to the earth's protective ozone layer. Cuban-American writer Oscar Hijuelos earned a Pulitzer Prize for fiction.

The achievements of today's Hispanic Americans build upon a long tradition of contributions by Hispanics in many varied fields. Before Dr. Ochoa and other Hispanic Americans began to explore the frontiers of space, Hernando de Soto and Francisco Vásquez de Coronado ventured into the vast uncharted land of the New World. A thousand years before Mario Molina calculated the effects of human actions on the atmosphere, Mayan priests accurately predicted solar and lunar eclipses. And before Oscar Hijuelos described a Cuban family's emigration to 1940s America, Miguel de Cervantes Saavedra gave us the classic adventures of Don Quixote and Sancho Panza.

Today, people of Hispanic heritage are an increasingly important and growing segment of our Nation's population. Studies show that, in just a few years, Hispanics will form the largest minority group in the United States. In little more than a decade, Hispanic Americans will wield buying power of nearly $1 trillion per year. And by the middle of the next century, if population trends continue, almost one-fourth of our population will be Spanish-speaking. The success of these citizens is vital to our continued national prosperity, and we must ensure that they are empowered with the tools and opportunities they need to thrive in the next century.

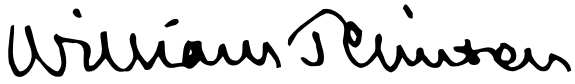
That is why my Administration has worked to widen the circle of economic opportunity, enforce our civil rights laws, invest in health and education, and promote racial reconciliation. We have launched a major initiative to mobilize the resources and expertise of the Federal Government, the private sector, and local communities to end racial and ethnic disparities in health conditions and health care. We established the first-ever Office of Minority Health Research and Alternative Medicine at the National Institutes of Health. We also have sought to expand our Hispanic Education Action Plan with an additional $480 million for improving educational programs and institutions serving high concentrations of Hispanic students. We cannot seize

the enormous opportunities of the 21st century if a large percentage of our children lack the skills and knowledge they need to reach their full potential.

In honor of the many contributions that Hispanic Americans have made and continue to make to our Nation and our culture, the Congress, by Public Law 100–402, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 15 through October 15, 1999, as National Hispanic Heritage Month. I call upon government officials, educators, and the people of the United States to honor this observance with appropriate ceremonies, activities, and programs, and I encourage all Americans to rededicate themselves to the pursuit of equality.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, 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-fourth.



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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV99–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule limits the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule limits the volume of size 48 and/or size 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 1999–2000 season. The weekly percentage for the first two weeks (September 20 through October 3) is 45 percent; for the third week (October 4 through October 10) is 40 percent; for the fourth through seventh weeks (October 11 through November 7) is 37 percent; and for the last four weeks (November 8 through December 5) is 32 percent. This limitation is designed to provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule should help stabilize the grapefruit market and improve grower returns.

DATES: Effective September 20, 1999. Comments received by September 27, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule limits the volume of size 48 and/or size 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 1999–2000 season which begins in September. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3 5/16 inches in diameter).

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee

may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule limits the volume of small red seedless grapefruit that can enter the fresh market for each week of the 11 week period beginning the week of September 20, 1999. This rule establishes the weekly percentage for the first two weeks (September 20 through October 3) at 45 percent; for the third week (October 4 through October 10) at 40 percent; for the fourth through seventh weeks (October 11 through November 7) at 37 percent; and for the last four weeks (November 8 through December 5) at 32 percent. This is a change in the percentages originally recommended by the committee. On April 6, 1999, the committee unanimously voted to establish a weekly percentage of 25 percent for each of the 11 weeks. The committee's initial recommendation was issued as a proposed rule published on August 26, 1999 (64 FR 46603). No comments were received during the comment period which expired on September 10, 1999. The committee subsequently met on August 31, 1999, and unanimously recommended adjusting the proposed percentages.

This action is similar to actions taken in the previous two seasons (1997–98 and 1998–99). Prior to those two years, there were no weekly percentages established. During the three seasons prior to implementation of weekly percentage regulations (1994–95, 1995–96, and 1996–97), returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (⅘ bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes drops to within $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During those three seasons, the market did not recover, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to below production cost returns for growers and lower on-tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish a weekly percentage of size regulation during the first 11 weeks of the 1997–98 and 1998–99 seasons. The initial recommendations from the committee were to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make its recommendations. The committee has since used this regulation to the betterment of the industry. Prices have increased, and movement has been more stable. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first 3 weeks, and 35 percent for the other 8 weeks. Actual weekly percentages established during the 11 week period during the 1998–99 season were 37 percent for the first 3 weeks, and 32 percent for the other 8 weeks.

In making its recommendation for the upcoming season, the committee reviewed its experiences in past seasons. The committee believes establishing weekly percentages during the last two seasons was successful. The committee examined shipment data covering the 11 week regulatory period for the last two regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. price figures. During the 11 week period, the regulations were successful at helping maintain prices at a higher level than previously, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. During the first 11 weeks of the 1996–97 season, shipments of sizes 48 and 56 were 3,076,474 cartons, or 40 percent of total shipments. In the first 11 weeks of the last two seasons, under regulation, shipments of sizes 48 and 56 averaged 2,517,080 cartons and accounted for 33 percent of total shipments.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. prices for these weeks were $6.28 for the 1996–97 season, $6.55 for the 1997–98 season, and $7.63 for the 1998–99 season. Total

fresh shipments for the 1998–99 season are estimated at 27.5 million cartons of red grapefruit.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season, the last season prior to establishing percentage size regulations. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. In fact, prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small sized grapefruit.

The committee initially recommended that the weekly percentage of size regulation be set at 25 percent for each week during the regulatory period. Members believed that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without such action. The committee thought that to provide the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The committee believes it is best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The committee's intent was to meet again early in the season to consider adjustments in the weekly percentage rates, as was done in the previous two seasons.

In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making its initial recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and subsequent months and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentages are appropriate.

Based on this information and the experiences from past seasons, the committee agreed to establish the initial weekly percentages at the most restrictive level. They could then meet in late August, or in September and October, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. They said this is essentially what was done in the prior two years, and it had been very successful. For example, the committee met in May 1998, and recommended a weekly percentage of 25 percent for each of the first 11 weeks of the 1998–99 season. In September, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and did not recommend any further relaxation. Any changes to the weekly percentages established by this rule would require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the April meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

The committee met again on August 31, 1999, and revisited the weekly percentage issue and reviewed information it had acquired since its April 6, 1999, meeting. At the meeting, the committee unanimously recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5).

In its discussion of these changes, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on this review, the committee agreed that maintaining the weekly percentage at 25 percent would be too restrictive.

During deliberations in past seasons as to weekly percentages, the committee considered how past shipments had affected the market. Based on available statistical information, the committee members believed that once shipments of sizes 48 and 56 reach levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As is the case for this season, they wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment that would approach the 250,000 carton mark during regulated weeks without exceeding it.

While the committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated during the 1998–99 season were lower by count and by percentage than in the unregulated seasons of 1994–95 through 1996–97. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent this season, the total available allotment would approximate 234,000 cartons (25 percent of the total industry base of 937,257 cartons). The committee thus believed the percentages should be increased, as was done last year. While satisfied with the level of regulation last season (37 percent for the first 7 weeks and 32 percent for the last 4 weeks), the committee believes that the unique circumstances this season warrant more liberal percentages during the first 3 weeks of the 1999–2000 season.

While the official crop estimate will not be available until October, there are indications that the grapefruit crop will be lower than last year. The committee projects fresh shipments of red seedless grapefruit to be equal to or below levels in previous seasons. The quality of this year's crop is anticipated to be normal or above normal. However, the shape of the fruit is expected to be below normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The smaller sizes will most likely be the better shaped fruit during the first part of the season, which supports allowing ample shipments of the smaller sizes.

The individual fruit size for the upcoming crop is projected to be a little smaller than normal, but not as small as last season. However, if the rain currently being received in the production area does not continue for the next 10 to 20 days, the crop will cease sizing. This would put pressure on the industry to ship more of the smaller sizes.

Additionally, the lack of rain during much of the growing has delayed maturity of the crop and early shipments are anticipated to be below levels in previous seasons. Unusual weather patterns in the past eight months has resulted in multiple blooms in most groves in Florida. The problem with multiple blooms is that it is difficult for fruit harvesters to determine which of the fruit is mature. This could cause a higher percentage of smaller sizes to be harvested early in the season, because the small fruit tends to mature earlier. Therefore, the committee recommended a higher percentage in the first three weeks of the season than in later weeks.

The situation is also complicated by the ongoing economic problems affecting the European and Asian markets. In past seasons, the European market has shown a strong demand for the smaller sized red seedless grapefruit. The reduction in shipments to these areas experienced during the recent years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

Therefore, this rule establishes the weekly percentage at 45 percent for the first two weeks of the regulatory period (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5).

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes in any or all of the 11 weeks.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week will be calculated using the recommended percentage of 45, 40, 37 or 32 percent, depending on the regulated week. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week is the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 45, 40, 31 or 32 percent, is multiplied by a handler's average week. The product is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler may ship. If the minimum size established under § 905.52 remains at size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers can fill their allotment with size 48 fruit such that the total of these shipments is within the established limits. The committee staff will perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is Handler A's base. For the first week of the regulatory period, the weekly percentage of 45 percent is then applied to this amount. This provides this handler with a weekly allotment of 720 cartons (1,600 X .45) of size 48 and/or 56. Similar calculations, using the appropriate weekly percentage, will be performed for the remaining 10 weeks of regulation.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Such new handlers can ship small sizes equal to a 45, 40, 37, or 32 percent of their total volume of shipments during their first shipping week (depending on when they begin shipping). Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

This rule establishes a weekly percentage of 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). The regulatory period begins the third Monday in September. Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee could meet and recommend a different percentage for any given week or weeks of the regulatory period. Any such recommendation would require approval of the Secretary.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When a regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler can handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there will be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped are not carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party must, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the committee so that proper adjustments of the records can be made. In each case, the committee confirms in writing all such transactions prior to the following week. The committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan.

The committee computes each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped many grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this definition of prior period as the method that provides each handler with an equitable base from which to establish shipments.

The procedures under which this rule is established provide flexibility through several different options. Handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments. Statistics show that in none of the regulated weeks in past seasons was the total available allotment used. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provides a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

After considering the available information, the committee determined that this rule is needed to regulate shipments of small red seedless grapefruit during the 1999–2000 season.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on industry and committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1998–99 season was around $7.20 per 4/5 bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition, and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this rule limits the volume of small red seedless grapefruit that can enter the fresh market during the first 11 weeks of the 1999–2000 season, beginning the third Monday in September. This rule utilizes the provisions of § 905.153. This rule establishes a weekly percentage of 45 percent for the first two weeks of the regulatory period (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through

seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). This is a change from the committee's original recommendation of a 25 percent weekly percentage for each of the 11 weeks. Under this limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the established percentage.

By taking the established percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small sizes. This rule sets the weekly percentage at 45, 40, 37 or 32 percent for each of the 11 weeks in the regulatory period. This rule should provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule is needed to help stabilize the market and improve grower returns during the early part of the season.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would have provided a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. If a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule will affect even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under this rule, a sufficient volume of small sized red grapefruit will be allowed into all channels of trade, and allowances will be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry costs should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes typically drops to within $2 of the f.o.b. price for small sizes.

The overshipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation will have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimal effect on overall shipments. While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule will help limit the effects of an over supply of small sizes early in the season. Similar rules were enacted successfully the last two seasons. During the 11 week period, the regulations were successful in helping maintain prices at a higher level than in prior seasons, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season, $6.55 for the 1997–98 season and $7.63 for the 1998–99 season.

The rules were also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 25, 25, 20, and 14 percent, respectively, during the 1997–98 season. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. Prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period last season as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum, with sizes 48 and 56 having the largest gains and larger sized grapefruit registering modest improvements.

The report also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the 1997–98 season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Over 50 percent of red seedless grapefruit are shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action would only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from the last two seasons suggests the regulation could do both. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation. Accordingly, this action would provide the most beneficial results for the industry given any other alternatives.

Handlers utilizing the flexibility of the loan and transfer aspects of this action will be required to submit a form to the committee. The rule will increase the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements

contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the April 6, 1999, and August 31, 1999, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on Thursday, August 26, 1999 (64 FR 46603). Copies of the rule were mailed or sent via facsimile to all committee members and to grapefruit growers and handlers. The rule was also made available through the Internet by the Office of the Federal Register, the Department and the committee.

A 15-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended September 10, 1999. No comments were received.

As previously stated, subsequent to the issuance of the proposed rule, the committee met and recommended modifying its original recommendation. The committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 45 percent for the first two weeks (September 20 through October 3); 40 percent for the third week (October 4 through October 10); 37 percent for the fourth through seventh weeks (October 11 through November 7); and 32 percent for the last four weeks (November 8 through December 5). Because of this recommendation, the Department has determined that interested parties should be provided the opportunity to comment on the changes to the original recommendations. However, the Department has further determined that extending the comment period with no percentages in effect limiting the shipment of small red seedless grapefruit when the period of regulation begins would be detrimental to the industry. Therefore, the Department is instituting the regulations on small red seedless grapefruit through this interim final rule that allows 10 additional days to comment.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

A 10-day comment period is provided to allow interested persons to respond to this interim final rule. Ten days is deemed appropriate because the regulation period begins on September 20, 1999, and continues for 11 weeks. Adequate time will be necessary so that any changes made to the regulations based on comments filed could be made effective during the 11-week period. All written comments timely received will be considered before a final determination is made on this matter.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule needs to be in place when the regulatory period begins on September 20, 1999, and handlers begin shipping grapefruit. The committee has kept the industry well informed on this issue. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. In addition, these size small red grapefruit are already being harvested and handlers need to know the amount they will be allowed to ship in order to determine harvesting quantities that will allow these increased amounts to be shipped. This rule is necessary to help stabilize the market and improve grower returns. Further, handlers are aware of this rule, which was recommended at public meetings. Also, a 15-day comment period was provided for in the proposed rule and a 10-day comment period is provided in this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under § 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under § 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments is within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/20/99 through 9/26/99	45
(b) 9/27/99 through 10/3/99	45
(c) 10/4/99 through 10/10/99	40
(d) 10/11/99 through 10/17/99	37
(e) 10/18/99 through 10/24/99	37
(f) 10/25/99 through 10/31/99	37
(g) 11/1/99 through 11/7/99	37
(h) 11/8/99 through 11/14/99	32
(i) 11/15/99 through 11/21/99	32
(j) 11/22/99 through 11/28/99	32
(k) 11/29/99 through 12/5/99	32

Dated: September 13, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–24238 Filed 9–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–3 FR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate from $3.28 to $2.00 per ton of salable dried prunes established for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1999–2000 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate decrease is possible because the 1999–2000 assessable tonnage is expected to total 173,700 salable tons (74 percent higher than last crop year). The $2.00 assessment rate will allow the Committee to meet its 1999–2000 expenses. The crop year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATES: September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 29, 1999, and unanimously recommended increasing its 1999–2000 budget from $327,180 to $347,400 and decreasing the current assessment rate from $3.28 to $2.00 per ton of salable dried prunes. Even with the increased budget, the $1.28 per ton decrease in the assessment rate to $2.00 per ton would allow the Committee to meet its 1999–2000 expenses. The California Agricultural Statistical Service estimates a 180,000 ton crop during the 1999–2000 crop year, of which 6,300 tons are not expected to be salable because of size or quality, leaving a balance of 173,700 salable tons. This is a 74 percent increase in salable tonnage from last year and allowed the Committee to recommend lowering its assessment rate.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, and major budget expenditures in the revised 1998–99 budget recommended on December 1, 1998.

Budget expense categories	($1,000)	
	1998–99	1999–2000
Salaries, Wages & Benefits	189.7	201.265
Research & Development	0	30
Office Rent	23	24
Travel	18.5	21
Reserve (Contingencies)	50.93	16.735
Equipment Rental	9	9.5
Data Processing	3.85	5
Stationary & Printing	5	5.5
Office Supplies	5	5
Postage & Messenger	5	7

The assessment rate recommended by the Committee was derived by dividing

anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 173,700 salable tons which should provide $347,400 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Interest income also will be available if assessment income is reduced for some reason. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to meet 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (Sec. 993.81(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently the prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, could be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent crop years from $3.28 per ton to $2.00 per ton of salable dried prunes. The Committee unanimously recommended 1999–2000 expenditures of $347,400 and an assessment rate of $2.00 per ton of salable dried prunes. The assessment rate of $2.00 is $1.28 lower than the current 1998–99 rate (64 FR 3621, January 25, 1999). The quantity of assessable dried prunes for the 1999–2000 crop year is now estimated at 173,700 salable tons. Thus, the $2.00 rate should provide $347,400 in assessment income and be adequate to meet this year's expenses. Interest income also will be available to cover budgeted expenses if the 1999-2000 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 29, 1999, with major budget expenditures in the revised budget recommended on December 1, 1998.

Budget expense categories	($1,000)	
	1998–99	1999–2000
Salaries, Wages & Benefits	189.7	201.265
Research & Development	0	30
Office Rent	23	24
Travel	18.5	21
Reserve (Contingencies)	50.93	16.735
Equipment Rental	9	9.5
Data Processing	3.85	5
Stationary & Printing	5	5.5
Office Supplies	5	5
Postage & Messenger	5	7

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $347,400. The assessment rate of $2.00 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The Committee is authorized to use excess assessment funds from the 1998–99 crop year (currently estimated at $51,857) for up to 5 months beyond the end of the crop year to fund 1999–2000 crop year expenses. At the end of the 5 months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1999–2000 will be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1999–2000 season should average above $850 per salable ton of dried prunes. Based on estimated shipments of 173,700 salable tons, assessment revenue during the 1999–2000 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 29, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to

reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 29, 1999 (64 FR 41045). Copies of the proposed rule were also mailed or sent via facsimile to all prune handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 30, 1999, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to collect assessments from handlers based on the lower rate as soon as possible to pay its expenses which are incurred on a continuous basis; (2) the 1999–2000 crop year began on August 1, 1999, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such year; (3) handlers are aware of this rule which was recommended unanimously at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 1999, an assessment rate of $2.00 per ton is established for California dried prunes.

Dated: September 13, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–24239 Filed 9–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB49

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to clarify that loan applicants organized as limited liability companies may be eligible to receive financial assistance. This direct final rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility they need to continue providing reliable telephone service at reasonable costs in rural areas, while maintaining the integrity of Government loans. This action also conforms more closely to private lending practice.

DATES: This rule will become effective on November 16, 1999, unless we receive written adverse comments or notice of intent to submit adverse comments on or before October 18, 1999. If we receive such comment or notice, we will publish a document in the **Federal Register** prior to the effective date withdrawing the direct final rule.

ADDRESSES: Submit written comments or notice of intent to submit adverse comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700). Comments received will be available for public inspection at room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any, are required must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation which may require consultation with state and local offices. A final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034) determined that RUS and Rural Telephone Bank loans and loan guarantees were not covered by Executive Order 12372.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technology continue to place pressure on RUS financed systems to operate more efficiently.

At the present, RUS regulations stipulate that an entity must be incorporated to be eligible for RUS financing (7 CFR 1735.14, Borrower eligibility). However, the limited liability company (LLC) structure is an increasingly used form of business organization. RUS has determined that its regulations should provide that LLCs be eligible for RUS loans if the state laws under which the LLC is organized and existing enable the LLC to effectively accomplish the purposes of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

RUS policies are utilized by the Governor of the Rural Telephone Bank in carrying out the Rural Telephone Bank's loan program.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR Chapter XVII is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.14, paragraph (c) is revised to read as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(c) RUS gives preference to those borrowers (including initial loan applicants) already providing telephone service in rural areas, and to cooperative, nonprofit, limited dividend, or mutual associations. To be eligible for a loan, a borrower:

(1) Must provide or propose to provide the basic local exchange telephone service needs of rural areas;

(2) Must have sufficient authority to carryout the purposes of the RE Act; and

(3) Must be incorporated or a limited liability company.

Dated: September 10, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 99–24188 Filed 9–16–99; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

RIN 3064 –AC23

Asset and Liability Backup Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Confirmation of interim final rule with changes.

SUMMARY: This rule confirms as final the FDIC's interim rule requiring asset and liability backup programs (ALBPs) for limited deposit account and loan account information in a limited number of institutions to facilitate timely and accurate restoration of key financial records in the event that an FDIC-insured depository institution (insured depository institution) experiences a Year 2000 (Y2K) computer problem and is placed in receivership. Specifically, the rule requires those insured depository institutions receivingY2K ratings of less than ''Satisfactory'' on or after July 31, 1999 (affected institutions) to follow specific programs to backup certain information concerning deposit and loan accounts. This information will be retained by each bank or savings and loan (thrift) to which the rule applies and used by the FDIC only if such an institution must be closed. This regulation will sunset on June 30, 2000 and will no longer be applicable after that date. An affected institution will be exempted from this ALBP rule if its primary federal regulator provides a written determination to the Executive Secretary, FDIC that the ALBP is not needed.

EFFECTIVE DATES: This rule is effective September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships: James E. Crum, Manager, Information Systems Section (202) 898–6698. Legal Division: Nancy Schucker Recchia, Counsel (202) 898–8885; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the FDIC, the Board of

Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) have provided extensive Y2K-readiness guidance to the banking industry. Virtually all of the nation's banks and thrifts are prepared for the millennium. As a result of these efforts, the FFIEC agencies expect few, if any, insured depository institutions to close because of the Y2K date change. Despite best efforts to prepare for Y2K, however, there remains the possibility that some institutions may not be Y2K ready and may have to be closed. The FDIC must plan for every conceivable event. The FDIC has adopted this rule to ensure that, if an affected institution experiences a Y2K problem and is closed, the FDIC will be able to make federally insured deposits available to depositors expeditiously. The rule also will facilitate the quick acquisition or transfer of servicing of assets and help maintain public confidence in, and minimize any related disruption to, the United States of America's financial system.

The rule requires affected institutions to create standardized backup programs for their deposit and loan accounts, in addition to their own backup systems. In the unlikely event that an affected institution experiences a Y2K problem and is closed, these standardized backup programs will provide the FDIC access to essential basic account information and eliminate the need to map and convert information before account reconciliation and deposit insurance determination can begin. A Y2K problem could make an institution's systems unusable for potential purchasers, making an alternative conversion process essential for an expeditious transfer of assets and liabilities. The rule will reduce the time needed to convert a closed affected institution's information. The rule is critical to the FDIC's ability to determine quickly and accurately deposit and loan account information to permit timely and accurate access of insured depositors to their accounts and effective management of receivership assets.

II. The Interim Final Rule

The FDIC published 12 CFR part 331 in the **Federal Register** as an interim final rule and request for comment on June 9, 1999, 64 FR 30869. The comment period closed and the interim final rule became effective on July 9, 1999.

III. Summary of Comments Received

In response to the request for comment published with the interim final rule, the FDIC received three comment letters. Two were from community bank trade associations and one was from a bank. The FDIC carefully considered each of the comment letters in light of theY2K concerns addressed by the rule, and, for the reasons discussed below, determined to finalize the interim final rule as it became effective on July 9, 1999, with the minor formatting and deadline changes discussed below.

Both of the trade association commenters generally supported the FDIC's need to have available appropriate data to facilitate quick and efficient resolution of insured depository institutions in the event that that there should be a Y2K related failure. One of the trade association commenters stated its belief that the rule (1) is an appropriate step for the FDIC, (2) offers an extra incentive to any banks that have made less than satisfactory progress towards being prepared for Y2K to take the necessary steps to become ''satisfactory,'' (3) is a good step to help ensure that account records can be transferred readily to another depository institution or to a receiver should the need arise, and (4) should provide additional comfort to the banking public that its deposits will be accessible after December 31, 1999. The other trade association commenter questioned whether the implementation details properly balanced the costs and benefits of the program and provided specific suggestions, discussed below, regarding how the affected institutions are selected, the deadlines for implementing the various provisions in the rule and the costs of the program. The bank commenter was opposed to the rule, believing it would take valuable resources away from affected institutions' Y2K remediation efforts, and opined that the FDIC and other agencies should provide reasonable assistance to aid those institutions in their Y2K compliance efforts.

The FDIC has considered all comments received. As a result of such consideration and in an effort to further refine the specifications of the ALBP, the final rule makes certain minor formatting changes to the Extract File Formats and extends certain deadlines as discussed below. The final rule does not require affected institutions to provide any more information than the interim final rule required.

IV. The Final Rule

A. The Final Rule Reflects ALBP Deposit and Loan Extract File Format Changes Developed From Industry Input

The FDIC sought technical advice from a variety of sources in developing the interim final rule. Industry programming experts have reviewed the rule and identified certain areas of either the Technical Instructions or the Deposit and Loan Extract File Formats requiring clarification to ensure consistency between the Technical Instructions and the Extract File Formats, and accurate compliance with the programming specifications. The formatting changes that address these concerns are set forth below.

1. Deposit Extract File Format

- Information Field 1: Account Status—Clarified the Definition to limit the acceptable codes to: O = Open, C = Closed, D = Dormant, I = Inactive.
- Information Field 3: Account Number—Expanded the Info Length to 20 characters.
- Information Field 8: Customer Street Address Line 1—Clarified the Definition to restrict this field to the first line of three allocated for customer street addresses.
- Information Field 9: Customer Street Address Line 2—Added a new field for the second line of three allocated for customer street addresses.
- Information Field 10: Customer Street Address Line 2—Added a new field for the third line of three allocated for customer street addresses.
- Information Field 11: Customer City—Provided technical instructions for dealing with addresses located in foreign countries.
- Information Field 30: Overdraft Account Number—Expanded the Info Length to 20 characters to match other deposit account number field lengths.
- Information Fields 26–28: Clarified the Info Length for dates to allow 10 characters to accommodate the slashes specified in the Technical Instructions.
- Information Fields 31–33: Clarified the decimal precision level (DEC) as 2 places.
- All Interest Rate Fields: Clarified Technical Instruction No. 5 to reflect the format for all interest rate fields to be displayed as xx.xxxxx.

2. Loan Extract File Format

- Information Field 3: Borrower Street Address Line 1—Clarified the Definition to restrict this field to the first line of three allocated for customer street addresses.
- Information Field 4: Borrower Street Address Line 2—Added a new field for the second line of three allocated for customer street addresses.

• Information Field 5: Borrower Address Line 2—Added a new field for the third line of three allocated for customer street addresses.

• Information Field 6: Borrower City—Provided technical instructions for dealing with addresses located in foreign countries.

• All Date Fields: Clarified the Info Length to allow 10 characters to accommodate the slashes specified in the Technical Instructions. Information Fields affected include: 28, 29, 30, 34, 36, 44, 51, 64 and 66.

• All Interest Rate Fields: Clarified Technical Instruction No. 5 to reflect the format for all interest rate fields to be displayed as xx.xxxxx. Corrected the precision level (Dec) for all such fields to reflect 5 characters. Information Fields affected include Nos. 25, 32, 33 and 48.

The final rule extends the date by which affected institutions are to complete their programming and testing of their ALBP Deposit and Loan Extract Files to October 31, 1999 and the date by which to submit their test files to the FDIC to November 15, 1999.

B. The Final Rule Implements the ALBP Requirements in the Least Burdensome Manner Possible

The Rule Applies to Only Those Insured Depository Institutions That Present the Greatest Y2K Risk

Both of the trade association commenters commented on and made suggestions regarding the implementation details of the rule. One of the trade association commenters suggested that the only institutions that should be subject to the rule are CAMELS 4, 5 and low-3 rated institutions and those that the primary federal regulators deem to pose serious data-processing-related risks. This commenter stated that well-capitalized, well-performing institutions with less than Satisfactory Y2K ratings that are not related to data processing and retention deficiencies or inadequate contingency plans are not likely to close.

Section 331.1 of the rule sets forth those insured depository institutions to which the rule applies (affected institutions). Affected institutions are all insured depository institutions as that term is defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) that have received a rating of less than Satisfactory in Y2K readiness by their primary federal regulator as of July 31, 1999. The rule also applies prospectively to any insured depository institution that received a Satisfactory rating as of July 31, 1999, and subsequently receives a rating of less than Satisfactory. The rule continues to apply to both categories of institutions until the termination date specified in § 331.3(d). Before January 1, 2000, if an affected institution's primary federal regulator changes the institution's Y2K readiness rating to Satisfactory, it will not be required to comply with the rule as of the date of the change. This permits institutions that demonstrate improvement in Y2K readiness after July 31, 1999, to avoid the requirements of the rule. After January 1, 2000, an affected institution will not be required to comply with the rule as of the date on which its primary federal regulator verifies that the institution's systems are Y2K ready. The rule sunsets on June 30, 2000.

Section 331.2 of the rule provides that an affected institution, without application, will be exempted by the FDIC from the rule upon a written determination by its primary federal regulator that the ALBP is not needed for that institution. For example, the primary federal regulator may find that an institution has ensured its systems' readiness during the testing phase and developed adequate business resumption contingency plans, but for less critical reasons was assessed a less than Satisfactory rating. A primary federal regulator's written determination should be submitted to the Executive Secretary of the FDIC. In the case of an FDIC-regulated institution, the determination would be made by the FDIC's Director of the Division of Supervision, or designee, and submitted to the Executive Secretary of the FDIC.

As insurer of the nation's bank and thrift deposits, the FDIC must act in a prudent and cost effective manner. It has considered numerous variables in order to identify which institutions present the greatest Y2K risk for purposes of the ALBP rule. The FFIEC agencies expect few, if any, insured depository institutions to close because of the Y2K date change. Despite best efforts to prepare for Y2K, some institutions may not be Y2K ready and may have to be closed. The inclusion of all less than Satisfactory institutions, regardless of their CAMELS ratings, reflects the FDIC's planning for every conceivable event in order to ensure that, if an affected institution experiences a Y2K problem and is closed, the FDIC will be able to make federally insured deposits available to depositors expeditiously. The FDIC believes that the exemption available under § 331.2 will enable those affected institutions that do not present significant Y2K risk to be exempted from the requirements of the rule.

The Rule Provides for Maximum Compliance Time

The two trade association commenters commented on the compliance time table contained in the rule. One stated that July 31, 1999 is an appropriate date for determining which insured depository institutions will be subject to the rule. However, this commenter suggested that the FDIC allow some flexibility with respect to the October 31, 1999 date by which the interim final rule required affected institutions to demonstrate compliance with the rule to the FDIC. This commenter suggested that additional time be allowed where an affected institution could demonstrate reasonable cause for not meeting the October 31st deadline. This commenter also suggested that the FDIC consider shortening the June 30, 2000 sunset date for the rule.

The interim final rule established September 30, 1999 as the date by which affected institutions should complete programming and testing of ALBP Deposit and Loan Extract Files. It also established October 31, 1999 as the date by which an affected institution must submit test files containing sample data to the FDIC. These dates were chosen after consultation with institutions and service bureaus experienced in programming files similar to those required under the Rule. The FDIC requires sufficient time to process the test files and, should problems be discovered, work with the affected institution to resolve them and re-validate new test files.

The final rule establishes October 31, 1999 as the date by which affected institutions should complete programming and testing and November 15, 1999 as the date by which affected institutions should submit test files to the FDIC. These extensions of time give consideration to the clarifications to the ALBP Extract File Formats included in the final rule and the smaller number of affected institutions subject to the final rule.

The formatting changes identified in the final rule will ensure the accurate and consistent interpretation of the data contained in the ALBP Deposit and Loan Extract Files. Should an affected institution have completed its programming and testing of ALBP Extract File Formats prior to the publication of the final rule in the **Federal Register**, or should it be unable to meet the November 15, 1999 date, the FDIC will work with the affected institution and its primary federal regulator to determine the most appropriate course of action.

The FDIC considered a variety of possible sunset dates for the rule. June 30, 2000 was deemed the most appropriate date as it allowed adequate time for any major system disruption to be identified and resolved. Prior to June 30, 2000, should an affected institution establish to the satisfaction of its primary federal regulator that its systems and data are fully functional and reliable, the affected institution will no longer be subject to the rule.

The other trade association commenter suggested a timetable that would focus initially on affected institutions with CAMELS ratings of low-rated 3, 4 or 5. These institutions would make their test file data available to the FDIC by September 30, 1999. This commenter suggested that by September 7, 1999, the other federal banking agencies send to the FDIC a list of the other institutions they regulate which have ''serious'' Y2K compliance deficiencies as of August 31, 1999, with extract data files made available to the FDIC by October 20, 1999.

Rather than providing additional time for certain institutions to comply with the rule, as the commenter suggested, this proposal actually would accelerate the timetable for all affected institutions. However, the FDIC considered the intent of this proposal to reflect the need for more flexibility in meeting the milestones required in the Interim Rule. Therefore, the FDIC has modified § 331.4 of the rule to require each affected institution to complete its programming and testing by October 31, 1999, and to deliver a sample output file meeting the ALBP criteria to the FDIC no later than November 15, 1999. The timetable in the final rule will provide sufficient time for the FDIC to evaluate the ALBP preparations of affected institutions.

FDIC Will Limit Its Use of ALBP Information

One of the trade association commenters commended the FDIC for addressing the potential privacy concerns that this type of rule might present by assuring bank customers that the ALBP files are required solely as a precaution and that the FDIC will not see the information unless the need arises. The rule requires no new reports or transmissions of useable information to the FDIC or any other government agency. No confidential records will be released. The FDIC will use ALBPs only if an affected institution is closed and experiences a Y2K problem and to give depositors timely and accurate access to their insured deposits, help maintain loan customer relationships and facilitate the quick resolution of the institution. Once an institution's computer systems are operating successfully in the year 2000 to the satisfaction of the institution's primary federal regulator, the rule will no longer be applicable to that institution. The rule has limited applicability because it sunsets on June 30, 2000.

C. The Benefits of the ALBP Rule Outweigh the Costs

Each of the commenters discussed the cost to the industry to comply with the rule. Each noted that compliance with the rule will divert data system programming efforts at a time when such resources might be better devoted to making satisfactory progress towards Y2K. One of the trade association commenters stated that the benefits of the rule outweigh the burdens imposed; the other questioned whether the costs and benefits of the ALBP had been properly balanced. One of the trade association commenters asked the banking regulatory agencies, when evaluating whether or not an institution should be exempt from the back-up program requirements, to carefully consider whether compliance with the rule would divert an institution's resources from preparing for Y2K and defeat the institution's Y2K efforts. This commenter also asked the banking regulatory agencies to make every effort to work with and monitor affected institutions, providing them expert guidance to help prepare for Y2K, noting that such assistance efforts would be more important to banks and their depositors than the compliance burden of a new back-up program. The other trade association and the bank commenter opined that the affected institutions would be better served by investing their time and resources in continuing their remediation efforts and developing appropriate data processing contingency plans.

The FDIC believes that for affected institutions, the minimal costs for programming and processing associated with creating and maintaining the ALBPs, including the minor changes identified in the final rule, represent a prudent investment in Y2K contingency planning.

Benefits of the Final Rule

The preamble to the interim final ALBP rule discussed in detail the many benefits of the rule. This rule will ensure that the FDIC will be able to continue to help maintain public confidence in the banking industry, if an affected institution should experience a Y2K problem and be closed, by honoring the FDIC's deposit insurance commitments in a timely and accurate manner. If an affected institution is closed and its business systems are unable to accurately receive, process and produce deposit balances and transactions because of a Y2K problem, the FDIC will rely upon the liability backup program to efficiently determine insured deposit account balances and quickly and accurately transfer or pay out such amounts for the benefit of depositors. Similarly the asset backup programs will provide the FDIC with the loan information necessary to expeditiously value and sell an institution and its assets in the event that the institution's systems are unable to receive, process and produce loan balances and transactions, thus expediting the return of assets to the marketplace and minimizing customer disruptions.

Potential acquirers of deposits and loans from Y2K related failed institutions will be able to anticipate the type and format of insured deposit data to be provided by the FDIC in electronic media. Acquirers will be able to pre-program their business systems to receive such data. Such pre-programming will reduce the time necessary to capture and load this data into their business systems upon such an acquisition.

Maximization of the value of the closed institution and its assets and liabilities and minimization of resolution costs result in a greater return to the closed institution's creditors and the FDIC insurance funds. Backup programs are an essential part of Y2K contingency planning worldwide. The Basle Committee on Banking Supervision has stated that banking supervisors should require their banks to ''maintain specified back-up records in electronically retrievable media for certain periods or key dates.'' (Year 2000 Supervisory Contingency Planning Process, January 1999, at 4, 5).

Costs of the Final Rule

When the cost burden of the interim final rule was estimated, 205 institutions were identified as affected institutions; as of August 24, 1999 there are 38. As institutions continue to complete their Year 2000 preparations and the number of institutions subject to the final rule declines, the FDIC has updated the information used in estimating the costs of compliance with the final rule. As of August 24, 1999 four affected institutions use in-house programming. The remaining 34 affected institutions use service providers or software vendors. 19 of these affected institutions are the sole customer of a service provider or software vendor required to comply

with the final rule. The FDIC assumed that service providers and software vendors would allocate their costs across multiple affected institutions using a given product line. With many sole customer situations, prior assumptions about cost allocations by such providers and vendors must be revised.

Overall, the estimated total cost burden to affected institutions has decreased from $3,057,000 to $1,388,500.

- The FDIC estimates the average cost to produce the ALBPs to be $17,500 for institutions under $1 billion in asset size and $190,000 for institutions greater than $1 billion in asset size when using in-house programming and processing.
- Service providers do the programming for most small institutions. For institutions using service providers or licensed software where the vendor provides the programming service, the FDIC estimates the cost of the ALBPs to be range from $13,188 to $52,750 per service provider or software vendor customer.

While the estimated cost burden for the remaining affected institutions is higher than anticipated in the interim final rule, the FDIC believes that the burden of these costs continues to be significantly outweighed by the benefits to be obtained.

Before issuing the interim final ALBP rule, the FDIC surveyed thirteen financial institutions and five major service providers of software and/or processing support to insured depository institutions (Office of Management and Budget Paperwork control number 3064–0130). The survey addressed: 1) current business practices, including number and types of clients, software development practices and backup procedures; 2) programming costs, including estimates of the hours and labor costs to program their EDP systems to produce the ALBP files; and 3) production costs, including estimates of the additional Central Processing Unit time to run the file extract routines, storage media and impacts on overall production schedules. The FDIC also discussed the ALBP rule with representatives of two financial industry trade associations, national clearinghouse authorities, a major financial information publisher and representatives of other federal financial institution regulatory agencies.

The Final Rule Places the Burden of Compliance on Those Institutions Presenting the Greatest Y2K Risk

One of the trade association commenters recognized the flexibility provided by the rule to each affected institution to extract and retain the required information in the manner that is most cost effective for that institution. However, this commenter believed that the FDIC would be the main beneficiary of the rule, and as such should bear some of the soft dollar costs of the programming effort, possibly by working directly with major data processing service providers.

The FDIC believes that those institutions that demonstrate the greatest Y2K risk should pay for their own programming costs. If the FDIC were to pay all or part of the programming costs, such costs would ultimately be borne by all insured depository institutions as the costs would have to be paid out of the deposit insurance funds.

V. The Effective Date

The FDIC adopted this regulation as an interim final rule effective July 9, 1999, without the usual notice and comment period as provided in the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*, or the delayed effective date as provided in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), 12 U.S.C. 4802(b). The APA provides that the requirement for such notice and comment periods does not apply ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest''. 5 U.S.C. 553(b)(3)(B). Section 302 of CDRI provides that certain new regulations should ''take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless—(A) the agency determines, for good cause published with the regulation, that the regulation should become effective before such time''. 12 U.S.C. 4802(b)(1)(A).

The FDIC found for good cause that promulgation of this regulation on an expedited basis was required. This rule is necessary to protect the public's interest in the continued stability of the financial system and to ensure timely and accurate access to deposits in insured depository institutions in the event that such institutions experiencing a Y2K problem are closed. All efforts to create ALBPs must be completed and operational by December 24, 1999, to ensure that public confidence in the financial system continues. The changes required by this rule would be impracticable to implement in less than six months. These backup programs must be in place pre-millennium to ensure that all systems will function as of January 1, 2000. Programming the backup program files must have begun by early August 1999, to allow establishment of the system requirements, analysis and design, and internal testing of the file production programs. The FDIC then must have sufficient time to test the sample formats for compliance with the rule and to work with the institutions to correct any deficiencies. Delay in the effective date of this rule would have been detrimental to the efforts of the regulatory agencies and the banking industry to prepare for potential Y2K problems.

VI. Regulatory Flexibility Analysis

Section 604(a) of the Regulatory Flexibility Act, 5 U.S.C. 604(a), requires an agency to prepare a final regulatory flexibility analysis, except to the extent provided in 5 U.S.C. 605(b), whenever the agency promulgates a final rule under 5 U.S.C. 553 for which it is required to publish a general notice of proposed rulemaking. For good cause discussed above, the FDIC published this rule as an interim final rule and is now finalizing the rule, for which publication of a general notice of proposed rulemaking was not necessary. No final regulatory flexibility analysis is required.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) 44 U.S.C. 3501, et seq., the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection that does not display a currently valid Office of Management and Budget (OMB) control number. No comments were received explicitly in response to the PRA request for comments contained in the interim final rule. However, the comments received in response to the interim final rule generally may also be viewed as relating to PRA issues such as enhancing the quality of the information to be collected and minimizing the burden of the information collection. These issues are discussed above in the preamble. The collection of information contained in this final rule was submitted to OMB for review and approval in accordance with the PRA and has been approved under OMB control number 3064–0132, which expires on August 31, 2002. The FDIC continues to welcome comments about any of it collections of

information. Please send comments to: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), FDIC, 550 17th Street, N.W., Washington, DC 20429.

Title of the collection: ''Asset and Liability Backup Program.''

Summary of the collection: This collection calls for affected FDIC-insured depository institutions to develop and retain extracts of deposit and loan account information maintained by such institutions, stored in electronic form, beginning December 24, 1999, and continuing until the earlier of approval by the institution's primary federal regulator or June 30, 2000 (12 CFR 331.3); to program and test the required ALBP extract files by October 31, 1999, and to submit a test file of sample information for each ALBP format to the FDIC for validation purposes (12 CFR 331.4); and to submit supporting documentation to the FDIC (12 CFR 331.5).

Need and use of the information: The FDIC needs the information to facilitate timely and accurate restoration of key financial records. The FDIC will use the information only in the event of the closure of an affected institution experiencing a Y2K problem.

Respondents: This rule applies those FDIC-insured depository institutions receiving Y2K ratings from their primary federal regulators of less than ''Satisfactory'' on or after July 31, 1999.

Adjusted Estimated annual burden resulting from this rulemaking:

Frequency of response: Daily, beginning December 24, 1999 and continuing until released from the rule's requirements or June 30, 2000, whichever occurs first.

Number of respondents: 38.

Average number of hours per respondent: 258.

Total annual burden hours: 10,500.

It is noted that the total annual burden includes service bureau and other contractor time, and that the actual burden experienced by individual institutions may range from 88 hours per institution to 350 hours per institution.

The final rule makes no changes in the collection of information established in the interim final rule and approved by OMB. However, the FDIC has adjusted the burden estimates associated with the information collection to reflect current expectations. Specifically, fewer institutions are expected to have to comply with the rule (from 205 at the time of the interim final rule to 38 at present) and the average number of hours that it will take those institutions to comply with the information collection has increased from 131.4 hours to 258 hours per institution. The increase in the average hours to comply is due to the fact that the remaining institutions use in-house programming or are the only customers of their service or software providers required to comply with the rule. As a result, the time required to comply with the information collection cannot be allocated among multiple customers of a service or software provider, an assumption made at the time of the interim final rule. The FDIC has requested OMB to approve an adjustment of the estimated burden.

VIII. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that this final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801, *et seq.* As required by SBREFA, the FDIC has filed the appropriate reports with Congress and the Comptroller General, General Accounting Office so that the final rule can be reviewed.

IX. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L.105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 331

Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

By order of the Board of Directors.

Dated at Washington D.C., this 9th day of September, 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

Accordingly, the interim rule adding 12 CFR part 331 which was published at 64 FR 30869 on June 9, 1999, is adopted as a final rule with the following changes:

PART 331—ASSET AND LIABILITY BACKUP PROGRAM

1. The authority citation for part 331 continues to read as follows:

Authority: 12 U.S.C. 1818(a) and (b), 1819(a)(Seventh and Tenth), 1821.

§ 331.4 [Amended]

2. Amend § 331.4 by removing ''September 30, 1999'' and adding in its place ''October 31, 1999'', and by removing the phrase ''no later than October 31, 1999'' and adding in its place the phrase ''no later than November 15, 1999''.

3. Revise appendix A to part 331 to read as follows:

Appendix A to Part 331—Asset and Liability Backup Program Technical Instructions and Deposit Extract File Format

Technical Instructions

FDIC Standard Deposit Extract File Format

The FDIC Standard Deposit Extract file Format

The attached ''Deposit Extract File Format'' is a list of fields developed as a tool for requesting information from an institution for the purposes of insurance estimation and other related functions. Please match your institution's deposit information field names to those on the ''Deposit Extract File Format.'' For your convenience, descriptions of each field are provided.

Standard Deposit Extract File Preferences

1. Information must be provided in an ASCII-flat, tab delimited file.
   (a) The preferred media is diskette, CD, ZIP Disk or fixed length 9-track tape.
   (b) All deposit records should be included in one file. Separate files are acceptable in those cases where the information will not fit on the selected media type.
   (c) Diskette and CD files zipped with PKZIP or WINZIP are also acceptable. If information cannot be provided on preferred media, or you cannot provide the information in ASCII format, please contact Mr. James Murphy, at the FDIC's Dallas Field Operations Branch, Telephone No. (972) 761–2226, for possible alternatives.
2. Please provide ALL requested information if available.
3. Provide a record layout in a printout accompanying the file. The field order and field names are indicated. The field names are under the column heading 'FDIC NAME.' Your record layout must include field order, field name, type (e.g., *C*haracter, *N*umeric), field length and decimal places (precision).
4. Do not duplicate records within the download.
5. Decimal points are to be included in the information provided, not implied (i.e., $10,300.75 will be provided as 10300.75; an interest rate of 8.45% will be provided as 08.45000). Please do NOT include packed or zoned decimals.
6. Date formats are to be MM/DD/YYYY (e.g., March 14, 2001 will be provided as 03/14/2001).
7. All numeric fields are be right justified. All character fields are to be left justified.

8. When the customer's mailing address is located in a foreign country, include the name of the country in the ''Customer City'' field, separated from the city by a comma and a space (e.g., Paris, France).

9. All numeric value are deemed positive unless signed as negative (−).

DEPOSIT EXTRACT FILE FORMAT

Information field	Definition	FDIC name	Info type	Info length	Dec
1 Account Status	Code defining account status (O = Open, C = Closed, D = Dormant, I = Inactive).	STATUS	C	4	
2 Branch Number	Branch Number	BRANCH	C	4	
3 Account Number.	Unique account number. Include all fields required to avoid duplicate account numbers.	ACCTNO	C	20	
4 Tax ID Number	Taxpayer identification number of the primary account holder (ex: 428–78–1992 or 58–2345679 Include Hyphens).	TAXID	C	11	
5 Customer Short Name.	Alpha sort key used to create an alpha list of accounts	SHORTNAME.	C	20	
6 Customer Name.	Full name line 1 as it appears on deposit account	NAME1	C	40	
7 Joint Customer Name.	Full name line 2 as it appears on deposit account	NAME2	C	40	
8 Customer Street Address Line 1.	The first line of the customer's street address as it appears on the statement.	ADDR1	C	40	
9 Customer Street Address Line 2.	The second line of the customer's street address as it appears on the statement.	ADDR2	C	40	
10 Customer Street Address Line 3.	The third line of the customer's street address as it appears on the statement.	ADDR3	C	40	
11 Customer City	Address city as it appears on statement. If this city is located in a foreign country, include the name of the country in this field, separated from the city by a comma and a space.	CITY	C	25	
12 Customer State.	State postal abbreviation as it appears on statement	STATE	C	2	
13 Customer Zip	Address zip code as it appears on statement—no hyphens	ZIP	N	9	
14 Financial Institution's Account Type.	The Financial Institution's account types. Use any pertinent codes relevant to identifying the type of account.	FITYPE	C	4	
15 Account Type Description.	Description of the Financial Institution's account types. May also be used to describe class codes.	FIDESC	C	20	
16 FDIC Account Type.	FDIC Claim Types (e.g., DDA, SAV, CD, NOW, MMA, IRA, KEO (KEOGH), TRU (TRUST)).	FDICTYPE	C	4	
17 GL Code	Financial Institution's GL code that the account is aggregated to for GL accounting.	GLCODE	C	6	
18 GL Code Description.	Description of Financial Institution's GL code that the account is aggregated to for GL accounting.	GLDESC	C	20	
19 Class Code	All codes identifying deposit account products on bank's system (may be the same as FITYPE).	CLASS	C	4	
20 Municipality	Indicates account of state, county or municipal entity	MUNICIPAL	C	4	
21 Current Account Balance.	Current principal account balance	CURRBAL	N	15	2
22 Accrued Interest.	Accrued interest earned but not paid on the account. Enter zero if not interest bearing.	ACCRINT	N	15	2
23 Per Diem	Daily accrual amount or per diem. Enter zero if blank or null	PERDIEM	N	9	5
24 Interest Paid Year-to-Date.	Interest paid year-to-date. Enter zero if not interest bearing	INTPYTD	N	15	2
25 Interest Rate	Current interest rate applicable to account on cutoff date. Rate is based on the current balance, not base rate. If minimum balance requirements are not met, rate is zero.	RATE	N	8	5
26 Original Date	Date account opened	ORIGDATE	D	10	
27 Maturity Date	Maturity date for all CDs and IRA accounts	MATDATE	D	10	
28 Interest Paid Through Date.	Date interest is paid through	PDTHRUDT	D	10	
29 Collateral Account Number.	Loan account number for which this deposit account is serving as collateral.	LOANACCT	C	16	
30 Overdraft Account Number.	Overdraft Protection account number this account is tied to	OPDACCT	C	20	
31 Available Overdraft Protection Amount.	Current available Overdraft Protection Balance	AVAILOD	N	15	2
32 Average Daily Balance.	Average daily balance, maintained for the current statement period (monthly, quarterly).	DAILYBAL	N	15	2

DEPOSIT EXTRACT FILE FORMAT—Continued

Information field	Definition	FDIC name	Info type	Info length	Dec
33 Available Balance.	Current available balance	AVAILBAL	N	15	2
34 Hold Code	Hold code(s)/flag(s) indicating account secures a loan(s)	HOLDCODE	C	4	
35 Hold Description.	Description of hold code(s)/flag(s) indicating account secures a loan(s) etc.	HOLDDESC	C	20	
36 Hold Amount	Amount of hold(s)	HOLDAMT	N	15	2

3. Revise appendix B to part 331 to read as follows:

Appendix B to Part 331—Asset and Liability Backup Program Technical Instructions and Loan Extract File Format

Technical Instructions

FDIC Standard Loan Extract File Format

The FDIC Standard Loan Extract File Format

The attached ''Loan Extract File Format'' is a list of fields developed as a tool for requesting information from an institution for the purposes of categorizing, analyzing and transmitting the loan portfolio and other related functions. Please match your institution's loan information field names to those on the ''Loan Extract File Format.'' For your convenience, descriptions of each field are provided.

Standard Loan Extract File Preferences

1. Information must be provided in an ASCII-flat, tab delimited file.
   (a) The preferred media is diskette, CD, ZIP Disk or fixed length 9-track tape.
   (b) All loan records should be included in one file. Separate files are acceptable in those cases where the information will not fit on the selected media type.
   (c) Diskette and CD files zipped with PKZIP or WINZIP are also acceptable.
   If information cannot be provided on preferred media, or you cannot provide the information in ASCII format, please contact Mr. James Murphy, at the FDIC's Dallas Field Operations Branch, Telephone No. (972) 761–2226, for possible alternatives.
2. Please provide ALL requested information if available.
3. Provide a record layout in a printout accompanying the file. The field order and field names are indicated. The field names are under the column heading 'FDIC NAME'. Your record layout must include field order, field name, type (e.g. *C*haracter, *N*umeric), field length and decimal places (precision).
4. Do not duplicate records within the download.
5. Decimal points are to be included in the information provided, not implied (i.e., $10,300.75 will be provided as 10300.75; an interest rate of 8.45% will be provided as 08.45000). Please do NOT include packed or zoned decimals.
6. Date formats are to be MM/DD/YYYY and include the slashes (e.g., March 14, 2001 will be provided as 03/14/2001).
7. All information for each loan must be contained within one record.
   a. Participation sold information is *not* to be provided as a separate record (provide as separate field).
   b. Partial charge-off information is *not* to be provided as a separate record (provide as separate field).
   c. Completely charged-off loans and paid-off loans are *not* to be included in the download.
   d. Loans with partial charge-off are to be provided with balances net of partial charge-off.
8. All numeric fields are to be right justified. All character fields are to be left justified.
9. When the customer's mailing address is located in a foreign country, include the name of the country in the ''Borrower City'' field, separated from the city by a comma and a space (e.g., Paris, France).
10. All numeric value are deemed positive unless signed as negative (−).

LOAN EXTRACT FILE FORMAT

Information field	Definition	FDIC name	Info type	Info length	Dec
1 Borrower Name	The full legal name (Last Name, First Name, MI) of the borrower (preferred). The information may also be provided in multiple fields (Last Name in field called NAME1, First Name in a field called NAME2, MI in a field called NAME3).	NAME	C	50	
2 Borrower Short Name.	Abbreviated name assigned to each borrower	SHORTNAME	C	50	
3 Borrower Street Address Line 1.	The first line of the Borrower's street address where the borrower's home or head office is located.	ADDR1	C	50	
4 Borrower Street Address Line 2.	The second line of the Borrower's street address where the borrower's home or head office is located.	ADDR2	C	50	
6 Borrower Street Address Line 3.	The third line of the Borrower's street address where the borrower's home or head office is located.	ADDR3	C	50	
6 Borrower City	The city where the borrower's home or head office is located. If this city is located in a foreign country, include the name of the country in this field, separated from the city by a comma and a space.	CITY	C	40	
7 Borrower State	The state where the borrower's home or head office is located	STATE	C	2	
8 Borrower Zip	The zip code where the borrower's home or head office is located.	ZIP	C	10	
9 CIF Number	Central Information File identifier. The number that links all loan, deposit, and other accounts to the borrower. (This number may be the same as the Borrower ID Number).	CIF	C	15	
10 Insider	Indicates if the borrower is either an insider of the bank or a related interest of an insider of the bank. If possible, indicate the type of insider (e.g., director, executive officer, principal shareholder, non-executive officer, or employee).	INSIDER	C, Y/N	1	
11 Tax ID Number	Taxpayer identification number of the primary account holder (e.g., 428–78–1992 or 58–2345679 Include Hyphens).	TAXID	C	11	

LOAN EXTRACT FILE FORMAT—Continued

Information field	Definition	FDIC name	Info type	Info length	Dec
12 Accrued Interest	Total amount of interest accrued and unpaid on a note/credit facility.	ACCRINT	N	14	2
13 Amortizing or Non Amortizing Status.	Indicates if the note/credit facility is amortizing or non-amortizing.	AMORTCD	C, Y/N	1	
14 Branch ID	Identifies the branch location where the note/credit facility was originated or is managed. Please indicate in your supporting documentation if this identification number is part of the note/credit facility number.	BRANCH	N	3	
15 Charged-Off Amount.	The amount associated with the note/credit facility that has been charged off. If the note/credit facility balances reported elsewhere are not net of charged-off amounts, please indicate this in your supporting documentation.	CHGOFFAMT	N	14	2
16 Co-Maker or Joint Maker.	The name of the co-maker(s) or joint maker(s) whose signature(s) appears on the promissory note or loan agreement.	COMAKER	C	50	
17 Current Balance	The portion of the note/credit facility that appears as an asset on the bank's General Ledger. This balance is net of all participations sold, charge-off, and specific reserves.	CURRBAL	N	14	2
18 Number of Days Past Due.	If interest or principal is delinquent, indicate the number of days delinquent. If both are delinquent, indicate the larger of the two numbers.	DAYSLATE	N	4	
19 Dealer Code	The code identifying loans accepted from auto, mobile home, or other sales agents.	DEALERCD	C	5	
20 Dealer Name	Dealer Name	DEALNAME	C	50	
21 Dealer Reserve Balance.	The amount of the dealer reserve held in conjunction with the applicable account.	DEALERRES	N	14	2
22 Escrow Balance	The amount currently held in escrow for payment to third parties, such as insurance and real estate taxes.	ESCRBAL	N	14	2
23 Guarantor or Endorser Name.	Name of the individual or entity that guarantees, in part or in full, the borrower's note.	GTYNAME	C	50	
24 Index	The specific underlying market index used to calculate the interest rate of an adjustable rate note/credit facility (i.e. LIBOR, Wall Street Prime, Cost of Funds Index, One-Year Treasury Bill).	INDEX	C	10	
25 Interest Rate	The interest rate currently applicable to the note/credit facility. If the interest rate is variable, indicate the current rate (e.g., 7.25%, not Prime + 1).	RATE	N	8	5
26 Interest Paid to Date.	Amount of interest collected since origination or other institution-defined time period.	INTPAID	N	14	2
27 Interest Rate Reset Interval.	The time between periodic reset dates for variable or adjustable rate loans.	RTCHGFRQ	N	3	
28 Interest Rate Reset Date.	The next periodic reset date for variable or adjustable rate loans.	RESETDTE	D	10	
29 Last Payment Date.	Date the last payment was made	LASTPMT	D	10	
30 Last Renewal	Date on which the legally binding note/credit facility was extended or renewed, even if principal reductions have been made.	LASTRENEW	D	10	
31 Late Charges	Late charges that are currently due	LTCHGBAL	N	14	2
32 Lifetime Interest Rate Cap.	The upper limit on the interest rate that can be charged over the life of the loan.	RTCEIL	N	8	5
33 Lifetime Interest Rate Floor.	The lower limit on the interest rate that can be charged over the life of the loan.	RATEFL	N	8	5
34 Maturity Date	The date on which the legally binding note/credit facility matures.	MATDATE	D	10	
35 Mortgage Loan Type.	For real estate loans, indicates if the note/credit facility is secured by a first lien on single-family residential real estate.	MTGTYPE	C	15	
36 Next Payment Date.	Date the next scheduled payment is due	NXTDUEDT	D	10	
37 Non-accrual	Indicates if the note/credit facility is on non-accrual status	NONACCRCD	C Y/N	1	
38 Note Number or Credit Facility Number.	The number used by the bank to uniquely identify a note/credit facility.	ACCTNO	C	15	
39 Note Type or Credit Facility Type.	A code representing the type of loan. May correspond to the FFIEC Report of Condition.	LOANTYPE	C	5	
40 Note Type or Credit Facility Type Description.	A description of the code representing the type of loan	TYPEDESC	C	15	
41 Number of Payments.	The number of payments specified in the loan agreement or note.	PAYNUM	N	3	
42 Number of Extensions.	The number of times the loan has been extended beyond original maturity date.	EXTENDS	N	2	

LOAN EXTRACT FILE FORMAT—Continued

Information field	Definition	FDIC name	Info type	Info length	Dec
43 Original Balance	The amount of the note or credit facility that has been executed. If a note/credit facility has been renewed one or more times and the original amount is not available, provide the amount most recently executed.	ORIGAMT	N	14	2
44 Original Date	The date your institution extended credit to the borrower. Date should be consistent with the information provided for original balance.	ORIGDATE	D	10	
45 Payment Amount.	Amount of regularly scheduled payments	PAYAMT	N	14	2
46 P&I Payment	Amount of regularly scheduled P&I payments	PIAMT	N	14	2
47 Payment Frequency.	The frequency payments are due to the bank (i.e. monthly, quarterly, annually).	PAYFREQ	C	15	
48 Periodic Interest Rate Cap.	For variable or adjustable rate loans, the maximum percentage points that the rate may change each reset interval.	PRTCAP	N	8	5
49 Basis Code	Day basis on which interest calculations are made (e.g., 3/360, Actual/360, etc.).	BASIS	C	12	
50 Revolving Line of Credit.	Indicates if the loan is a revolving line of credit	REVCODE	C	5	
51 Security Perfection Date.	The date that the last security interest, lien, or UCC–1 was perfected.	PERFDATE	D	10	
52 Times Past Due 30–59 Days.	Number of times the note/credit facility has been past due 30–59 days during the last 12 months of the loan.	LATE30	N	4	
53 Times Past Due 60–89 Days.	Number of times the note/credit facility has been past due 60–89 days during the last 12 months of the loan.	LATE60	N	4	
54 Times Past Due 90+ Days.	Number of times the note/credit facility has been past due 90 or more days during the last 12 months of the loan.	LATE90	N	4	
55 Total Commitment.	The sum of the outstanding balance and the undisbursed amount legally available to be drawn upon.	CREDLMT	N	14	2
56 Troubled Debt Restructured Code.	Code indicating if the note/credit facility is considered to be a troubled debt restructure.	RTDCODE	C Y/N	1	
57 Unfunded or Undisbursed Balance.	The amount legally available under a note/credit facility that has not been disbursed.	UNFUNDED	N	14	2
58 Variable Rate Code.	Code indicating adjustable, floating, or variable interest rate	RATECODE	C	5	
59 Variable Rate Description.	Description of code indicating adjustable, floating or variable interest rate.	RATEDESC	C	15	
60 Collateral Code	The code associated with a unique collateral type (i.e. commercial real estate, 1–4 family real estate, UCC filings, marketable securities).	COLLCODE	C	5	
61 Collateral Description.	The narrative description of collateral or a description Referencing a collateral code. The collateral code for each description must be included in a separate table.	COLLDESC	C	50	
62 Collateral State	State in which the collateral is located	COLSTATE	C	2	
63 Collateral Value	The total value assigned to the collateral. If the bank has adjusted this value, please indicate this in your supporting documentation.	APPRLAMT	N	14	2
64 Collateral Valuation or Appraisal Date.	Date collateral was last appraised or valued	APPRDATE	D	10	
65 Insurance Code/ Flag.	A code indicating the status of insurance covering collateral for a note/credit facility.	INSCODE	C	5	
66 Insurance Expiration Date.	The date that the related insurance policy covering bank collateral expires.	INSEXP	D	10	
67 Lien Status	The priority lien held by this bank (i.e. 1st lien, 2nd lien)	LIENCODE	C	10	
68 Participating Institution Code.	Code indicating the institution participating in the credit. If the credit is sold to multiple institutions, please indicate this in your supporting documentation.	INVESTOR	C	5	
69 Participating Institution Description.	Description of the code indicating the institution participating in the credit. If the credit is sold to multiple institutions, please indicate this in your supporting documentation.	INVDESC	C	50	
70 Participation Amount.	The current outstanding dollar amount of the loan sold to or purchased from another institution.	PARTSOLD	N	14	2
71 Participation Code.	A code indicating that the loan/credit facility involves a participation purchased or sold. Please identify the purchased and sold codes.	PARTTYPE	C	5	
72 Participation Code Description.	Description of the code indicating that the loan/credit facility involves a participation purchased or sold.	PARTDESC	C	15	
73 Participation Sold Original Amount.	The original amount of the loan participation sold or purchased	PARTORG	N	14	2

LOAN EXTRACT FILE FORMAT—Continued

Information field	Definition	FDIC name	Info type	Info length	Dec
74 Rebate Flag	Flag indicating there is any kind of rebate associated with the account. (i.e. insurance, interest etc.).	REBATE	C Y/N	1	

[FR Doc. 99–24225 Filed 9–16–99; 8:45 am]
BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–119–AD; Amendment 39–11319; AD 99–19–32]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires inspecting all flap actuator internal gear systems to assure that correct end-play and backlash measurements exist, and accomplishing any corrective adjustments as necessary. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to prevent premature wear of the internal gear system caused by excessive backlash in the flight control flap actuators, which could eventually result in loss of actuator output with possible reduced or loss of airplane control.

DATES: Effective November 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–119–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 23, 1999 (64 FR 33445). The NPRM proposed to require inspecting all flap actuator internal gear systems to assure that correct end-play and backlash measurements exist, and accomplishing any corrective adjustments as necessary.

The affected airplanes could incorporate one of the following flight control flap actuators:

—Pilatus part number (P/N) 978.71.20.302—Actuator, Linear (951D100–5);

—Pilatus P/N 978.71.20.303—Actuator, Linear (951D100–7); and

—Pilatus P/N 978.71.20.304—Actuator, Linear (951D100–9).

Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with Pilatus Service Bulletin No. 27–005, dated November 18, 1998. Accomplishment of the proposed adjustments, if necessary, would be required in accordance with the maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 69 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The manufacturer will provide parts free-of-charge to the owners/operators of the affected aircraft. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $24,840, or $360 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–32 Pilatus Aircraft Ltd.: Amendment 39–11319; Docket No. 98–CE–119–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 236; certificated in any category, that have one of the following flight control flap actuators installed:

—Pilatus part number (P/N) 978.71.20.302—Actuator, Linear (951D100–5);
—Pilatus P/N 978.71.20.303—Actuator, Linear (951D100–7); and
—Pilatus P/N 978.71.20.304—Actuator, Linear (951D100–9).

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

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

To prevent premature wear of the internal gear system caused by excessive backlash in the flight control flap actuators, which could eventually result in loss of actuator output with possible reduced or loss of airplane control, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect all flap actuator internal gear systems to assure that correct end-play and backlash measurements exist, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin No. 27–005, dated November 18, 1998. Prior to further flight, perform any corrective adjustments, as necessary, in accordance with the maintenance manual.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a flap actuator that has not been inspected and adjusted (as necessary) as required by paragraph (a) this AD.

Note 2: The FAA recommends that the most up-to-date Pilatus reports and revisions pertaining to this subject be incorporated into the Pilatus PC–12 Maintenance Manual. The most up-to-date documents at the date of issuance of this AD are Temporary Revision No. 27–04, dated November 18, 1998; and Temporary Revision No. 04–04, dated June 16, 1999.

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

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

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

(e) Questions or technical information related to Pilatus Service Bulletin No. 27–005, dated November 18, 1998, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections required by this AD shall be done in accordance with Pilatus Service Bulletin No. 27-005, dated November 18, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swiss AD HB 98–460, dated November 23, 1998.

(g) This amendment becomes effective on November 8, 1999.

Issued in Kansas City, Missouri, on September 9, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24088 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–16–AD; Amendment 39–11320; AD 99–19–33]

RIN 2120–AA64

Airworthiness Directives; LET Aeronautical Works Model L–13 ''Blanik'' Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all LET Aeronautical Works (LET) Model L–13 ''Blanik'' sailplanes. This AD requires painting (using a contrasting color, i.e., red paint) the left hand elevator drive mechanism in order to not have the elevator drive bellcrank inadvertently installed backwards. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to prevent the elevator drive bellcrank from being installed backwards, which could result in an incorrect rigging of the elevator flight control with potential reduced or loss of control of the sailplane.

DATES: Effective November 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all LET Model L–13 ''Blanik'' sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 14, 1999 (64 FR 31760). The NPRM proposed to require painting (using a contrasting color, i.e., red paint) the left hand elevator drive mechanism in order to not have the elevator drive bellcrank inadvertently installed backwards. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with LET Mandatory Bulletin No. L13/082a, dated December 10, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic.

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

The FAA's Determination

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

Compliance Time of This AD

Although flight control problems caused by improper installation of the elevator drive bellcrank are only unsafe while the affected sailplanes are in flight, the condition could occur after any time the elevator drive bellcrank is reinstalled on the sailplane. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA is utilizing a compliance based on calendar time instead of hours TIS in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 140 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $9,100, or $65 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–19–33 LET Aeronautical Works: Amendment 39–11320; Docket No. 99–CE–16–AD.

Applicability: Model L–13 ''Blanik'' sailplanes, all serial numbers, certificated in any category.

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

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

To prevent the elevator drive bellcrank from being installed backwards, which could result in an incorrect rigging of the elevator flight control with potential reduced or loss of control of the sailplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, paint (using a contrasting color, i.e., red paint) the elevator drive mechanism to prevent the elevator drive bellcrank from being inadvertently installed backwards. Accomplish this action in accordance with the Work Procedure section, including Figure 1, of LET Mandatory Bulletin No. L13/082a, dated December 10, 1998.

(b) As of the effective date of this AD, no person may install, on any affected sailplane, an elevator drive bellcrank where the following has not been accomplished:

(1) The elevator bellcrank inspected to assure that it is not installed backwards; and

(2) The elevator drive bellcrank painted as required by paragraph (a) of this AD.

(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 sailplane to a location where the requirements of this AD can be accomplished.

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

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

(e) Questions or technical information related to LET Mandatory Bulletin No. L13/082a, dated December 10, 1998, should be directed to LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The modification required by this AD shall be done in accordance with LET Mandatory Bulletin No. L13/082a, dated December 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from LET Aeronautical Works, Kunovice 686 04, Czech Republic. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Czech Republic AD Number: CAA–AD–4–099/98, dated December 30, 1998.

(g) This amendment becomes effective on November 8, 1999.

Issued in Kansas City, Missouri, on September 9, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24089 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–44–AD; Amendment 39–11317; AD 99–19–30]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corp. Model S76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, B, and C helicopters. This action requires conducting a visual inspection to detect disbonding of the attachment angle between the tail gearbox forward fairing (fairing) and the pylon and replacing or repairing the attachment angles as necessary. This amendment is prompted by incidents, two in flight and eight on the ground, of fairing bonding failures. The actions specified in this AD are intended to prevent separation of the fairing, damage to the tail rotor blades, and subsequent loss of control of the helicopter.

DATES: Effective October 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1999.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–44–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7161, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: This amendment adopts a new airworthiness directive (AD) applicable to Sikorsky Model S–76A, B, and C helicopters. This action requires, within 50 hours time-in-service (TIS), conducting a visual inspection for disbonding on any attachment angle between the fairing and the pylon. Thereafter, a visual inspection is required at intervals not to exceed 1500 hours TIS. If a bonding failure of one square inch or larger is found on the attachment angle, this AD requires repairing or replacing the attachment angle. This amendment is prompted by incidents, two in flight and eight on the ground, of fairing bonding failures. The actions specified in this AD are intended to prevent a separation of the fairing, damage to the tail rotor blades, and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Alert Service Bulletin 76–55–16, dated May 12, 1999 (ASB), which describes procedures for inspecting for disbonding on the attachment angle between the fairing and the pylon and either repairing or replacing, as necessary, the attachment angle. The ASB also describes a recurring 1500-hour TIS inspection.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Model S–76A, B, and C helicopters of the same type design, this AD is being issued to prevent separation of the fairing, damage to the tail rotor blades, and subsequent loss of control of the helicopter. This AD requires visually inspecting the attachment angle on each fairing for disbonding and repairing or replacing the attachment angle as appropriate. The actions are required to be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, visually inspecting the attachment angle on each fairing for disbonding and repairing or replacing the attachment angle, as appropriate, within 50 hours TIS, is required and this AD must be issued immediately.

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.

The FAA estimates that 150 helicopters will be affected by this AD, that it will take approximately 4 work hours to accomplish the inspection and 8 work hours to replace the attachment angle. The average labor rate is $60 per work hour. Required parts will cost approximately $880 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240,000.

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 rule must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 99-SW–44–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 that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–19–30 **Sikorsky Aircraft** Corporation: Amendment 39–11317. Docket No. 99–SW–44–AD.

Applicability: Model S–76A, B, and C helicopters, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the tail gearbox forward fairing (fairing), damage to the tail rotor blades, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), conduct a visual inspection of the attachment angle on each fairing, in accordance with the Accomplishment Instructions, paragraph A, of Sikorsky Aircraft Corp. Alert Service Bulletin 76–55–16, dated May 12, 1999 (ASB).

(b) Thereafter, at intervals not to exceed 1500 hours TIS, conduct a visual inspection of the attachment angle on each fairing in accordance with the Accomplishment Instructions, paragraph A, of the ASB.

(c) If the visual inspection in paragraphs (a) or (b) reveals a disbond area that equals or exceeds 1.0 square inch, prior to further flight, repair or replace the attachment angle with an airworthy attachment angle in accordance with the Accomplishment Instructions, paragraph B, of the ASB.

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

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

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

(f) The inspection, repair, or replacement shall be done in accordance with the Accomplishment Instructions in Sikorsky Aircraft Corp. Alert Service Bulletin 76–55–16, dated May 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1999.

Issued in Fort Worth, Texas, on September 7, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–23959 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–31]

Airspace Designations; Incorporation By Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends FAA regulations relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9G, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points incorporated by reference.

DATES: These regulations are effective September 16, 1999, through September 15, 2000. The incorporation by reference of FAA Order 7400.9G is approved by the Director of the Federal Register as of September 16, 1999, through September 15, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Brown, Janet Glivings, or Christine Graves, 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:

History

FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, listed Class A, Class B, Class C, Class D, and Class E airspace areas and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the **Federal Register** to incorporate the material by reference in the Federal Aviation Regulations § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.9F in § 71.1, effective September 16, 1998, through September 15, 1999. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9F in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Airspace Designations and Reporting Points, Order 7400.9G. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9G in § 71.1, as of September 16, 1999, through September 15, 2000. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, 71.79, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9G.

The Rule

This action amends part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9G, effective September 16, 1999, through September 15, 2000. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9G in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

2. Section 71.1 is added to read as follows:

§ 71.1 Applicability.

The complete listing for all Class A, Class B, Class C, Class D, and Class E airspace areas and for all reporting points can be found in FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999. 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. The approval to incorporate by reference FAA Order 7400.9G is effective September 16, 1999, through September 15, 2000. During the incorporation by reference period, proposed changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and to reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9G may be obtained from the Airspace and Rules Division, ATA–400, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. Copies of FAA Order 7400.9G may be inspected in Docket No. 29334 at the Federal Aviation Administration, Office of the Chief Counsel, AGC–200, Room 915G, 800 Independence Avenue, SW., Washington, D.C., weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. This section is effective September 16, 1999, through September 15, 2000.

§ 71.5 [Amended]

3. Section 71.5 is amended by removing the words ''FAA Order 7400.9F'' and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.31 [Amended]

4. Section 71.31 is amended by removing the words ''FAA Order 7400.9F'' and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.33 [Amended]

5. Paragraph (c) of § 71.33 is amended by removing the words ''FAA Order 7400.9F'' and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.41 [Amended]

6. Section 71.41 is amended by removing the words ''FAA Order 7400.9F'' each place they appear and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.51 [Amended]

7. Section 71.51 is amended by removing the words ''FAA Order 7400.9F'' each place they appear and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.61 [Amended]

8. Section 71.61 is amended by removing the words ''FAA Order 7400.9F'' each place they appear and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.71 [Amended]

9. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words ''FAA Order 7400.9F'' and

adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.79 [Amended]

10. Section 71.79 is amended by removing the words ''FAA Order 7400.9F'' and adding, in their place, the words ''FAA Order 7400.9G''.

§ 71.901 [Amended]

11. Paragraph (a) of § 71.901 is amended by removing the words ''FAA Order 7400.9F'' and adding, in their place, the words ''FAA Order 7400.9G''.

Issued in Washington, DC, September 3, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–23931 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–31]

Modification of Class E Airspace, Sheridan, IN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This action suspends the effectiveness of a final rule that was published in the **Federal Register** on Wednesday, August 25, 1999 (64 FR 46267), Airspace Docket No. 99–AGL–31. The final rule modified Class E Airspace at Sheridan, IN.

EFFECTIVE DATE: Effective September 17, 1999 the final rule amendments published August 25, 1999 (64 FR 46267) are suspended until 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–22067, Airspace Docket No. 99–AGL–31, published on August 25, 1999 (64 FR 46267), modified Class E Airspace at Sheridan, IN. An incorrect effective date was published for this airspace action. This action corrects that error.

Issued in Des Plaines, IL on August 30, 1999.

Christopher R. Blum.

Manager, Air Traffic Division.

[FR Doc. 99–23941 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0968]

Food Labeling: Declaration of Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its ingredient labeling regulations to permit the use of ''and/or'' labeling for the various fish species used in the production of certain processed seafood products, i.e., surimi and surimi-containing foods. This action responds to a petition submitted by the National Fisheries Institute (NFI) requesting more flexible ingredient labeling for the fish ingredients used in the production of surimi products. This rule will permit manufacturers of surimi and surimi-containing products to maintain a single label inventory identifying all of the fish species that are used in the manufacture of these products.

DATES: This rule is effective on September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Linda J. McCollum, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 9, 1999 (64 FR 17295), FDA published a proposal to amend the ingredient labeling regulations (hereinafter referred to as the April 9 proposal) to permit the use of ''and/or'' labeling for the various fish species used in the production of certain processed seafood products such as surimi and surimi-containing foods. The April 9 proposal responded to a citizen's petition submitted by NFI, which requested that FDA allow more flexible ingredient labeling for the fish ingredients used as a component in surimi production. NFI asserted that the use of ''and/or'' labeling would have two advantages: (1) Reduce the economic burden on manufacturers of having to maintain extensive label inventories to account for all possible fish species or predominance combinations used and (2) enable manufacturers to effectively manage harvestable resources by allowing them to take advantage of the varying species and quantities of fish available at different times of the year. The petitioner also asserted that because the fish ingredients are thoroughly decharacterized during processing, the specific fish species used does not influence the nutritional content or product character, nor does it influence consumer-purchasing decisions.

In regard to the fish ingredients used to produce surimi, the NFI petition described them as refined myofibrillar protein products. The processing of the fish ingredients is such that the fish, regardless of species, are headed, gutted, filleted, skinned, deboned, and minced. The minced flesh is then washed and screened to decharacterize the tissue by removing blood, fat, pigments, and enzymes characteristic of the fish species, resulting in a slurry not recognizable as fish flesh. The fish ingredient used as a component of surimi is a washed, dehydrated slurry devoid of color, odor, texture, and taste. Surimi, an intermediate processed seafood product, is made by mixing cryoprotectants into the myofibrillar protein base then extruding it. It can be used fresh or stored frozen until processed further into seafood analog food products (Ref. 1).

Based on FDA's review of the information provided in the petition, and other information available to the agency describing the production of surimi, we tentatively found in the April 9 proposal that the use of ''and/or'' ingredient labeling for the declaration of the fish species in certain processed seafood products is consistent with other exceptions to the ingredient labeling requirements providing for ''and/or'' labeling. The agency also tentatively found that such labeling would not compromise the type or amount of information received by the consumer regarding surimi and surimi-containing foods. Consequently, in the April 9 proposal, FDA proposed to amend its ingredient labeling regulations to permit the use of ''and/or'' labeling for the fish ingredient present in surimi and surimi-containing foods. Specifically, the agency proposed that when processed seafood products contain fish protein ingredients consisting primarily of the myofibrillar protein fractions from one or more fish species and the manufacturer is unable

to adhere to a constant pattern of fish species in the fish protein ingredient, because of seasonal or other limitations of species availability, the common or usual name of each individual fish species need not be listed in descending order of predominance. Fish species not present in the fish protein ingredient may be listed if they are sometimes used in the product. Such ingredients must be identified by words indicating that they may not be present, such as ''or,'' ''and/or,'' or ''contains one or more of the following:'' e.g., ''fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting).'' Interested persons were given until June 23, 1999, to comment on the April 9 proposal.

II. Comments and Agency Response

In response to the April 9 proposal, FDA received 16 letters, each containing 1 or more comments. The comments were from government, industry, industry trade associations, academia, and consumer organizations. All of the comments agreed with the agency's decision to amend the ingredient labeling regulations in 21 CFR 101.4(b) (§ 101.4(b)) to permit the use of ''and/or'' labeling for the various fish species used in the production of surimi and surimi-containing foods.

1. Several comments requested that FDA immediately issue a letter advising manufacturers that the agency would use its enforcement discretion and permit ''and/or'' labeling consistent with the proposed rule until a final rule is published. The comments asserted that such action would provide relief from onerous labeling requirements. The agency did not act on the request for enforcement discretion because of the short timeframe in which it intended to publish the final rule. The agency considered it a more efficient use of its resources to concentrate on completing the final rule in accordance with Congress' intent that the agency publish the final rule within 1 year of receiving the petition. FDA, in publishing this final rule within that timeframe, has met congressional intent. Further, this final rule is effective on the date of publication in the **Federal Register**; therefore, the comment is moot.

2. A few comments suggested revising the ingredient statement so that all possible species of fish that can be used for the fish ingredient of surimi and surimi-containing foods would be included in the ingredient statement. They proposed that this be done by either leaving a blank for other species names or adding ''may'' to the ''contains... and/or'' statement.

The agency does not agree with this suggestion. The agency believes there is an intrinsic difference between the phrase ''may contain,'' with the inherent suggestion that the food may or may not contain the named species, and the phrase ''contains * * * and/or.'' FDA believes that the statement that a food may contain a particular fish species would be useless to consumers because the statement would not advise them whether the product would ever contain the fish species named. On the other hand, ''and/or'' labeling informs the consumer that one or more of the fish species declared is sometimes present in the product. Therefore, the agency is not granting the request to allow the use of the term ''may contain'' in the declaration of fish species in fish protein. The language of the final rule provides for the inclusion of any species of fish that is sometimes used in the surimi or surimi-containing product and is consistent with all other regulations in § 101.4(b) where the use of ''and/or'' labeling is allowed.

3. Some comments disagreed with the use of the term ''fish protein'' as an appropriate common or usual name in the ingredient list. Several comments questioned whether FDA used the term ''fish protein'' as an example and did not intend to preclude the use of other terms. They requested that FDA clarify that the term ''fish protein'' was just an example of an acceptable term for the fish ingredient. The comments asserted that other terms such as ''fish'' or ''fish blend'' rather than ''fish protein'' would be better for both industry and consumers as the descriptive name, noting that other countries use these names for labeling this ingredient.

Another comment stated that ''fish protein'' would be an inappropriate and confusing term for consumers. The comment contended that consumers would equate ''fish protein'' with denatured fish protein concentrate that is used in fish fertilizer or in animal feed.

The term ''fish protein,'' as used in the context of this regulation, is a collective (generic) name to describe the fish ingredient. FDA believes that the use of ''fish'' or ''fish blend'' is not an appropriately descriptive collective name, as it does not sufficiently describe the basic nature of the food ingredient. According to the petition, the ingredient used in surimi is processed fish muscle tissue that has been totally decharacterized by being defatted, decolorized, deflavorized, deodorized, and mechanically detexturized. Consequently, the basic nature of the food is no longer ''fish'' as is commonly understood by consumers. The term ''fish'' or ''fish blend'' implies the use of the natural fish flesh in the product; whereas, the organoleptic properties and nutritional values of the fish in surimi products are significantly modified. Further, the agency accepted industry's position that ''and/or'' labeling was appropriate for the fish protein ingredient because the species from which the fish protein is derived are no longer distinguishable (64 FR 17295 at 17297).

In response to the comment regarding consumer perception, FDA is not persuaded that consumers will confuse ''fish protein'' with ingredients used in fertilizer or animal feed. The comment did not provide data or other evidence supporting the contention that consumer confusion would occur. Further, even though other human food ingredients, such as liver or chicken, are declared on pet food labels FDA is unaware of complaints or inquiries based on confusion of the suitability of the ingredients.

Therefore, having considered the suggestions in these comments, the agency concludes that the most appropriate collective term is ''fish protein.'' In the absence of an appropriate alternative collective term the agency disagrees with the comments that requested the agency to clarify that ''fish protein'' was intended to be only an example of an acceptable ingredient name. At this time, ''fish protein'' is the collective name that should be used to designate the fish ingredient in surimi. The agency has modified the language in the final rule to clarify this point. We recognize, however, that there might be other terms that could appropriately describe the fish ingredient. Thus, we are willing to consider the appropriateness of other terms on a case-by-case basis as submitted in a citizen's petition.

4. One comment that supported use of the term ''fish'' as an appropriate descriptive name also suggested that the ingredient statement of surimi include percentage designations as follows: ''Fish (may contain one or more of the following: Pollock * * *) 50%, water 30% and other ingredients 20%.''

FDA believes that an ingredient statement is sufficiently informative when it lists the ingredients in order of predominance by weight. However, voluntary percentage declaration of ingredients is provided for in § 101.4(e). Furthermore, based on the arguments presented in the petition, the agency questions the practicability of percent ingredient labeling for these products because of its potential to negate the usefulness of the ''and/or'' labeling format by requiring a different label for

each different recipe of the surimi product. Therefore, the agency concludes that it is neither necessary nor appropriate to amend the regulations as suggested by the comment.

5. One comment requested that FDA broaden the scope of the proposal to allow for the use of ''and/or'' ingredient labeling for other fish ingredient products that may not meet the technical description of surimi. This comment requested that minced fish ingredients used in products such as fish sticks and portions that conform to 21 CFR 102.45 (§ 102.45) and fish ingredients for stews, soups, and chowders also be included in this rule. The comment contended that these products rely on substantially the same fish species used in surimi and, therefore, are subject to the same seasonality, quota limitations, and labeling costs as surimi. Further, the comment argued that processing of these types of ingredients decharacterizes the fish species ''to an extent'' and the final product may be made from a blend of several fish species.

FDA is not persuaded by the comment that it should broaden the scope of this regulation to provide for ''and/or'' labeling to other forms of fish ingredients such as minced fish. Surimi is a unique product unrecognizable as fish due to its extensive processing. Because the washed, blended minced fish and similar types of ingredients used in making fish sticks and the other products mentioned in the comment still retain taste and texture characteristic of the fish species used, we believe it is inappropriate to include them under this regulation. Fish sticks and portions made from minced fish are appropriately labeled under § 102.45.

III. Analysis of Economic Impacts

A. Benefit–Cost Analysis

FDA has examined the impacts of this rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. FDA finds that this rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA agrees with the petitioner that the current combination of seasonal species harvests, harvesting limits, labeling regulations, and limited product storage times places an unwarranted and costly logistical burden on surimi manufacturers. This combination of circumstances forces surimi manufacturers to maintain and coordinate several inventories of species-specific surimi and contingent labels that declare the specific fish species used to make the surimi. The convergence of these conditions also hampers the seafood industry's efforts to use conventional and innovative surimi processing technologies to optimize fishery yield.

This rule will mitigate the logistical burden faced by surimi manufacturers. Because surimi manufacturers will be able to maintain a single label inventory and use innovative technologies, they will be able to operate more efficiently. Because of lower production costs, consumers may see slightly lower prices for surimi. Because of the greater flexibility for species usage, the goals of fisheries management will be easier to achieve.

This rule will not result in any increase in societal costs. Because the rule is permissive, there are no costs imposed on producers. Because the new labels adequately inform consumers there will be no costs to them in terms of lost information or increased search costs. FDA received no comments to the April 9 proposal concerning its analysis of economic impacts.

B. Small Entity Analysis

FDA has examined the impacts of this rule under the Regulatory Flexibility Act (RFA). The RFA (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. In compliance with the RFA, FDA finds that this rule will not have a significant impact on a substantial number of small entities.

No costs will be generated by this final rule because it will not require any labels to be changed, or any product to be reformulated. Therefore, small businesses will only relabel or reformulate products if the benefits of ''and/or'' labeling outweigh the costs. Accordingly, under the RFA (5 U.S.C. 601–612), the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of this rule under the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for inflation) or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (68 FR 17295 at 17298). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This rule contains ingredient declaration provisions that fall within the scope of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In the April 9 proposal the agency tentatively concluded that the proposed provisions for the declaration of fish ingredients using ''and/or'' labeling would not impose any new information collection requirements. We did not receive any comments on this issue. Therefore, the agency concludes that the provisions set forth below for the declaration of fish ingredients using ''and/or'' labeling do not impose any new information collection requirements because they create an exception from existing ingredient declaration requirements to make compliance easier. The ingredient declaration burden under § 101.4(b) has been approved by the Office of Management and Budget (OMB control number 0910–0381).

VI. References

The following reference has been placed on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

1. Lee, C. M., ''Surimi Process Technology,'' *Food Technology*, pp. 69 to 80, 1984.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.4 is amended by adding paragraph (b)(23) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(b) * * *

(23) When processed seafood products contain fish protein ingredients consisting primarily of the myofibrillar protein fraction from one or more fish species and the manufacturer is unable to adhere to a constant pattern of fish species in the fish protein ingredient, because of seasonal or other limitations of species availability, the common or usual name of each individual fish species need not be listed in descending order of predominance. Fish species not present in the fish protein ingredient may be listed if they are sometimes used in the product. Such ingredients must be identified by words indicating that they may not be present, such as ''or'', ''and/or'', or ''contains one or more of the following:'' Fish protein ingredients may be declared in the ingredient statement by stating the specific common or usual name of each fish species that may be present in parentheses following the collective name ''fish protein'', e.g., ''fish protein (contains one or more of the following: Pollock, cod, and/or pacific whiting)''.

* * * * *

Dated: September 13, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–24235 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–079]

RIN 2115–AE46

Special Local Regulations for Marine Events; Neuse River Bridge Dedication Fireworks Display, Neuse River, New Bern, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Neuse River Bridge Dedication Fireworks Display, to be held September 17, 1999, over the waters of the Neuse River, New Bern, North Carolina. These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 7:45 p.m. to 9:15 p.m. EDT (Eastern Daylight Time) on September 17, 1999 and September 18, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Marine Events Coordinator, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register.** The Coast Guard received confirmation of this request for special local regulations on August 5, 1999. There were not sufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is needed to protect vessel traffic from the potential hazards associated with this event.

Background and Purpose

The City of New Bern will sponsor the Neuse River Bridge Dedication fireworks display, to be held over the waters of the Neuse River, New Bern, North Carolina. The event will consist of pyrotechnic displays fired from a barge positioned in the Neuse River. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Neuse River. The temporary special local regulations will be in effect from 7:45 p.m. to 9:15 p.m. EDT on September 17, 1999 and will restrict general navigation in the regulated areas during the event. If the event is postponed due to weather conditions, the temporary special local regulations will be effective from 7:45 p.m. to 9:15 p.m. EDT on September 18, 1999. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the fireworks display to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. *Small Entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this temporary final rule will only be in effect for a short period of time and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this temporary final rule to be minimal.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

In consideration of foregoing, part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read ad follows:

Authority: 33 U.S.C 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–079 is added to read as follows:

§ 100.35–T05–079 Neuse River Bridge Dedication Fireworks Display, Neuse River, New Bern, North Carolina.

(a) *Regulated Area.* The waters of the Neuse River enclosed within the arc of a circle with a radius of 150 yards and with its center located at latitude 35°06′00″ North, longitude 077°02′00″ West. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon.

(c) *Special Local Regulations.* (1) All persons and vessels not authorized as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Group Fort Macon.

(2) Except for person or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by the official patrol, including any commissioned, warranted, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective dates:* This section is effective from 7:45 p.m. to 9:15 p.m. EDT (Eastern Daylight Time) on September 17, 1999. If the event is postponed due to weather conditions, the regulated area is effective from 7:45 p.m. to 9:45 to 9:15 p.m. EDT (Eastern Daylight Time) on September 18, 1999.

Dated: September 2, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 99–24255 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Bulk Parcel Return Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Minor Classification Change for Bulk Parcel Return Service, Docket No. MC99–4. The change allows properly endorsed Standard Mail (A) machinable parcels that have been opened and resealed by the recipient to be returned to the original mailer and allows mailers the option of providing the parcel recipients with the label for returns.

EFFECTIVE DATE: October 3, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Lettmann, (202) 268–6261, or Scott L. Reiter, (202) 268–2999.

SUPPLEMENTARY INFORMATION: The changes in Domestic Mail Manual standards allow properly endorsed Standard Mail (A) machinable parcels that have been opened and resealed by the recipient to be returned to the original mailer without payment of return postage as part of the bulk parcel return service in certain circumstances. They also allow mailers to elect to furnish a label that can be used by recipients when returning a parcel.

These changes will provide better service to mailers and their customers and will also improve postal efficiency. Parcels that have been opened, resealed, and replaced in the mail normally require payment of additional postage. However, there are two situations in which the Postal Service believes the requirement should be superseded by the more efficient and cost-effective practice of treating the parcel as part of the BPRS mailstream.

The first situation occurs when the parcel has already been returned to the mailstream and it is impractical or inefficient to return it to the recipient for payment of postage. This could occur either because discovery that the parcel had been opened is made only after the parcel has reached a point in the mailstream that is at or near the office serving the original mailer or because such discovery is simply not made. This situation might also occur because of the inefficiencies and costs that would be encountered by having a carrier return the parcel to the recipient.

The second situation in which a recipient does not have to pay for return postage occurs when a mailer distributes a return label prepared to Postal Service specifications that the parcel recipient later uses to indicate that the parcel is being returned as BPRS at the expense of the original mailer. The use of a label is optional

and is a new feature of BPRS that mailers requested.

Background

The Postal Service currently offers bulk parcel return service (BPRS) to mailers who have a large volume of returned Standard Mail (A) machinable parcels. One of the new features will allow BPRS mailers to have properly endorsed parcels that are opened, resealed, and redeposited in the mail by addressees to be returned to designated postal facilities. BPRS currently offers a mailer the option of picking up all returned parcels from a designated postal facility at a predetermined frequency specified by the Postal Service or having them delivered by the Postal Service in a manner and frequency specified by the Postal Service. For this service a mailer pays an annual permit fee and a per piece fee for each returned parcel.

Some BPRS mailers requested that the Postal Service allow addressees who opened their parcels to have some method of returning these parcels and to allow the original mailer to pay the return postage. The Postal Service previously offered BPRS for machinable parcels only when they were undeliverable-as-addressed (UAA). If a recipient received a BPRS-endorsed parcel, opened it, and then decided to return it, the recipient was to bring it to a post office and pay single-piece postage for the return. Domestic Mail Manual standards previously required that Standard (A) parcels that had been delivered and subsequently opened, resealed, and reentered into the mail by the recipient be returned to the recipient for payment of postage. This practice resulted in inconvenience for some postal customers as well as mailers, and inefficiency for the Postal Service.

Label Option

BPRS mailers now have the option to provide customers with a return label prepared at the mailer's expense and in accordance with Postal Service specifications. These specifications include a barcode for the address of the postal facility to which the parcel is to be returned. The label authorizes recipients to return opened, machinable parcels at the expense of the mailer. It will be required that instructions be provided to recipients with the label. Once returned to the mailstream, opened and resealed parcels bearing a label will be handled in the same manner as other BPRS parcels. There will be no additional fee since there are no additional costs to the Postal Service associated with the use of a label. Mailers may choose to distribute their return labels by enclosing them with parcels or by other means, including First-Class Mail or making them available for customer downloading from an Internet site.

It is anticipated that the revisions will help resolve several problems that have been experienced by customers, mailers, and the Postal Service. They will help to eliminate situations where original mailers experience delays or other difficulties in having their merchandise returned by their customers. Mailers may be denied customer payments and information of value to their business when returned parcels are not received in a timely manner. By using a return label, mailers will be able to inform any customer who is not satisfied with the merchandise they receive that it can be sent back at no cost to them. The label feature thus gives mailers somewhat more influence over how their mailings are treated by recipients and helps to reduce or eliminate a source of customer dissatisfaction.

Another benefit is that mailers will have an effective way to retrieve merchandise that their customers reseal and redeposit after opening. A key factor in the Postal Service decision to make the use of return labels optional was the feeling on the part of some mailers that the use of a label tends to encourage customers to return merchandise. Instead of using a label, these mailers can choose to identify BPRS parcels and make the Postal Service aware that they will pay the postage for returns by properly using one of the prescribed BPRS endorsements.

The new service features also benefit the Postal Service by minimizing both decision and transaction costs associated with former procedures for dealing with opened and resealed Standard Mail (A) machinable parcels found in the mailstream. Postal employees who discover such parcels without postage will no longer be required to make a decision about how to handle them. As long as the parcels bear a proper BPRS endorsement, they can be handled like BPRS-endorsed parcels that are undeliverable-as-addressed. This will help reduce costs that are incurred by the Postal Service if such parcels are sent to a mail recovery center.

Mail processing costs can also be minimized because barcodes are required on all return labels. The barcodes will allow the Postal Service to process the parcels on bulk mail center parcel sorting machines.

There is yet another advantage when a label is used. Parcels that display a return label will be easier to identify and process as part of the BPRS mailstream. Printing on the labels will make them easier to read than if the parcels have a hand-written or stamped endorsement of ''Return to Sender.'' An easy-to-read label makes it less likely that a parcel will become ''loop'' mail in processing and delivery channels because of an unclear or incomplete return address.

In these ways the label option may help to reduce postal costs for handling returned parcels. There is no additional fee for use of the label since the Postal Service fully recovers the costs of processing opened, resealed parcels that are redeposited into the mailstream, including postage due accounting through the BPRS fee. Current BPRS permit holders who want to use the label option need only to submit their proposed labels to the post office for approval. There is no need for them to apply for a new permit.

Because of the purpose and limited scope of these changes to BPRS, the Postal Service finds no need to solicit comment on them or to delay their implementation.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. §§ 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as follows:

S SPECIAL SERVICES

* * * * *

S900 Special Postal Services

* * * * *

S920 Convenience

* * * * *

S924 Bulk Parcel Return Service

1.0 BASIC INFORMATION

[*Amend 1.1 to allow the remailing of opened parcels to read as follows:*]

1.1 Description

Bulk parcel return service (BPRS) allows mailers of large quantities of Standard Mail (A) machinable parcels that are either undeliverable-as-addressed or opened and remailed by

addressees to be returned to designated postal facilities. The mailer has the option of picking up all returned parcels from a designated postal facility at a predetermined frequency specified by the Postal Service or having them delivered by the Postal Service in a manner and frequency specified by the Postal Service. For this service a mailer pays an annual permit fee and a per piece fee for each parcel returned.

[*Revise 1.2 to read as follows:*]

1.2 Availability

A mailer may be authorized to use BPRS when the following conditions apply:

a. All returned parcels are initially prepared as Regular or Nonprofit Standard Mail (A) and are machinable parcels as defined in C050.

b. At least 10,000 Standard Mail (A) machinable parcels will be returned to a designated postal facility during a 12-month period.

c. Parcels are returned to the mailer either because they are undeliverable-as-addressed or because they have been opened, resealed, and redeposited in the mail by the recipient and it is impractical or inefficient for the Postal Service to return them.

d. Parcels bear one of the following BPRS endorsements

(F010):

''Return Service Requested—BPRS''

''Address Service Requested—BPRS''

e. Parcels have a return address that is in the delivery area of the post office that issued the BPRS permit.

f. The postal facility designated for returned parcels is located in the United States, its territories or possessions, or is a U.S. military post office overseas (APO or FPO).

g. The mailer has a valid postage due advance deposit account and pays the annual BPRS permit fee.

h. BPRS parcels may be combined with the shipper paid forwarding service (F030).

i. Standard Mail (A) parcels that qualify for a single-piece Standard Mail (B) rate under the applicable standards and that contain the name of the Standard Mail (B) rate in the mailer's ancillary service endorsement are not eligible for BPRS.

[*Revise 1.3 to read as follows:*]

1.3 Optional Label

An authorized BPRS permit holder has the option to use a label to identify BPRS parcels for return to a designated postal facility. The label is prepared at the mailer's expense and must meet all format requirements described in 4.0 and 5.0 and specifications in C820 for a postal routing barcode symbology used to produce a correct, readable barcode for the return address. Each label must be accompanied by complete instructions for its use.

[*Remove current 1.4*]

2.0 PERMITS

[*Revise section 2.1 to read as follows:*]

2.1 Application Procedures

To obtain a BPRS permit, a mailer must send a written request to the postmaster at each post office where parcels are to be returned. The request must include the following:

a. Payment for the annual BPRS permit fee.

b. Information pertinent to each requested delivery point that documents either the receipt of at least 10,000 machinable parcels originally mailed at Standard Mail (A) rates during the past 12 months, or that there are reasonable grounds to expect at least 10,000 machinable parcels originally mailed at Standard Mail (A) rates will be returned during the next 12-month period.

c. A description of the returned parcels (e.g., piece size and packaging).

d. A statement of the desired frequency and location of the parcel pickup or delivery point.

e. Sample documentation that will be used to substantiate the number of parcels returned daily to each location.

f. If labels will be furnished for returning opened parcels, sample labels prepared in accordance with 4.0 and 5.0 along with instructions for their use.

g. A written statement agreeing to pay the per piece fee for each returned parcel from a centralized advance deposit account.

[*Redesignate 2.2 as 2.4 and add new 2.2 as follows:]*

2.2 Authorization

Upon approval of a mailer's request, the post office issues an authorization letter and provides a postage due service agreement with a BPRS permit number. The permit number is used for account administration only and is not for use on mail.

[*Revise 2.3 to read as follows:*]

2.3 Postage Due Service Agreement

A BPRS mailer will be required to sign a postage due service agreement with each post office that issues a permit for the return of BPRS parcels.

[*Amend redesignated 2.4 to clarify permit renewal as follows:*]

2.4 Permit Renewal

A post office provides BPRS permit holders with annual renewal notices advising that their permits are due to expire. A notice must be returned to the issuing post office with the fee payment or authorization for the postmaster to deduct the fee from the advance deposit account by the permit expiration date. Written authorization is not necessary for renewal of a permit if there is no change to the authorization on file at the post office where the parcels are returned. If a permit holder does not renew a BPRS permit after having been given notice, the USPS will endorse the mail ''Bulk Parcel Return Service Canceled'' and will charge postage due at the single-piece First-Class Mail or Priority Mail rate as appropriate for the weight of the piece. If the single-piece First-Class Mail or Priority Mail rate is not paid, the mail is forwarded to the nearest mail recovery center for final disposition.

[*Redesignate current 2.4 as 2.5 and revise to read as follows:*]

2.5 Permit Cancellation

A BPRS permit may be canceled by the USPS for any of the following reasons:

a. Failure to meet the minimum volume requirement of 10,000 parcels returned during a 12-month period to each postal facility;

b. Failure of the mailer to pay the required postage and fees for returned parcels;

c. Insufficient funds in an advance deposit account to cover postage and fees that are due for returned parcels;

d. Failure to fulfill the terms and conditions of the BPRS permit authorization; or

e. Failure to conform return labels to the specifications in sections 4.0 and 5.0.

[*Redesignate current 2.5 as 2.6 and revise to read as follows:*]

2.6 Reapplying After Cancellation

A mailer must do the following to receive a new BPRS permit at the same post office where a permit was canceled earlier:

a. Submit a letter to that office requesting a permit and new agreement.

b. Pay a new permit fee.

c. Provide evidence showing that the reasons for cancellation of the previous permit no longer exist.

d. Maintain adequate funds in an advance deposit account to cover the number of returns expected over at least a 2-week period.

3.0 POSTAGE AND FEES

3.1 Permit Fee

[Amend 3.1 for clarification to read as follows:]

The permit fee is charged once for each 12-month period and the fee for a permit renewal is due on the anniversary date of the original permit issuance. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period under the existing permit. The fee charged is that which is in effect on the date of payment.

3.2 Payment

[Revise 3.2 to read as follows:]

The requirements for payment of the BPRS annual permit fee and per piece fees are as follows:

a. The permit holder must pay BPRS per piece fees through an advance deposit account.

b. Parcels will be turned over to the mailer only when sufficient funds are in the account to pay all applicable fees.

c. The permit holder may establish a unique advance deposit account or use an existing one to pay postage and fees under BPRS.

[Add new 4.0 to specify label requirements to read as follows:]

4.0 LABEL REQUIREMENTS

4.1 Production Methods

Any photographic, mechanical, or electronic process, or any combination of such processes other than typewriting or handwriting may be used to prepare the BPRS label. The background may be any light color that allows the address, postmark, and other endorsements to be easily read. Brilliant colors may not be used for the background. If a label is prepared with adhesive on its reverse side, the adhesive must be capable of securely bonding the label to the parcel.

4.2 Label Instructions

Written instructions must be provided with the label that, at a minimum, advise the user to do the following:

a. Obliterate all other delivery addresses and barcodes on the outside of the parcel.

b. Print a complete return address in the location provided in the upper left corner of the label.

c. Place the label with the delivery address and barcode on the side of the mailpiece with the largest surface area. If tape or similar material is used, it must not cover any part of the label where the mailer's return address and postal routing barcode are located. The barcode should be at least 1 inch from the edge of the parcel. If the shape of the parcel requires specific orientation for stability, the label must be placed on the top surface.

d. Take the parcel to a post office, drop it in a collection box, or give it to a postal carrier.

4.3 Distribution

BPRS return labels may be distributed to customers as an enclosure with merchandise, as a separate item, as a facsimile transmission (fax), or as an electronic transmission for customer downloading and printing. Regardless of distribution method, all standards in 4.2 and 5.0 must be met. An electronic file must include instructions that explain how to affix the label securely to the parcel as required in 4.2.

[Add new 5.0 to read as follows:]

5.0 FORMAT

5.1 General

The BPRS label contents and format must meet all applicable standards before the label may be distributed for use. Format requirements are shown in Exhibit 5.0.

5.2 Postage Guarantee

The endorsement ''NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES'' must be printed in the upper right corner of the face of the piece. The endorsement must not extend more than 1¾ inches (1.75 inches) from the right edge of the label.

5.3 Horizontal Bars

To facilitate recognition of BPRS parcels, a series of horizontal bars parallel to the label length must be printed directly below the endorsement ''NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES.''

a. The bars must be uniform in length, at least 1 inch long and 1/16 inch (0.0625 inch) to 3/16 inch (0.1875 inch) thick, and evenly spaced.

b. There must be at least a ½ inch (0.500 inch) clearance between the right edge of the ZIP Code in the delivery address and the left edge of the horizontal bars.

c. The bottom bar in the series must be above (not on or below) the top of the delivery address line (the next-to-last line in the address, just above the line with the city, state, and ZIP Code).

d. Do not use a facing identification mark (FIM) on this label.

5.4 Class Endorsement

The ''STANDARD MAIL A'' class endorsement must be at least ¼-inch (.25 inch) high and shown in capital letters to the left of the postage guarantee endorsement.

5.5 BULK PARCEL RETURN SERVICE Legend

The ''BULK PARCEL RETURN SERVICE'' legend must be placed above the return delivery address on all BPRS parcels. The legend means that the BPRS permit holder guarantees payment of postage and fees on all returned Standard Mail (A) parcels. The following information must be enclosed in a rectangle:

a. Line 1: Show the words ''BULK PARCEL RETURN SERVICE'' in capital letters at least 3/16 inch (0.1875 inch) high, enclosed in a rectangle.

b. Line 2: The name of the BPRS permit holder must also be printed in capital letters in the rectangle directly below the words ''BULK PARCEL RETURN SERVICE.''

c. The permit holder's city, state, and ZIP Code must appear in capital letters and must be located on the same line as the company name.

d. The post office box number and/or street address must appear in capital letters on the line beneath this information.

5.6 Delivery Address

A complete delivery address (city, state, ZIP Code) specified by the post office that issued the BPRS permit and to which parcels are returned must be printed in capital letters at least 3/16 inch (0.1875) high below the ''BULK PARCEL RETURN SERVICE'' rectangle and at least 1 inch from the left edge of the label. There must be at least a ½-inch (0.50 inch) clearance between the ZIP Code and the horizontal bars.

5.7 Customer's Return Address

The complete return address (street, city, state, ZIP Code) of the customer mailing the article back to the permit holder must be shown in the upper left corner of the label. Space must be provided for the customer's return address if it is not preprinted by the permit holder.

5.8 Optional Information

At the option of the permit holder, a single line above the top line of the customer return address may be used for customer account or other information.

5.9 Postal Routing Barcode

Every BPRS label must include a properly prepared barcode that represents the correct ZIP Code information for the delivery address of the returned parcel plus the appropriate verifier character suffix or application identifier prefix characters appropriate for the barcode symbology as described in C850 for machinable parcels. In addition to the barcode requirements in C850, the following requirements must be met in preparing BPRS labels:

a. Barcode Location: The barcode must be placed on the label immediately adjacent to the address and the label must be located on the parcel so the

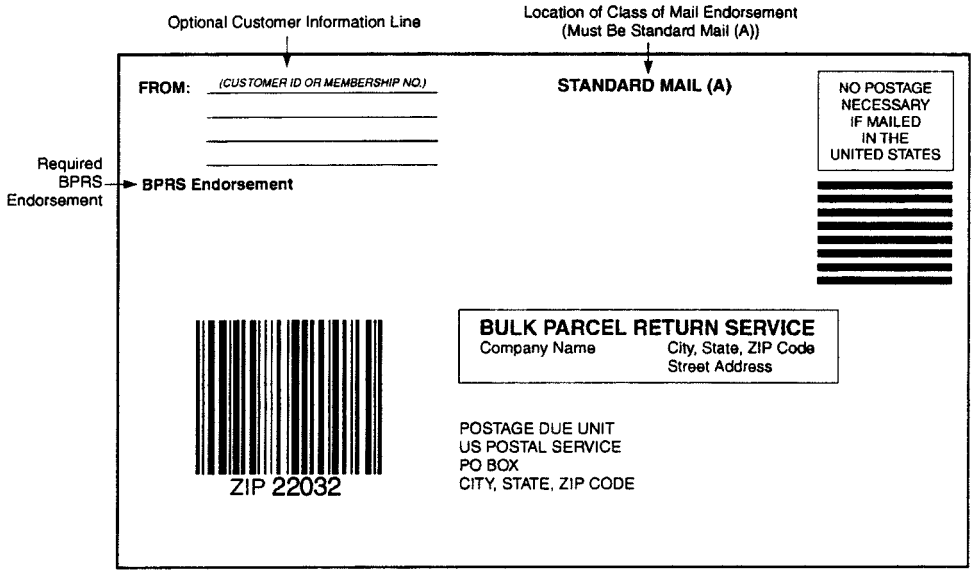
barcode is at least 1 inch from the parcel edge.

b. Barcode Clear Zone: No printing may appear in the area ⅛ inch (0.125 inch) above and below the barcode regardless of location on the label. A minimum clear zone equal to 10 times the average measured narrow element (bars or space) width must be maintained to the left and right of the barcode.

c. Human-Readable Barcode Information. The human-readable equivalent of the ZIP Code or ZIP+4 code encoded in the barcode as referenced in C850 may be omitted.

Exhibit 5.0 Bulk Parcel Return Service Label (not to scale)

BILLING CODE 7710–12–P



Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–24263 Filed 9–16–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DE037–1015a; FRL–6439–2]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the municipal solid waste (MSW) landfill 111(d) plan submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on April 23, 1998. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Delaware plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective November 16, 1999 unless by October 18, 1999 adverse or critical comments are received. 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: Comments may be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Department of Natural Resources and Environmental Control's offices at 715 Grantham Lane, New Castle; and 89 Kings Highway, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I–V and answers the questions posed below.

I. General Provisions

What is EPA approving?

What is a State 111(d) plan?

What pollutant(s) will this action control?

What are the expected environmental and public health benefits from controlling landfill gas (LFG) emissions?

II. Federal Requirements the Delaware Department of Natural Resources and Environmental (DNREC) 111(d) Plan Must Meet for Approval

What general requirements must the DNREC meet to receive approval of the Delaware MSW landfill 111(d) plan?

What does the Delaware State plan contain?

Does the Delaware plan meet all EPA requirements for approval?

III. Requirements for Affected MSW Landfill Owners/Operators

How do I determine if my MSW landfill is subject to the Delaware 111(d) plan?

What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?

If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what

emissions limits must I meet, and in what time frame?

Are there any operational requirements for my installed LFG collection and control system?

What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill?

If I modify or expand the capacity of my landfill, what additional requirements must I meet?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Question (Q): What action is EPA approving?

Answer(A): We are approving the Delaware landfill 111(d) plan, as submitted on April 23, 1998 by the Delaware Department of Natural Resources and Environmental Control (DNREC), for the control of non-methane organic compound (NMOC) emissions from municipal solid waste (MSW) landfills. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

Q. What is a State 111(d) plan?

A. Section 111(d) of the CAA requires that ''designated'' pollutants, controlled under Section 111(b) standards of performance for new stationary sources, must also be controlled at existing sources (i.e., designated facilities) in the same source category. Furthermore, Section 111(d) requires EPA to establish procedures for state submittal and EPA approval of state plans that implement emissions guidelines (EG) for the control of designated pollutants and facilities. State 111(d) plans, approved by EPA, implement and provide for federal enforceability of the EG requirements.

Q. What pollutant(s) will this action control?

A. The EG promulgated by EPA on March 12, 1996 are applicable to existing municipal solid waste (MSW) landfills (i.e., the designated facilities) that emit landfill gas (LFG). LFG consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest manmade source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous pollutants (HAPs), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of NMOC is the control of methane.

Q. What are the expected environmental and public health benefits from controlling LFG emissions?

A. Studies indicate that MSW landfill gas (LFG) emissions can at certain levels have adverse effects on both public health and welfare. EPA presented its concerns with the health and welfare effects of landfill gases in the preamble to the proposed MSW landfill regulations (56 FR 24468). As noted above, MSW landfills emit NMOC that contains HAPs, and VOC, which include odorous compounds. Exposure to HAPs can lead to cancer, respiratory irritation, and damage to the nervous system. VOC emissions contribute to ozone formation which can result in adverse affects on human health and vegetation. Methane contributes to global climate change and can also result in fires or explosions, if the gas accumulates in structures, on or off the landfill site. The Delaware 111(d) plan will serve to significantly reduce these potential problems associated with LFG emissions.

II. Federal Requirements the Delaware Department of Natural Resources and Environmental Control (DNREC) 111(d) Plan Must Meet for Approval

Q. What general requirements must the DNREC meet to receive approval of the Delaware MSW landfill 111(d) plan (i.e., the plan)?

A. Detailed procedures for submitting and approving State plans were promulgated by EPA in 40 CFR Part 60, Subpart B. The MSW landfill EG, Subpart Cc, and the related new source performance standards (NSPS), Subpart WWW, were promulgated on March 12, 1996, and amended on June 16, 1998 and February 24, 1999. More specifically, the Delaware plan must meet the requirements of 40 CFR Part 60, Subpart Cc, Sections 60.30c through 60.36c, and the related Subpart WWW; and 40 CFR part 60, Subpart B, Sections 60.23 through 26.

State MSW landfill 111(d) plans submittals were due at EPA on December 12, 1996, as required under the provisions of Section 111(d) of the CAA and 40 CFR part 60, Subpart B, and the March 16, 1997 promulgated MSW landfill EG, Subpart Cc. As a result of litigation over the landfill rule, on November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.*, No. 96–1152 (D.C. Cir), in accordance with Section 113(g) of the Act. *See* 62 FR 60898. Pursuant to the proposed settlement agreement, EPA published in the **Federal Register** a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, Subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. The proposed settlement did not vacate or void the March 12, 1996 MSW landfill EG or NSPS. Furthermore, as stated in the June 16, 1998, preamble, the amendments to 40 CFR part 60, Subparts Cc and WWW, do not significantly modify the requirements of those Subparts. *See* 63 FR 32743–32753, 32783–32784. In part, these amendments clarified the EG regulatory text with respect to landfill mass and volume applicability and Title V permit requirements. On February 24, 1999 (64 FR 9258), EPA again amended the MSW landfill rule to further clarify the regulatory text and correct errors with respect to the due date for the submittal of the initial landfill design capacity and emissions rate reports, and the definition of landfill ''modification''.

Q. What does the Delaware State Plan contain?

A. Consistent with the requirements of Subpart B and Cc, as amended, the Delaware Plan contains the following:

1. A demonstration of the State's legal authority to implement the Section 111(d) State Plan;

2. Regulation No.20, Section 28 as the enforceable mechanism;

3. A source inventory of known designated facilities, including NMOC emissions rate estimates;

4. Emission collection and control requirements that are no less stringent than those in Subpart Cc;

5. A description of the Delaware process for the review and approval of site-specific gas collection and control design plans;

6. A source compliance schedule that requires final compliance no later than September 30, 1998;

7. Source testing, monitoring, recordkeeping, and reporting requirements;

8. Records of the public hearings on the State Plan; and

9. Provisions for State submittal to EPA of annual progress reports on plan enforcement.

On April 11, 1998, the DNREC MSW landfill regulation (Regulation 20, Section 28) became effective. The regulation applies to existing MSW landfills and incorporates by reference (IBR) related and applicable new source performance standards, Subpart WWW, requirements.

Q. Does the Delaware plan meet all EPA requirements for approval?

A. Yes. The DNREC has submitted a 111(d) plan that conforms to all Subpart B and Cc requirements cited above.

Each of the above listed plan elements is approvable. Details regarding the approvability of plan elements are included in the technical support document (TSD) associated with this action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** portion of this document.

With respect to the plan's conformance with the June 16, 1998, and February 24, 1999 amended EG, the DNREC has submitted letters to EPA clarifying DNREC's authority under State law, requesting approval of the currently submitted plan, and committing to a revision of the Delaware landfill regulation in order to clarify its requirements in the context of the EG amendments. As discussed above, the June 16, 1998 amended EG added clarifying language, made editorial amendments, and corrected typographical errors. These amendments relate to four substantive changes: (1) Landfill mass ''and'' volume applicability threshold language, (2) timely Title V permit applications, (3) the definition of landfill ''modification'', and (4) the due date for submittal of initial design capacity and NMOC emissions rate reports.

Regarding the first amendment, a change of ''or'' to ''and'' in the EG mass and volume applicability language in affect relaxes the EG applicability requirements and standards. Under the amended EG, if the landfill design capacity is equal to or greater than 2.5 million megagrams ''and'' 2.5 million cubic meters, the landfill owner/operator must submit a timely initial NMOC emissions rate report in order to determine the need for installation of a collection and control system. Under Delaware's MSW landfill regulation, the initial NMOC emissions rate report is submitted if the landfill design capacity is equal to or greater than 2.5 million megagrams ''or'' 2.5 million cubic meters. However, the State of Delaware has the authority to impose more stringent emission standards, compliance schedules, and other requirements than may be required under federal law. It is important to note that Subpart B, § 60.24(g)(2), states that nothing in this subpart shall be construed to preclude any State from adopting or enforcing emission standards that are more stringent than the EG specified in Subpart C (e.g., MSW landfills under Subpart Cc), or requiring final compliance at earlier times than those specified in Subpart C, or in applicable guideline documents. Furthermore, § 60.32c states, ''The designated facility to which the guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.'' No reference is made regarding the design capacity of the landfill. Based upon the provisions of § 60.24(g)(2), § 60.32c, and Delaware State law, the DNREC's use of ''or'' in its applicability language is not cause for EPA disapproval of the its 111(d) plan.

The second substantive EPA EG amendment relates to the need for timely Title V permit application. The DNREC has submitted a letter to EPA confirming that its 111(d) Title V permitting requirements are consistent with those of the June 1998 EG amendments and its December 4, 1995 EPA approved Title V program (60 FR 62032).

The third substantive EPA EG amendment relates to the definition of landfill ''modification''. This definition has significance only when the landfill new source performance standards (NSPS), Subpart WWW, applicability requirements are triggered. Therefore, the State need not incorporate this definition into its MSW regulation 111(d) plan definitions. NSPS requirements are self-implementing.

The fourth substantive EPA EG amendment relates to the due date for submittal of the initial design capacity and nonmethane organic compounds (NMOC) emissions rate reports. The provisions of 40 CFR 60.24(g)(2) allow states to stipulate compliance schedules requiring final compliance at earlier times than those specified in the EG. Again, as noted above, the State of Delaware has the authority to impose more stringent emission standards, compliance schedules, and other requirements than may be required under federal law. Accordingly, the DNREC has the authority to impose earlier reporting and compliance schedule requirements than those stipulated in the EG. This includes the submittal of initial design capacity and NMOC emissions rate reports.

In summary, the Delaware plan meets all EPA requirements for approval.

III. Requirements Affected MSW Landfill Owners/Operators Must Meet

Q. How do I determine if my MSW landfill is subject to the Delaware 111(d) plan?

A. If your MSW landfill was constructed, reconstructed or modified before May 30, 1991, and received MSW on or after November 8, 1987, then it is subject to the 111(d) plan.

Q. What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?

A. The plan requires the submittal of an initial design capacity report. If the design capacity of the landfill is equal to or greater than 2.5 million megagrams or 2.5 million cubic meters of MSW, the plan then also requires the submittal of an initial NMOC emissions rate report. The NMOC emissions rate must be calculated according to methods specified in the regulation. If your calculated landfill NMOC emissions rate is 50 megagrams or more per year, you are required to install a MSW landfill gas collection and control system that meets the design and operational requirements specified in Regulation 20, Section 28, which IBR all related and applicable NSPS requirements.

Q. If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what emissions limits must I meet, and in what time frame?

A. You must install a landfill gas collection and control system to reduce the collected NMOC emissions by 98 weight-percent, or reduce the emissions from the control device to a concentration of 20 parts per million by volume, or less, for an enclosed combustor. The installation of the required collection and control system is required on or before September 30, 1998. Details regarding compliance schedules are stipulated in Regulation 20, Section 28(f).

Q. Are there any operation requirements for my installed LFG collection and control system?

A. Yes, there are operational requirements. These requirements are summarized below:

1. Operate the collection system wellheads at negative pressure;

2. Operate the interior collection wellheads with a landfill gas temperature less than 550° C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent;

3. Operate the collection system so that the methane gas concentration is less than 500 parts per million above background at the surface of the landfill;

4. Operate the collection system so that the colleted gases are vented to the control system; and

5. Operate the collection and control system at all times.

Details regarding operational requirements are stipulated at Regulation 20, Section 28, which IBR all the related and applicable NSPS requirements.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill?

A. A summary of these requirements is given below:

1. Performance testing, to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet concentration level, must be completed within 180 days after construction completion on the collection and control system. Performance and source test methods must be consistent with EPA test methods, as referenced in the DNREC landfill regulation.

2. Monitoring of control devise temperature on a continuous basis is required for enclosed combustion control devices, and flares. Measurement of the gas flow rate from the collection system to an enclosed combustion device, or flare, is required at least once every 15 minutes, unless the bypass line valves are secured in a closed position. Monthly monitoring requirements are specified in the regulation for the gas collection system. Gas wellhead monitored parameters include gauge pressure, nitrogen or oxygen concentration, and temperature. Quarterly monitoring is required of methane surface concentrations.

3. Reporting requirements are stipulated for landfill design capacity and NMOC emission rates; submittal of a collection and control system design plan; system start-up; performance testing; system operations; closure notification; and equipment removal.

4. On-site recordkeeping is required with respect to maximum design capacity, current amount of solid waste in-place, year-by-year waste acceptance rate; life of the control equipment, as measured during the initial performance test or compliance determination; and control device specifications until removal.

Details regarding testing, monitoring, recordkeeping, and reporting requirements are stipulated in Regulation 20, Section 28, which IBR all the related and applicable NSPS requirements.

Q. If I modify or expand the capacity of my landfill, what additional requirements must I meet?

A. Any MSW landfill that commences construction, modification, or reconstruction on or after May 30, 1991 is subject to the EPA NSPS for landfills, 40 CFR Part 60, Subpart WWW.

IV. Final EPA Action

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Delaware MSW landfill 111(d) plan for the control of landfill gas emissions from affected facilities. As provided by 40 CFR 60.28(c), any revisions to the Delaware Section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the DNREC in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR Part 60, Subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective November 16, 1999 without further notice unless the Agency receives relevant adverse comments by October 18, 1999. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 16, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled ''Regulatory Planning and Review.'' Because today's rule does not create a mandate on state, local or tribal governments, it 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. This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule. Under the Regulatory Flexibility Act (RFA), because the Federal 111(d) 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. Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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.

B. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the Delaware MSW landfill 111(d) plan 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).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

W. Michael McCabe,

Regional Administrator, EPA Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. A new undesignated center heading and §§ 62.1950, 62.1951, and 62.1952 are added to subpart I to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills (Section 111(d)) Plan)

§ 62.1950 Identification of plan.

Section 111(d) plan for municipal solid waste landfills and the associated Delaware Department of Natural Resources, Division of Air and Waste Management, Regulation No. 20, Section 28, as submitted on April 23, 1998.

§ 62.1951 Identification of sources.

The plan applies to all Delaware existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, Subpart Cc.

§ 62.11952 Effective date.

The effective date of the plan for municipal solid waste landfills is November 16, 1999.

[FR Doc. 99–24041 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6438–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Action to Delete the Dutchtown Oil Treatment Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) announces its direct final action to delete the Dutchtown Oil Treatment Superfund Site (Site), located in Ascension Parish, Louisiana, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 9605, as amended. This direct final action to delete is being taken by the EPA, with the concurrence of the State of Louisiana, because the EPA has determined that responsible parties have implemented all appropriate response actions required, and such actions remain protective of public health and the environment.

DATES: This direct final action will be effective November 16, 1999, unless the EPA receives significant adverse or critical comments by October 18, 1999. If adverse comments are received, we 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: Comments may be mailed to Ms. Janetta Coats, Community Relations Coordinator (6SF–PO), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6617.

Information Repositories: Comprehensive information on the Site is available for viewing and copying at the Site information repositories at the following locations: U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424/665–6427; Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (225) 765–0487; Ascension Parish Library, 708 S. Irma Blvd., Gonzales, LA 70737, (504) 647–3955.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Tzhone, Remedial Project Manager (6SF–LP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8409.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Action

I. Introduction

The EPA Region 6 announces the deletion of the Site from the NPL and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be subject to response actions financed by the Hazardous Substance Superfund (Fund). As stated in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for further Fund-financed remedial actions should future conditions at the site warrant such action.

The EPA will accept comments concerning this direct final action to delete for 30 days after publication of this document in the **Federal Register**. If no significant adverse or critical comments are received, the Site will be deleted from the NPL effective November 16, 1999. However, if significant adverse or critical comments are received within the 30 day comment period, the EPA will publish a notice of withdrawal of this direct final action to delete within 60 days of publication of the original document and prepare a response to the comments and continue with the rulemaking process on the basis of the proposal to delete and the comments already received.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures the EPA is using for this action. Section IV discusses the Site and how the Site meets one of the criteria. Section V states the EPA's action to delete Site from the NPL.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- Responsible parties or other persons have implemented all appropriate response actions required;
- All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, the EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL,

the site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of the Site:

- The EPA consulted with the State of Louisiana on this deletion from the NPL prior to developing this direct final action to delete.
- The EPA provided the State of Louisiana at least 30 working days for review of this direct final action to delete prior to its publication in the **Federal Register**, and the State of Louisiana concurred with this direct final action to delete.
- Concurrently with publication of this direct final action to delete, a notice of availability of this direct action to delete is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate Federal, State, and local officials and other interested parties; said notice announces the 30 day public comment period concerning the intended deletion.
- The EPA has placed copies of information supporting the deletion in the information repositories, which information is available for public inspection and copying.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist the EPA management.

The EPA Region 6 will accept and evaluate public comments on the EPA's direct final action to delete before the EPA makes a final decision. If necessary, the EPA will prepare a responsiveness summary to address any significant public comments received. If no significant adverse or critical comments are received during the comment period, the Site will be deleted from the NPL effective November 16, 1999.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting this Site from the NPL:

A. Background

The Site is an abandoned waste oil reclamation plant located at the intersection of Interstate 10 and Highway 74 in Ascension Parish, Louisiana. Previously located on this 5-acre Site were a holding pond, waste pit, seven above ground vertical storage tanks, two small horizontal tanks, and a railroad tank car used as a horizontal tank. Monitoring wells are currently scattered throughout the perimeter of the Site.

B. Expedited Response Action Activities

The EPA issued an action memorandum for an expedited response action (ERA) on March 25, 1988. A consent decree between EPA and responsible parties to design and implement the ERA was entered on May 23, 1990.

Mobilization for the ERA began in November 1990, and field activities were conducted from January 1991 through August 1991. The ERA field activities consisted of:

- Removal of the contents of the holding pond, waste oil pit, and the above ground storage tanks,
- Treatment and disposal of water from the pits, decontamination activities, and tank cleaning, and
- Excavation and treatment of the soils under the waste pits and holding ponds by soil washing to concentrations less than 4 parts per million of benzene.

During the ERA field activities, the following waste quantities were removed and treated:

- 449,810 gallons of waste oil from the holding pond, waste oil pit, and tanks were recovered, blended, and shipped for incineration;
- 3,451,999 gallons of stormwater from the waste oil pit and the holding pond were treated in the water treatment unit: 2,400,695 gallons of water were discharged and 1,051,304 gallons of water were routed to the soil washing unit; and
- 4,400 cubic yards of soil were treated by soil washing to concentrations of less than 4.0 ppm, stabilized with fly ash, and placed as backfill into the pond and pit.

Following completion of the ERA field activities, a French collection drain was installed in the waste oil pit which recovered 75,792 gallons of ground water through August 24, 1992. Compacted caps of imported clay were installed over the backfilled holding pond, the French collection drain, and the areas previously occupied by the storage tanks.

C. Remedial Investigation And Feasibility Study Activities

On August 7, 1989, the EPA entered into an administrative order on consent by which a number of responsible parties agreed to perform the remedial investigation (RI) and feasibility study (FS) for the Site. The RI/FS was started concurrently with the ERA and continued after its completion. Soil and ground water investigations during the RI identified risk due to residual contamination within the unusable shallow water bearing zone (Class III classification). Remediation alternatives to address the remaining contamination at the Site were evaluated in the FS, including using natural attenuation, ground water monitoring, and institutional controls to address the residual contamination. The FS was completed in May 1993.

D. Record Of Decision

A Record Of Decision (ROD) for the Site was issued by the EPA on June 20, 1994. Within the ROD, no remedial action (RA) numerical goals were specified because there were no pathways which existed between the residual contaminants within the unusable shallow water bearing zone and any potential receptor population. Also, exposure to surface and subsurface soils at the Site would not result in any excess risk to human health and the environment under current and no action conditions. Therefore, the remedy provided for continued ground water monitoring at the Site to observe that residual contaminants naturally attenuate on their own. RA numerical goals were not needed since the Site posed no excess risk to human health or the environment.

The components of the ROD's selected remedy include:

- Continued ground water monitoring,
- Institutional controls (deed notices and land use restrictions),
- Installation of additional monitoring wells,
- Maintenance of existing caps and fence,
- Close out of the residential well on property of adjacent residence and drilling of a replacement well, and
- Contingency measures to be implemented if ground water monitoring indicates an increase in contaminant concentrations (either vertically or horizontally).

A unilateral administrative order (UAO) was issued by the EPA on December 30, 1996, and subsequently amended on January 15, 1997. The UAO for the Site required the responsible parties to implement the remedy as selected in the ROD.

E. Remedial Action Activities

RA activities associated with the selected remedy were implemented during August 1997 by the responsible parties with oversight by the EPA and the Louisiana Department of Environmental Quality (LDEQ).

The Site RA activities included:

- Installing Monitor Well MW–21,
- Sampling all Site wells,

- Plugging and abandoning the adjacent residential well,
- Installing restriction signs,
- Inspecting caps and monitor wells, and
- Mowing vegetation.

The RA analytical data indicated a significant decrease in residual contaminant concentrations within the unusable water bearing zone. There were no off-site ground water impacts.

F. Pre-Final Inspection Activities

A pre-final inspection was conducted by EPA and LDEQ on October 29, 1997. After the inspection, the following activities were completed:

- Additional warning signs were placed at the entrance gate;
- Perimeter fence at the northeast and northwest corners and along the eastern side of the Site was repaired;
- Perimeter fence was cleared of major vegetation; and
- Several monitoring wells were upgraded with installation of locks, protective posts, shroud, and concrete pad.

Following the completion of these activities, an RA Report was completed on December 12, 1997.

G. Preliminary Close Out Report

A preliminary close out report (PCOR) was completed on January 12, 1998. The PCOR states that all RA field activities have been completed and only LTRA ground water monitoring activities associated with natural attenuation are continuing.

H. Long-Term Remedial Action Activities (LTRA)

LTRA ground water monitoring activities continued following the completion of RA field activities. The ground water monitoring data contained within the RA Report, dated December 12, 1997, and the 1st Year Natural Attenuation Report, dated September 1998, revealed that residual contaminants have decreased in concentrations within the unusable shallow water bearing zone since the ERA.

I. Final Close Out Report

The final close out report, completed in August 1999, detailed that all Site response actions, including the LTRA, were accomplished in accordance with CERCLA and consistently with the NCP. Since the Site did not have any RA numerical goals, and data from the RA and LTRA showed that natural attenuation had been taking place, EPA concluded that LTRA activities have been completed and that ground water monitoring and inspection activities will continue through the operation and maintenance stage.

Based on the completion of the activities listed above, the EPA concludes that responsible parties have implemented all appropriate response actions required and that the Site should be deleted from the NPL.

J. Characterization of Risk

The EPA actions taken to prevent overflow of a contaminated lagoon, cleanup of a diesel fuel spill, and capping a contaminated area at the Site have limited the spread of contaminated wastes, greatly lessened the potential for exposure to contaminants at the Site, and reduced environmental risk for approximately 4,000 people living within 3 miles of the Site. Continued ground water monitoring at the Site will provide data on the residual contaminants' natural attenuation process within the unusable shallow water bearing zone.

K. Community Involvement

Public participation activities required by CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617, have been satisfied. Documents which the EPA relied on for Site deletion from the NPL are available to the public in the information repositories.

V. Action

The EPA, with concurrence of the State of Louisiana, has determined that the Site poses no significant threat to human health or the environment, and all appropriate responses under CERCLA at the Site have been completed and that no further response actions, other than O&M and five year reviews, are necessary. Therefore, the EPA is deleting this Site from the NPL.

Because the EPA considers this action to be noncontroversial and routine, the EPA is taking this action without prior proposal. This direct final action will be effective November 16, 1999, unless the EPA receives significant adverse or critical comments by October 18, 1999. If significant adverse or critical comments are received, the EPA will publish a timely withdrawal of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 31, 1999.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended by removing Dutchtown Treatment Plant, Ascension Parish, Louisiana.

[FR Doc. 99–24039 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6439–7]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds one new site to the General Superfund Section of the NPL. The site is the Pools Prairie site in Neosho, Missouri.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be October 18, 1999.

ADDRESSES: For addresses for the Headquarters and Regional docket, as

well as further details on what these dockets contain, see Section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c),

added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 22, 1999 (64 FR 39878).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of September 1, 1999, the Agency has deleted 187 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of September 1, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 187 sites that have been deleted from the NPL, 178 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of September 1, 1999, there are a total of 613 sites on the CCL. This total includes the 178 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund/.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the EPA Region 7 office.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the ''Support Document for the Revised National Priorities List Final Rule—Pools Prairie, September 1999.''

C. What Documents Are Available for Review at the Regional Docket?

The Region 7 docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 7 docket.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 7 docket for its hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Region 7 dockets is as follows: Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds one site to the NPL (to the General Superfund Section of the NPL). The site is the Pools Prairie site located in Neosho, Missouri.

B. Status of NPL

With the one new site added in today's rule, the NPL now contains 1,225 sites (1,067 in the General Superfund section and 158 in the Federal Facilities section).

There are now 58 sites proposed and awaiting final agency action; 52 in the General Superfund section and 6 in the Federal Facilities section. Final and proposed sites now total 1,283.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the Pools Prairie site in this rule. The site was proposed on January 19, 1999 (64 FR 2950).

EPA responded to all relevant comments received on the Pools Prairie site. EPA's responses to site-specific public comments are addressed in the ''Support Document for the Revised National Priorities List Final Rule—Pools Prairie, September 1999''.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to

adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Does the Regulatory Flexibility Act Apply to This Final Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the site in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of this site to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and Bd. of Regents of the *University of Washington* v. *EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

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.

B. Does Executive Order 13045 Apply to This Final Rule?

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 the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Final Rule?

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.''

This 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.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. This rule will not result in the imposition of any additional requirements on any State, local governments or other political subdivisions within any State. Accordingly, the requirements of section 6(c) of Executive Order 12612 do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 10, 1999.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by adding the following site in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes(a)
*	* * * * * * *		
MO	Pools Prairie	Neosho.	
*	* * * * * * *		

(a) A=Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤28.50).
C=Sites on Construction Completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

[FR Doc. 99–24166 Filed 9–16–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 95–118, FCC 96–79]

Streamlining the International Section 214 Authorization Process and Tariff Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rules; announcement of effective date.

SUMMARY: This document announces the effective date of rules governing the international Section 214 authorization process and tariff requirements. The amended rules lowered the barriers to entry, which will encourage more applicants to enter the international market. The amended rules contained new information collection requirements and were subject to review and approval by the Office of Management and Budget (OMB). Due to an administrative error, two rules were not included in the Commission's submission to OMB. Subsequently, the Commission sought approval for the information collection requirements contained in these rule sections. OMB approved the information collection on August 17, 1999. This document announces that Sections 63.19 and 63.53 (c) are now effective.

EFFECTIVE DATES: Sections 63.19 and 63.53 (c) published at 61 FR 15724 (April 9, 1996) became effective on August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzrel, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION: On February 29, 1996, the Commission adopted a report and order that streamlined the international Section 214 authorization process and tariff requirements, a summary of which was published in the **Federal Register**. See 61 FR 15724, April 9, 1996. The report and order contained new paperwork burdens. The Commission sought and received approval from the Office of Management and Budget (OMB) for all but two of the information collections contained in the report and order. Through a clerical error, 47 CFR 63.19 and 63.53(c) were inadvertently omitted from the Commission's information collection submission to OMB. The Commission subsequently sought OMB approval for 47 CFR 63.19 and 63.53(c). The information collections for these two rules were approved by OMB on August 17, 1999. See OMB Nos. 3060–0686. This publication satisfies the statement that the Commission would publish a document announcing the effective date of the rules.

List of Subjects in 47 CFR Part 63

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24233 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235; FCC 99–203]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay.

SUMMARY: By this document, the Commission grants petitions to stay rule changes providing that frequencies formerly assigned on a shared basis to the Power Radio Service, Petroleum Radio Service, or Railroad Radio Service must be coordinated by the frequency coordinator formerly solely responsible for the service in question (or be coordinated with that coordinator's prior written concurrence). The stay will remain in effect pending resolution of petitions for reconsideration of the rule changes, during which time any Industrial/Business Pool coordinator may coordinate these frequencies.

DATES: Effective August 5, 1999. The Commission will publish a document announcing the termination of this stay.

FOR FURTHER INFORMATION CONTACT: Scot Stone of the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order* in PR Docket No. 92–235, FCC 99–203, adopted August 4, 1999, and released August 5, 1999. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov. The full text of the *Fourth Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St., SW, Room CY–A257, Washington, DC 20554. The full text of the *Fourth Memorandum Opinion and Order* can also be downloaded at:

http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc99203.txt or
http://www.fcc.gov/Bureaus/Wireless/Orders/1998/fcc99203.wp

Summary of the Fourth Memorandum Opinion and Order

1. On July 7 and 9, 1999, respectively, MRFAC, Inc. (MRFAC) and Forest Industries Telecommunications (FIT) requested that the Commission stay the effective date of recent amendments to 47 CFR 90.35, 90.175, until the issues raised in their petitions for reconsideration are addressed.

2. Formerly, the Private Land Mobile Radio service frequencies in the bands below 512 MHz were divided into twenty separate radio services, including the Power, Petroleum, Forest Products, Manufacturers, and Railroad Radio Services. The Commission certified one frequency coordinator to make frequency recommendations for each service. The coordinators for the services mentioned were, respectively, UTC, the Telecommunications Association (UTC), the American Petroleum Institute (API), FIT, MRFAC, and the American Association of Railroads (AAR).

3. In the *Second Report and Order* in this proceeding, 62 FR 18834 (rel. April 17, 1997), the Commission consolidated the twenty services into two broad frequency pools, Public Safety and Industrial/Business. All of the services listed above were consolidated into the Industrial/Business Pool. Generally, the Commission allowed coordination of any Industrial/Business frequency by any of the coordinators of the services that were consolidated into that pool, who would then notify the other in-pool frequency coordinators within one business day. The Commission provided, however, that frequencies formerly allocated *solely* to the Power, Petroleum, or Railroad Radio Service could be coordinated only by the relevant frequency coordinator. The Commission made this exception in order to ensure that licensees in those services, who sometimes use radio as a critical tool for responding to emergencies that could be extremely dangerous to the general public, not incur harmful interference from other licensees.

4. API sought reconsideration of the *Second Report and Order*, on the grounds that this exception did not provide sufficient protection to incumbent petroleum operations because most of the frequencies formerly allocated to the Petroleum Radio Service were shared with other services. In the *Second Memorandum Opinion and Order* in this proceeding, 64 FR 36258 (rel. July 6, 1999), the Commission amended the rules to require that frequencies formerly allocated to the Power, Petroleum, or Railroad Radio Services on an exclusive *or shared* basis be coordinated only by the frequency coordinator of the relevant service, or, at the relevant frequency coordinator's discretion, with its written concurrence.

5. MRFAC and FIT have raised substantial issues regarding the propriety and utility of the rule changes adopted in the *Second Memorandum Opinion and Order.* It is likely that they will incur much greater harm if the rules are permitted to take effect than might accrue to UTC and API if they are stayed. We conclude, therefore, on balance, that MRFAC and FIT have shown that it is in the public interest to grant the requested stay while the Commission examines these issues, in order to permit frequency coordinators to continue coordinating frequencies they have coordinated for years, and preserve coordination customers' options. We also find that limiting the stay to certain frequency coordinators or certain frequencies would engender greater confusion than it would avoid. Therefore, we shall stay in their entirety the changes to §§ 90.35 and 90.175 of the Commission's Rules requiring that frequencies formerly allocated on a shared basis to the Power, Petroleum, or Railroad Radio Services be coordinated

by UTC, API, or AAR, respectively (or, at their discretion, with their written concurrence). The stay will be in effect until the Commission resolves their Petitions for Reconsideration of the *Second Memorandum and Order* in this proceeding.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

In the final rule published on July 6, 1999, in amendatory instruction 4 on page 36262 beginning in the second column the following amendments to § 90.35 are stayed effective August 5, 1999: 153.035 MHz through 153.4025 MHz, 153.4025 MHz through 153.4625 MHz, 153.485 MHz through 153.5225 MHz, 153.545 MHz through 153.5825 MHz, 153.605 MHz through 153.6425 MHz, 153.665 MHz through 153.6675 MHz, 158.145 MHz through 158.1825 MHz, 158.205 MHz through 158.2425 MHz, 158.265 MHz through 158.3325 MHz, 158.355 MHz through 158.3775 MHz, 158.415 MHz through 158.4375 MHz, 173.250 MHz, 173.300 MHz, 173.350 MHz, 451.175 MHz, 451.225 MHz, 451.275 MHz, 451.375 MHz, 451.425 MHz, 451.475 MHz, 451.525 MHz, 451.550 MHz, 451.575 MHz, 451.600 MHz, 451.625 MHz, 451.650 MHz, 451.675 MHz, 451.700 MHz, 451.750 MHz, 452.325 MHz, 452.375 MHz, 452.425 MHz, 452.475 MHz, 452.775 MHz, 452.825 MHz, 452.875 MHz, 456.175 MHz, 456.225 MHz, 456.275 MHz, 456.375 MHz, 456.425 MHz, 456.475 MHz, 456.525 MHz, 456.550 MHz, 456.575 MHz, 456.600 MHz, 456.625 MHz, 456.650 MHz, 456.675 MHz, 456.700 MHz, 456.750 MHz, 457.325 MHz, 457.375 MHz, 457.425 MHz, 457.475 MHz, 457.775 MHz, 457.825 MHz, 457.875 MHz, 462.475 MHz, 462.525 MHz, 467.475 MHz, and 467.525 MHz of paragraph (b)(3), and paragraphs (c)(80) and (c)(81).

[FR Doc. 99–24234 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

RIN 1018–AB81

Eagle Transportation Permits for American Indians and Public Institutions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the general eagle permit restrictions applicable to American Indians and public institutions. This final regulation provides for the issuance of eagle permits for transportation of lawfully possessed eagle parts into or out of the United States only when the eagle parts have a religious purpose, or when a public institution transports eagle parts for scientific or exhibition purposes. In these cases, we will require that the eagle parts be returned to the country of origin. We make this revision to address concerns expressed by American Indians and public institutions who have sought our permission to allow international travel of lawfully possessed eagle parts or items containing eagle parts. We have carefully considered the needs of science and education, the religious protections guaranteed by the United States Constitution, and the recommendations made by those responding to the proposed rule providing for Eagle Transportation Permits for American Indians and Public Institutions published Thursday, June 16, 1994 (**Federal Register** (59 FR 30892)).

EFFECTIVE DATE: This rule is effective September 17, 1999.

ADDRESSES: Comments received are available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in Room 500, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203–3247, (703) 358–1949.

FOR INFORMATION CONTACT: Kevin R. Adams, Chief, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

We, the U.S. Fish and Wildlife Service, will issue permits of limited duration and conditions to American Indians and public institutions for the transportation into or out of the United States of lawfully possessed dead bald eagles (*Haliaeetus leucocephalus*) or dead golden eagles (*Aquila Chrysaetos*), or their parts, nests, or dead eggs. The movement of dead eagles, their parts ,nests, or dead eggs across the border of the United States without a permit will still be considered an import or export and will be unlawful. We will not issue a permit under this part that authorizes the transportation into or out of the United Stats of any live bald or golden eagles, or any live eggs of these birds. We will not issue permits for one of these live eagle species if any population of that species is listed as endangered under the Endangered Species Act.

We have the authority and responsibility for enforcing the provisions of the Bald and Golden Eagle Protection Act (Eagle Act), 16 U.S.C. 668–668d, and related regulations in 50 CFR part 22. The Act prohibits certain activities including the import and export of bald or golden eagles on their parts, nests, or eggs. The Act also authorizes us to issue permits for otherwise prohibited activities, including transporting bald and golden eagles, or their parts, nests, or eggs.

Since the adoption of the Eagle Act, its amendments, and its regulations, we have received requests to allow the transportation of dead bald and golden eagles, their parts, nests, or dead eggs into or out of the United States for scientific or exhibition purposes or for religious use by American Indian tribes. There were, however, no provisions within our regulations to allow such activity and the scientific and educational community and the Indian tribes effectively were prevented from crossing international borders with such items. We recognize that this situation creates some problems both in the sharing of science and in the exercise of religious freedoms. We intend to allow American Indians meeting the certification requirements in § 22.22 and public scientific or educational institutions to transport into or out of the United States on a temporary basis dead bald and golden eagles, their parts, nests, or dead eggs. We do not intend this ''transportation into or out of the United States'' provision to apply to members of foreign aboriginal, indigenous, or other tribal groups. Those individuals are unable to meet the tribal certification requirements applying to a member of an Indian entity recognized and eligible to receive services from the United States Bureau of Indian Affairs listed pursuant to 25 U.S.C. 479a–1.

In changing the applicable regulations, we strive to eliminate unreasonable restrictions placed on the scientific community and American Indians while continuing to prevent any adverse effect on eagle populations. By allowing the transportation of dead bald and golden eagles, or their parts, nests, or dead eggs into or out of the United States, we believe that both of these goals can satisfactorily be met. Other rationales for these changes are: To update part 22 to reflect official title changes of our employees, to correct minor typographical errors, and to incorporate several changes suggested by respondents.

In §§ 22.1, 22.2, 22.11, 22.21, and 22.22, we add the term ''transportation into or out of the United States'' to existing wording to allow dead bald and golden eagles, or their parts, nests, or dead eggs to be moved across United States borders under strict guidelines. We will not issue a permit under this part that authorizes the transportation into or out of the United States of any live bald and golden eagles, or any live eggs of these birds. We modified § 22.3 to define ''Transportation into or out of the United States,'' as well as §§ 22.21 and 22.22 to provide for the issuance of one permit to meet the requirements of several laws under our jurisdiction and to identify the offices responsible for permit application review. Sections 22.21 and 22.22 are further clarified to require a showing of lawful acquisition and possession prior to granting a permit to transport eagle parts outside the United States and, with respect to § 22.22, to impose time limits on permits for transportation of dead bald and golden eagles, or their nests, or dead eggs into or out of the United States. We correct typographical errors in §§ 22.11 and 22.12. In addition, we are modifying §§ 22.21, 22.22, 22.23, and 22.25 to direct permit applications and required reports to the appropriate Regional Director—Attention: Migratory Bird Permit Office. In § 22.11, we add wording to clarify that conditions included in a permit are enforceable as terms of a permit. Finally, we are revising § 22.22 to clarify certification requirements for members of Indian tribes and to delete paragraph (a)(6), which required a separate certification from an official of the individual's religious group. Although the latter change was not specifically addressed in the proposed rule, we do not view it as significant deviation from the proposed rule. The certification by a religious official is largely duplicative of the separate requirements of tribal membership certification and the individual's statement on the application form itself, under penalty of perjury, of the individual's religious need for the permit. We believe the sole effect of this change will be to reduce the administrative burden placed on individuals.

Summary of Comments and Information Received

We received six written comments to the proposed rule: One from a Confederation of Tribes; two from scientific associations; two from representatives of Federal government agencies; and one from a private citizen. We have carefully considered all comments received in response to the June 16, 1994, **Federal Register** Notice proposing these changes to part 22.

General Comments and Responses

We received a number of suggestions for changes that we found suitable for inclusion in the regulations. Many of these suggestions were incorporated into this revision of the regulation and the discussions follow.

Comment

A representative of a scientific association expressed support of the proposed rule. This individual commended our efforts in authorizing permits to transport eagle specimens into or out of the United States for scientific and exhibition purposes. The person explained that natural history museums have reason to transport such materials in the ordinary course of their work when mounting exhibits or transacting loans with other institutions for scientific study. It was also noted that until now scientists could not transport exhibits when eagles or eagle parts were involved. It was noted that for the first time since adoption of the Eagle Act, it will be possible for public institutions to borrow specimens from institutions in other countries and to send abroad exhibits containing eagle parts for educational purposes.

Response

We support the contention that the changes to be made in the regulations are a positive development. We also appreciate the assurance that allowing the transportation of bald and golden eagle specimens into or out of the United States will serve the public interest without harming wildlife resources. We agree that this change is a positive response to what generally is recognized as a real need in the science and education fields. It is or intent, by permitting public institutions to make such transportation, to promote the sharing of information, specimens, and exhibits within the international community for educational and scientific purposes whenever possible without harming wildlife resources.

Comment

Several comments expressed concern that the Endangered Species Act (ESA), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the Migratory Bird Treaty Act (MBTA) have requirements affecting both bald and golden eagles. It was noted that we require qualified individuals wishing to transport bald or golden eagle parts into or out of the United States to obtain additional permits under regulations implementing the ESA, MBTA, and CITES. It was also noted that we issue these different permits from separate offices. One suggestion was that a single office should issue all permits, and one permit meeting the requirements of all three Acts would simplify the process for the applicant and for us. Another suggestion was that any permit issued in this fashion should include language stating the requirements being met.

Response

We agree that having a single document meeting the requirements of the several laws benefits both the individual or public institution and us. We currently authorize a single permit under 50 CFR 13.1. In addition, under 50 CFR 21.2(b), we do not require part 21 permits for bald and golden eagles except for banding or marking. However, we will continue to require a part 21 permit if an artifact containing eagle feathers also contains feathers of a non-eagle species protected by the MBTA. This provision of part 21 is not changed in this final rule.

We are taking additional steps to simplify permitting requirements. We published a Special Rule under the Endangered Species Act for bald eagles in the July 12, 1995 **Federal Register** (60 FR 36000), in which we changed 50 CFR 17.41(a)(1). The final rule states that ''any permit issued under § 21.22 or part 22, will be deemed to satisfy all requirements of § 17.31 (prohibitions) and 17.32 (permits) for that authorized activity and a second permit will not be required under § 17.32.'' In this final rule we amend § 22.21, for the purpose of uniformity, to acceptance issuance of a single permit application that satisfies permit requirements of the MBTA, the Eagle Act, CITES, and the ESA. However, issuance of a single permit may not always be possible. Applicants for permits to transport eagle parts into or out of the United States under the provisions of § 22.21, permits for scientific or exhibition purposes, must submit applications to the Office of Management Authority in order to comply with the relevant sections of part 23 and CITES, and they must demonstrate lawful possession. Since CITES requires that original permits be surrendered upon import, the CITES permit could not authorize possession. Possession requires a separate permit issued by the Migratory Bird Permit Office in a respective Regional Office that is retained by the applicant.

American Indians applying for permits for the transportation into or out of the United States under the Indian religious purposes section, 22.22, will submit a single application to the

appropriate Regional Director—Attention: Migratory Bird Permit Office, because applicants must initially be certified as meeting the enrolled tribal member criteria established in this section. The Migratory Bird permit office will then forward the application to the Office of Management Authority for issuance of a CITES permit. This single permit application must also contain all the necessary information for issuance of a CITES permit.

Comment

One comment from an individual representing the interests of a Confederation of Tribes noted that because their Tribes are near the border with Canada, families frequently must travel between the two countries to maintain tribal and family relationships with members living in Canada. The individual also noted that tribal members often will possess eagle parts when crossing the border. The individual suggested that we delegate permitting authority to possess and transport eagle parts, especially miscellaneous feathers, to the Tribes. This person was of the opinion that the proposed transport permit requirements and the Federal permit process are too cumbersome.

Response

We recognize that the process of obtaining permits can be a burden especially for those individuals unfamiliar with the procedures or the reasons why such procedures are necessary. Under 16 U.S.C. 668a, we may issue permits only ''Whenever, after investigation, the Secretary of the Interior shall determine that it is compatible with the preservation of the bald eagle or the golden eagle * * *.'' We must comply with the duties placed on us by the Eagle Act, and we have no plans to delegate our permitting responsibilities. However, we attempted to eliminate any unintended or unreasonable permit burden in this final rule.

Comment

One representative of a Federal agency suggested that the proposed regulation should consider repatriation of objects containing bald or golden eagle parts to Indian Tribes or lineal descendants as mandated by the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 *et seq.* The individual noted that although transportation of most repatriated items occurs within the United States, foreign museums or persons also send items containing bald or golden eagle parts to the United States for repatriation.

Response

We acknowledge the concerns expressed by this individual. NAGPRA presents special circumstances that will ultimately have to be dealt with on a case by case basis; however, we expect this revision to reduce the problem of transporting items subject to the Eagle Act into the United States for repatriation under NAGPRA. One of the conditions of permits issued under this final rule authorizing transportation into the United States is that the permitted item or items do not change ownership. According to the statutory provisions found in 25 U.S.C. 3002, ''funerary objects'' subject to repatriation under NAGPRA are owned or controlled by the lineal descendants of a Native American or the Indian tribe. Using this definition, a ''change of ownership'' would not apply to these objects; therefore, the amendment could allow us to issue a permit authorizing transportation into the United States for religious purposes. Although incidents involving repatriation from outside the United States may be few, we intend to make every effort to assist in implementing NAGPRA rules that fall within our jurisdiction.

Comment

One individual noted several reasons for opposing the proposed revision of part 22. The first reason was that the Eagle Act prohibits the import or export of bald and golden eagles. The second reason was that the Eagle Act also explicitly prohibits the taking, possession, sale, purchase, barter, or transport of bald and golden eagles.

This individual also noted that because the Eagle Act prohibits transport and import or export, the latter two terms are not meant to be included within the meaning of ''Transportation.''

Response

With respect to this individual's concerns on the Eagle Act prohibiting import and export, we regard this assertion as correct as it pertains to ''import'' or ''export.'' We point out that the statutory authority in 16 U.S.C. 668a allows the Secretary of the Interior (Secretary) to issue permits for activities prohibited by the Eagle Act. This authority, delegated to us by the Secretary, provides for our oversight and enforcement and does not require Congressional administration of our day-to-day responsibilities. In making this change, we do not intend to include activities defined as ''import'' or ''export'' within the meaning of ''transport.'' Our intent is to distinguish between import/export activities and ''transport into or out of the United States'' for very specific purposes as it applies to the Eagle Act. The intent of this change is to remove any unreasonable and unintended regulatory restrictions previously imposed upon American Indians and public institutions. By allowing transportation into or out of the United States on a restricted basis, we are ensuring that bald and golden eagle populations are not harmed and lawfully possessed eagle parts are utilized in ways consistent with the intent of the law.

Comment

The same individual also noted that the Act specifically authorizes ''the taking, possession, and transportation of specimens * * * for scientific or exhibition purposes by public museums, scientific societies and zoological parks, or for the religious purposes of Indian tribes, * * *'' but as the individual noted, nowhere is there any provision for permits or other relief from the specific prohibitions of import and export of bald and golden eagles or relevant specimens thereof.

This individual expressed the opinion that Congress specified the acts it intended to prohibit and those for which it intended to provide exceptions and believes Congress intended to prohibit import/export of eagles because those activities are not included within the specified exceptions. The individual also expressed the point of view that Congress did not intend ''import'' or ''export'' to be included within the meaning of the term ''transportation,'' nor did it intend to provide any exception for ''import'' or ''export'' either directly or within the context of the term ''transport.'' The individual asserted that, in regards to the Indian religious right to ''import'' or ''export'' eagles, Congress intended to abrogate any such Indian Treaty rights that may have existed.

Response

We do not agree with this person's interpretation of the Act. The Act, as codified in 16 U.S.C. 668a, expressly authorizes the Secretary to issue permits for certain activities. One of the permitted activities is transportation for scientific or exhibition purposes; another is transportation for the religious purposes of Indian tribes. We interpret the term ''transportation'' to include the transportation of bald and golden eagles, or their parts, nests, or eggs within the United States or, under limited circumstances, the

transportation of dead bald and golden eagles, or their parts, nests, or dead eggs into and out of the United States on a temporary basis. As previously stated, we will not issue a permit under this part that authorizes the transportation into or out of the United States of any live bald or golden eagles or any live eggs of these birds. We also disagree with this individual's interpretation of the intent of Congress with respect to the Eagle Act. It is not our position that the terms ''import'' or ''export,'' as used in the Eagle Act, are included in the term ''transportation.'' Rather, it is our position that Congress intended ''import'' or ''export,'' as used in the Act, to refer to activities of a permanent nature with a commercial component and that the Eagle Act allows the Secretary to permit the temporary and conditional transportation of eagle parts across national borders for activities covered by this proposal. Regardless of what rights may or may not have been abrogated by the Eagle Act, the transportation activities authorized in this final rule are not importations or exportations for the purposes of the Eagle Act.

Comment

The same individual additionally noted that the term ''import,'' as defined in the ESA, is also applicable to restrictions on bald eagles. The ESA, as the individual noted, defines ''import'' as ''to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States.'' Therefore, in this person's opinion, it was unreasonable to expect an individual to understand how actions proposed to be included within the term ''transportation into or out of the United States'' for purposes of the Eagle Act would be treated as ''imports'' or ''exports'' under other treaties, statutes, or regulations. The person further expressed the point of view that neither administrative agencies nor the courts are free to substitute their own standards for standards imposed by statute. Another characterization made by this person was that the proposed regulations fail to contain any provision to either detect or prevent circumvention of the law.

Response

We disagree with the conclusion that the definition of ''import'' as it appears in the ESA is applicable to the Eagle Act. To define terms applying to a law within the law itself or within the implementing regulations of that law is both reasonable and customary. We define the term ''transport'' and clarify the definitions of ''import'' and ''export'' as they apply to the Eagle Act in the implementing regulations in 50 CFR 22.3. We strive to use regulatory terms in an invariable fashion; however, in certain cases it is necessary for the regulations to clarify terminology used within a specific statute. In the present case, we have chosen to define certain limited kinds of permitted transportation activities as transportation into or out of the United States. This is a special case where the use of a term has no application to any activity other than those specifically stated in the regulations of part 22. This distinction is necessary for the proper administration of the Eagle Act, in a manner consistent with the intent of Congress. We will make every effort to explain to permit applicants the impact that various statutes may have on a proposed activity and will seek to resolve any continuing confusion on the part of applicants when processing applications.

We believe the characterization of the changes made as a substitution of standards is inaccurate. The court system in the United States is founded on principles of judicial review and interpretation and, when necessary, the courts void laws in order to guarantee reasonableness and compliance with constitutional provisions. We believe that we share responsibility with the courts for ensuring that these laws are reasonably interpreted and constitutionally enforced. The changes to part 22 in this final rule are not a substitution of standards. The Eagle Act provides the authority to make changes in the way we administer eagle permits, and we seek to provide the reader with an interpretation and clarification of statutory and regulatory terminology. In making these changes we hope to prevent any abridgement of constitutional rights while continuing to provide for enforcement of the law within the standards and intent established by Congress.

We believe that we have adequate enforcement mechanisms in place to deter circumvention of the law and to ensure the return of eagle parts to the United States. In the case of transports, the permit conditions will require the permit holder to return the eagle parts to the country of origin. In addition, we may require submission of reports, inventories, or photographic records of items transported outside the United States in order to ensure those items' eventual return. Permit holders must comply with all permit conditions.

We believe that regulations have general application and do not only serve as a means of deterrence. Regulations also serve to provide notice to law-abiding citizens of how to conform their activities to comply with the requirements of applicable law. It is primarily the responsibility of the individual to abide by the requirements of applicable law and the requirements of the agency charged with implementing the law. We believe that the changes made to these regulations will neither increase nor decrease the underlying difficulty of detecting or preventing wildlife violations. The proposed changes are important because they allow a segment of our society the ability to exercise their religious freedoms without undue infringement. Additionally, the ability for the scientific and educational communities to share specimens and exhibits is important to encourage the protection and enhancement of the species.

Comment

The individual raised another issue by saying that the proposed regulation will not satisfy the requirements of other relevant treaties and statutes and the laws of foreign countries. Examples of this are the requirements of the ESA, MBTA, and CITES. In the individual's opinion, this would create several kinds of ''innocent violator'' situations. The person suggests several hypothetical scenarios to illustrate this assertion. In the first scenario, an individual trying to comply with the law receives a ''transportation'' permit and is of the belief that he or she is in full compliance with the law. Later, however, the same individual encounters difficulties upon learning he or she has not complied with the requirements of other applicable laws. The second scenario concerns an individual who succeeds in obtaining a new ''transportation'' permit, but finds he or she does not qualify for one or more required permits. In the third scenario an individual possessing a permit authorizing possession and transportation of eagle specimens within the United States mistakenly assumes that he or she can lawfully export and/or re-export his or her specimen.

Response

We are sympathetic to the concerns of this individual, but we believe that these hypothetical situations illustrate worst case scenarios that this revision to part 22 protects against. The changes made to part 22 will have exactly the opposite effect. As described above, the changes made in 50 CFR 22.11 reiterate that we may issue one permit, when possible, that will meet the separate requirements of the applicable laws.

This fact will help prevent the problems suggested in the first two scenarios from arising.

Regarding the third scenario, we do not wish to penalize a good faith applicant who misunderstands what a permit authorizes. We seek to minimize the chance of error or misunderstanding in the permitting process; however, permit conditions are very explicit as to what activities they authorize, and we must hold applicants accountable for activity outside those allowed. This revision does not change our position on the necessary compliance with applicable foreign laws as it pertains to the third scenario. It will continue to remain the primary responsibility of the individual seeking to transport items outside the United States, or to return such items to the United States, to ensure that he or she is in compliance with all applicable foreign laws and the CITES requirements for exiting a foreign country, or entering additional foreign countries while abroad.

Comment

Finally, the individual suggested that instead of making changes in the regulations, we should request that Congress amend the Eagle Act, and further suggested that by inserting ''import, export'' between the words ''possession,'' and ''and transportation'' in the first paragraph of 16 U.S.C. 668a, all questions of meaning would be resolved.

Response

We do not believe that such measures are necessary in order to correct the limitations in the existing regulations. We believe that Congress already has provided adequate authority to respond to the needs of American Indians and public institutions. We also believe the terms defined in 50 CFR 22.3 are compatible with 50 CFR 14.4 or those in other sections of Title 50. We have clarified the definitions in these regulations within the scope of this Act and in accordance with the intentions of Congress for enforcement of the Eagle Act.

Required Determinations

Executive Order 12866

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. We conducted a review of economic impacts and determined that the rule affects about 11,000 public zoological and scientific societies, public museums, and Native Americans who have permits under part 22. As commercial trade in eagles and eagle parts is illegal, there is no related commercial activity. The rule will not induce any new economic transactions. The ability to transport eagle parts across borders will generate benefits by permitting activities to occur without regard to political boundaries. Native American religious rites may be held at the appropriate places, and zoos and museums may be able to reach new audiences. These efficiency benefits will improve the welfare of the individual but will not be reflected in measures of economic activity.

Regulatory Flexibility Act—5 U.S.C. 601 et seq.

The Department of the Interior (Department) has determined that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This revision will have a beneficial effect upon small entities for the reasons stated above and by simplifying general permit procedures.

Small Business Enforcement Fairness Act—5 U.S.C.

Similarly, this is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2).

Paperwork Reduction Act of 1995—44 U.S.C. 3507(d)

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the U.S. Fish and Wildlife Service has, in the past, received approval for this collection of information using form 3–200 with approval number 1018–0022. This information is used to determine whether or not the applicant is qualified to take, possess, or transport bald and golden eagles, or their parts, nests, or eggs. The likely respondents to this collection of information are public zoological or scientific societies, public museums, and American Indians for religious purposes. The information is needed by us to determine whether an applicant meets the criteria established in this part and in part 13 of this subchapter B, allowing for the taking, possession, and transportation, of bald and golden eagles, or their parts, nests, or eggs. The annual burden of reporting and recordkeeping is estimated to be two hours or less per response. The estimated number of likely respondents is less than 2,600, yielding a total current annual reporting and recordkeeping burden of 5,200 hours or less.

Executive Order 12988, NEPA, and Endangered Species Consideration

The Department has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. These changes in the regulations in part 22 are regulatory and enforcement actions encompassed in a categorical exclusion from National Environmental Policy Act procedures under section 516 of the Department Manual. An Environmental Action Memorandum is on file in the U.S. Fish and Wildlife Service office in Arlington, Virginia. A determination has been made pursuant to section 7 of the Endangered Species Act that the revision of part 22 will not adversely affect federally-listed species.

Unfunded Mandates Reform Act—2 U.S.C. 1531 et seq.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not alter the ownership rights associated with eagles and their parts.

Executive Order 12612

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Effective Date of Rule

This rule relieves current restrictions on Native Americans and qualifying public institutions and has no impact on wild populations of eagles. Accordingly, as provided by 5 U.S.C. 553(d) we have determined that the rule become effective immediately upon publication in the **Federal Register**.

List of Subjects in 50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, and Wildlife.

Regulation Promulgation

For reasons explained in the preamble, Title 50, Chapter I, subchapter B, of the Code of Federal Regulations is amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

2. Revise § 22.1 to read as follows:

§ 22.1 What is the purpose of this part?

This part controls the taking, possession, and transportation within the United States of bald and golden eagles for scientific, educational, and depredation control purposes and for the religious purposes of American Indian tribes. This part also governs the transportation into or out of the United States of bald and golden eagle parts for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, trade, or barter of bald and golden eagles, or their parts, nests, or eggs is prohibited.

3. Amend § 22.2 by revising the heading and paragraph (a) to read as follows:

§ 22.2 What activities does this part apply to?

(a)(1) You can possess or transport within the United States, without a Federal permit:

(i) Any live or dead bale eagles, or their parts, nests, or eggs that were lawfully acquired before June 8, 1940; and

(ii) Any live or dead golden eagles, or their parts, nests, or eggs that were lawfully acquired before October 24, 1962.

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald or golden eagles, or their parts, nests, or eggs of these lawfully acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired dead bald or golden eagles, their parts, nests, or dead eagles, if you acquire a permit issued under § 22.22 of this part.

(3) No exemption from any statute or regulation will apply to any offspring of these pre-act birds.

(4) You must mark all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs as directed in § 14.81 of this subchapter. The markings must contain the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the number of each species.

* * * * *

4. Amend § 22.3 by revising the heading and adding in alphabetical order definitions for ‘‘ export,’’ ‘‘import,’’ and ‘‘transportation into and out of the United States’’ to read as follows:

§ 22.3 What definitions do you need to know?

* * * * *

Export for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs out of the United States when accompanied with a valid transportation permit.

* * * * *

Import for the purpose of this part does not include the transportation of any dead bald or golden eagles, or their parts, nests, or dead eggs into the United States when accompanied with a valid transportation permit.

* * * * *

Transportation into or out of the United States for the purpose of this part means that the permitted item or items transported into or out of the United States do not change ownership at any time, they are not transferred from one person to another in the pursuit of gain or profit, and they are transported into or out of the United States for Indian religious purposes, or for scientific or exhibition purposes under the conditions and during the time period specified on a transportation permit for the items.

5. Revise § 22.11 to read as follows:

§ 22.11 What is the relationship to other permit requirements?

You may not take, possess, or transport any bald eagle (*Haliaeetus leucocephalus*) or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of such birds, except as allowed by a valid permit issued under this part, part 13, and/or § 21.22 of this subchapter, or authorized under a depredation order issued under subpart D of this part. We will accept a single application for a permit under this part and any other parts of this subchapter B if it includes all of the information required for an application under each applicable part.

(a) You do not need a permit under parts 17 and 21 of this subchapter B for any activity permitted under this part 22 with respect to bald or golden eagles or their parts, nests, or eggs.

(b) You must obtain a permit under part 21 of this subchapter for any activity that also involves migratory birds other than bald and golden eagles, and a permit under part 17 of this subchapter for any activity that also involves threatened or endangered species other than the bald eagle.

(c) If you are transporting dead bald or golden eagles, or their parts, nests, or dead eggs into or out of the United States, you will also need a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permit under part 23 of this subchapter.

6. Revise § 22.12 to read as follows:

§ 22.12 What activities are illegal?

(a) You may not sell, purchase, barter, trade, import, or export, or offer for sale, purchase, barter, or trade, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle (*Aquila chrysaetos*), or the parts, nests, or eggs of these birds, and we will not issue a permit to authorize these acts.

(b) You may not transport into or out of the United States any *live* bald or golden eagle, or any *live* egg of those birds, and we will not issue a permit to authorize these acts.

7. Amend § 22.21 as follows:

a. By revising the heading and the introductory text,

b. By redesignating paragraphs (a)(1) through (a)(6) as (a)(3)(i) through (a)(3)(vi),

c. By revising paragraphs (a) introductory text, (b), and paragraph (c) introductory text, and

d. By adding paragraphs (a)(1), (a)(2), and (a)(3) introductory text, to read as follows:

§ 22.21 What are the requirements concerning scientific and exhibition purpose permits?

We may, under the provisions of this Section, issue a permit authorizing the taking, possession, transportation within the United States, or transportation into or out of the United States of lawfully possessed bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any live bald or golden eagles, or any live eggs of these birds.

(a) *How do I apply if I want a permit for scientific and exhibition purposes?*

(1) You must submit applications for permits to take, possess, or transport within the United States lawfully acquired live or dead bald or golden eagles, or their parts, nests, or live or dead eggs for scientific or exhibition purposes to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the Regional Directors in 50 CFR 2.2.

(2) If you want a permit to *transport into or out of the United States* any lawfully acquired dead bald or golden

eagles or their parts, nests, or dead eggs for scientific or exhibition purposes, you must submit your application to the Office of Management Authority. Your application must contain all the information necessary for the issuance of a CITES permit. You must also comply with all the requirements in part 23 of this subchapter before international travel. Mail should be addressed to: Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA, 22203.

(3) Your application for any permit under this section must also contain the information required under this section, § 13.12(a) of this subchapter, and the following information:

* * * * *

(b) *What are the conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific or exhibition purposes, are also subject to the following condition: In addition to any reporting requirement specifically noted in the permit, you must submit a report of activities conducted under the permit to the Regional Director—Attention: Migratory Bird Permit Office, within 30 days after the permit expires.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will only issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests, or eggs for scientific or exhibition purposes when we determine that the taking, possession, or transportation is compatible with the preservation of the bald eagle and golden eagle. In making this determination, we will consider, among other criteria, the following:

* * * * *

8. Amend § 22.22 as follows:

a. By removing paragraph (a)(6).

b. Revising the heading, the introductory text to the section, paragraph (a) introductory text, paragraph (a)(5), paragraph (b) introductory text, paragraph (b)(2), paragraph (c) introductory text, and paragraph (d) to read as follows:

§ 22.22 What are the requirements concerning permits for Indian religious purposes?

We will issue a permit only to members of Indian entities recognized and eligible to receive services from the United States Bureau of Indian Affairs listed under 25 U.S.C. 479a–1 engaged in religious activities who satisfy all the issuance criteria of this section. We may, under the provisions of this section, issue a permit authorizing the taking, possession, and transportation within the United States, or transportation into or out of the United States of lawfully acquired bald eagles or golden eagles, or their parts, nests, or eggs for Indian religious use. We will not issue a permit under this section that authorizes the transportation into or out of the United States of any *live* bald or golden eagles, or any *live* eggs of these birds.

(a) *How do I apply if I want a permit for Indian regligious purposes?* You must submit applications for permits to take, possess, transport within the United States, or transport into or out of the United States lawfully acquired bald or golden eagles, or their parts, nests, or eggs for Indian religious use to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. If you are applying for a permit to *transport into or out of the United States,* your application must contain all the information necessary for the issuance of a CITES permit. You must comply with all the requirements in part 23 of this subchapter before international travel. Your application for any permit under this section must also contain the information required under this section, § 13.12(a) of this subchapter, and the following information:

* * * * *

(5) You must attach a certification of enrollment in an Indian tribe that is federally recognized under the Federally Recognized Tribal List Act of 1994, 25 U.S.C. 479a–1, 108 Stat. 4791 (1994). The certificate must be signed by the tribal official who is authorized to certify that an individual is a duly enrolled member of that tribe, and must include the official title of that certifying official.

(b) *What are the permit conditions?* In addition to the general conditions in part 13 of this subchapter B, permits to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests or eggs for Indian religious use are subject to the following conditions:

(1) * * * * *

(2) You must submit reports or inventories, including photographs, of eagle feathers or parts on hand as requested by the issuing office.

(c) *How do we evaluate your application for a permit?* We will conduct an investigation and will only issue a permit to take, possess, transport within the United States, or transport into or out of the United States bald or golden eagles, or their parts, nests or eggs, for Indian religious use when we determine that the taking, possession, or transportation is compatible with the preservation of the bald and golden eagle. In making a determination, we will consider, among other criteria, the following:

* * * * *

(d) *How long are the permits valid?* We are authorized to amend, suspend, or revoke any permit that is issued under this section (see §§ 13.23, 13.27, and 13.28 of this subchapter).

(1) A permit issued to you that authorizes you to take bald or golden eagles will be valid during the period specified on the face of the permit, but will not be longer than 1 year from the date it is issued.

(2) A permit issued to you that authorizes you to transport and possess bald or golden eagles or their parts, nests, or eggs within the United States will be valid for your lifetime.

(3) A permit authorizing you to transport dead bald eagles or golden eagles, or their parts, nests, or dead eggs into or out of the United States can be used for multiple trips to or from the United States, but no trip can be longer than 180 days. The permit will be valid during the period specified on the face of the permit, not to exceed 3 years from the date it is issued.

9. Amend § 22.23 by revising the heading, paragraph (a) introductory text, the heading of paragraph (b), and paragraph (b)(4) to read as follows:

§ 22.23 What are the requirements for permits to take depredating eagles?

* * * * *

(a) *How do I apply for a permit?* You must submit applications for permits to take depredating bald or golden eagles to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. Your application must contain the information and certification required by § 13.12(a) of this subchapter, and the following additional information:

* * * * *

(b) *What are the permit conditions?*

* * *

* * * * *

(4) In addition to any reporting requirement on a permit, you must submit a report of activities conducted under the permit to the appropriate Regional Director—Attention: Migratory

Bird Permit Office within 10 days following completion of the taking operations or the expiration of the permit, whichever occurs first.

* * * * *

10. Amend § 22.25 by revising the heading and paragraph (a) introductory text to read as follows:

§ 22.25 What are the requirements concerning permits to take golden eagle nests?

* * * * *

(a) *How do I apply for a permit to take golden eagle nests?* You must submit applications for permits to take golden eagle nests to the appropriate Regional Director—Attention: Migratory Bird Permit Office. You can find addresses for the appropriate Regional Directors in 50 CFR 2.2. We will only accept applications if you are engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Your application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

* * * * *

Dated: June 11, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–24282 Filed 9–16–99; 8:45 am]

BILLING CODE 4316–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 091099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Statistical Area 620 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment to open directed fishing for pollock within the C fishing season in Statistical Area 620 of the Gulf of Alaska (GOA). This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC).

DATES: Directed fishing for pollock in Statistical Area 620 will be open at 1200 hrs, A.l.t., September 14, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 29, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

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

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.

NMFS issued an inseason adjustment effective September 1, 1999, limiting the initial opening of the C season fishery in Statistical Area 620 to 24 hours in accordance with § 679.25(a)(1)(i)(64 FR 48329, September 3, 1999).

NMFS also extended the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency had determined whether sufficient amounts of the C season allowance remained unharvested to allow another opening within the C fishing season prior to the harvest of the pollock authorized for the D season. NMFS has determined that 7,565 metric tons (mt) of pollock remain in the C seasonal allowance of the pollock TAC in Statistical Area 620 of the GOA.

NMFS has determined that the C seasonal allowance of pollock has not been taken and is terminating the previous C fishing season directed fishing closure in Statistical Area 620.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that opening directed fishing in the C fishing season at 1200 hrs, A.l.t., September 14, 1999, is the least restrictive management adjustment to achieve the C seasonal allowance of the pollock TAC. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the C seasonal allowance of the pollock TAC in Statistical Area 620 of the GOA would not be harvested in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the preceding address until September 29, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

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

Dated: September 14, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–24284 Filed 9–14–99; 3:20 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 091099A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Statistical Area 630 of the Gulf of Alaska

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment to open directed fishing for pollock within the C fishing season in Statistical Area 630 of the Gulf of Alaska (GOA). This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC).

DATES: Directed fishing for pollock in Statistical Area 630 will be open at 1200 hrs, A.l.t., September 14, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 29, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

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

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.

NMFS issued an inseason adjustment effective September 1, 1999, limiting the initial opening of the C season fishery in Statistical Area 630 to 24 hours in accordance with § 679.25(a)(1)(i)(64 FR 48332, September 3, 1999).

NMFS also extended the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency had determined whether sufficient amounts of the C season allowance remained unharvested to allow another opening within the C fishing season prior to the harvest of the pollock authorized for the D season. NMFS has determined that 4,346 metric tons (mt) of pollock remain in the C seasonal allowance of the pollock TAC in Statistical Area 630 of the GOA.

NMFS has determined that the C seasonal allowance of pollock has not been taken and is terminating the previous C fishing season directed fishing closure in Statistical Area 630.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that opening directed fishing in the C fishing season at 1200 hrs, A.l.t., September 14, 1999, is the least restrictive management adjustment to achieve the C seasonal allowance of the pollock TAC. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, the C seasonal allowance of the pollock TAC in Statistical Area 630 of the GOA would not be harvested in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the preceding address until September 29, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

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

Dated: September 14, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–24283 Filed 9–14–99; 3:19 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 180
Friday, September 17, 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.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB49

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing a minor amendment to its regulations that will clarify that loan applicants organized as limited liability companies may be eligible to receive financial assistance. This proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility they need to continue providing reliable telephone service at reasonable costs in rural areas, while maintaining the integrity of Government loans. This action also conforms more closely to private lending practice.

In the final rules section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this proposed action. Any parties interested in commenting on this proposed action should do so at this time.

DATES: Comments on this proposed action must be received on or before October 18, 1999.

ADDRESSES: Written comments should be sent to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700). Comments will be available for public inspection at room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: See the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the final rules section of this **Federal Register** for the applicable supplementary information on this action.

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Dated: September 10, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 99–24189 Filed 9–16–99; 8:45 am]

BILLING CODE 3410–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DE037–1015b; FRL–6439–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the municipal solid waste landfill 111(d) plan submitted by the State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management, for the purpose of controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by October 18, 1999.

ADDRESSES: Comments may be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7642.

Dated: September 2, 1999.

W. Michael McCabe,

Regional Administrator, EPA Region III.

[FR Doc. 99–24042 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6438–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposal to delete the Dutchtown Oil Treatment Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to delete the Dutchtown Oil Treatment Superfund Site (Site), located in Ascension Parish, Louisiana, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which

is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 9605, as amended. This action is being taken by the EPA, with the concurrence of the State of Louisiana, because the EPA has determined that all appropriate response actions have been implemented and remedial actions conducted at the Site to date remain protective of public health and the environment.

DATES: Comments concerning this action must be received by the EPA by October 18, 1999.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Relations Coordinator (6SF–PO), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7308.

Information Repositories: Comprehensive information on the Site is available at the Site information repositories at the following locations: U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424; Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (225) 765–0487; Ascension Parish Library, 708 S. Irma Blvd., Gonzales, LA 70737, (504) 647–3955.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Tzhone, Remedial Project Manager (6SF–LP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8409.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final action to delete notice which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 31, 1999.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 99–24040 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6439–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Tipton Army Airfield portion of Fort George Meade Site, located in Fort Meade, Maryland, from the National Priorities List (partial site deletion) and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region III announces its intent to delete the Tipton Army Airfield portion of the Fort George Meade Site (Site) from the National Priorities List (NPL) and requests public comment on this action.

The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the Maryland Department of Environment (MDE) have determined that all appropriate CERCLA response actions have been implemented and that no further action is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before October 18, 1999.

ADDRESSES: Comments may be submitted to Nicholas J. DiNardo, (3HS13), Project Manager, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, (215) 814–3365.

Comprehensive information on this Site is available for viewing at the Site information repositories at the following locations:

(1) Provinces Public Library, 2624 Annapolis Road, Severn, MD 21144, Phone: (410) 222–6280.

Hours: Mondays, Tuesdays and Thursdays—1:00 p.m. to 9:00 p.m.; Wednesdays and Saturdays—9:00 a.m. to 5:00 p.m.; and Fridays—1:00 p.m. to 5:00 p.m.

(2) U.S. Army, Directorate of Public Works, Attn: ANME–PWE, Bldg. 239, 2–1/2 Street and Ross Road, Fort Meade, MD 20755, Phone: (301) 677–9648.

FOR FURTHER INFORMATION CONTACT: Nicholas J. DiNardo, (3HS13), Project Manager, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029, (215) 814–3365.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region III announces its intent to delete the Tipton Army Airfield portion of the Fort George Meade Site, located in Fort Meade, Anne Arundel County, Maryland, from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this partial deletion. Releases on the Tipton Army Airfield portion were located at Inactive Landfill 1, Inactive Landfill 2, Inactive Landfill 3, Fire Training Area, and Helicopter Hangar Area. The Army is the DOD component and is responsible for implementing all response actions at the Fort George Meade NPL Site. In consultation with EPA and MDE, the Army has completed all required response actions at Tipton Army Airfield portion of the Fort George Meade NPL Site as detailed below.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for remedial actions if future conditions at the site warrant such action.

In a December 1998 Record of Decision (ROD), an interim remedial action decision for Tipton groundwater was made, in addition to a no further action determination for the soils in the following areas of concern:

- Helicopter Hangar Area (HHA);
- Fire Training Area (FTA); and
- Inactive Landfill No. 3 (IAL3).

In a June 1999 ROD, a final determination for Tipton groundwater, which includes continued monitoring, was made in addition to a no further action determination for the soils in the following areas of concern:

- Inactive Landfill No. 1 (IAL1); and
- Inactive Landfill No. 2 (IAL2).

EPA will accept comments on the proposal to delete this Site from the NPL for thirty calendar days after publication of this notice in the **Federal Register**. Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate responses under CERCLA have been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

In addition to the above, for all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at a site above levels that allow for unlimited use and unrestricted exposure, CERCLA § 121(c), 42 U.S.C. 9621(c), the NCP at 40 CFR 300.430(f)(4)(ii) and EPA's policy, OSWER Directive 9320.2–09, dated August 1995, provide that a subsequent review of a site will be conducted by the lead Agency ''no less often than'' every five years after the initiation of the first remedial action at a site to ensure that conditions at a site remain protective of public health and the environment. In the case of a site, the Army will conduct a review every 5 years to evaluate the frequency and need for continued monitoring of conditions at the Site. This is to ensure that the no further action remedies continue to provide adequate protection of human health and the environment. As explained/discussed below, the Site meets the NCP's deletion criteria listed above. Five-year reviews will continue to be conducted at the Site until no hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure.

The NCP further specifies that releases shall not be deleted from the NPL until the State in which the release was located has concurred on the proposed deletion. 40 CFR 300.425(e)(2). All releases deleted from the NPL are eligible for further remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the Hazard Ranking System. 40 CFR 300.425(e)(3).

III. Deletion Procedures

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to assure public involvement in the decision. MDE also will review this document along with all other documents in the Administrative Record and any public comment that may be received during the public comments period. During the process of proposing to delete a site from the NPL, EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at or near the release that is proposed for deletion;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion. These items shall be available for public inspection and copying; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period in a Responsiveness Summary and include this response document in the final deletion package.

If appropriate, after consideration of comments received during the public comment period, EPA will then publish a notice of final deletion in the **Federal Register** and place the final deletion package, including the Responsiveness Summary, in the Site information repositories.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As stated in Section II of this Notice, Section 300.425(e)(3) of the NCP provides that the deletion of a site from the NPL does not preclude eligibility for future response actions.

IV. Basis for Intended Site Deletion

A. Site History

The following site summary provides EPA's rationale for the proposal to delete the Tipton Army Airfield portion of the Fort George Meade Site from the NPL.

Fort George G. Meade (FGGM) is located in Fort Meade, Maryland. FGGM formerly occupied 13,596 acres of land in the northwest corner of Anne Arundel County. FGGM is a Base Closure and Realignment Act of 1988 (BRAC) parcel, located east of State Route 198 and south of Highway 32. It is bounded on the west by the Baltimore-Washington Parkway and by the Patuxent River to the south. The Amtrak railroad track right-of-way and State Route 175 form the southeast and northeast boundaries of FGGM, respectively.

The facility was authorized by Congress in 1917 as a training cantonment for troops during World War I. The U.S. Government commandeered 4,000 acres, most of which was then farm land, and named the installation Camp Meade in honor of Major General George G. Meade. In January 1941, additional training areas were added within the installation, expanding the post to 13,596 acres. During the 1940s, the facility underwent widespread growth to accommodate several regiments who moved their base of operations to FGGM, including the Second U.S. Army and the Eleventh Cavalry. Tipton Army Airfield was completed in 1963, replacing a small airstrip which had been in operation since 1928.

In 1988, the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 mandated the closure and/or realignment of approximately 9,000 acres, encompassing the southernmost two-thirds of the installation. In 1991, the Army transferred 7,600 of the 9,000 acres to the Department of the Interior's Patuxent Research Refuge (PRR), formerly known as the Patuxent Wildlife Research Center. A second land transfer of approximately 500 acres to the PRR took place in January, 1993.

Use of the Site as a military range has been documented as far back as the early 1920s. In Special Military Maps from 1923, the area, later designated as Tipton Army Airfield, was identified as an artillery impact area. A 1941 South Cantonment Map shows that two ranges were located within the future Tipton Army Airfield area; one was an anti-tank range to the west of Bullard Hill, the other was an anti-aircraft range to the east of Bullard Hill. In the summer of 1942, 81mm and 60mm mortars were used in this area for target practice. During the same timeframe, live high-explosive shells were fired over the heads of troops for training purposes.

The investigation of the Tipton Army Airfield portion of the Fort George Meade NPL Site included the following areas: Helicopter Hangar Area (HHA), Fire Training Area (FTA), Inactive Landfill #1 (IAL1), Inactive Landfill #2 (IAL2), and Inactive Landfill #3 (IAL3).

HHA includes Building 90 and adjacent areas located at the northwest corner of the airfield. The HHA is roughly bounded by the Little Patuxent River to the west, an unnamed tributary to the Little Patuxent River to the north, Patuxent Road to the east, and the helicopter parking area to the south. The HHA is located approximately 800 feet west of the FTA. The HHA covers approximately 5 acres.

During operations, the 97th Army Command performed maintenance and storage of helicopters at Hangar 90. Typical activities included washing, disassembly, repair, and painting of aircraft. In addition to the use of fuels such as aviation and diesel fuel, other materials that were typically used, handled or stored included hydraulic and lubricating oils, detergents, and solvents. Hangar 90 was cleared and taken out of service when it was decommissioned in early 1996.

The FTA is located north of Airfield Road and is about 800 feet east of the HHA. The FTA covers approximately two acres. The FTA is flat and sparsely vegetated with grass. A drainage swale and culvert were located parallel to the gate that drained to wetlands/forested area just west of the FTA. The northern half of the FTA is fenced off, enclosing the fire training pit and adjacent training areas. The area was constructed around 1979 for training purposes by the Fort Meade Fire Department. Fires were typically set inside the pit or in portable burn pans by using gasoline or aviation fuel. The fires were then extinguished with water or aqueous film-forming foam, a synthetic extinguishing agent. Other emergency response training, such as self-contained breathing apparatus training and emergency rescues, were performed at the FTA. The fire training pit was constructed of a concrete berm about one foot high and twenty feet in diameter, which was surrounded by a concrete apron. An oil-water separator located on the south side of the fire training pit was used in draining the pit. Water from the separator was transported from the site via an underground pipeline to a sanitary sewer. Both the fire training pit and the oil-water separator were removed in 1998. During the Final RI report (USACE, 1998b), contaminants from this area were shown to be restricted to the two wells nearest the FTA.

IAL3 is located on the Tipton Army Airfield parcel in the eastern portion of the runway area. According to the Enhanced Preliminary Assessment (PA) Report (USAEC, 1989), IAL3 was initially used as a sand borrow area. During the late 1940s and 1950s, the area was used as a sanitary and ''leaf-dump'' landfill. The Tipton Army Airfield was constructed over the fill area in 1963. The airfield consists of four hangars, an operations building, a fire station, taxiways and runway, and a helicopter training area. A storm water management system is located under the airfield. The site history indicates that the main disposal area was under what is now the eastern portion of the runway area. According to the Enhanced PA, during construction of the airfield in 1963, much of IAL3 was excavated and the materials were disposed of off-post. The airfield construction plans, which include both pre- and post-construction geotechnical soil boring logs, indicate that landfill materials were removed from beneath all runway construction areas for structural reasons. However, landfilled materials are still present in areas subjacent to the runways. The landfill boundary was developed based on the extent of historical operations, aerial photographs, and subsequent site investigations.

IAL1 covers 16 acres in the north-central portion of the BRAC parcel between the Little Patuxent River and Bald Eagle Drive. IAL1 is considered part of the Tipton Army Airfield parcel although it is physically separated from the airfield by the Little Patuxent River. A small concrete blockhouse, formerly used as a communications building, is present on the northwest corner of the area. This boundary was developed based on the extent of historical operations, aerial photographs, and subsequent site investigation activities.

According to the Enhanced PA report (USAEC, 1989), IAL1 was used as an unlined sanitary landfill from approximately 1950 to 1964. No information has been found indicating the types of material disposed of at this location. Select historical aerial photographs of IAL1, compiled by the USEPA (1990 and 1996), are presented in the Final RI report (USACE, 1998a). The earliest known aerial photograph (1938) shows IAL1 as a cultivated field. In subsequent aerial photographs from 1943, 1952, and 1957, IAL1 appears as an open clearing or training area, with no evidence of ground scarring or landfill activity. Landfill activities were first indicated in aerial photographs from 1963, which show barren areas and what appear to be trenches, probable debris, and mounded material presumably associated with landfill activities (USEPA, 1990). Aerial photographs since 1970 show the area as inactive. The 1963 treeline, which appears to correspond to the maximum extent of man-made activities, persists to the present. Areas of mounded materials located on the north side of IAL1, which were first observed on the 1970 photographs, also persist to the present. A possible former burial trench location, corresponding to the mounded area and an area of strong magnetic responses, was tentatively located in the northern part of IAL1.

IAL2 is located within the BRAC parcel on approximately 10 acres of land north of New Tank Road (now Wildlife Loop), approximately 450 feet north and east of the Little Patuxent River. The bulk of IAL2 is separated from the PRR by the perimeter fence which runs along New Tank Road then turns north along the western side of IAL2. A dirt access road runs north, from a locked gate in the fence, through IAL2 to Tipton Airfield. Other unnamed tracks provide access to the area between IAL2 and the Little Patuxent River. No buildings or structures are present at IAL2. This boundary was developed based on the extent of historical operations, aerial photographs, and subsequent site investigations.

Select historical aerial photographs of IAL2 from USEPA photo compilations are presented in the Final Remedial Investigation (RI) report (USACE, 1998a). IAL2 was initially operated as a soil borrow area. Large active excavations are apparent in aerial photographs from 1938 and 1943 (USEPA, 1996). By 1952, the borrow area was mostly overgrown. According to the Enhanced PA (USAEC, 1989), the area was subsequently operated as an unlined rubble disposal area. In 1957 and 1963, at its maximum extent, mounded materials and probable fill material are visible in the southern portion of the area. IAL2 was little used between 1963 and 1970, with aerial photographs showing the area being increasingly revegetated. A single north-northwest trending trench is visible along the east side of the access road in 1970 (USEPA, 1990). Continued disposal activity occurred after 1980 in the northern portion of IAL2 where graded and disturbed areas are visible in 1986. During RI fieldwork, piles of rubble material (brush, concrete and asphalt debris) which appear to be of more recent origin were observed in a marshy area on the north side of IAL2.

Several environmental investigations have been performed at FGGM since 1988, including an Enhanced PA

(USAEC, 1989), a study by the Maryland Department of Natural Resources (MDNR), an RI (USAEC, 1992a), a Site Inspection (SI) Study (USAEC, 1992b), a Draft SI Addendum (which included an Environmental Impact Statement (EIS) and a Wetland Identification Study) (USACE, 1991), an Ordnance and Explosives (OE) Removal Action (USACE, 1997), RI reports (USACE 1998a and 1998b), and sampling and data evaluation for the Defense Reutilization and Marketing Office Salvage Yard (DRMO) (USACE, 1999). The Enhanced PA includes a review of all available records related to air, soil, surface water, and groundwater, and identifies six areas of concern requiring additional investigation at FGGM: active and inactive landfills, underground storage tanks, asbestos, unexploded ordnance, surface water, and burning grounds. These reports either address totally or in part parcels of Tipton Army Airfield.

Maryland Department of Natural Resources ''MDNR'' conducted an evaluation of the 9,000-acre BRAC parcel in January 1990, which includes the Tipton area. The study describes the natural features and land uses associated with the 9,000 acres to be excessed from FGGM and discusses the degree of development of the retained land. In January 1991, a wetland identification study was prepared by RGH/CH2M Hill, Inc. to complete the study of the closure and use/reuse alternatives for the 9,000-acre parcel at FGGM (USAEC, 1994). The report describes the methods used to identify wetlands on the parcel and presents a map of wetlands distribution.

A Final EIS for the comprehensive base realignment and partial closure for FGGM and Fort Holabird was prepared by the U.S. Army Corps of Engineers, Baltimore District, in August, 1991. This report focuses on the environmental and socioeconomic impacts associated with the planned base realignment and partial closure at FGGM and Fort Holabird. The EIS covers the 9,000-acre BRAC parcel at FGGM. A Draft SI report was submitted by EA Engineering, Science and Technology (EA) in January, 1992. This report discusses conditions at the Helicopter Hangar Area (HHA), four inactive landfills (IAL1 to IAL4), the DRMO, the Fire Training Area (FTA), the Ordnance Demolition Area (ODA), underground storage tanks, and asbestos. The Final SI was submitted in October 1992 (USAEC, 1992b).

A Draft SI Addendum (SIA) report, prepared by Arthur D. Little, Inc., addresses data gaps identified in the previous SI report (USAEC, 1994a). The SIA focused on the following six areas of investigation: DRMO Salvage Yard, the FTA, the HHA, IAL2, the ODA, and Soldiers Lake. Another study, a Remedial Investigation Addendum (RIA), was conducted concurrently with the SIA (USAEC, 1993a). The results of the RIA are reported as a separate document. However, some basewide data, such as geology, general hydrogeology, and background soil concentrations, are reported in both reports. An OE Removal was conducted by Human Factors Applications, Inc. (HFA) over the Tipton Army Airfield parcel in 1996 (USACE, 1997a). With the exception of the interior areas of the inactive landfill sites and areas beneath water, all unpaved areas of the parcel were searched for potential unexploded ordnance (UXO) to a depth of four feet.

RI reports (USACE, 1998a and USACE, 1998b) of IAL1, IAL2, IAL3, the CFD, the FTA, and the HHA were prepared by ICF Kaiser. In addition, an ecological risk assessment was performed for the 9,000-acre BRAC parcel, which included data from the inactive landfills, the CFD, FTA, and HHA. RI sampling data for the DRMO (USACE, 1999) was recently approved by EPA and MDE. This RI evaluated the potential for the DRMO to act as an upgradient source for groundwater contamination in the Tipton Army Airfield area. The RI data evaluation determined that the DRMO was not impacting the groundwater at the Tipton Army Airfield. While other groundwater studies will still be conducted for separate operable units at the Fort George Meade Site and may still include the Tipton area, no other upgradient areas are suspected as sources of groundwater contamination at the Tipton Army Airfield.

B. Other Army Actions and Safety Precautions Taken in the Tipton Army Airfield Area

Past military training activities resulted in the presence of UXO at the Tipton Army Airfield parcel. The following is a list of many actions and safety precautions taken by the Army at the Site:

Ordnance Survey (1994)

The Army commissioned an ordnance survey covering all areas of the airfield to assess the extent of ordnance remaining at the Site and surrounding areas. During this survey, ordnance was searched for to a depth of six inches below the surface, and 10% of the remaining area was surveyed for ordnance to a depth of five feet. During this action, a total of 1,400 ordnance items were recovered from the Site and surrounding areas.

Ordnance Clearance (1995–1997)

The Army searched for ordnance from all accessible areas of the Site to a four-foot depth. Inactive landfill areas, wetlands, and all paved surfaces were excluded. During this action, 1,548 ordnance items were recovered, rendered safe, and disposed of. In addition, more than 33 tons of scrap (concrete, metal, and miscellaneous debris) were recovered incidental to the ordnance removal. Much of this material was recycled at local facilities.

Miscellaneous Debris Removal (Summer 1998)

Several items that were identified during previous ordnance clearance projects were recovered for disposal. Items removed included several 55-gallon drums and an old vehicle-mounted storage tank.

Ordnance Safety Measures, Inactive Landfill 3 (1998)

The Army performed ordnance survey work in and around IAL3. The safety plan for this area includes developing a long-term monitoring plan for the site. The first step in this effort was to identify the depth of soil cover over any landfill debris at this site. The Army will now develop a schedule for periodic surface sweeps of the area to ensure that no ordnance items have migrated to the surface through frost action.

Ordnance Safety Measures, Inactive Landfill 2 (1998)

IAL2, located at the southern most end of the Tipton parcel, could not be cleared of suspected ordnance because the area contains large amounts of rubble debris and is partially composed of wetlands with a shallow water table. The selected response action for this site was the installation of a passive engineering control consisting of a seven-foot high chain link fence with three-strand barbed wire surrounding the entire site. The fence ties into an existing fence along Wildlife Loop Road, and encompasses an area of 24.68 acres that will be retained by the United States as a part of FGGM. IAL2 will not be included in the Tipton parcel transfer.

Ordnance Safety Measures, Building Debris Site (1999)

The Army took additional ordnance safety measures at a 2½-acre area designated as the Building Debris Site. Because of its central location, this area has been made a priority for reuse. The

selected response action for the site is a combination of additional ordnance clearance and construction of a vehicle parking lot.

Ordnance Safety Measures, Inactive Landfill 1 (1998–1999)

The selected response action for IAL1 was a combination of ordnance clearance to a four-foot depth and construction of a safety cover. During this action, 54 ordnance items were recovered, rendered safe, and disposed of. In addition, more than 760 tons of scrap (concrete, metal, and miscellaneous debris) were recovered incidental to the ordnance removal, and recycled at local facilities. The area of IAL1 not cleared of suspected ordnance is approximately 5.5 acres. A three-foot thick safety cover has been constructed over the entire landfill.

In summary, the Army's prior response actions addressed the explosives risks related to UXO and protect human health and the environment. The specifics of the Tipton Airfield Decision Document (July, 1998), and the Decision Document Addendum (November, 1998) include the establishment and enforcement of land use restrictions, initially via the FGGM Master Plan and, subsequent to property transfer, via deed restrictions. Existing land use restrictions include a prohibition on conducting any surface or subsurface excavations, digging, well drilling, or other disturbances of soil, or below paved surfaces, without prior written approval of the U.S. Government. This approval is also required for the first four feet which was previously cleared of ordnance items. Exceptions can be made for emergency repair of existing utilities. Groundwater use at the Site is restricted for any potable or non-potable purposes except for environmental studies. Furthermore, the existing land use restrictions prohibit residential use of the property without evaluation of residential exposure risk.

C. Hazard Ranking Process

On April 1, 1997, Fort George G. Meade (FGGM) was proposed for inclusion to the National Priorities List (NPL). FGGM was added to the final NPL on July 28,1998. The initial proposal was based on a Hazard Ranking System (HRS) Score of 51.44, compiled by EPA. An HRS score of 28.5 has been determined as the cut-off point for inclusion on the NPL; thus sites scoring below that will typically not be added to the NPL. None of the areas included in this deletion proposal were used in compiling the above score. Releases at the following four areas at FGGM were evaluated by the HRS scoring team;

(1) Defense Property Disposal Office (DPDO) Salvage Yard;

(2) Post Laundry Facility (PLF);

(3) Active Sanitary Landfill (ASL); and

(4) Clean Fill Dump (CFD).

The most significant exposure pathway within the HRS Documentation Record was the observed releases to the surface water migration pathway (SWMP) from these areas. Primary contaminants of potential concern (COPCs) in the SWMP were DDT and Lindane. Atrazine was the primary COPC in the groundwater migration pathway of the HRS. New information indicates that none of the private wells in the HRS Documentation Record are currently being used for drinking water purposes (Phone record with Amanda Sigillito of Maryland Department of Environment). In addition to the COPCs identified in the offpost private wells, new and existing information (Ref. No. 25 and No. 26 in the HRS) indicates that Atrazine was detected in offpost private wells only and not attributed to the ASL (''ASL Atrazine Study'', U.S. Army Environmental Center, June 1995). Atrazine is stored and mixed at the Amtrak rail yard, which is located between the ASL and the offpost wells. Although Atrazine was not used for HRS purposes, it is likely to be attributable to sources other than the ASL.

The Army and EPA issued a Record of Decision in December, 1998 which included an interim remedy for the Tipton area groundwater, and which included a final remedy of no further action for soils at HHA, FTA, and IAL3. The Army and EPA issued a Record of Decision in June, 1999 which included no further action as a final remedy for Tipton area groundwater with continued monitoring, and no further action for soils at IAL1 and IAL2. Details of the groundwater remedies are discussed in the following sections. The RI reports provide the basis for the no further action determinations. These reports, which include the Baseline Risk Assessment, document the findings associated with the Site. These findings indicate that contaminants detected in the environment do not pose an unacceptable risk to human health and the environment as long as the land use restrictions selected and established by the Tipton Airfield Decision Document and the Decision Document Addendum remain in effect. The risk calculated under the current and reasonably anticipated future land use scenarios for the Site is within the EPA's acceptable risk range. Previously established land use restrictions focus on maintaining these land use assumptions.

The RI reports included both ecological and human health risk assessments to address the potential current and future risks posed to human health and the environment associated with the Site. The human health risk assessment was based on exposure to soil, surface water, sediment, and supplementary evaluations of groundwater. The ecological risk assessment was based on exposure to soil, sediments, and surface water. The risk assessment included estimates of the risk posed to human health and the environment assuming the continuation of the current industrial (non-residential) land use scenario, as well as risk in the absence of restrictions, or in the event of contaminant migration. The establishment of land use restrictions eliminates the exposure route to the contaminated groundwater and, therefore, protects human health and the environment. The groundwater assessment supports the continuation of these restrictions. The current land use scenario estimates the level of risk posed by Fort Meade's current use of the land. The current land use scenario is based on the assumption that the property continues in current or like use remains, remains under U.S. Government authority to enforce existing land use restrictions, and assumes that groundwater contaminant migration to off-site receptors will not occur at unacceptable levels.

The RI report for IAL3 also documents Maximum Contaminant Level (MCL) exceedances of the volatile organic compound, benzene, in groundwater sampled from well MW3–2 during two sampling rounds. Benzene has an MCL of 5.0 µg/l. The average benzene concentration detected during the two sampling events is 9.05 µg/l. The RI investigation did not reveal a likely source area. Although the average concentration of 9.05 µg/l exceeds the MCL, the risks associated with benzene in the Tipton area groundwater as a whole were relatively low. Even if the groundwater were used residentially, the benzene risks would be as follows: for a child, the Hazard Index (HI) would be 0.04; for an adult, the HI would be 0.07; and the cancer risk would be 2×10^{-6}. Therefore, it has been determined that benzene is not a risk driver for groundwater.

Health risks are based on a conservative estimate of the potential carcinogenic risk or potential to cause other health effects not related to cancer. Carcinogenic risks and non-carcinogenic risks were evaluated as part of the risk assessment; three factors

were considered: (1) Nature and extent of chemicals at the Site, (2) the pathways through which human and ecological receptors are or may be exposed to those chemicals at the Site, and (3) potential toxic effects of those chemicals.

Cancer risks are expressed as numbers reflecting the increased chance that a person will develop cancer, if he/she is directly exposed (e.g., through working at the Site) to the chemicals found in the groundwater and soil at the Site over a period of time. For example, EPA's acceptable risk range for Superfund sites is 1×10^{-4} to 1×10^{-6}, meaning there is one additional chance in ten thousand (1×10^{-4}) to one additional chance in one million (1×10^{-6}) that a person will develop cancer if exposed to a Superfund site. The risk associated with developing other health effects is expressed as a HI, which is the ratio of the existing level of exposure to contaminants at a site to an acceptable level of exposure. Below a HI of 1, adverse effects are not expected. A HI is also used to evaluate ecological risks.

An isolated detection of 2-amino-4, 6-dinitrotoluene was observed at 0.522 µg/l in well MW3–2. This compound, an explosive's degradation product, was detected at lower depths (Arundel Confining Layer) during one of two sampling rounds. This isolated detection resulted in an HI less than 1 for commercial/industrial use scenarios. 4-amino-2,6-dinitrotoluene was detected in both sampling rounds in well MW3–2. The average sample concentration is 28.6 µg/l resulting in a HI of 2 (EPA Region 3 risk-based screening concentration = 2.2 µg/l; Hazard Quotient of 1). The area-wide evaluation of groundwater concluded that the contamination was not originating from an identifiable source area within the Site, but was the result of past activities at Fort George Meade. There is no known carcinogenic risk associated with 4-amino-2,6-dinitrotoluene. The aminodinitrotoluenes (particularly 4–A–2,6–DNT) are associated with HIs greater than 1 for groundwater use by workers or residents. Because of the land use restrictions already in effect, it has been determined that no exposure pathways to the public exist due to this class of contaminants, provided that the land use restrictions are maintained. This is also true of metals, bis(2-ethylhexyl)phthalate, and acetophenone, which could contribute further to risks (both carcinogenic and noncarcinogenic) if residential receptors were ever exposed to the groundwater. In addition, a study of groundwater migration does not indicate expected migration of these chemicals to off-post residential wells above unacceptable concentrations. Given the relatively low concentrations of the aminodinitrotoluenes, the lack of a known carcinogenic risk relating to this class of contaminants, the lack of an identifiable source of these contaminants within the Site, and the lack of an exposure route, it has been determined that no active groundwater remediation is required.

Because of the RI findings, the Army and EPA determined that every two years after the date of the June 1999 ROD, groundwater will be sampled from certain wells. Monitoring results will be provided to EPA, MDE, and the Army. In addition, the Tipton area will be inspected to assure compliance with the land use restrictions. A review every 5 years will be conducted to evaluate the frequency and need for continued monitoring. This is to ensure that the remedies continue to provide adequate protection to human health and the environment. The five year reviews will be conducted pursuant to OSWER Directive 9355.7–02. ''Structure and Components of Five-Year Reviews,'' and/or other applicable guidance.

The remedies selected for this Site will be implemented in accordance with the two Records of Decision. Human health threats and potential environmental impacts have been reduced to acceptable levels. EPA and the MDE, therefore, find that the remedies implemented will provide adequate protection to human health and the environment.

EPA, with the concurrence of MDE, believes that the criteria for deletion of the Tipton Army Airfield portion of the Fort George Meade Site have been met. Therefore, EPA is proposing deletion of the Tipton Army Airfield portion of the Fort George Meade Site from the NPL.

Dated: September 10, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–24280 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1086–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and locations for the sixth and seventh meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. This meeting is open to the public.

The purpose of this committee is to develop a proposed rule that would establish a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act (BBA '97) of 1997.

DATES: The sixth meeting is scheduled for October 4, 1999 from 9:00 a.m. until 5 p.m. and October 5, 1999 from 8:30 a.m. until 4 p.m. E.S.T. The seventh meeting is scheduled for December 6, 1999 from 9 a.m. until 5 p.m., December 7, 1999 from 9 a.m. until 5 p.m., and December 8, 1999 from 8:30 a.m. until 4 p.m.

ADDRESSES: The 2-day October meeting will be held at Turf Valley Hotel, 2700 Turf Road, Ellicott City, Maryland 21042; (410) 465–1500. The 3-day December meeting will be held at Doyle's Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. 20036; (202) 483–6000.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these meetings should be addressed to Bob Niemann ((410) 786–4569) or Margot Blige ((410) 786-4642) for general issues related to ambulance services or to Lynn Sylvester, ((202) 606–9140) or Elayne Tempel, ((207) 780–3408) facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the Balanced Budget Act of 1997 (BBA '97), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and

• Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to the Secretary with respect to the text and content of a proposed rule that would establish a fee schedule for the payment of ambulance services under Part B of the Medicare program.

The Committee held its third meeting on May 24 and 25, 1999. At this meeting, the Committee heard presentations from HCFA staff, including a data presentation. The Committee requested another presentation by HCFA's Office of the Actuary to obtain clarification about its calculation of the fee schedule payment cap. Additionally, a Medical Issues workgroup was formed.

The Committee held its fourth meeting on June 28 and 29, 1999. At this meeting a presentation was made by a HCFA Office of the Actuary staff member. The presentation clarified that budget neutrality will be evaluated by using all ambulance claims for the most current year and comparing the results of the proposed models with those paid claims. HCFA staff presented more historical Medicare hospital and supplier ambulance billing data. Consensus was reached on one possible basic structure for the fee schedule. HCFA indicated that the fee schedule must be effective as soon as operationally possible after January 1, 2000. Subcommittees were formed to produce, by July 19, proposals for:

(1) A rural/urban adjustment; and

(2) a fee schedule model based on the structure agreed to at the June meeting, combined with relative values. These proposals, along with the results of the medical issues workgroup, were to serve as the basis for the Committee's next meeting.

The Committee held its fifth meeting on August 2 and 3, 1999. At this meeting the Committee heard presentations from HCFA staff on the Medicare Physician Fee Schedule's Geographic Practice Cost Index (GPCI) and hospital wage index. The Committee is considering the GPCI and hospital wage index for possible use as a geographic cost adjuster for the ambulance fee schedule. The second presenter, a member of the HCFA negotiated rulemaking team, presented additional historical Medicare hospital and ambulance supplier billing data. The Committee was advised in a letter signed by HCFA's Deputy Administrator, Michael M. Hash, that it has until February 15, 2000 to conclude its business. The Committee reached consensus on the definitions for Basic Life Support, Advanced Life Support (ALS) Level-1, ALS Level-2, and the criteria that the service must meet in order for the emergency response modifier amount to be paid. During the October meeting, the Committee will work on defining the geographic and rural modifiers and establishing the relative values of the different levels of service.

The announced meetings are open to the public without advanced registration. Public attendance at the meeting may be limited to space available. Mail written statements to the following address: Federal Mediation and Conciliation Service, 2100 K Street, NW, Washington, D.C. 20427, Attention: Lynn Sylvester. Notice of future meetings will be published in the **Federal Register**. A summary of all proceedings will be available for public inspection in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), and can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Sec. 1834(l) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 14, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–24274 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 64, No. 180
Friday, September 17, 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 AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's Section IV of the Field Office Technical Guide (FOTG) in Colorado

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS Section IV of the FOTG in Colorado.

SUMMARY: It is the intention of the NRCS in Colorado to issue the following new or revised conservation practice standards in Section IV of the FOTG. These standards are Wetland Wildlife Habitat Management (Code 644), Shallow Water Management for Wildlife (Code 646), Wetland Restoration (Code 657), Wetland Creation (Code 658), and Wetland Enhancement (Code 659). These practices may be used in conservation systems that treat wetlands.

DATES: Comments will be received on or before September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Stephen F. Black, State Conservationist, Natural Resources Conservation Service, 655 Parfet St., Lakewood, CO 80215–5517.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Colorado will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Colorado regarding disposition of those comments and a final determination of change will be made.

Dated: September 1, 1999.

Stephen F. Black,

State Conservationist, Natural Resources Conservation Service, Lakewood, Colorado.

[FR Doc. 99–24226 Filed 9–16–99; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities Submission for OMB Review; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled has submitted annual certification forms (Form 403 and Form 404) to OMB for review and clearance under the provisions of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: Comments must be submitted on or before October 18, 1999.

ADDRESSES: Written comments should be sent to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for information, including copies of the forms and supporting documentation, should be directed to: Beverly L. Milkman, Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The Committee has two annual certification forms, one for nonprofit agencies serving people who are blind and one for nonprofit agencies primarily serving people who have severe disabilities. The information included on the forms is required to ensure that nonprofit agencies participating in the Committee's program continue to meet the requirements of 41 USC 46–48c.

The forms have been modified to request that the previously reported JWOD direct labor hours be broken down into two separate categories: those generated from services, and those generated from products. The forms have also been revised so that previously reported non-JWOD sales are broken down to show any sales from other Federal Government contracts separately.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–24275 Filed 9–16–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 18, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies

employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cloth, Cleaning
7920–00–292–9204
NPA: East Texas Lighthouse for the Blind, Tyler, Texas

Services

Janitorial/Custodial
Naval Medical Center (NMC) and Branch Medical and Dental Clinics at the following locations:
North Island Naval Air Station, Naval Station, Naval Amphibious Base, Miramar Naval Air Station, Naval Training Center and Marine Corp Recruit Depot San Diego, CA
NPA: Job Options, Inc., San Diego, California

Janitorial/Custodial

Basewide, Picatinny Arsenal, New Jersey
NPA: Occupational Training Center of Morris County, Cedar Knolls, New Jersey

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Table, Office, Steel
7110–00–149–2045
7110–00–113–0454
7110–00–113–0448
7110–00–149–2044
7110–00–149–2046
Cleaner, Water Soluble
7930–01–367–2962
Hood, Anti-Flash, Flame Resistant 8415–01–268–3473
Shirt, Sleeping
8415–00–890–2102
8415–00–890–2101
8415–00–935–6855
8415–00–890–2099
8415–00–890–2103
8415–00–890–2100

Services

Bus Service
Veterans Affairs Medical Center, Outpatient Clinic, Tomah, Wisconsin
Document Processing
U.S. Coast Guard Institute, 5900 SW 64th Street, Oklahoma City, Oklahoma

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–24276 Filed 9–16–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission which was to have convened at 6:00 p.m. and adjourned at 8:00 p.m., on September 27, 1999, has been canceled.

The original notice for the meeting was announced in the **Federal Register** on September 1, 1999, FR Doc. 99–22685, 64 FR, No. 169, p. 47760.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414).

Dated at Washington, DC, September 14, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–24306 Filed 9–14–99; 4:31 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipe and tube from Taiwan. The review covers four manufacturers/exporters of the subject merchandise and the period May 1, 1997 through April 30, 1998.

EFFECTIVE DATE: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Odenyo or Thomas Killiam, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5254 or 482–3019, respectively.

Background and Notice of Extension

On June 29, 1998, the Department initiated this administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (63 FR 40258). On June 7, 1999 the Department published its preliminary results of this review (64 FR 30306).

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act'') provides that the Department may extend the deadline for its final results of review for up to 60 days, if it is not practicable to complete the final results within the allotted 120 days after the date of publication of the preliminary results. For the following reasons, the Department determines that it is not practicable to complete this review within the 120-day time frame: (1) Verification was completed

approximately one month after publication of the preliminary results; (2) due to methodological difficulties encountered during verification, verification reports are not expected to be released until approximately mid-to-late September; and (3) on July 6, 1999, the Department extended the deadline for submission of case briefs until after the verification reports have been released. In order to properly analyze and respond to petitioner's and respondents' case briefs we have extended the deadline for the final results of this review until December 6, 1999, in accordance with the time limits allowed under section 751(a)(3)(A) of the Act.

Dated: September 13, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group III.

[FR Doc. 99–24301 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand: Final Results of Changed Circumstances Review; Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances review and revocation of antidumping duty order.

SUMMARY: On August 20, 1999, the Department of Commerce published a notice of initiation of a changed circumstances review and preliminary results of review with intent to revoke the antidumping duty order on fresh kiwifruit from New Zealand. We are now revoking this order, retroactive to June 1, 1997, based on the fact that domestic parties no longer have an interest in maintaining the antidumping duty order.

EFFECTIVE DATES: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John P. Maloney, Jr., Office 2, AD/CVD Enforcement Group I, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–2613 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

On July 30, 1999, the petitioner, the California Kiwifruit Commission, requested that the Department conduct a changed circumstances review to revoke the antidumping duty order on fresh kiwifruit from New Zealand retroactive to June 1, 1997. The petitioner stated that circumstances have changed such that the petitioner no longer has an interest in maintaining the antidumping duty order. On August 5, 1999, the petitioner supplemented its request to indicate that it represents all kiwifruit growers in California and virtually all commercial growers of kiwifruit in the United States.

We preliminarily determined that the affirmative statement of no interest by the California Kiwifruit Commission constituted changed circumstances sufficient to warrant revocation of this order. Consequently, on August 20, 1999, we published a notice of initiation of a changed circumstances review and preliminary results of review with intent to revoke the order. *See* 64 FR 45508. We received no comments from interested parties on the preliminary results of this changed circumstances review.

Scope of Review

The product covered by this review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit are not covered under the scope of this review. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 0810.90.20.60. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

This changed circumstances review covers all producers and exporters of fresh kiwifruit from New Zealand.

Final Results of Changed Circumstances Review; Revocation of Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) require the Department to conduct a changed circumstances review in accordance with 19 CFR 351.221 if it decides that changed circumstances sufficient to warrant a review exist. Section 782(h) of the Act and 19 CFR 351.222(g)(1)(i) provide further that the Department may revoke an order, in whole or in part, if it concludes that the order under review is no longer of interest to producers accounting for substantially all of the production of the domestic like product.

The California Kiwifruit Commission is a domestic interested party as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b) and represents substantially all of the production of the domestic like product. Based on the affirmative statement by the California Kiwifruit Commission of no interest in the continued application of the order and the fact that no interested parties objected to or otherwise commented on our preliminary results of this review, we determine that there are changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the antidumping duty order on fresh kiwifruit from New Zealand, retroactive to June 1, 1997.

In accordance with 19 CFR 351.222(g)(4), we will instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of fresh kiwifruit from New Zealand made on or after June 1, 1997. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act.

This changed circumstances review, revocation of the antidumping duty order and notice are in accordance with sections 751(b), 751(d) and 782(h) of the Act and 19 CFR 351.216 and 351.222.

Dated: September 13, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–24300 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–508]

Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from Taiwan.

SUMMARY: On February 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping order on porcelain-on-steel (''POS'') cooking ware from Taiwan pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party, and inadequate response (in this case, no response) from respondent interested parties, the Department is conducting an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATES: September 17, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The product covered by this antidumping duty order is POS cooking ware from Taiwan that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to this order. The merchandise is currently classifiable under the HTS item 7323.94.00. The HTS subheading is provided for convenience and U.S. Customs purposes.

On October 30, 1996, Cost Plus, Inc.'s 10 piece porcelain-on-steel fondue set was found to be within the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1992)).

On August 18, 1995, Blair Corporation's Blair cooking ware items #1101 (seven piece cookware set), #271911 (eight-quart stock pot), and #271921(twelve-quart stock pot) were found to be outside the scope of the order (*see Notice of Scope Rulings*, 60 FR 36782 (July 18, 1995)).

On September 3, 1992, in response to a request from Mr. Stove Ltd., stove top grills and drip pans were found to be outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On September 25, 1992, in response to a request from Metrokane Inc., the ''Pasta Time'' pasta cooker was found to be within the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On August 23, 1990, in response to a request from RSVP, BBQ grill baskets were found to be outside the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

History of the Order

On October 10, 1986, the Department issued a final determination of sales at less-than-fair value on imports of POS cooking ware from Taiwan.[1] On December 2, 1986, the antidumping duty order for POS cooking from Taiwan was published in the **Federal Register** (51 FR 43416).

In the original investigation, the Department found dumping margins that ranged from 1.99 percent to 23.12 percent for six Taiwanese producers and exporters of the subject merchandise. With the exception of one changed circumstance review, there have been no administrative reviews of this order.[2]

The antidumping duty order remains in effect for all producers and exporters of POS cooking ware from Taiwan.

Background

On February 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on POS cooking ware from Taiwan pursuant to section 751(c) of the Act. On February 16, 1999 we received a Notice of Intent to Participate on behalf of a domestic interested party, Columbian Home Products, LLC (''CHP''), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On March 3, 1999, the Department received a complete substantive response from CHP within the deadline specified in section 351.218(d)(3)(i) of the *Sunset Regulations*. CHP claimed interested party status under section 771(9)(C) of the Act, as a U.S. producer of POS cooking ware. CHP asserts that it is the sole domestic producer of POS cooking ware.

We did not receive any response from respondent interested parties in this review. As a result, and in accordance with our regulations (19 CFR § 351.218(e)(1)(ii)(C)(2)) we are conducting an expedited review.

The Department determined that the sunset review of the antidumping duty order on POS cooking ware fromTaiwan is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.* an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of final results of this review until no later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period

[1] *See Porcelain-On-Steel Cooking Ware from Taiwan; Final Determination of Sales at Less-Than-Fair Value*, 51 FR 36425 (October 10, 1986).

[2] *See Porcelain-on-Steel Cooking Ware from Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 10024 (March 5, 1997).

[3] *See Notice of Extension of Time Limit for Final Results of Five-Year (''Sunset'') Reviews*, 64 FR 30305 (June 7, 1999).

before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, CHP's comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, CHP argues that dumping would be likely to continue or recur if the antidumping duty order on POS cooking ware from Taiwan were revoked. CHP argues that the relationship between dumping margins and import volumes strongly suggests that dumping will continue at significant margins if the orders were revoked.

CHP argues that in the Department's final determination of sales at less-than-fair-value, six producers/exporters of POS cooking ware from Taiwan were assigned dumping margins ranging from 1.99 to 23.12 percent. CHP asserts that each of these margins are above the 0.5 percent *de minimis* standard applied in sunset reviews, and these dumping margins continue to exist.

With respect to imports of the subject merchandise from Taiwan, CHP argues that imports have decreased significantly since the antidumping duty order was put in place. Citing the Department's Bureau of Census import trade statistics, CHP argues that since the imposition of the order, imports from Taiwan declined by 75 percent. Further, CHP argues that in the most recent five years (1994 to 1998), imports declined by more than 60 percent, from 4,293 (thousand units) to 1,643 (thousand units).[4]

In conclusion, CHP argues that a decrease in import volume after the issuance of the order, coupled with the continuation of dumping margins above *de minimis* levels, is probative that producers and exporters of POS cooking ware from Taiwan will continue to dump if the order were revoked. Therefore, CHP maintains that the Department should determine that there is a likelihood of the continuation of dumping of POS cooking ware from Taiwan if the order were revoked.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline of the order were revoked. Dumping margins above *de minimis* levels continue to exist for companies subject to this order. Therefore, given that dumping above *de minimis* continued over the life of the orders, imports decreased significantly after the order, respondent interested parties waived their right to participate in the instant reviews, and absent argument and evidence to the contrary, the Department determines that dumping would likely continue if the order were revoked for POS cooking ware from Taiwan.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) We note that, to date, we have not issued any duty absorption finding in these cases.

In its substantive response, CHP urges the Department to follow the guidance of the SAA and its stated policy and provide to the Commission the margins from the original investigation.

CHP argues that the Department should apply the rates from the original investigation because they are the only rates available to the Department, given that there have been no administrative reviews of this order.

We agree with CHP. Absent argument and evidence to the contrary, we find that the margins calculated in the original investigation are probative of the behavior of Taiwanese producers/exporters if the order were revoked. Therefore, we will report to the Commission the margins contained in the *Final Results of Review* of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
First Enamel Industrial Corp.	9.04
Tian Shine Enterprise Co., Ltd.	1.99
Tou Tien Metal (Taiwan) Co., Ltd.	2.67
Li-Fong Industrial Corp.	2.63
Li-Mow Enamelling Co., Ltd.	6.48
Receive Will Industry Co., Ltd.	23.12

[4] *See* CHP's Substantive Response, March 3, 1999, Attachment 1.

Manufacturer/exporter	Margin (percent)
All Others	6.82

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 27, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–24298 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of administrative review and determination not to revoke order in part.

SUMMARY: On May 11, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada and its notice of intent not to revoke the order with respect to pure magnesium produced by Norsk Hydro Canada Inc. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers one producer/exporter of pure magnesium to the United States during the period August 1, 1997, through July 31, 1998. The review indicates no dumping margins during the review period.

EFFECTIVE DATE: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0189.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (''the Department'') is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930 (''the Act''), as amended. 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 Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 351 (April 1998).

Background

On May 11, 1999, the Department published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada and notice of the intent not to revoke the order in part (64 FR 25276) (''*Preliminary Results*''). The producer/exporter in this review is Norsk Hydro Canada Inc. (''NHCI''). We received case briefs from NHCI and petitioner, Magnesium Corporation of America (''Magcorp''), and a rebuttal brief from NHCI (*see Interested Party Comments,* below).

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Determination Not to Revoke Order in Part

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, inter alia, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

In our *Preliminary Results,* we determined that ''NHCI does not qualify for revocation of the order on pure magnesium because it does not have three consecutive years of sales in commercial quantities at not less than normal value'' (*see Preliminary Results* at 25277).

After consideration of the various comments that were submitted in response to the *Preliminary Results,* we determine that NHCI did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by NHCI to support its request for revocation. Specifically, NHCI made one sale in one of the relevant years and two sales in another. One or two sales to the United States during a one year period is not consistent with NHCI's selling activity prior to the order, nor is it consistent with NHCI's selling activity in the home market (*see* Memorandum from Team to Susan Kuhbach, ''Commercial Quantities,'' dated September 8, 1999 (''Commercial Quantities Memorandum''), for a discussion of NHCI's selling activity). Therefore, we find that NHCI does not qualify for revocation of the order on pure magnesium under 19 CFR 351.222(e)(1)(ii).

We note that on January 29, 1999, a panel established by the Dispute

Settlement Body (''DSB'') of the World Trade Organization (''WTO'') determined that the ''not likely'' standard contained in 19 CFR 353.25(a)(2) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. *See United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above From Korea,* WTO Doc. WT/DS99/R (January 29, 1999) (''*DRAMS Panel*''). The panel recommended that the United States ''bring section 353.25(a)(2)(ii) of the DOC regulations * * * into conformity with its obligations under Article 11.2 of the AD Agreement.'' The DSB adopted the panel report on March 19, 1999. On April 15, 1999, the United States announced its intention to implement the recommendations and rulings of the DSB. Consistent with section 123(g) of the URAA, which governs the Department's implementation of adverse panel reports, the Department is revising 19 CFR 351.222(b). The determination not to revoke in the instant case is not premised upon the interpretation or application of the ''not likely'' standard currently found in 19 CFR 351.222(b).

Comparisons

We calculated export price and normal value based on the same methodology used in the *Preliminary Results,* with the following exceptions:

Based upon comments received from respondent, when determining the appropriate home market sales to use for comparison purposes the Department is now matching to sales of identical merchandise. Also based upon comments received from respondent, we have corrected the currency conversions applied to home market freight charges.

Interested Party Comments

In accordance with 19 CFR 351.309, we invited interested parties to comment on our *Preliminary Results.* On June 10, 1999, the petitioner and the respondent submitted case briefs and the respondent submitted a rebuttal brief on June 15, 1999.

Comment 1: Appropriateness of Commercial Quantities Analysis

NHCI argues that the Department erred in conducting a commercial quantities analysis because its request for revocation was based on an absence of dumping over three consecutive years, not over a period of time in which there was an unreviewed intervening year. According to the respondent, section 351.222(b)(2) of the Department's regulations neither authorizes nor instructs the Department to conduct a commercial quantities analysis. NHCI contends that such analyses are only for revocations based on unreviewed intervening years. In support of this contention, NHCI cites the Department's notice of proposed rule in which the Department stated that, with respect to the new changes concerning intervening years, it would require a certification regarding sales in commercial quantities. *See Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 FR 7308, 7320 (February 27, 1996) (''*Proposed Rule*''). The respondent notes that the certification was promulgated into the final regulations with respect to revocations based on an intervening year through section 351.222(d)(1), which states that the Department ''must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities. * * *''

NHCI agrees that such an analysis is reasonable in the case of a request based on unreviewed intervening years because a revocation of the antidumping duty order is weaker when based on only two, rather than three, years of sales above normal value. The respondent notes that the Department has reasoned that if sales are made in commercial quantities during an intervening year in which no review was requested, it is reasonable to conclude that the sales were not dumped because, if they had been, the domestic industry would have requested a review. Thus, according to the respondent, if reviews have taken place in each year upon which a revocation request is made, a commercial quantities analysis has no relevance. Rather, the fact that sales have been made above normal value each year is the relevant factor.

Magcorp argues that the Department's requirement that sales have been made in commercial quantities applies to all respondents requesting revocation of an antidumping order, regardless of whether an unreviewed intervening year has taken place. The petitioner cites to section 351.222(e)(1)(ii) of the Department's regulations which states that a request for revocation must include the person's certification that, during each of the consecutive years, the person sold the subject merchandise to the United States in commercial quantities. According to the petitioner, the Department's regulations create a first step that must be met before the Department will consider revocation and is not limited to the situation of an unreviewed year. Magcorp cites to the fifth administrative review of this antidumping order (*see Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part,* 64 FR 12977 (March 16, 1999) (''*Fifth Review*'')) and to *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part* (64 FR 2173 (January 13, 1999)) (''*Corrosion-Resistant Steel from Canada*''), in which the Department did not revoke the antidumping duty order with respect to companies that had sold above normal value for three consecutive years because such sales were not made in commercial quantities. While the petitioner recognizes that the Department's prior regulations did not address the volume of subject imports with respect to revocation, Magcorp argues that the Department now views sales in commercial quantities to be essential for revoking an order.

Department's Position: As noted above, we have developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires that a company requesting revocation must submit a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. Therefore, we must determine, as a threshold matter, in accordance with our regulations, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. See *Fifth Review* at 12978. In the *Preliminary Results,* we found that NHCI does not qualify for revocation of the order on pure magnesium because it did not have three consecutive years of sales in commercial quantities at not less than normal value. We based this finding on the fact that two of the three years of sales NHCI is relying upon to support its request for revocation were not made in commercial quantities. Specifically, in the *Fifth Review* we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation. Because NHCI has used two of those three years to support its current request for revocation and the facts have not otherwise changed, we determine that NHCI has not met the threshold criterion outlined in section 351.222 of our regulations requiring sales in commercial quantities in each of the

three years forming the basis of the revocation request. *See* Commercial Quantities Memorandum.

We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on an absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 CFR 351.222(d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 CFR 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. In this case the number of sales and the total sales volumes for at least two of the three years are so small, both in absolute terms and in comparison with the period of investigation and other review periods, that we do not have sufficient information regarding the company's normal commercial behavior to make a revocation decision. If sales levels are not reflective of a company's normal commercial activities, they can offer no basis upon which to make a revocation determination, regardless of whether we conducted a review of the sales in question or the sales took place in an intervening year. *See, e.g., Corrosion-Resistant Steel from Canada* at 2175.

Comment 2: Impermissible Change in Revocation Procedure

NHCI argues that the Department's practice of reviewing whether sales have taken place in commercial quantities in all three revocation review years constitutes an impermissible substantive change to the Department's longstanding revocation practice. According to the respondent, the Department expressly stated in its *Proposed Rule* (at 7319) that it intended there to be no substantive change in its new revocation regulations. NHCI notes that this understanding was also reflected in the *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea,* 62 FR 39809, 39810 (July 24, 1997) (''*DRAMS from Korea*''), where the Department said that its final regulations did not change the previous revocation requirements.

The respondent further argues that, up to this point, the development of the Department's revocation procedure has been in the direction of examining positive evidence indicating the absence of unfair price discrimination. According to NHCI, the Department must review sales to make this evaluation but the number of sales or sales volume from one year to the next has nothing to do with whether specific sales are evidence of unfair price discrimination. The respondent notes that when the Department has considered the volume of a respondent's shipments it has done so in the context of determining whether future dumping was likely. NHCI contends that the Department's threshold criterion of requiring sales in commercial quantities results in the Department ignoring positive evidence of unfair price discrimination and that this approach constitutes an impermissible substantive change to the Department's longstanding revocation practice.

Department's Position: As noted in the preamble, our substantive criteria for revocation (*i.e.*, an absence of dumping for three years and no continuing necessity for application of the order—the likelihood issue) have not changed. However, the new regulations do establish a new criterion for requesting revocation. Specifically, we now require a company requesting revocation to have sold the subject merchandise in commercial quantities during the three periods on which the revocation request is based, and to certify to that effect. Unless this criterion is met, we do not consider the revocation request. However, where it is met, we consider all relevant positive evidence in making our revocation decision.

Comment 3: Meeting the Commercial Quantities Threshold

NHCI argues that, even if a commercial quantities analysis is warranted, it has made sales to the United States in commercial quantities for at least three consecutive years. Specifically, the respondent contends that the term ''commercial quantities'' refers not to the number or volume of sales, but to whether any individual sale was a normal size transaction for the industry. In support of this argument, respondent points to the proposed regulations in which the Department states that it will ''establish whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers of subject merchandise.'' (*See Proposed Regulations* at 7320.) Respondent believes that the Department never intended to consider the aggregate volume of sales made throughout the POR. Rather, NHCI argues, the concept of commercial quantities was included in the regulations to ensure that individual sales were bona fide sales that demonstrated the exporter's ability to sell to U.S. customers without dumping in ordinary transactions (as opposed to sales of samples or prototypes).

Given this interpretation of commercial quantities, the respondent argues that its sales were made in commercial quantities because they were characteristic of NHCI's normal commercial practice and the industry standard. Specifically, NHCI states that its spot sales in both the U.S. and home markets involved commercial volumes consistent with the normal size of sales within the industry in general. Furthermore, NHCI argues that the sales examined in the last three years of this proceeding were found by the Department to be sales made in the ordinary course of trade and were not found to be samples nor prototypes nor ''noncommercial'' in any other sense.

Magcorp argues that NHCI's sales to the United States during the last three review periods were far too small to be considered commercial quantities. The petitioner contends that the concept of commercial quantities refers to the aggregate volume of sales made by a respondent over the course of the entire period of review (''POR'') and not to the size of a single sale. In support of this argument, petitioner claims that there would be no reason for the requirement of commercial quantities in 19 CFR 351.222(e)(1)(ii) if the term merely referred to the existence of any sale recognizable as a U.S. sale for calculating an antidumping margin because there would be no reason for the Department to ask a respondent to certify a fact that has already been established. Under this definition of commercial quantities, the petitioner states that NHCI's sales during the three years in question have been negligible throughout the period, noting that in one of the years NHCI only had one U.S. sale.

The petitioner further argues that only if a respondent's sales are sufficiently large will a zero dumping margin offer any valid indication that the respondent can continue to export the subject merchandise to the United States at normal prices if the antidumping duty order were revoked. The petitioner refers to the preamble of the final regulations in which the Department states that a revocation based on the absence of dumping is based on the fact

that when a respondent sells in commercial quantities without dumping it has demonstrated that it will not resume dumping if the order is revoked (*see Antidumping Duties; Countervailing Duties; Final Rule* (''*Final Regulations*''), 62 FR 27296, 27326 (May 19, 1997)).

Department's Position: In the *Fifth Review,* we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation. Specifically, NHCI made one sale in two of the relevant years and two sales in the other. We determined that one or two sales to the United States during a one year period was neither consistent with NHCI's selling activity prior to the order nor NHCI's selling activity in the home market. Specifically, we stated that,

> for each year, the volume of merchandise sold was less than one-half of one percent of the volume of merchandise sold in the last completed fiscal year prior to the order. These sales and volume figures are so small, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins NHCI received are reflective of the company's normal commercial experience. More specifically, the abnormally low level of sales activity does not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

(See *Fifth Review* at 12978.) Two of the 3 years examined in the *Fifth Review* have been cited by NHCI in support of its current request for revocation. Because no party has submitted information indicating that the facts relied upon in the *Fifth Review* have changed, we continue to find that NHCI does not qualify for revocation because it does not have three consecutive years of sales in commercial quantities.

We disagree with NHCI's argument that the commercial quantities criterion requires only that there be a *bona fide* commercial transaction during a given period. As the Department recently explained, ''sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping'' (*see Corrosion-Resistant Steel from Canada* at 2175). As the record of this case demonstrates, NHCI did not sell the subject merchandise in the United States in commercial quantities in at least two of the three years cited by NHCI to support its request for revocation. Regardless of the *bona fide* nature of each transaction, these sales, in the aggregate, are abnormally small in quantity and do not provide the Department with a reasonable basis to make a revocation determination. Furthermore, we agree with the petitioner that if commercial quantities related to the *bona fide* nature of the sales, the commercial quantities requirement in our regulations would be redundant.

Comment 4: Revocation Following a Drop-Off in Sales

NHCI argues that the Department is effectively disqualifying companies from revocation if there is a sales drop-off following the imposition of an antidumping duty order. NHCI contends that, in situations where a sales drop-off has occurred, aggregate sales will appear ''abnormally small'' when compared to the aggregate sales made prior to the imposition of the order. However, the respondent states that there is no requirement in the Department's regulations that a company maintain a certain number of sales, market share, or sales volume after imposition of an order to qualify for revocation and that such a requirement is unreasonable and inappropriate because it has nothing to do with a company's pricing practice.

Department's Position: The Department's threshold requirement does not mean, as NHCI suggests, that the Department is effectively disqualifying companies from revocation if there is a sales drop-off following the imposition of an antidumping order. The issue that is analyzed by the Department is the magnitude of the drop-off. In this regard, the Department has expressed its intent to revoke an antidumping duty order even where the sales drop-off has been substantial so long as the sales used to demonstrate a lack of price discrimination are reflective of the companies' normal commercial experience. *See, e.g., Professional Electric Cutting Tools from Japan: Preliminary Results of Antidumping Administrative Review and Intent to Revoke in Part,* 64 FR 43346, 43351 (August 10, 1999).

When determining whether a company's sales have been made in commercial quantities we must look at each case on an individual basis. In many instances, when making such an assessment we will use the original period of investigation as a benchmark for a company's normal commercial behavior. The period of investigation is a logical and reasonable benchmark for this assessment, especially given that it is the only time period for which we have evidence concerning the company's normal commercial behavior with respect to exports to the United States without the discipline of an antidumping duty order. As demonstrated in the Commercial Quantities Memorandum, we have determined that NHCI's sales during the fourth and fifth review periods were not reflective of its normal commercial behavior.

Comment 5: Commercial Quantities Threshold Conflicts with WTO Agreement

The respondent argues that the Department's preliminary analysis is inconsistent with the 1994 WTO Antidumping Agreement because Article 11.1 of this agreement states that an antidumping duty ''shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.'' Respondent supports this position by noting that in a recent decision a WTO panel found that the ''continued imposition [of an antidumping duty] must * * * be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it'' (*see DRAMS Panel*). NHCI states that the Department's application of a commercial quantities threshold in this proceeding is in direct violation of the positive evidence rule set forth in the *DRAMS Panel* because the Department has determined to keep the order in place after refusing to consider any positive evidence.

Department's Position: The Department's revocation procedures are fully consistent with Article 11 of the WTO Antidumping Agreement. Consistent with the Agreement, under U.S. law, the Department is not required to review whether application of an order continues to be necessary unless there is positive evidence that such a review is warranted. Under the Department's regulations, three years of sales in commercial quantities at not less than normal value is the minimum evidence required to establish that a revocation review is warranted. This evidentiary threshold is reasonable because, as discussed above, absent commercially meaningful sales, we do not have a sufficient basis to make a reasoned judgement as to revocation. Moreover, while this specific evidentiary threshold was not at issue in the *DRAMS Panel,* it is in no way inconsistent with the Panel's findings.

Comment 6: Likelihood of Future Dumping

In addition to their arguments respecting the commercial quantities threshold requirement, both the petitioner and the respondent submitted

comments, in the alternative, on the likelihood of future dumping.

Department's Position: Because we have determined that NHCI is not eligible for revocation, based on the fact that it did not make sales in commercial quantities during the three year period being analyzed, we do not reach the likelihood of future dumping issue.

Final Results of Review

As a result of this review, we find that the following margin exists for the period August 1, 1997, through July 31, 1998:

Manufacturer/exporter	Period	Margin
Norsk Hydro Canada Inc	8/1/96–7/31/97	0

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturers/exporters subject to this review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate indicated above; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 21 percent established in the amended final determination of sales at less than fair value (58 FR 62643 (November 29, 1993)).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: September 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–24302 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final result for the 1997–1998 antidumping duty administrative review for the antidumping order on certain welded carbon steel pipes and tubes from Thailand. This review covers the period March 1, 1997 through February 28, 1998. The extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATES: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: John Totaro at (202) 482–1374; AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Postponement of Final Results

On April 13, 1999, the Department published in the **Federal Register** the preliminary results for this review. *See* 64 FR 17998. Section 751(a)(3)(A) of the Act requires the Department to complete an administrative review within 120 days of publication of the preliminary results. If it is not practicable to complete the review within the 120-day time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit to 180 days from the date of publication of the preliminary results. On August 18, 1999, the Department published in the **Federal Register** an extension of the time limit for the final results of this review until September 10, 1999. *See* 64 FR 44892. However, the Department has determined that it is not practicable to issue its final results within this time limit (*See* Decision Memorandum from Joseph A. Spetrini to Robert S. LaRussa dated September 10, 1999). We are therefore fully extending the deadline for the final results in this review to 180 days from the date on which the notice of preliminary results was published. The fully extended deadline for the final results is October 12, 1999.

Dated: September 10, 1999.

Barbara E. Tillman,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–24299 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041299A]

Marine Mammals; Scientific Research Permit (PHF# 909–1465–00)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Mr. Dan Engelhaupt, 9195 Jamaica Beach, Galveston, TX 77554, has been issued a permit to take several species of cetaceans for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 22, 1998, notice was published in the **Federal Register** (63 FR 39272) that a request for a scientific research permit to take several species of cetaceans during the course of biopsy sampling and photo-identification studies had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 233–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 14, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–24277 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	2,999,396 square meters of which not more than 863,553 square meters shall be in Category 410.
433	13,510 dozen.
435	24,322 dozen.
442	15,761 dozen.
444	73,766 numbers.
448	27,837 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–24243 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,255,919 dozen.
342/642	463,630 dozen.
347/348	2,116,502 dozen.
443	222,012 numbers.
447	11,970 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 14, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2000 and extending through December 31, 2000:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 (55 FR 21074), as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–24242 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in the Dominican Republic and exported

during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits and guaranteed access levels.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Restraint limit
338/638	1,041,869 dozen.
339/639	1,239,822 dozen.
340/640	1,072,547 dozen.
342/642	754,776 dozen.
347/348/647/ 648.	2,567,466 dozen of which not more than 1,356,395 dozen shall be in Categories 647/648.
351/651	1,285,800 dozen.
433	22,436 dozen.
442	76,173 dozen.
443	139,360 numbers.
444	76,173 numbers.
448	39,241 dozen.
633	157,374 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 5, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2000, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 2000 through December 31, 2000:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/ 648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987 (52 FR 6595), as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–24244 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	587,581 dozen.
360	4,243,640 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated September 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–24245 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Mauritius and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit Group	
345, 438, 445, 446, 645 and 646, as a group.	218,034 dozen.
Levels not in a group	
237	281,167 dozen.
335/835	111,766 dozen.
336	131,521 dozen.
338/339	526,529 dozen.
340/640	856,890 dozen of which not more than 521,611 dozen shall be in Categories 340–Y/640–Y [1].
341/641	593,587 dozen.
347/348	1,108,321 dozen.
351/651	260,664 dozen.
352/652	2,210,420 dozen of which not more than 1,878,860 dozen shall be in Category 352.
442	12,370 dozen.
604–A [2]	455,134 kilograms.
638/639	605,511 dozen.
647/648/847	816,494 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–24246 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2000 through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for 2000.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of 54,122 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 1999 shall be charged to the applicable category limit for that year (see directive dated December 14, 1998) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–24247 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

September 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2000 and extending through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month limit
435	93,740 dozen.
442	15,606 dozen.
444	67,626 numbers.
448	67,626 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–24248 Filed 9–16–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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: Interested persons are invited to submit comments on or before November 16, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 13, 1999.

William Burrow, Leader,

Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Core Alcohol and Other Drug Survey.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 216,750.

Burden Hours: 144,500.

Abstract: The Core Alcohol and Other Drug Survey is being conducted as a national probability sample in order for the Department to obtain national statistics on alcohol and other drug use and violence at public and private, two- and four-year institutes of higher education. The survey will be completed by college students and inform us of their perceptions and actual drug and alcohol use. It will also collect data on violence, including hate crimes.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692 or by e-mail at kathy__axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–24227 Filed 9–16–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies, Energy Efficiency and Renewable Energy; Meeting for a New Generation of Natural Gas-Fired Reciprocating Engines

AGENCY: DOE, Chicago Operations Office.

ACTION: Notice of an Open Meeting for a New Generation of Natural-Gas-Fired Reciprocating Engines.

SUMMARY: High efficiency and clean burning natural-gas-fired reciprocating

engines in the 0.3 to 3.0 MW range are expected to meet a significant portion of the demand for distributed generation by the ''Industries of the Future.'' The U.S. Department of Energy (DOE) seeks to establish partnerships with manufacturers, vendors, suppliers, research organizations, universities, regulators, end users and other committed stakeholders that will expand opportunities for gas-fired reciprocating engines. On September 24, 1999 from 1:00 PM to 4:00 PM, an open meeting will be held at: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, DC 2002, 202–484–1000. The purpose of the meeting is to start a roadmap that outlines the mission, goals, technical activities, and priorities of a five-year program (2000–2004). The intent is to develop, test, and demonstrate a new generation of gas-fired reciprocating engine systems that will be cleaner, more fuel efficient, longer lived, more rugged, and lower cost than the existing fleet of products. The roadmap will emphasize the future role of gas-fired reciprocating engines for distributed power generation in the ''Industries of the Future.'' The specifics of this roadmap will result from extensive collaboration with industry and other partners. It is expected that the roadmap will start with preliminary studies that scope and quantify the benefits of specific technologies relative to the existing engine fleet. Subsequent to the completion of developmental activities, the roadmap will culminate with long-term engine demonstrations. Persons planning to attend this meeting are asked to provide prior notification (including name, mailing address, phone and fax number, and electronic mail address) via electronic mail (recips@energetics.com) or fax (410–423–2193). As further information becomes available, it will be posted at the following Internet site www.ch.doe.gov/business/ACQ.htm.

DATES AND ADDRESSES: An open meeting will be held on September 24, 1999 from 1:00 p.m.–4:00 p.m. (EST). The meeting will be held at Lowes L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W. , Washington, DC 2002, (202) 484–1000.

FOR FURTHER INFORMATION CONTACT: Stephen Waslo at (630) 252–2143 or Joseph Mavec at (630) 252–2323, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, or by electronic mail at stephen.waslo@ch.doe.gov or joseph.mavec@ch.doe.gov

Issued in Argonne, Illinois on September 10, 1999.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 99–24251 Filed 9–16–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $30 and $15 each, respectively, or available without charge at the Internet address: *http://www.bpa.gov/Corporate/kgp/bpi/bpi.htm and http://www.bpa.gov/corporate/kgp/bfai/bfai.htm*.

ADDRESSES: Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing KGP, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208-3621.

FOR FURTHER INFORMATION CONTACT: The Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–133 Audits of States, Local Governments and Non-Profit Organizations. BPA's solicitations include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 9, 1999.

Kenneth R. Berglund,

Manager, Contracts and Property Management.

[FR Doc. 99–24250 Filed 9–16–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–582–001, FERC–582]

Information Collection Submitted for Review and Request for Comments

September 13, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments in response to an

earlier **Federal Register** notice of April 21, 1999 (64 FR 19522) and has responded in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before October 18, 1999.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–582 ''Oil, Gas and Electric Fees and Annual Charges''.

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0132. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a change in the reporting burden due an additional 63 entities who are now required to file. These are mandatory information collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) which authorizes the Commission to establish fees for services. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (42 U.S.C. 7178) authorizes the Commission ''to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year.'' In calculating annual charges, the Commission first determines the total costs of its electric regulatory program and subtracts all electric regulatory program filing fee collections to determine total collectible electric regulatory program costs. It then uses the data submitted under FERC information collection requirement FERC–582 to determine the total volumes of long-term firm sales and transmission, and short-term sales and transmission and exchanges for all public utilities, including power marketers. The Commission divides those volumes into its collectible program costs to determine the unit charge per mega-watt hour for each category of sales. Finally, the Commission multiplies the sales volume in each category for public utility (including each power marketer) by the relevant unit charge per mega-watt hour to determine the annual charges for all public utilities and power marketers. Public utilities and power marketers subject to these annual charges must submit FERC–582 to the Commission's Office of the Secretary by April 30 of each year. The Commission issues bills for annual charges, and public utilities and power marketers then must pay the charges within 45 days of the date on which the Commission issues the bill. In addition, Commission staff uses companies' financial information filed under the waiver provisions to evaluate requests for a waiver or exemption of the obligation to pay a fee for an annual charge. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 381, sections 381.108 and 381.302 and part 382 section 382.201(b).

5. Respondent Description: The respondent universe currently comprises on average, 242 applicants.

6. Estimated Burden: 968 total burden hours, 242 respondents, 1 response annually, 4 hours per response (average).

7. Estimated Cost Burden to Respondents: 968 hours ÷ 2,080 hours per year × $109,889 per year = $51,139, average cost per respondent = $211.32.

Statutory Authority: Section 3401 of the Omnibus Budget Reconciliation Act of 1986 42 U.S.C. 7178 (1998) and Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24213 Filed 9–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–583–001, FERC–583]

Information Collection Submitted for Review and Request for Comments

September 13, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of April 21, 1999 (64 FR 19523) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before October 18, 1999.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0136. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is no change in the reporting burden. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act

(FPA). Section 10(e) of the FPA authorizes the Commission to collect annual charges from hydro power licenses for, among other things, the cost of administering Part I of the FPA and for use of administering the cost of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission ''to assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amount of annual charges to be assessed licensees for reimbursable government administrative costs for the use of government dams.

5. *Respondent Description:* The respondent universe currently comprises on average, 660 applicants.

6. *Estimated Burden:* 1,320 total burden hours, 660 respondents, 1 response annually, 2 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,320 hours ÷ 2,080, hours per year × $109,889 per year = $69,737, average cost per respondent = $105.66.

Statutory Authority: Section 10(e) of the Federal Power Act (FPA), Part 1, 16 U.S.C. 803(e).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24214 Filed 9–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–46–001, et al.]

Capacity Benefit Margin, et al.; Electric Rate and Corporate Regulation Filings

September 10, 1999.

Take notice that the following filings have been made with the Commission:

1. Capacity Benefit Margin

[Docket No. EL99–46–001]

Take notice that on August 12, 1999, North American Electric Reliability filed a response to the Commission's Order on Capacity Benefit Margin that was issued on July 28, 1999 in Docket No. EL99–46–000.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Vitol Gas & Electric LLC

[Docket No. ER94–155–026]

Take notice that on September 9, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Stand Energy Corporation, Environmental Resources Trust, Inc. and Mid-Power Service Corporation

[Docket No. ER95–362–018, ER98–3233–004 and ER97–4257–010]

Take notice that on September 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Wilson Power & Gas Smart, Inc.

[Docket No. ER95–751–019]

Take notice that on September 2, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. GDK

[Docket No. ER96–1735–012]

Take notice that on September 1, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. United American Energy Corporation

[Docket Nos. ER96–3092–013 and ER99–4360–000]

Take notice that on September 1, 1999, United American Energy Corp. (UAE), tendered for filing a Notification of Change in Status. UAE seeks to notify the Commission that it has become affiliated with Duke Energy Corporation (Duke Energy). Due to its new affiliation with Duke Energy, UAE is submitting for filing with the Commission an amended Rate Schedule No. 1 as well as a Code of Conduct (Supplement No. 1 to Rate Schedule No. 1).

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., Virginia Electric & Power Company and Ontario Hydro

[Docket No. ER97–697–003]

Take notice that on September 2, 1999, Allegheny Power Service Corporation, Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Pennsylvania Power Company, Southern Company Services, Inc., Virginia Electric & Power Company, and Ontario Hydro tendered for filing a Final Report on the GAPP Experiment which was initiated on April 2, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PSEG Energy Technologies Incorporated

[Docket No. ER97–2176–010]

Take notice that on September 8, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. Northeast Electricity Inc.

[Docket No. ER98–3048–002]

Take notice that on August 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. Virginia Electric and Power Company

[Docket No. ER99–1886–000]

Take notice that on September 2, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. Section 824d, an amendment to its February 22, 1999 and April 20, 1999 filings in the above referenced docket number. Virginia Power's filings pertain to a Service Agreement under the Company's Open Access Transmission Tariff with The Wholesale Power Group for Long Term Firm Point-to-Point Transmission Service.

Copies of this filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER99–4330–000]

Take notice that on September 1, 1999, the New England Power Pool Participants Committee submitted the Forty-Fourth Agreement Amending New England Power Pool Agreement, which modifies the formula in the Restated NEPOOL Agreement that determines Installed Capability Responsibility in Section 12.2(a)(1) of the Restated NEPOOL Agreement to more accurately account for the reliability value for NEPOOL Interruptible and Dispatchable Loads.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER99–4331–000]

Take notice that on September 1, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Public Service Company of New Mexico (PNM). This umbrella service agreement provides for Southwestern's sale and PNM's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–4332–000]

Take notice that on September 1, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and NRG Power Marketing, Inc. (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree. In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is: (a) requesting an effective date of September 1, 1999 for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4333–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4334–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4335–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4336–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4337–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4338–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4340–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4341–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4342–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (Solutions).

Con Edison states that a copy of this filing has been served by mail upon Solutions.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4343–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (Solutions).

Con Edison states that a copy of this filing has been served by mail upon Solutions.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4344–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (APC).

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Consumers Energy Company

[Docket No. ER99–4345–000]

Take notice that on September 1, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for unbundled wholesale power service with American Electric Power Service Corporation pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000 .

The service agreement has an effective date of July 27, 1999.

Copies of the filing have been served on the Michigan Public Service Commission and American Electric Power Service Corporation.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Virginia Electric and Power Company

[Docket No. ER99–4346–000]

Take notice that on September 1, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing its proposed modification to Section 14.7 of the Open Access Transmission Tariff, that modifies the charge to a transmission customer that fails to curtail a non-firm point-to-point transmission transaction within ten minutes of notification by the Company. Virginia Power seeks to recover any costs that are incurred to meet NERC contingency reserve requirements.

Virginia Power requests waiver of the Commission's notice requirements to permit an effective date of September 10, 1999. If waiver is not granted, Virginia Power requests that the filing become effective sixty days from the date of this letter.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Virginia Electric and Power Company

[Docket No. ER99–4347–000]

Take notice that on September 1, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Notice of Cancellation of the following Service Agreements:

1. Service Agreement between Virginia Electric and Power Company and Cleveland Electric Illuminating Company (Cleveland Electric) for Non-Firm Point-to-Point Transmission Service;

2. Service Agreement between Virginia Electric and Power Company and Toledo Edison Company (Toledo Edison) for Non-Firm Point-to-Point Transmission Service.

The above referenced Service Agreements were dated December 16, 1996 and were filed under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. These agreements were accepted by the FERC under Docket No. ER97–1461–000 in a letter order dated March 6, 1997. In light of the formation of FirstEnergy Corp. (FirstEnergy), an exempt holding company which owns all of the common stock of The Cleveland Electric Illuminating Company and The Toledo Edison Company, FirstEnergy directed Virginia Power to cancel the above referenced Service Agreements.

Virginia Power requests an effective date of November 2, 1999, for the cancellation of the above referenced Service Agreements.

Copies of this filing were served upon FirstEnergy, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Virginia Electric and Power Company

[Docket No. ER99–4348–000]

Take notice that on September 1, 1999, Virginia Electric and Power

Company (Virginia Power), tendered for filing an assignment letter indicating that FirstEnergy Corp. (FirstEnergy), will replace Ohio Edison Company as transmission customer in the Non-Firm Point-to-Point Transmission Service Agreement dated February 28, 1997 and originally filed under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. The original Service Agreement was approved by the FERC in Docket No. ER97–2511–000 in a Letter Order dated May 15, 1997.

Virginia Power requests an effective date of January 1, 1998, for the assignment.

Copies of this filing were served upon FirstEnergy, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Avista Corp.

[Docket No. ER99–4349–000]

Take notice that on September 1, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Long Term Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Avista Corporation (Power Marketing).

AVA requests the Service Agreements be given the respective effective date of August 1, 1999 and September 1, 1999 respectively.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Vermont Electric Power Company, Inc.

[Docket No. ER99–4350–000]

Take notice that on September 1, 1999, Vermont Electric Power Company, Inc. (VELCO), tendered for filing a non-firm point-to-point service agreement with Entergy Power Marketing Corporation as a customer under the terms of VELCO's Local Open Access Transmission Tariff. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that this agreement and the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements.

Copies of this filing were served on the customer, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Vermont Electric Power Company, Inc.

[Docket No. ER99–4351–000]

Take notice that on September 1, 1999, Vermont Electric Power Company, Inc. (VELCO), tendered for filing a firm point-to-point service agreement with Entergy Power Marketing Corporation as a customer under the terms of VELCO's Local Open Access Transmission Tariff. VELCO also filed a revised List of Customers With Active Service Agreements.

VELCO asks that this agreement and the revised List of Customers become effective as of the date of filing. Accordingly, VELCO requests a waiver of the Commission's notice requirements.

Copies of this filing were served on the customer, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. PP&L, Inc.

[Docket No. ER99–4354–000]

Take notice that on September 2, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated August 19, 1999, with Consolidated Edison Company of New York, Inc. (ConEd) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds ConEd as an eligible customer under the Tariff.

PP&L requests an effective date of September 2, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ConEd and to the Pennsylvania Public Utility Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, Devon Power LLC, and Connecticut Jet Power LLC

[Docket Nos. ER99–4355–000, ER99–4356–000, ER99–4357–000, ER99–4358–000 and ER99–4359–000]

Take notice that on September 1, 1999, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, Devon Power LLC, and Connecticut Jet Power LLC (Sellers), limited liability companies organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Sellers' proposed Rate Schedules FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Sellers are indirect subsidiaries of Northern States Power Company.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Boston Edison Company

[Docket No. ER99–4361–000]

Take notice that on September 2, 1999, Boston Edison Company (Boston Edison), tendered for filing a service agreement between Boston Edison as the transmission provider and Entergy Nuclear Generation Company as the transmission customer. The service agreement provides for Network Integration Transmission Service under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of November 1, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Central Vermont Public Service Corporation

[Docket No. ER99–4362–000]

Take notice that on September 2, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Sonat Power Marketing L.P., under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on September 1, 1999.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Cinergy Services, Inc.

[Docket No. ER99–4363–000]

Take notice that on September 2, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively Cinergy Operating Companies (COC)), tendered for filing an executed service agreement between COC and Northern Indiana

Public Service Company (NIPSCO) replacing the unexecuted service agreement filed on November 28, 1997 under Docket No. ER98–847–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 6–CB.

Cinergy is requesting an effective date of October 29, 1997 and the same Rate Designation as per the original filing.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Cinergy Services, Inc.

[Docket No. ER99–4364–000]

Take notice that on September 2, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively Cinergy Operating Companies (COC)), tendered for filing an executed service agreement between COC and Northern Indiana Public Service Company (NIPSC) replacing the unexecuted service agreement filed on November 28, 1997 under Docket No. ER98–847–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of October 29, 1997 and the same Rate Designation as per the original filing.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Duke Energy Corporation

[Docket No. ER99–4365–000]

Take notice that on September 2, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with the North Carolina Municipal Power Agency Number 1, for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on August 30, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Commonwealth Edison Company

[Docket No. ER99–4366–000]

Take notice that on September 2, 1999, Commonwealth Edison Company (ComEd), tendered for filing an Interconnection Agreement with LSP-Kendall Energy, LLC (LSP-Kendall).

ComEd requests an effective date of September 3, 1999 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on LSP-Kendall and the Illinois Commerce Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Virginia Electric and Power Company

[Docket No. ER99–4367–000]

Take notice that on September 2, 1999, Virginia Electric and Power Company, doing business as North Carolina Power, tendered for filing a letter agreement supplementing Rate Schedules 102, 114 and 115 of North Carolina Power for service to the Town of Hertford, North Carolina (Town), a member municipality of the North Carolina Municipal Power Agency Number 3 of the North Carolina Eastern Municipal Power Agency (Power Agency). The letter agreement establishes the terms and conditions for the temporary and then permanent modification of a substation in conjunction with the Town's upgrade of its own electric system and the elimination of the rental fee for the existing instrument transformers leased by the Power Agency for the Town.

Copies of the filing were served upon the Power Agency, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Niagara Mohawk Power Corporation

[Docket No. ER99–4368–000]

Take notice that on September 2, 1999, Niagara Mohawk Power Corporation tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and Northbrook New York LLC dated as of August 20, 1999.

Niagara Mohawk Power Corporation requests an effective date of the Closing Date of the sale of the Northbrook generating facility. To the extent necessary, Niagara Mohawk Power Corporation requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. ProLiance Energy, LLC

[Docket No. ER99–4380–000]

Take notice that on September 2, 1999, ProLiance Energy, LLC (ProLiance), tendered for filing proposed changes in its FERC Electric Service Tariff Rate Schedule No. 1 and a Notification of a Change in Status. The changes consist of restrictions on the sale of power and non-power goods and services between ProLiance and Southern Indiana Gas & Electric Company (SIGECO), based on a proposed merger between Indiana Energy, Inc. and SIGCORP, Inc., that would result in ProLiance becoming an affiliate of SIGECO, a subsidiary of SIGCORP, and the accompanying Code of Conduct.

Copies of the filing were served upon ProLiance's jurisdictional customers.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. PDI—New England & PDI—Canada

[Docket No. ER99–4381–000]

Take notice that on September 2, 1999, PDI—New England & PDI—Canada filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. PacifiCorp

[Docket No. ER99–4390–000]

Take notice that on September 7, 1999, PacifiCorp filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–24212 Filed 9–16–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

September 13, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–3052–003.

c. *Date Filed:* August 27, 1999.

d. *Applicant:* City of Black River Falls, Wisconsin.

e. *Name of Project:* Black River Falls Hydroelectric Project.

f. *Location:* On the Black River in Jackson County, Wisconsin. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Loren Radcliffe, Administrator, Black River Falls Municipal Utilities, 119 North Water Street, Black River Falls, Wisconsin 54615.

i. *FERC Contact:* Susan B. O'Brien, *susan.obrien@ferc.fed.us,* (202) 219–2659.

j. *Deadline for filing comments and additional study requests:* October 26, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The existing run-of-river project consists of: (1) 103-foot-long concrete gravity nonoverflow dam with the crest elevation of 773.0 feet; (2) 221-foot-long Taintor gate spillway; (3) 83-foot-long flashboard spillway with 12-inch-high flashboards; (4) nonoverflow concrete wall forming the left side of the powerhouse forebay; (5) headworks consisting of six head gates, a forebay, and the powerhouse intake; (6) powerhouse with a total installed capacity of 920 kilowatts, producing about 4.4 gigawatthours annually; (7) nonoverflow concrete gravity section extending from the headworks to the right retaining wall; (8) concrete retaining wall; (9) 198-acre reservoir with a total storage capacity of 1,980 acre-feet; (10) transmission lines; and (11) other appurtenances.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24215 Filed 9–16–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed September 06, 1999 Through September 10, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990323, Draft EIS, FAA, Programmatic EIS—Commercial Launch Vehicles, Implementation, Issuing a Launch License, Due: November 01, 1999, Contact: Nikos Himaras (202) 267–7926.

EIS No. 990324, Draft EIS, COE, FL, Lee County Beach Erosion Control Project, Shore Protection, Gasparilla and Estero Islands, Lee County, FL, Due: November 01, 1999, Contact: Kenneth Dugger (904) 232–1686.

EIS No. 990325, Draft EIS, NPS, MN, WI, Lower Saint Croix National Scenic Riverway Cooperative Management Plan, Implementation, MN and WI, Due: November 30, 1999, Contact: Michael Madell (608) 264–5257.

EIS No. 990326, Draft EIS, USN, NY, Brooklyn Naval Station Disposal and Reuse, Implementation, King County, NY, Due: November 01, 1999, Contact: Robert K. Ostermueller (610) 595–0759.

EIS No. 990327, Final EIS, AFS, OR, Nicore Mining Project, Implementation, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Josephine County, OR, Due: October 18, 1999, Contact: Rochelle Desser (541) 592–4055.

EIS No. 990328, Final EIS, FRC, MO, Missouri-Madison Hydroelectric (FERC No. 2188) Project, Issuing a New licence (Relicense) for Nine Dams and Associated Facilities, MO, Due: October 18, 1999, Contact: Mark Pawlowski (202) 219–2795.

EIS No. 990329, FINAL EIS, NPS, CA, Whiskeytown Unit General Management Plan, Implementation, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, CA, Due: October 18, 1999, Contact: Alan Schmierer (415) 427–1441.

Amended Notices

EIS No. 990291, FINAL EIS, NOA, FL, Spiny Dogfish (Squalus acanthras) Fishery Management Plan, Implementation, Northwest Atlantic Ocean, Labrador to Florida, Due: September 20, 1999, Contact: Hannah Goodale (978) 281–9315. Published FR–08–20–99—Correction to Comment Period.

EIS No. 990310, FINAL SUPPLEMENT, NRC, Generic EIS—License Renewal of Nuclear Power Plants Operating Licenses, NUREG–1437 Addendum 1, Due: October 04, 1999, Contact: Donald P. Cleary (301) 415–3903. Published FR 09–03–99 Correction to Title.

Dated: September 14, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–24295 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 9, 1999 Through August 13, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

Erp No. D–FHW–F40384–MI Rating EO2, Boardman River Crossing Mobility Study, Improve the East-West Mobility across the Boardman River, COE Permit, Traverse City and Grand Traverse County, MI.

Summary: EPA expressed objections due to potential significant wetland, water quality, aquatic resource impacts and secondary/cumulative impacts. EPA also believes that additional detail is needed in the alternative analysis.

ERP No. D–NPS–D61051–VA Rating LO, Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA.

Summary: EPA has no objection to the proposal and the DEIS adequately addressed the environmental impacts of the preferred alternative.

ERP No. D–TPT–K61147–CA Rating EC2, Presidio of San Francisco General Management Plan, Implementation, New Development and Uses within the Letterman Complex, Golden Gate National Recreation Area, City and County of San Francisco, CA.

Summary: EPA expressed environmental concerns due to traffic and parking impacts and recommended that the Trust take all steps to reduce the number of project-related single occupancy vehicle trips to, from, and within the Presidio, and adjust the capacity of the proposed parking structure accordingly. EPA also requested additional information regarding the Presidio Trust's master development plan, in the context of cumulative environmental impacts.

ERP No. D–UAF–K11016–NV Rating EC2, Nellis Air Force Base, Proposal to Base or Beddown F–22 Aircraft Force Development Evaluation and Weapons School, Clark County, NV.

Summary: EPA expressed concerns regarding the lack of a full alternatives analysis, increased noise impacts that disproportinately affect environmental justice (minority and low-income) populations, inaccurate/incomplete reporting of increased hazardous waste streams resulting from the proposed project.

ERP No. DA–COE–G36145–NM Rating EC2, Rio Grande Floodway, Flood Protection Plan, San Acacia to Bosque del Apache Unit, Socorro County, NM.

Summary: EPA has identified several environmental concerns in the area of document clarity, mitigation, coordination, impact assessment, cumulative effects, and biological assessment that need to be included in the Final SEIS.

ERP No. DS–AFS–K65203–CA Rating EC2, Sirretta Peak Motorcycle Trail, Additional Information on Alternative Route for the Trail, Construction, Approval and Implementation, Sirretta Peak/Machine Creek Area, Kern Plateau, Sequoia National Forest, Cannell Meadow Ranger District, Tulare County, CA.

Summary: EPA's concerns expressed in a letter dated April 6, 1998, regarding the draft EIS remain.

Final EISs

ERP No. F–BIA–G25000–NM, High Mesa Environmental Facility, Construction and Operation, Approval of Lease for Disposal of Municipal Solid Waste, Nambi Indian Reservation, Santa Fe County, New Mexico.

Summary: EPA continues to seek a commitment by BIA to require all Federal requirements to be met prior to approval and operation of the facility. To insure these conditions are legally binding, EPA requests that the contingencies be included in the lease agreement as well as the ROD. EPA offered to assist BIA in its evaluation of the technical information to be provided in 40 CFR Part 257, and 40 CFR Part 258 and motivated on willingness to continue to work with BIA in the design and operation approval process.

ERP No. F–BLM–J03013–UT, Ferron Natural Gas Project, Proposal to Construct, Maintain and Operate a Natural Gas Transmission Pipeline, Application for Permit to Drill (APD), Special-Use-Permit and Right-of-Way Grant, Carbon and Emery Counties, UT.

Summary: EPA is satisfied that previous comments have been addressed and that additional alternative options for reducing air quality impacts have been modeled. EPA suggests use of an Adaptive Environmental Management Process to track, evaluate, and modify mitigation measures to be implemented.

ERP No. F–BLM–J65212–WY, Newcastle Resource Management Plan, Implemention, Evaluates Alternatives for the Use of Public Lands and Resources in Portions of Wyoming, Crook, Niobrara and Westion Counties, WY.

Summary: EPA continued to express concern regarding the lack of full disclosure of direct, indirect and cumulative impacts. EPA believes that there is sufficient new information on regional air quality impacts to warrant further analysis and disclosure.

ERP No. F–BOP–E80029–KY, McCreary County Federal Correctional Facility, Construction and Operation, Five Possible Sites, McCreary County, KY.

Summary: EPA continues to have environmental concerns about the issue of wetland impacts.

ERP No. F–COE–E39042–GA, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA.

Summary: EPA's previous concerns have been adequately addressed, therefore EPA has no objection to the proposed action.

ERP No. F–COE–F36163–00, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construction of a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI.

Summary: EPA's previous objections have been resolved, EPA still has concerns regarding the scope of analysis.

ERP No. F–FHW–K40235–CA, California Forest Highway 137, Improvements to Wentworth Springs Road and the Stumpy Meadows Reservoir Dam eastward (14.4 miles) to Ice House Road, Eldorado National Forest, El Dorado County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–GSA–K40228–CA, United States Border Facility, Tecate Port of Entry (POE) Realignment and Expansion, NPDES Permit, City of Tecate, San Diego County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–F39035–MI, Thunder Bay National Marine Sanctuary

Management Plan, Comprehensive and Long-Term Management for Shipwrecks and other Underwater Cultural Resources, extending from Presque Isle Harbor to Sturgeon Paint and eastward into Lake Huron, Alpena, Alconia and Presque Isle Counties, MI.

Summary: Based on EPA review, EPA has no comments.

ERP No. F–RUS–F39034–00, Lincoln-Pipestone Rural Water (LPRW), Development and Expansion of Existing System North/Lyon County Phase and Northeast Phase Expansion Project, Yellow Medicine, Lincoln and Lyon Counties, MN and Deuel County, SD.

SUMMARY: While the previous comments made on the DEIS have been addressed, EPA recommended that an Adaptive Environmental Management Plan to be incorporated into the Record of Decision (ROD) as a method of verifying the implementation of the proposed Water Resource Management Plan and its effectiveness in mitigation of potential impacts to the surrounding ground water system.

ERP No. F–SFW–F99009–WI, Karner Blue Butterfly Habitat Conservation Plan State-wide, Application for an Incidental Take Permit, several counties, WI.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FA–IBR–J05016–UT, Diamond Fork Power System, Updated Information, Boneville Unit, Central Utah Project, Approval and Funding, Utah and Wasatch Counties, UT.

Summary: EPA agreed with the lead agencies that municipal water conservation will be included in the next CUP planning effort on the Utah Lake Drainage Basin Water Distribution System.

Dated: September 13, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–24296 Filed 9–16–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2360]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

September 10, 1999.

Petition for Reconsideration and Clarification has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by October 4, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Calling Party Pay Service Option in the Commercial Mobile Radio Services (WT Docket No. 97–207).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24231 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of California, resulting from severe fires on August 24, 1999, and continuing are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of California.

You are authorized to provide appropriate assistance for required emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees. Other forms of assistance under Title V of the Stafford Act may be provided, as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark Ghilarducci of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared emergency:

Emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees for Butte, Shasta, Tehama, and Tuolome Counties.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–24289 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3140–EM]

California; Amendment No. 1 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of California, (FEMA–3140–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of California is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 1, 1999:

The counties of Plumas and San Bernardino for emergency protective measures, including the limited removal of debris which poses a health and safety hazard to the general public, as authorized under Title V. This assistance excludes regular time costs for subgrantees regular employees.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–24290 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3141–EM]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA–3141–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina, resulting from Hurricane Dennis beginning on August 29, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. You are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have authorized emergency protective measures, which includes direct Federal assistance at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees regular employees.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared emergency:

Emergency protective measures, which includes direct Federal assistance at 75 percent Federal funding will be provided for Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico and Pender Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–24291 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3141–EM]

North Carolina; Amendment No. 1 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of North Carolina, (FEMA–3141–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of North Carolina is hereby amended to include debris removal (Category A) under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 1, 1999:

Brunswick, Carteret, Currituck, Dare, Hyde, New Hanover, Onslow, Pamlico and Pender Counties for debris removal (Category A) under the Public Assistance program (already designated for emergency protective measures (Category B) under the Public Assistance program.

Beaufort and Craven Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–24292 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1289–DR]

Commonwealth of Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1289–DR), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe storms and flooding on August 20–21, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

McKean County for Individual Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–24287 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Aransas, Brooks, Cameron, Duval, Kenedy, Kleberg, Nueces, Webb, and Willacy Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program).

Hidalgo County for the Public Assistance Program (already designated for Individual Assistance).

San Patricio County for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Associate Director, Response and Recovery Directorate.

[FR Doc. 99–24285 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Jim Hogg County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis

Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Associate Director, Response and Recovery Directorate.

[FR Doc. 99–24286 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3142–EM]

Texas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3142–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of Texas, resulting from extreme fire hazards on August 1, 1999, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Texas.

You are authorized to coordinate with other Federal agencies to provide any form of direct Federal assistance which you deem appropriate for required emergency measures, authorized under the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. You are also authorized to provide reimbursement for the eligible costs associated with the pre-staging of Emergency Management Assistance Compact and State fire suppression assets. Reimbursement for costs associated with suppressing wildland fires will continue to be authorized under Section 420 of the Stafford Act. This assistance excludes regular time costs for subgrantees regular employees. In addition, you are authorized to provide such other forms of assistance under the Stafford Act, as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert E. Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

FEMA has been authorized to coordinate with other Federal agencies to provide any form of direct Federal assistance appropriate for required emergency measures, authorized under the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. Reimbursement for the eligible costs associated with the pre-staging of Emergency Management Assistance Compact and State fire suppression assets is authorized. Reimbursement for costs associated with wildland fires will continue to be authorized under Section 420 of the Stafford Act.

This assistance is for the counties of: Anderson, Andrews, Angelina, Archer, Armstrong, Austin, Bailey, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Gaines, Galveston, Garza, Gillespie, Glasscock, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Jones, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Llano, Loving, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somerveil, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Wharton, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, and Young.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–24293 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1290–DR]

Commonwealth of Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1290–DR), dated September 6, 1999, and related determinations.

EFFECTIVE DATE: September 6, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 6, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from Tropical Storm Dennis and tornadoes beginning on August 27, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

City of Hampton for Individual Assistance.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–24288 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Partially Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of partially open meeting.

SUMMARY: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

NAME: Board of Visitors for the National Fire Academy.

DATES OF MEETING: September 30–October 1, 1999.

PLACE: Building J, Room 103, National Emergency Training Center, Emmitsburg, Maryland.

TIME: September 30, 1999, 8:30 a.m.–10:30 a.m. (Closed Meeting); September 30, 1999, 10:35 a.m.–5 p.m. (Open Meeting); October 1, 1999, 8:30 a.m.–9 p.m. (Open Meeting); October 2, 1999, 8:30 a.m.–12 noon (Open Meeting).

PROPOSED AGENDA: September 30, 1999 (Closed Meeting From 8:30 a.m.–10:30 a.m., to review Fiscal Years 2000 and 2001 budgetary and procurement recommendations.) September 30, 1999, 10:35 a.m.–5 p.m., Review National Fire Academy Program Activities. October 1–2, 1999, Finish Review of National Fire Academy Program Activities and Prepare Fiscal Year 1999 Annual Report.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public (except as noted above) with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 24, 1999.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: September 8, 1999.

Richard A. Marinucci,

Acting Chief of Operations.

[FR Doc. 99–24294 Filed 9–16–99; 8:45 am]

BILLING CODE 6718–01–U

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 22, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–24378 Filed 9–15–99; 12:07 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Governmentwide Policy Advisory Board, Committee for Excellence in Customer Satisfaction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of open meeting.

SUMMARY: Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of the opportunity to attend.

DATES AND TIMES: September 28, 1999, 1:15 p.m. to 5:00 p.m.

ADDRESSES: Vice President's Ceremonial Office (Room 274), Old Executive Office Building, 17th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernard Lubran, Project Manager, Excellence in Customer Satisfaction Initiative, Federal Quality Consulting Group, 1700 G Street, NW—Third Floor—Washington, DC 20552. Telephone: (202) 906–5642. Facsimile: (202) 906–6162. E-Mail: Bernie.Lubran@ots.treas.gov.

SUPPLEMENTARY INFORMATION: This is the second meeting of the Governmentwide Policy Board's Committee for Excellence in Customer Satisfaction. The Committee is responsible for providing advice and recommendations regarding new and ongoing initiatives to improve customer satisfaction with the services provided by the Executive Branch.

The Committee's planned agenda includes the following:

1:15 to 1:30 Call to Order and Opening Remarks.
1:30 to 1:45 Introductions.
1:45 to 2:30 Subcommittee Reports.
2:30 to 2:45 Break.
2:45 to 3:45 Executive Roundtable on Top Recommendations and Implementation Strategies.
3:45 to 4:15 Committee Operations.
4:15 to 4:30 Summary of Decisions.
4:30 to 5:00 Public Comment Period.
5:00 Adjourn.

The meeting of the Committee is open to the public; however, advance registration is required due to the limited seating available and the need to obtain prior clearance to enter the Old Executive Office Building. Attendance will be confirmed on a first-come, first-served basis. You must provide the following information by the close of business on September 24, 1999, to the point of contact listed above in order to be admitted: (a) Full name of the attendee; (2) Date of birth, and (3) Social Security number. In order to enter the Old Executive Office Building at the time of the meeting, each attendee must present a form of legal identification, such as a driver's license, bearing their picture and the personal information requested in this paragraph.

With advance notification to the contact person listed above, members of the public may make brief statements from 4:30 to 5:00. Oral statements may not exceed 5 minutes in length. Written statements may also be filed with the Committee for its consideration. Written statements should be submitted to the address listed above no later than September 27, 1999.

Individuals requiring special assistance should contact the person listed above no later than September 17, 1999.

Dated: September 13, 1999.

James L. Dean,

Director, Committee Management Secretariat.

[FR Doc. 99–24219 Filed 9–16–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Grant Award to Cicatelli Associates, Inc.

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: This notice is to inform the public that the Office of Family Planning (OFP) of the Office of Population Affairs (OPA) is making available an award of approximately $500,000 in FY 1999 to Cicatelli Associates, Inc., a Title X general training and technical assistance grantee, under Section 1003 of Title X of the Public Health Service Act. These funds are from the Office of the Secretary's Public Health and Social Services Emergency Fund and were provided in the FY 1999 Emergency Supplemental Appropriation Pub. L. 105–277) by the Congressional Black Caucus for the Secretary to address the HIV/AIDS crisis in racial and ethnic minority communities through specifically targeted programs that respond to changing demographics of the disease.

Cicatelli Associates, Inc. (CAI) has requested these funds to support a one-year training and technical assistance project that will increase the capacity of Title X providers and other small community-based organizations to provide prevention and early intervention services for poor, minority communities disproportionately impacted by HIV/AIDS, sexually transmitted diseases, and unwanted pregnancies. CAI is proposing to develop training and technical assistance activities that focus on improving the coordination, comprehensiveness and quality of HIV/AIDS service provision, by bringing together community-based organizations, primarily those providing support services to communities of color, including Title X providers, into federal regional planning and networking activities.

The training and technical assistance activities proposed by CAI will include facilitating the identification of HIV/AIDS community resources across the country, and compiling regional resource handbooks on HIV/AIDS services, focusing on community-based organizations providing support and ancillary services to individuals and families affected and infected by HIV/AIDS. Also, CAI is proposing to support training and technical assistance activities for capacity building within small agencies and organizations that serve primarily racial and ethnic minorities and are in communities with high HIV incidence.

The unsolicited proposal from CAI was reviewed and approved by a federal interagency review panel. The following language regarding the use of these funds is to be placed on the award: ''These funds are to be used only for high priority prevention and treatment needs in areas heavily impacted by HIV/AIDS, and to complement existing and previously planned targeted HIV/AIDS activities regarding communities of color.''

FOR FURTHER INFORMATION CONTACT: Susan Moskosky, Acting Deputy Director, Office of Family Planning, OPA, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. (301) 594–4008.

Dated: September 10, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–24211 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–150]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April 1999 through June 1999. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant

Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on June 21, 1999 (64 FR 33090). This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)).

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assesssments Completed or Issued

Between April 1 and June 30, 1999, public health assessments were issued for the sites listed below:

NPL Sites

California

Sherwin Williams—Emeryville—(PB99–155590)

Union Pacific (a/k/a Union Pacific Railroad Yard)—Sacramento—(PB99–155608)

Florida

Normandy Park Apartments—Temple Terrace—(PB99–140956)

Georgia

USAF Robins Air Force (Landfill/Sludge LA) (a/k/a USAF Robins Air Force Base)—Warner Robins—(PB99–152738)

Illinois

Byron Salvage Yard (a/k/a Byron Johnson)—Byron—(PB99–149239)

National Lead Industries/Taracorp Lead Smelt Site—Granite City—(PB99–155343)

Sandoval Zinc Company—Sandoval—(PB99–155616)

Sangamo Electric Dump/Crab Orchard National Refuge (a/k/a Crab Orchard National Refuge)—Carterville—(PB99–149205)

Louisiana

Agriculture Street Landfill—New Orleans—(PB99–152282)

Massachusetts

Re-Solve, Incorporated—Dartmouth—(PB99–151490)

New Jersey

LCP Chemicals Incorporated—Linden—(PB99–155335)

New York

General Motors (Central Foundry Division)—Massena—(PB99–140949)

Pennsylvania

Sharon Steel Corporation (Farrell Works)—Farrell—(PB99–149197)

Tennessee

Ross Metals Incorporated—Rossville—(PB99–156622)

Wisconsin

US Army Badger Army Ammunition Plant—Baraboo—(PB99–151532)

Non NPL Petitioned Sites

Mississippi

Mayfair/New Haven Subdivision—Natchez—(PB99–163305)

New York

Underground Storage Tanks—Jacksonville—(PB99–156630)

Rhode Island

Smithfield Chemical Industrial Dump—Smithfield—(PB99–163321)

Dated: September 13, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–24229 Filed 9–16–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–39]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) and ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Studies of Adverse Reproductive Outcomes in Female Occupation Groups (0920–0367)—EXTENSION—National Institute for Occupational Safety and Health (NIOSH). An estimated 50,000 to 60,000 chemicals are in common use throughout society today and hundreds of new chemicals are introduced each year. Yet the list of environmental chemicals and agents that have been investigated to determine whether they have adverse effects on reproductive health is still limited. With the growing number of women in the work force, it is becoming increasingly important to evaluate the potential female reproductive health effects of occupational and physical agents.

This study will examine reproductive disorders among female flight attendants. Approximately 66,000 flight attendants are currently employed by

U.S. commercial airlines and are potentially exposed to ionizing radiation and disruption of circardin rhythms, two exposures that may adversely affect reproductive function. Teachers will be enrolled as an external comparison group for this study.

Data from company personnel records containing demographic and work history information will be used to estimate workplace exposures. Each women will be asked to complete a telephone questionnaire on reproductive history and other factors (such as cigarette smoking) that may influence reproductive function. Each questionnaire will take approximately 60 minutes to complete. Medical records will be requested to confirm adverse reproductive outcomes reported by the participants. The risk of adverse reproductive outcomes between the two groups of women will then be compared.

The total cost to respondents to estimated at $102,000.

Respondents	Number of respondents	Number of responses respondent	Avg. burden per response	Total burden
Workers	6,200	1	1.0	6,200
Medical providers	1,200	1	0.5	600
Total				6,800

Dated: September 13, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24230 Filed 9–16–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0407]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Reclassification Petitions for Medical Devices.

DATES: Submit written comments on the collection of information by November 16, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

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: Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices; 21 CFR 860.123 (OMB Control Number 0910–0138—Extension)

FDA has the responsibility under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a medical device from any one of three classes (I, II, and III) to another class. The reclassification procedures (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu of premarket approval for class III devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.133	11	1	11	500	5,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends, FDA anticipates that 11 petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements and have reviewed the documentation submitted.

Dated: September 13, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–24237 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2874]

Development of Guidance Documents for Medical Devices Regulated by the Center for Biologics Evaluation and Research; Stakeholders Input Under FDA Modernization Act of 1997; Public Meeting and Teleconference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting and teleconference entitled ''Development of Guidance Documents for Medical Devices Regulated by the Center for Biologics Evaluation and Research-Stakeholders Input Under FDA Modernization Act of 1997.'' The goals of the public meeting and teleconference are to explain to stakeholders the process and development of medical device guidance documents under good guidance practices (GGP's) and how to participate in both processes and to give stakeholders the opportunity to provide input on what they think the Center for Biologics Evaluation and Research's (CBER's) priorities should be regarding medical devices regulated by CBER. The agency is also requesting comments prior to the meeting, from stakeholders on proposals of priorities for development of guidance documents related to CBER-regulated medical devices.

DATES: The meeting will be held on November 15, 1999, 1 p.m. to 4 p.m. (Eastern Time). The teleconference will be held on the same day. See Table 1 in section III of this document for the scheduled times and locations of the teleconference. The deadline for registration for the meeting or teleconference is November 8, 1999. Comments are requested before the meeting by October 1, 1999, or after the meeting by December 15, 1999.

ADDRESSES: The meeting will be held at the Masur Auditorium, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Bethesda, MD. See Table 1 in section III of this document for the scheduled locations of the teleconference. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Melanie N. Whelan, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3841, FAX 301–827–3079, or e-mail ''Whelan@CBER.FDA.GOV''.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 406(b) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (21 U.S.C. 393(f) and (g)), CBER held a series of public meetings to discuss its statutory obligations under FDAMA for biologics. The meetings were held in Washington, DC, on August 14, 1998 (63 FR 39877, July 24, 1998); in Oakland, CA, on August 28, 1998; in Bethesda, MD, on December 1, 1998 (63 FR 58743, November 2, 1998); and in San Francisco, CA, and Boston, MA, on April 28, 1999 (64 FR 13804, March 22, 1999). The FDA Pacific Regional Office sponsored a grassroots meeting on September 15, 1998 (63 FR 42052, August 6, 1998), in Irvine, CA, with the biotechnology industry.

At some of the earlier public meetings, a recurring theme was dissatisfaction with the handling of medical devices regulated by CBER. Important concerns were related to CBER procedures and standards for medical device products similar to products regulated by the Center for Devices and Radiological Health (CDRH). In response to these concerns, CBER developed the Device Action Plan in order to facilitate the implementation of the device provisions of FDAMA and to ensure consistency of policy and procedures between CBER and CDRH. CBER announced the completed Device Action Plan at the CBER Stakeholders Meetings held in San Francisco, CA, and Boston, MA, on April 28, 1999 (64 FR 13804, March 22, 1999). The following issues have been outlined in the Device Action Plan: (1) Compliance and team biologics issues (application of certain good manufacturing practices (GMP's) and compliance policy), (2) enhancing communication with industry and within FDA, (3) coordination with CDRH, and (4) improvement of device review performance. The Device Action Plan has been posted on the CBER web site at ''http://www.fda.gov/cber/dap/dap.htm''.

The public meeting and teleconference will be gathering information on all medical devices including those regulated under the Federal Food, Drug, and Cosmetic Act and those licensed under the Public Health Service Act. The public meeting and teleconference announced in this notice is intended to: (1) Explain to stakeholders the process and development of medical device guidance documents under GGP's and how they can participate in both processes, and (2) give stakeholders the opportunity to provide input on what they think CBER's priorities should be regarding the development of guidance documents related to medical devices regulated by CBER.

In preparation for the November 15, 1999, public meeting, FDA is soliciting comments from stakeholders on proposals of priorities for development

of guidance documents related to medical devices regulated by CBER.

II. Comments

Written comments should be identified with the docket number found in brackets in the heading of this document and submitted to the Dockets Management Branch (address above). All comments should be identified with the docket number found in brackets in the heading of this document. Stakeholders are encouraged to submit their written comments by Friday, October 1, 1999, in order to have the comments addressed at the meeting. Written comments may also be submitted after the meeting to the Dockets Management Branch (address above) by December 15, 1999. Two copies of any comments should be submitted, except that individuals may submit one copy. Received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Scheduled Meetings

The teleconference will be held in several locations throughout the country. The scheduled times and locations are listed as follows:

TABLE 1.—TELECONFERENCE SCHEDULES

Address/Food and Drug Administration (FDA) District	Scheduled Time of Teleconference
Denver District: Sixth & Kipling Sts., Denver Federal Center, Bldg. 20, rm. B1409, Denver, CO 80225–0087	11 a.m. to 2 p.m. Mountain Time.
San Francisco District: 1431 Harbor Bay Pkwy., Alameda, CA 94502	10 a.m. to 1 p.m. Pacific Time.
Los Angeles District: 19900 MacArthur Blvd., suite 300, Irvine, CA 92715–2445	10 a.m. to 1 p.m. Pacific Time.
Minneapolis District: 240 Hennepin Ave., Minneapolis, MN 55401	12 noon to 3 p.m. Central Time.
New England District: One Montvale Ave., Fourth Floor, Stoneham, MA 02180	1 p.m. to 4 p.m. Eastern Time.

IV. Registration

Send registration information (including name, title, firm name, address, telephone, and fax number) for the public meeting or teleconference, by mail, fax or e-mail to the contact person by Monday, November 8, 1999. Registration at the site will be done on a space available basis on the day of the meeting. There is no registration fee for the meeting. Space is limited, therefore, interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Melanie N. Whelan (address above) at least 7 days in advance.

V. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the meeting will also be available on the CBER web site at ''http://www.fda.gov/cber/minutes/workshop-min.htm''.

Dated: September 10, 1999

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–24236 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–3089]

Draft Affirmative Agenda for International Activities—Center for Food Safety and Applied Nutrition; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the document entitled ''Draft Affirmative Agenda for International Activities'' (Draft International Affirmative Agenda) for FDA's Center for Food Safety and Applied Nutrition (CFSAN). The Draft International Affirmative Agenda presents, consistent with the center's mission and resources, CFSAN's international priorities for the next 3 years (2000–2002).

DATES: Written comments by November 1, 1999.

ADDRESSES: The Draft International Affirmative Agenda is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. To view the document electronically or to print copies: World Wide Web at ''http://vm.cfsan.fda.gov/''.

FOR FURTHER INFORMATION CONTACT: To obtain a single copy of the Draft International Affirmative Agenda: John W. Jones, Office of Constituent Operations, Center for Food Safety and Applied Nutrition (HFS–550), 200 C St. SW., Washington, DC 20204, 202–205–4311.

SUPPLEMENTARY INFORMATION:

I. Background

CFSAN participates in numerous international activities pertaining to the safety, quality, and labeling of foods and cosmetics. These activities are intended, first and foremost, to enhance FDA's ability to ensure that foods and cosmetics available to American consumers are safe and appropriately labeled, whether the products are produced in or imported into the United States.

The international environment in which CFSAN operates has changed dramatically in the last 20 years. International trade in foods and cosmetics has grown markedly and international trade agreements have introduced new requirements that affect FDA's traditional approaches for regulating such products. Furthermore, resources available for CFSAN to accomplish its international activities are finite and limited.

Thus, CFSAN must establish priorities that are consistent with FDA's mission and resources. CFSAN's Draft International Affirmative Agenda is intended to present achievable, international priorities for the next 3 years for those areas where it is critical for the safety and regulation of foods and/or cosmetics that the center maintain a strong presence.

CFSAN is actively seeking comments on this Draft International Affirmative Agenda and will, if interest is sufficient, consider holding a public meeting to enable further dialogue on its contents. The center would appreciate hearing in the next two weeks from persons regarding the need for a public meeting on the draft document. Comments on the document, itself, may be submitted within the next 45 days.

II. Comments

Interested persons may, on or before November 1, 1999, submit to the Dockets Management Branch (address above) written comments on the draft document. 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 at the head of this notice. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

Dated: September 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–24207 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2975]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); VICH GL6 Draft Guidance on ''Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)-Phase I;'' Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of the following VICH GL6 draft guidance for industry entitled ''Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)-Phase I.'' This draft guidance document has been developed by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). It is intended to assist in developing harmonized guidance for conducting environmental assessments for VMP's in the European Union, Japan, and the United States.

DATES: Submit written comments by October 18, 1999. FDA must receive comments before the deadline in order to ensure their consideration at the next meeting, but the agency will accept general comments after the deadline at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document.

Copies of this **Federal Register** notice and the draft guidance document entitled ''Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)-Phase I'' may be obtained from the Center for Veterinary Medicine (CVM) home page at ''http://www.fda.gov/cvm/fda/TOCs/guideline.html''. Persons without Internet access may submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798, e-mail: ''sthompso@cvm.fda.gov'', or

Robert C. Livingston, Center for Veterinary Medicine (HFV–145), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5903, e-mail: ''rlivings@cvm.fda.gov''.

Regarding the guidance document: Charles E. Eirkson, Center for Veterinary Medicine (HFV–145), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6958, e-mail: ''ceirkson@cvm.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical requirements for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for VMP's. The VICH is concerned with developing harmonized technical requirements for the approval of VMP's in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the Japanese Veterinary Pharmaceutical Association; the Japanese Ministry of Agriculture, Forestry, and Fisheries; the Committee on Veterinary Medicinal Products; the U.S. FDA; the U.S. Department of Agriculture; the Animal Health Institute; and the Japanese Association of Veterinary Biologics.

Two observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/New Zealand, and one representative from the industry in Australia/New Zealand. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative participates in the VICH Steering Committee meetings.

II. Guidance on Assessing Environmental Impacts of VMP's Other Than Veterinary Biological Products

At a meeting held on October 20 through 22, l998, the VICH Steering Committee agreed that the draft guidance entitled ''Environmental Impact Assessments (EIA's) for Veterinary Medicinal Products (VMP's)-Phase I'' should be made available for public comment.

This draft guidance document presents guidance on how to assess the environmental impact of VMP's other than veterinary biological products. This draft guidance document is intended to be consistent with the laws of the European Union, Japan, and the United States. In an effort to harmonize the different requirements in each of these areas for assessing the environmental impact of VMP's, this draft guidance document adopts the terminology ''Phase I EIA's'' and ''Phase II EIA's.''

In the United States, the environmental impact of VMP's is determined under the requirements established by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR part 1500 and part 25 (21 CFR part 25)). Under NEPA, an environmental assessment (EA) is conducted to determine whether a VMP may have a significant environmental impact. A particular VMP may be categorically excluded from the requirement of an

EA, or it may require an EA or an environmental impact statement (EIS), or it may require both.

Using the terminology of the draft guidance document, a Phase I EIA is equivalent under NEPA to either a categorical exclusion or an EA that addresses only environmental exposures (40 CFR 1508.4 and 1508.9). A Phase II EIA represents an EA with more extensive data than would be necessary under the U.S. equivalent of a Phase I EIA. A Phase II EIA may lead to a finding of no significant impact or preparation of an EIS under NEPA.

Questions 2, 3, and 4 of the VICH guidance, which respectively address natural substances, nonfood animals, and minor species, directly parallel existing categorical exclusions under NEPA. (See § 25.33(c), (d)(1), and (d)(4).) These classes of actions have been determined not to have significant environmental impacts. Similarly, question 5, which concerns VMP's used to treat a small number of animals, generally parallels categorical exclusions in § 25.33(d)(2), (d)(3), (d)(4), and (d)(5). These questions provide guidance for defining when a categorical exclusion may be appropriate for U.S. environmental reviews.

Even when a VMP might ordinarily be categorically excluded under NEPA, there may be extraordinary circumstances that require the submission of an EA. Questions 11 through 13 and 17 provide guidance on when such extraordinary circumstances exist. Specifically, questions 11 through 13 relate to whether the environmental introduction concentration ($EIC_{aquatic}$) of a VMP released from aquaculture facilities is less than 1 microgram/liter (µg/L). Similarly, question 17 relates to whether the predicted environmental concentration in soil (PEC_{soil}) for VMP's used in terrestrial species is less than 100 µg/kilogram (kg). Based upon information reviewed to support the guidance, $EIC_{aquatic}$ at or above 1 µg/L, or PEC_{soil} at or above 100 µg/kg, could result in an environmental exposure concentration that could potentially have significant impact on the environment. Thus, an $EIC_{aquatic}$ equal to or greater than 1 µg/L or a PEC_{soil} equal to or greater than 100 µg/kg represents a level of exposure that constitutes extraordinary circumstances that require the submission of an EA or an EIS (see § 25.21(a)).

Additionally, for questions 11 through 13 and 17, FDA is concerned that if the VMP is not expected to degrade or may bioconcentrate, then the aggregate level of exposure from repeated uses could exceed the 1 µg/L $EIC_{aquatic}$ or the 100 µg/kg PEC_{soil} guidance. FDA is seeking comment on how to address the degradability and bioconcentration of a VMP when applying these guidance.

There are no categorical exclusions which parallel questions 6 through 17. Consequently, an EA to address the issues identified in these questions will be required under NEPA for U.S. environmental review. The EA must provide data demonstrating that any conditions of the question (e.g., the VMP is extensively metabolized in the treated animal) or any proposed mitigations (e.g., waste disposal by incineration or sewage treatment) will result in no significant environmental impacts from the VMP.

FDA specifically requests comment on questions 8 and 14 and the text following these questions because FDA is concerned that the text might create the mistaken impression that any time incineration is used to dispose of a waste matrix, there will be no significant impact on the environment under NEPA. For any mitigation, including incineration, the sponsor needs to provide data in the EA that demonstrates that the mitigating measures do in fact ensure that the VMP has no significant impact on the environment.

CVM will provide more detailed guidance, including guidance on formatting for EA's submitted to the United States, guidance on other extraordinary circumstances, and guidance on other NEPA-related environmental issues, such as impacts on natural and historical resources.

Comments about this draft guidance document will be considered by FDA and the VICH Ecotoxicity Working Group. Ultimately, FDA intends to adopt and publish the VICH Steering Committee's final guidance.

This document, developed under the VICH process, has been revised to conform to FDA's good guidance practice regulations (62 FR 8961, February 27, l997) . For example, the document has been designated ''guidance'' rather than ''guideline.'' Since guidance documents are not binding, mandatory words such as ''must'' and ''shall,'' and ''will'' in the original VICH document have been substituted with ''should.'' Additionally, the term(s) ''veterinary medicinal products'' and ''veterinary pharmaceuticals products'' may require revision to be consistent with product terms used in other VICH guidance documents.

This draft guidance document represents a portion of FDA's current thinking on the conduct of ecological risk assessment for veterinary medicinal products proposed for marketing in the European Union, Japan, and the United States. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

III. Comments

General comments on agency guidance documents are welcome at any time. However, in order to ensure consideration at the next meeting, interested persons should submit written comments on or before October 18, 1999, to the Dockets Management Branch (address above) regarding this draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 10, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–24208 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0232]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or

other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension; *Title of Information Collection:* Supporting Statement for Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.310 and 421.312;

Form No.: HCFA–R–0232 (OMB# 0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 2,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 9, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–24220 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1964]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Review of Part B Medicare Claim and Supporting Regulations in 42 CFR 405.807;

Form No.: HCFA–1964 (OMB# 0938–0033);

Use: The HCFA–1964 is a form which is used nationally to request review of an initial determination made on a Part B health insurance claim. A Medicare beneficiary (or his/her physician/supplier who accepts assignment) files for Part B benefits using forms HCFA–1490S (Patient's Request for Medicare Payment), HCFA–1491 (Request for Medicare Payment—Ambulance), or HCFA–1500 (Health Insurance Claim Form). If any benefits are denied, the claimant has the right to request a review of the initial determination by submitting this HCFA–1964, form.;

Frequency: On occasion;

Affected Public: Individuals or Households, and Not-for-profit institutions;

Number of Respondents: 5,600,000;

Total Annual Responses: 5,600,000;

Total Annual Hours: 1,400,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 9, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services,Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–24269 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0286]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension; *Title of Information*

Collection: Collection of Assessment Information on the HCFA website: www.medicare.gov/nmep; *Form No.:* HCFA–R–0286 (OMB# 0938–0773); *Use:* The purpose of the bounceback forms is to provide feedback to HCFA. The information collected through the bounceback form will be used in conjunction with other information collected about the web sites through focus groups and interviews with members of the Alliance Network. The combined information will guide future improvements to the web sites. There is no plan to disseminate the information, other than through public health, medical, or other professional journals, in which we may report the results; *Frequency:* Users will have the opportunity to complete the bounceback form whenever they exit the web site; *Affected Public:* Individuals or households, Business or other for profit, and Not for profit institutions; *Number of Respondents:* 49,300; *Total Annual Responses:* 49,300; *Total Annual Hours:* 5,752.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 9, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–24270 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1450]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5; *Form No.:* HCFA–1450 (OMB# 0938–0279); *Use:* This standardized form is used in the Medicare/Medicaid program to apply for reimbursement for covered services by all providers that accept Medicare/Medicaid assigned claims. It reduces cost and administrative burden associated with claims since only one reimbursement coding system is used and maintained. *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 149,609,549; *Total Annual Responses:* 149,609,549; Total Annual Hours: 1,960,991.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 9, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–24271 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2567]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction and Supporting Regulations in 42 CFR 488.18, 488.26, and 488.28; *Form No.:*

HCFA–2567 (OMB# 0938–0391); *Use:* This Paperwork package provides information regarding the form used by the Medicare, Medicaid, and the Clinical Laboratory Improvement Amendments (CLIA) programs to document a health care facility's compliance or noncompliance (deficiencies) with regard to the Medicare/Medicaid Conditions of Participation and Coverage, the requirements for participation for Skilled Nursing Facilities and Nursing Facilities, and for certification under CLIA. This form becomes the basis for both public disclosure of information and HCFA certification decisions (including termination or denial of participation).; *Frequency:* Biennially and Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 9, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–24272 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1090–N]

Medicare Program; October 6, 1999 and November 15, 1999, Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Kansas City, MO Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces two meetings of the Competitive Pricing Demonstration Area Advisory Committee (AAC), Kansas City, MO Metropolitan Area on October 6, 1999 and November 15, 1999.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an AAC in each designated demonstration area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. The AAC meetings are open to the public.

DATES: The meetings are scheduled for October 6, 1999, from 9:00 a.m. until 4:30 p.m., c.d.s.t. and November 15, 1999 from 9:00 a.m. until 4:30 p.m., c.s.t.

ADDRESSES: The meetings will be held at the Adam's Mark Hotel, 9103 E. 39th Street, Kansas City, MO 64133.

FOR FURTHER INFORMATION CONTACT: Richard P. Brummel, Acting Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233.

SUPPLEMENTARY INFORMATION:

Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to make recommendations concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors. Thus far, the Kansas City, MO Metropolitan Area and Maricopa County, AZ have been designated as demonstration sites.

The Kansas City, MO Metropolitan Area AAC has previously met on March 26, 1999, April 8, 1999, April 22, 1999, May 12, 1999, and July 22, 1999. The Kansas City AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The members are: E.J. Holland, Chair, Sprint Corporation; Robert S. Bonney, Saint Luke's Shawnee Mission Health System; Hazel Borders, Beneficiary; Richard W. Brown, Health MidWest; Cynthia A. Finter, Kaiser Permanente; Tresia Franklin, Hallmark Cards; Alan O. Freeman, Cass Medical Center; Herman Johnson, Beneficiary; John W. Kennedy, Blue Cross/Blue Shield of Kansas City; Mike Oxford, Topeka Independent Living Resource Center; Jean D. Rumbaugh, HealthNet; Kathleen Sebelius, Kansas Insurance Commissioner; Zarina Shockley-Sparling, Humana Health Plan; Jan Stallmeyer, Principal Health Care; Charles Van Way, M.D., St. Luke's Hospital; Barry Wilkinson, Heavy Construction Workers Local 663; and Esther V. Wolf, University of Missouri at Kansas City School of Social Welfare. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area.

This notice announces two meetings of the Kansas City, MO Metropolitan Area AAC. The meetings will be held on:

- October 6, 1999, from 9:00 a.m. until 4:30 p.m., c.d.s.t., at the Adam's Mark Hotel, 9103 E. 39th Street, Kansas City, MO 64133.
- November 15, 1999 from 9:00 a.m. until 4:30 p.m., c.s.t., at the Adam's Mark Hotel, 9103 E. 39th Street, Kansas City, MO 64133.

The agenda for the October 6, 1999, meeting will include the following:

- A discussion of the status of local efforts to educate and inform beneficiaries, providers, and others about the demonstration.
- A review and contrast of the standard benefit package previously developed to the health plan benefits proposed for 2000.

• A discussion of a schedule for all implementation activities leading to the start-up on January 1, 2001.

• Other issues involving implementation of the demonstration in Kansas City, MO.

The agenda for the November 15, 1999, meeting will include the following:

• Reports of progress on development of risk adjustment alternatives and quality incentives.

• Decisions on the standard benefit package and outreach and communication initiatives for Kansas City, MO.

• A discussion of the bid solicitation and review process.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues listed above should contact the Kansas City Acting Regional Administrator, by 12 noon, for each of the following days:

• September 29, 1999, for the first meeting.

• November 8, 1999, for the second meeting.

Anyone who is not scheduled to speak may submit written comments to the Kansas City Acting Regional Administrator, by 12 noon, for each of the following days:

• September 30, 1999, for the first meeting.

• November 9, 1999, for the second meeting.

These meetings are open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 14, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–24273 Filed 9–16–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1999.

Name: National Advisory Council on the National Health Service Corps (NHSC).

Date and Time:

October 7, 1999; 8:30 a.m.–5:00 p.m.
October 8–9, 1999; 1:30 p.m.–4:30 p.m.
October 10, 1999; 7:30 a.m.–10:00 a.m.

Place: Alexis Park Hotel, 375 East Harmon Avenue, Las Vegas, Nevada 89109, Phone: (702) 796–3300.

The meeting is open to the public.

Agenda: Items will include updates on the NHSC and Scholarships and Loan Repayments program; Health Professional Shortage Areas (HPSA) designations; reports from the San Francisco field office, State Primary Care Association, and State Primary Care Office. In preparation for the year 2000 reauthorization, the Council will discuss the distribution of their position paper ''The National Health Service Corps for the 21st Century.'' On Friday, October 8 through Sunday, October 10, the Council will attend parts of the NHSC Orientation Conference and interact with new scholars and loan repayers.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Dated: September 10, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–24206 Filed 9–16–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. **Veterans Administration**, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be

declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: September 9, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Suitable/Available Properties

Buildings (by State)

Colorado

Bldg. 964
Former Lowry AFB
Denver Co: CO 80220–
Landholding Agency: Air Force
Property Number: 18199930016
Status: Unutilized
Comment: 14,495 sq. ft., local land use controls, most recent use—child care/kitchen facility

Hawaii

Facility No. 63
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930075
Status: Excess
Comment: 14,784 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only

Facility No. 92
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930076
Status: Excess
Comment: 1008 sq. ft., needs rehab, most recent use—storage, off-site use only

Facility No. 99
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930077
Status: Excess
Comment: 544 sq. ft., concerete, needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 127
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930078
Status: Excess
Comment: 198 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 227
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930079
Status: Excess
Comment: 2240 sq. ft., needs rehab, presence of asbestos, most recent use—weight room, off-site use only

Facility No. 285
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930080
Status: Excess
Comment: 418 sq. ft., needs rehap, most recent use—storage, off-site use only

California

Eureka Federal Building
5th & H Streets
Eureka Co: CA 95501–
Landholding Agency: GSA
Property Number: 54199930024
Status: Excess
Comment: 23,959 gross sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—post office/office, listed on the National Register of Historic Places
GSA Number: 9–G–CA–1529

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy

Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration
Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 771999300100
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Portion, Bellows AFS
DE#1, Parcel 5A
Waimanalo Co: Oahu HI 96795–
Landholding Agency: GSA
Property Number: 54199930025
Status: Surplus
Reason: Floodway
GSA Number: 9–D–HI–574

Ohio

Bldg. 02
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930008
Status: Unutilized
Reason: Secured Area
Bldg. 06
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930009
Status: Unutilized
Reason: Secured Area
Bldg. 08
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930010
Status: Unutilized
Reason: Secured Area
Bldg. 09
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930011
Status: Unutilized
Reason: Secured Area
Bldg. 11
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930012
Status: Unutilized
Reason: Secured Area
Bldg. 12
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930013
Status: Unutilized
Reason: Secured Area
Bldg. 13
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930014
Status: Unutilized
Reason: Secured Area
Bldgs. 14 & 15
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930015
Status: Unutilized
Reason: Secured Area
Bldg. 16
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930016
Status: Unutilized
Reason: Secured Area
Bldg. 19
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930017
Status: Unutilized
Reason: Secured Area.
Bldg. 22
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930018
Status: Unutilized
Reason: Secured Area.
Bldg. 24
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930019
Status: Unutilized
Reason: Secured Area.

[FR Doc. 99–23999 Filed 9–16–99; 8:45 am]
BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice To Extend Public Comment Period on the Draft Document Entitled, ''Forming Management Bodies To Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska''

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service is requesting comments on a plan to establish management bodies for the development of a migratory bird subsistence program in Alaska. This action is the result of the 1997 amendments to the migratory bird treaties with Canada and Mexico ratified by the U.S. Senate on October 23, 1997. The amendment to the treaty with Canada requires that indigenous inhabitants of the State of Alaska will have a meaningful role in migratory bird conservation by participating on relevant management bodies. The plan which is available for public comment describes four models for organizing management bodies. This notice, the substance of which was printed as a notice on July 1, 1999 (FR 35674–35675), extends the comment period for an additional 29 days to allow further review and comment by interested groups and persons.

DATES: Comments must be received by close of business on October 29, 1999.

ADDRESSES: Submit comments to Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503, Attn: Migratory Bird Management; fax: 907/786–3641. See Supplementary Information section for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan at 907/786–3673 or Bob Stevens at 907/786–3499.

SUPPLEMENTARY INFORMATION: Copies of the document for review may be obtained by writing to the above address or by telephoning Mimi Hogan or Bob Stevens. *Electronic Access and Filing Addresses:* The document is also available for viewing and downloading at <www.r7.fws.gov/mbm/treaty>. Comments can be sent by e-mail to

<treaty@fws.gov>. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption.

Dated: September 8, 1999.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 99–24268 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW120245]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

September 9, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW120245 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or faction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW120245 effective June 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–24267 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1492–01; CACA–38217]

Opening Order

AGENCY: Bureau of Land Management, DOI.

ACTION: Termination of Recreation and Public Purposes Classification and Opening Order, Lassen County, California.

SUMMARY: This notice terminates the existing Recreation and Public Purposes Classification and opens the affected lands to disposal by exchange.

EFFECTIVE DATE: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Wannebo, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, CA 96130 (530) 257–0456.

SUPPLEMENTARY INFORMATION: On May 23, 1997, the land described below was classified as suitable for lease or sale pursuant to the Recreation and Public Purposes (R&PP). No R&PP development has occurred, therefore the R&PP classification is hereby terminated to allow other uses consistent with planning and current land classification. The lands are opened to disposal pursuant to provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, California

T.30N., R.12E.,
Sec: 21, E½SESE,
Sec. 27, NW,
Sec. 28, E½NE,
Containing 260.00 acres more or less.
Dated: September 7, 1999.

Linda D. Hansen,

Field Office Manager.

[FR Doc. 99–24223 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–99–1410–00; AA–59715]

Realty Action; FLPMA Section 302 Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, lease of public land.

SUMMARY: The following public lands have been examined and found suitable for non-competitive lease to Mr. Dave Penz at Kako Landing, Russian Mission area, under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976 and 43 CFR Part 2920. This Notice of Realty Action proposes a 20 year lease intended to authorize operation and maintenance of an existing earthen dike which would permit safe containment and storage of fuel holding tanks required for operation of Kako Mine.

Seward Meridian, Alaska

T. 20 N., R. 67 W.,
Section 1, SW¼SW¼NE¼
Containing approximately .05 acre.

SUPPLEMENTARY INFORMATION: These lands have been selected by the Russian Mission Native Association for future conveyance pursuant to Alaska Native Claims Settlement Act (ANCSA) Section 11.

DATES: On or before November 1, 1999, interested parties may submit comments to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of timely objections, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Shirley Rackley, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska, 99507–2599; (907) 267–1289 or (800) 478–1263.

Nick Douglas,

Field Manager.

[FR Doc. 99–24221 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63113]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a Public Park.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 3, Government Lots 88, 89, and 90.
Containing *16.05* acres.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the

right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement 30 feet in width along the East boundary, 30 feet in width along the South boundary, and 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. Those rights for public utility purposes which have been granted to the City of Las Vegas by Permit No. N–51520, and to the Las Vegas Valley Water District by Permit No. N–53360 under the Act of October 26, 1976 (FLPMA). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Public Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Public Park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: September 8, 1999.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–24224 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–00: GP9–0300]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of Amended Protraction Diagrams of the following described lands are officially filed in the Oregon State Office, Portland, Oregon.

Willamette Meridian

Oregon and Washington

T. 23 N., R. 5W., accepted March 7, 1990
T. 17 S. R. 8 E., accepted April 20, 1990
T. 12 S., R. 18 E., accepted November 22, 1993
T. 1 S., R. 7 E., accepted September 23, 1994
T. 2 N., R. 7 E., accepted September 23, 1994
T. 1 N., R. 8 E., accepted September 23, 1994
T. 1 S., R. 8 E., accepted September 23, 1994
T. 13 S., R. 24 E., accepted January 10, 1995
T. 13 S., R. 24 E., accepted January 10, 1995
T. 13 S., R. 24 E., accepted January 10, 1995
T. 5 N., R. 9 E., accepted January 17, 1995
T. 4 N., R. 9 E., accepted January 17, 1995
T. 6 N., R. 9 E., accepted January 17, 1995
T. 6 N., R. 8 E., accepted January 20, 1995
T. 6 N., R. 6 E., accepted January 20, 1995
T. 5 N., R. 8 E., accepted January 20, 1995
T. 5 N., R. 7 E., accepted January 20, 1995
T. 4 N., R. 6 E., accepted January 20, 1995
T. 3 N., R. 8 E., accepted January 20, 1995
T. 3 N., R. 5 E., accepted January 20, 1995
T. 4 N., R. 8 E., accepted January 20, 1995
T. 4 N., R. 7 E., accepted January 20, 1995
T. 3 N., R. 5 E., accepted January 20, 1995
T. 5 N., R. 5 E., accepted January 20, 1995
T. 6 N., R. 7 E., accepted January 20, 1995
T. 5 N., R. 6 E., accepted January 20, 1995
T. 12 S., R. 35.5 E., accepted July 13, 1995
T. 11 S., R. 35.5 E., accepted July 13, 1995
T. 13 S., R. 35.5 E., accepted July 13, 1995
T. 11 S., R. 35.5 E., accepted July 13, 1995
T. 2 N., R. 38 E., accepted August 3, 1995
T. 2 N., R. 38 E., accepted August 3, 1995
T. 6 S., R. 37 E., accepted October 16, 1995
T. 6 S., R. 37 E., accepted October 16, 1995
T. 7 S., R. 37 E., accepted October 16, 1995
T. 9 S., R. 37 E., accepted October 16, 1995
T. 7 S., R. 7 E., accepted April 12, 1996
T. 5 S., R. 10 E., accepted April 12, 1996
T. 8 S., R. 8.5 E., accepted April 12, 1996
T. 7 S., R. 8.5 E., accepted April 12, 1996
T. 6 S., R. 8.5 E., accepted April 12, 1996
T. 8 S., R. 8 E., accepted April 12, 1996
T. 7 S., R. 8 E., accepted April 12, 1996
T. 8 S., R. 7 E., accepted April 12, 1996
T. 6 S., R. 10 E., accepted April 12, 1996
T. 8 S., R. 9 E., accepted April 12, 1996
T. 7 S., R. 9 E., accepted April 12, 1996
T. 6 S., R. 9 E., accepted April 12, 1996
T. 5 S., R. 7 E., accepted April 12, 1996
T. 6 S., R. 8 E., accepted April 12, 1996
T. 9 S., R. 8.5 E., accepted May 8, 1996
T. 10 S., R. 8.5 E., accepted May 8, 1996
T. 11 S., R. 9 E., accepted May 8, 1996
T. 10 S., R. 8 E., accepted May 8, 1996
T. 9 S., R. 7 E., accepted May 8, 1996
T. 9 S., R. 8 E., accepted May 8, 1996
T. 9 S., R. 7 E., accepted May 8, 1996
T. 11 S., R. 8 E., accepted May 8, 1996
T. 11 S., R. 7.5 E., accepted May 8, 1996
T. 3 S., R. 47 E., accepted June 12, 1996
T. 5 S., R. 49 E., accepted June 12, 1996
T. 4 S., R. 49 E., accepted June 12, 1996
T. 3 S., R. 49 E., accepted June 12, 1996
T. 5 S., R. 48 E., accepted June 12, 1996
T. 6 E., R. 47 E., accepted June 12, 1996
T. 5 S., R. 47 E., accepted June 12, 1996
T. 4 S., R. 47 E., accepted June 12, 1996
T. 2 N., R. 51 E., accepted June 13, 1996
T. 2 S., R. 50 E., accepted June 13, 1996
T. 1 S., R. 50 E., accepted June 13, 1996
T. 1 N., R. 50 E., accepted June 13, 1996
T. 2 N., R. 50 E., accepted June 13, 1996
T. 2 S., R. R. 49 E., accepted June 13, 1996
T. 1 N., R. 49 E., accepted June 13, 1996
T. 1 N., R. 49 E., accepted June 13, 1996
T. 2 N., R. 49 E., accepted June 13, 1996
T. 1 N., R. 51 E., accepted June 13, 1996
T. 12 S., R. 8 E., accepted June 18, 1996
T. 12 S., R. 7.5 E., accepted June 18, 1996
T. 13 S., R. 8 E., accepted June 18, 1996
T. 13 S., R. 7.5 E., accepted June 18, 1996
T. 13 S., R. 7 E., accepted June 18, 1996
T. 12 S., R. 7 E., accepted June 18, 1996
T. 12 S., R. 6 E., accepted June 18, 1996
T. 12 S., R. 5 E., accepted June 18, 1996
T. 11 S., R. 5 E., accepted June 18, 1996
T. 14 S., R. 7 E., accepted June 18, 1996
T. 11 S., R. 5 E., accepted June 18, 1996
T. 16 S., R. 8.5 E., accepted June 27, 1996
T. 15 S., R. 7 E., accepted June 27, 1996
T. 16 S., R. 7 E., accepted June 27, 1996
T. 17 S., R. 6.5 E., accepted June 27, 1996
T. 18 S., R. 6.5 E., accepted June 27, 1996
T. 15 S., R. 7.5 E., accepted June 27, 1996
T. 16 S., R. 8 E., accepted June 27, 1996
T. 18 S., R. 6 E., accepted June 27, 1996
T. 15 S., R. 8 E., accepted June 27, 1996
T. 18 S., R. 5 E., accepted June 27, 1996
T. 17 S., R. 8 E., accepted June 27, 1996
T. 17 S., R. 7 E., accepted June 27, 1996
T. 20 S., R. 6 E., accepted June 27, 1996
T. 19 S., R. 5.5 E., accepted June 27, 1996
T. 20 S., R. 5.5 E., accepted June 27, 1996
T. 21 S., R. 5.5 E., accepted June 27, 1996
T. 17 S., R. 6E., accepted Jun 27, 1996
T. 19 S., R. 6 E., accepted June 27, 1996
T. 15 S., R. 5 E., accepted June 27, 1996
T. 17 S., R. 9 E., accepted June 27, 1996
T. 16 S., R. 5 E., accepted June 27, 1996
T. 17 S., R. 5 E., accepted June 27, 1996
T. 15 S., R. 6 E., accepted June 27, 1996
T. 23 S., R. 5.5 E., accepted June 27, 1996
T. 23 S., R. 6 E., accepted July 26, 1996
T. 23 S., R. 3 E., accepted July 26, 1996
T. 24 S., R. 6 E., accepted July 26, 1996

T. 22 S., R. 5.5 E., accepted July 26, 1996
T. 23 S., R. 4 E., accepted July 26, 1996
T. 23 S., R. 3 E., accepted July 26, 1996
T. 24 S., R. 5.5 E., accepted July 26, 1996
T. 23 S., R. 5 E., accepted July 26, 1996
T. 10 N., R. 12 E., accepted October 11, 1996
T. 8 N., R. 11 E., accepted October 11, 1996
T. 10 N., R. 11 E., accepted October 11, 1996
T. 9 N., R. 11 E., accepted October 11, 1996
T. 2 S., R. 8 E., accepted October 25, 1996
T. 4 S., R. 11 E., accepted October 25, 1996
T. 2 S., R. 8.5 E., accepted October 25, 1996
T. 36 S., R. 13 W., accepted October 25, 1996
T. 2 S., R. 8 E., accepted October 25, 1996
T. 36 S., R. 13 W., accepted October 25, 1996
T. 37.5 S., R. 11 W., accepted October 25, 1996
T. 37.5 S., R. 12 W., accepted October 25, 1996
T. 37 S., R. 12 W., accepted October 25, 1996
T. 36 S., R. 12 W., accepted October 25, 1996
T. 37 S., R. 12.5 W., accepted October 25, 1996
T. 36 S., R. 12.5 W., accepted October 25, 1996
T. 37 S., R. 13 W., accepted October 25, 1996
T. 37 S., R. 11 W., accepted October 25, 1996
T. 2 S., R. 9 E., accepted October 25, 1996
T. 27 S., R. 8 E., accepted November 15, 1996
T. 28 S., R. 6 E., accepted November 15, 1996
T. 25 S., R. 5.5 E., accepted November 15, 1996
T. 25.5 S., R. 6.5 E., accepted November 15, 1996
T. 26 S., R. 6.5 E., accepted November 15, 1996
T. 27 S., R. 6.5 E., accepted November 15, 1996
T. 28 S., R. 6 E., accepted November 15, 1996
T. 26 S., R. 7 E., accepted November 15, 1996
T. 27 S., R. 7 E., accepted November 15, 1996
T. 26 S., R. 8 E., accepted November 15, 1996
T. 27 S., R. 6 E., accepted November 15, 1996
T. 27 S., R. 5 E., accepted November 15, 1996
T. 28 S., R. 7 E., accepted November 15, 1996
T. 26 S., R. 4 E., accepted November 15, 1996
T. 24 S., R. 4 E., accepted November 15, 1996
T. 25 S., R. 5.5 E., accepted November 15, 1996
T. 26 S., R. 6 E., accepted November 15, 1996
T. 25.5 S., R. 4 E., accepted November 15, 1996
T. 27 S., R. 4 E., accepted November 15, 1996
T. 28 S., R. 4 E., accepted November 15, 1996
T. 25 S., R. 5 E., accepted November 15, 1996
T. 25.5 S., R. 5 E., accepted November 15, 1996
T. 26 S., R. 5 E., accepted November 15, 1996
T. 28 S., R. 5 E., accepted November 15, 1996
T. 25. S., R. 6 E., accepted November 15, 1996
T. 25 S., R. 4 E., accepted November 15, 1996
T. 6 S., R. 45 E., accepted December 18, 1996
T. 5 S., R. 43 E., accepted December 18, 1996
T. 36 S., R. 6 E., accepted December 18, 1996
T. 35 S., R. 6 E., accepted December 18, 1996
T. 4 S., R. 42 E., accepted December 18, 1996
T. 5 S., R. 42 E., accepted December 18, 1996
T. 33 S., R. 6 E., accepted December 18, 1996
T. 4 S., R. 43 E., accepted December 18, 1996
T. 4 S., R. 44 E., accepted December 18, 1996
T. 5 S., R. 44 E., accepted December 18, 1996
T. 6 S., R. 44 E., accepted December 18, 1996
T. 5 S., R. 45 E., accepted December 18, 1996
T. 5 S., R. 46 E., accepted December 18, 1996
T. 30 S., R. 5.5 E., accepted December 18, 1996
T. 36 S., R. 5 E., accepted December 18, 1996
T. 04 S., R. 45 E., accepted December 18, 1996
T. 30 S., R. 6 E., accepted December 18, 1996
T. 29 S., R. 5 E., accepted December 18, 1996
T. 35 S., R. 5 E., accepted December 18, 1996
T. 32 S., R. 6 E., accepted December 18, 1996
T. 30 S., R. 5 E., accepted December 18, 1996
T. 31 S., R. 5 E., accepted December 18, 1996
T. 32 S., R. 5 E., accepted December 18, 1996
T. 29 S., R. 5.5 E., accepted December 18, 1996
T. 29 S., R. 6 E., accepted December 18, 1996
T. 29 S., R. 5 E., accepted December 18, 1996
T. 30 S., R. 7 E., accepted December 18, 1996
T. 31 S., R. 7 E., accepted December 18, 1996
T. 32 S., R. 7 E., accepted December 18, 1996
T. 33 S., R. 4 E., accepted December 18, 1996
T. 36 S., R. 4 E., accepted December 18, 1996
T. 33 S., R. 5 E., accepted December 18, 1996
T. 34 S., R. 5 E., accepted December 18, 1996
T. 31 S., R. 6 E., accepted December 18, 1996
T. 2 S., R. 44 E., accepted January 10, 1997
T. 3 N., R. 43 E., accepted January 10, 1997
T. 6 S., R. 12 E., accepted February 28, 1997
T. 29 S., R. 14 E., accepted February 28, 1997
T. 31 S., R. 16 E., accepted February 28, 1997
T. 35 S., R. 19 E., accepted February 28, 1997
T. 29 S., R. 14 E., accepted February 28, 1997
T. 30 S., R. 13 E., accepted February 28, 1997
T. 30. S., R. 12 E., accepted February 28, 1997
T. 33 S., R. 16 E., accepted February 28, 1997
T. 6 S., R. 14 E., accepted February 28, 1997
T. 6 S., R. 13 E., accepted February 28, 1997
T. 5 N., R. 48 E., accepted February 28, 1997
T. 6 S., R. 12 E., accepted February 28, 1997
T. 5 N., R. 47 E., accepted February 28, 1997
T. 4 N., R. 45 E., accepted February 28, 1997
T. 38 S., R. 19 E., accepted February 28, 1997
T. 36 S., R. 16 E., accepted February 28, 1997
T. 36 S., R. 15 E., accepted February 28, 1997
T. 38 S., R. 14 E., accepted February 28, 1997
T. 37 S., R. 20 E., accepted February 28, 1997
T. 35 S., R. 18 E., accepted February 28, 1997
T. 35 S., R. 18 E., accepted February 28, 1997
T. 36 S., R. 19 E., accepted February 28, 1997
T. 4 N., R. 47 E., accepted February 28, 1997
T. 7 N., R. 8 E., accepted January 13, 1998
T. 8 N., R. 10 E., accepted January 13, 1998
T. 9 N., R. 10 E., accepted January 13, 1998
T. 10 N., R. 10 E., accepted January 13, 1998
T. 7 N., R. 9 E., accepted January 13, 1998
T. 8 N., R. 9 E., accepted January 13, 1998
T. 10 N., R. 9 E., accepted January 13, 1998
T. 8 N., R. 8 E., accepted January 13, 1998
T. 9 N., R. 8 E., accepted January 13, 1998
T. 10 N., R. 8 E., accepted January 13, 1998
T. 7 N., R. 7 E., accepted January 13, 1998
T. 8 N., R. 7 E., accepted January 13, 1998
T. 9 N., R. 7 E., accepted January 13, 1998
T. 10 N., R. 7 E., accepted January 13, 1998
T. 9 N., R. 9 E., accepted January 13, 1998
T. 14 N., R. 8 E., accepted January 30, 1998
T. 14 N., R. 9 E., accepted January 30, 1998
T. 11 N., R. 7 E., accepted January 30, 1998
T. 13 N., R. 8 E., accepted January 30, 1998
T. 12 N., R. 8 E., accepted January 30, 1998
T. 11 N., R. 8 E., accepted January 30, 1998
T. 11 N., R. 9 E., accepted January 30, 1998
T. 13 N., R. 10 E., accepted January 30, 1998
T. 12 N., R. 10E., accepted January 30, 1998
T. 11 N., R. 10E., accepted January 30, 1998
T. 11 N., R. 7E., accepted January 30, 1998
T. 12 N., R. 9E., accepted January 30, 1998
T. 16 N., R. 9E., accepted February 23, 1998
T. 15 N., R. 10E., accepted February 23, 1998
T. 16 N., R. 10E., accepted February 23, 1998
T. 17 N., R. 10E., accepted February 23, 1998
T. 15 N., R. 9E., accepted February 23, 1998
T. 17 N., R. 9E., accepted February 23, 1998
T. 18 N., R. 9E., accepted February 23, 1998
T. 17 N., R. 8E., accepted February 23, 1998
T. 16 N., R. 8E., accepted February 23, 1998
T. 16 N., R. 7E., accepted February 23, 1998
T. 15 N., R. 7E., accepted February 23, 1998
T. 15 N., R. 8E., accepted February 23, 1998
T. 18 N., R. 10E., accepted February 23, 1998
T. 14 N., R. 14E., accepted April 2, 1998
T. 13 N., R. 11E., accepted April 2, 1998
T. 12 N., R. 11E., accepted April 2, 1998
T. 11 N., R. 11E., accepted April 2, 1998
T. 14 N., R. 12E., accepted April 2, 1998
T. 13 N., R. 12E., accepted April 2, 1998
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T. 11 N., R. 12E., accepted April 2, 1998
T. 13 N., R. 13E., accepted April 2, 1998
T. 15 N., R. 12E., accepted April 2, 1998
T. 14 N., R. 11E., accepted April 2, 1998
T. 14 N., R. 13E., accepted April 2, 1998
T. 18 N., R. 12E., accepted April 2, 1998
T. 18 N., R. 11E., accepted April 2, 1998
T. 16 N., R. 11E., accepted April 2, 1998
T. 17 N., R. 12E., accepted April 2, 1998
T. 16 N., R. 12E., accepted April 2, 1998
T. 16 N., R. 13E., accepted April 2, 1998
T. 14 N., R. 11E., accepted April 2, 1998
T. 15 N., R. 13E., accepted April 2, 1998
T. 17 N., R. 11E., accepted April 2, 1998
T. 40 S., R. 10W., accepted April 17, 1998
T. 39 S., R. 10W., accepted April 17, 1998
T. 40 S., R. 11W., accepted April 17, 1998
T. 39 S., R. 11W., accepted April 17, 1998
T. 40 S., R. 12W., accepted April 17, 1998
T. 29 N., R. 13W., accepted May 2, 1998
T. 28 N., R. 11W., accepted May 2, 1998
T. 31 N., R. 12W., accepted May 2, 1998
T. 29 N., R. 11W., accepted May 2, 1998
T. 30 N., R. 11W., accepted May 2, 1998
T. 29 N., R. 12W., accepted May 2, 1998
T. 30 N., R. 12W., accepted May 2, 1998
T. 28 N., R. 11W., accepted May 2, 1998
T. 36 S., R. 13W., accepted May 19, 1998
T. 9 S., R. 8E., accepted May 22, 1998
T. 30 N., R. 10W., accepted June 8, 1998
T. 23 N., R. 8W., accepted June 8, 1998
T. 29 N., R. 7W., accepted June 8, 1998
T. 29 N., R. 10W., accepted June 8, 1998
T. 30 N., R. 9W., accepted June 8, 1998
T. 29 N., R. 9W., accepted June 8, 1998
T. 30 N., R. 8W., accepted June 8, 1998
T. 29 N., R. 8W., accepted June 8, 1998
T. 23 N., R. 7W., accepted June 8, 1998
T. 24 N., R. 7W., accepted June 8, 1998
T. 24.5 N., R. 7W., accepted June 8, 1998
T. 30 N., R. 10W., accepted June 8, 1998
T. 24.5 N., R. 10W., accepted June 8, 1998
T. 22 N., R. 7W., accepted June 8, 1998
T. 24 N., R. 10.5W., accepted June 8, 1998
T. 24 N., R. 8W., accepted June 8, 1998
T. 24 N., R. 10W., accepted June 8, 1998
T. 24.5 N., R. 9W., accepted June 8, 1998
T. 24 N., R. 9W., accepted June 8, 1998
T. 23 N., R. 9 W., accepted June 8, 1998
T. 22 N., R. 9 W., accepted June 8, 1998
T. 24.5 N., R. 9 W., accepted June 8, 1998
T. 30 N., R. 7 W., accepted June 8, 1998
T. 27 N., R. 8 W., accepted June 18, 1998
T. 25 N., R. 7 W., accepted June 18, 1998
T. 26 N., R. 7 W., accepted June 18, 1998
T. 27 N., R. 7 W., accepted June 18, 1998
T. 28 N., R. 7 W., accepted June 18, 1998
T. 28 N., R. 9 W., accepted June 18, 1998

T. 26 N., R. 8 W., accepted June 18, 1998
T. 25 N., R. 8 W., accepted June 18, 1998
T. 28 N., R. 10 W., accepted June 18, 1998
T. 25 N., R. 9 W., accepted June 18, 1998
T. 28 N., R. 8.5 W., accepted June 18, 1998
T. 27 N., R. 8.5 W., accepted June 18, 1998
T. 26 N., R. 8.5 W., accepted June 18, 1998
T. 25 N., R. 8.5 W., accepted June 18, 1998
T. 28 N., R. 8 W., accepted June 18, 1998
T. 28 N., R. 10 W., accepted June 18, 1998
T. 22 N., R. 5 W., accepted July 6, 1998
T. 24 N., R. 4 W., accepted July 6, 1998
T. 24 N., R. 6 W., accepted July 6, 1998
T. 23 N., R. 6 W., accepted July 6, 1998
T. 22 N., R. 6 W., accepted July 6, 1998
T. 23 N., R. 5 W., accepted July 6, 1998
T. 23 N., R. 4 W., accepted July 6, 1998
T. 24 N., R. 5 W., accepted July 6, 1998
T. 24 N., R. 3 W., accepted July 6, 1998
T. 27 N., R. 5 W., accepted July 14, 1998
T. 28 N., R. 5 W., accepted July 14, 1998
T. 25 N., R. 6 W., accepted July 14, 1998
T. 25 N., R. 3 W., accepted July 14, 1998
T. 26 N., R. 6 W., accepted July 14, 1998
T. 27 N., R. 6 W., accepted July 14, 1998
T. 26 N., R. 3 W., accepted July 14, 1998
T. 25 N., R. 3 W., accepted July 14, 1998
T. 28 N., R. 6 W., accepted July 14, 1998
T. 28 N., R. 3 W., accepted July 14, 1998
T. 25 N., R. 4 W., accepted July 14, 1998
T. 26 N., R. 4 W., accepted July 14, 1998
T. 27 N., R. 4 W., accepted July 14, 1998
T. 28 N., R. 4 W., accepted July 14, 1998
T. 25 N., R. 5 W., accepted July 14, 1998
T. 26 N., R. 5 W., accepted July 14, 1998
T. 27 N., R. 3 W., accepted July 14, 1998
T. 28 N., R. 17 E., accepted August 14, 1998
T. 29 N., R. 2 W., accepted August 14, 1998
T. 28 N., R. 17 E., accepted August 14, 1998
T. 29 N., R. 4 W., accepted August 14, 1998
T. 28 N., R. 20 E., accepted August 14, 1998
T. 29 N., R. 3 W., accepted August 14, 1998
T. 28 N., R. 18 E., accepted August 14, 1998
T. 29 N., R. 5 W., accepted August 14, 1998
T. 29 N., R. 6 W., accepted August 14, 1998
T. 26 N., R. 2 W., accepted August 14, 1998
T. 27 N., R. 2 W., accepted August 14, 1998
T. 28 N., R. 2 W., accepted August 14, 1998
T. 29 N., R. 2 W., accepted August 14, 1998
T. 36 N., R. 20 E., accepted August 25, 1998
T. 33 N., R. 20 E., accepted August 25, 1998
T. 33 N., R. 21 E., accepted August 25, 1998
T. 36 N., R. 22 E., accepted August 25, 1998
T. 36 N., R. 23 E., accepted August 25, 1998
T. 35 N., R. 23 E., accepted August 25, 1998
T. 34 N., R. 23 E., accepted August 25, 1998
T. 36 N., R. 24 E., accepted August 25, 1998
T. 36 N., R. 20 E., accepted August 25, 1998
T. 35 N., R. 22 E., accepted August 25, 1998
T. 32 N., R. 20 E., accepted August 25, 1998
T. 31 N., R. 20 E., accepted August 25, 1998
T. 30 N., R. 20 E., accepted August 25, 1998
T. 31 N., R. 21 E., accepted August 25, 1998
T. 30 N., R. 21 E., accepted August 25, 1998
T. 29 N., R. 21 E., accepted August 25, 1998
T. 29 N., R. 22 E., accepted August 25, 1998
T. 29 N., R. 20 E., accepted August 25, 1998
T. 34 N., R. 20 E., accepted August 25, 1998
T. 31 N., R. 17 E., accepted October 26, 1998
T. 32 N., R. 17 E., accepted October 26, 1998
T. 29 N., R. 16 E., accepted October 26, 1998
T. 30 N., R. 16 E., accepted October 26, 1998
T. 31 N., R. 16 E., accepted October 26, 1998
T. 30 N., R. 17 E., accepted October 26, 1998
T. 32 N., R. 16 E., accepted October 26, 1998
T. 31 N., R. 19 E., accepted October 26, 1998
T. 32 N., R. 16 E., accepted October 26, 1998
T. 29 N., R. 17 E., accepted October 26, 1998
T. 32 N., R. 18 E., accepted October 26, 1998
T. 31 N., R. 18 E., accepted October 26, 1998
T. 30 N., R. 18 E., accepted October 26, 1998
T. 32 N., R. 19 E., accepted October 26, 1998
T. 30 N., R. 19 E., accepted October 26, 1998
T. 29 N., R. 19 E., accepted October 26, 1998
T. 29 N., R. 18 E., accepted October 26, 1998
T. 34 N., R. 16 E., accepted November 18, 1998
T. 36 N., R. 18 E., accepted November 18, 1998
T. 36 N., R. 16 E., accepted November 18, 1998
T. 35 N., R. 16 E., accepted November 18, 1998
T. 33 N., R. 16 E., accepted November 18, 1998
T. 35 N., R. 17 E., accepted November 18, 1998
T. 36 N., R. 17 E., accepted November 18, 1998
T. 33 N., R. 17 E., accepted November 18, 1998
T. 33 N., R. 19 E., accepted November 18, 1998
T. 35 N., R. 18 E., accepted November 18, 1998
T. 34 N., R. 18 E., accepted November 18, 1998
T. 33 N., R. 18 E., accepted November 18, 1998
T. 36 N., R. 19 E., accepted November 18, 1998
T. 35 N., R. 19 E., accepted November 18, 1998
T. 34 N., R. 19 E., accepted November 18, 1998
T. 34 N., R. 17 E., accepted November 18, 1998
T. 40 N., R. 16 E., accepted December 31, 1998
T. 38 N., R. 16 E., accepted December 31, 1998
T. 40 N., R. 20 E., accepted December 31, 1998
T. 39 N., R. 20 E., accepted December 31, 1998
T. 38 N., R. 20 E., accepted December 31, 1998
T. 37 N., R. 20 E., accepted December 31, 1998
T. 39 N., R. 21 E., accepted December 31, 1998
T. 39 N., R. 16 E., accepted December 31, 1998
T. 37 N., R. 21 E., accepted December 31, 1998
T. 40 N., R. 22 E., accepted December 31, 1998
T. 39 N., R. 22 E., accepted December 31, 1998
T. 38 N., R. 22 E., accepted December 31, 1998
T. 37 N., R. 22 E., accepted December 31, 1998
T. 40 N., R. 20 E., accepted December 31, 1998
T. 40 N., R. 16 E., accepted December 31, 1998
T. 40 N., R. 21 E., accepted December 31, 1998
T. 37 N., R. 16 E., accepted December 31, 1998
T. 40 N., R. 17 E., accepted December 31, 1998
T. 39 N., R. 17 E., accepted December 31, 1998
T. 38 N., R. 17 E., accepted December 31, 1998
T. 37 N., R. 17 E., accepted December 31, 1998
T. 40 N., R. 18 E., accepted December 31, 1998
T. 39 N., R. 18 E., accepted December 31, 1998
T. 38 N., R. 18 E., accepted December 31, 1998
T. 37 N., R. 18 E., accepted December 31, 1998
T. 40 N., R. 19 E., accepted December 31, 1998
T. 39 N., R. 19 E., accepted December 31, 1998
T. 38 N., R. 19 E., accepted December 31, 1998
T. 37 N., R. 19 E., accepted December 31, 1998
T. 38 N., R. 21 E., accepted December 31, 1998
T. 37 N., R. 9 E., accepted April 12, 1999
T. 37 N., R. 6 E., accepted April 12, 1999
T. 38 N., R. 7 E., accepted April 12, 1999
T. 41 N., R. 9 E., accepted April 12, 1999
T. 37 N., R. 7 E., accepted April 12, 1999
T. 41 N., R. 8 E., accepted April 12, 1999
T. 40 N., R. 8 E., accepted April 12, 1999
T. 39 N., R. 8 E., accepted April 12, 1999
T. 38 N., R. 8 E., accepted April 12, 1999
T. 37 N., R. 8 E., accepted April 12, 1999
T. 38 N., R. 9 E., accepted April 12, 1999
T. 39 N., R. 7 E., accepted April 12, 1999
T. 40 N., R. 9 E., accepted April 12, 1999
T. 39 N., R. 9 E., accepted April 12, 1999
T. 37 N., R. 10 E., accepted April 12, 1999
T. 38 N., R. 10 E., accepted April 12, 1999
T. 39 N., R. 10 E., accepted April 12, 1999
T. 40 N., R. 10 E., accepted April 12, 1999
T. 41 N., R. 10 E., accepted April 12, 1999
T. 38 N., R. 11 E., accepted April 14, 1999
T. 41 N., R. 12 E., accepted April 14, 1999
T. 39 N., R. 14 E., accepted April 14, 1999
T. 39 N., R. 13 E., accepted April 14, 1999
T. 39 N., R. 12 E., accepted April 14, 1999
T. 38 N., R. 12 E., accepted April 14, 1999
T. 37 N., R. 12 E., accepted April 14, 1999
T. 37 N., R. 11 E., accepted April 14, 1999
T. 41 N., R. 13 E., accepted April 14, 1999
T. 40 N., R. 13 E., accepted April 14, 1999
T. 40 N., R. 12 E., accepted April 14, 1999
T. 38 N., R. 13 E., accepted April 14, 1999
T. 40 N., R. 11 E., accepted April 14, 1999
T. 37 N., R. 13 E., accepted April 14, 1999
T. 40 N., R. 14 E., accepted April 14, 1999
T. 37 N., R. 14 E., accepted April 14, 1999
T. 38 N., R. 14 E., accepted April 14, 1999
T. 41 N., R. 11 E., accepted April 14, 1999
T. 39 N., R. 11 E., accepted April 14, 1999
T. 41 N., R. 14 E., accepted April 14, 1999
T. 32 N., R. 14 E., accepted April 30, 1999
T. 32 N., R. 13 E., accepted April 30, 1999
T. 36 N., R. 7 E., accepted April 30, 1999
T. 35 N., R. 7 E., accepted April 30, 1999
T. 34 N., R. 7 E., accepted April 30, 1999
T. 34 N., R. 8 E., accepted April 30, 1999
T. 36 N., R. 10 E., accepted April 30, 1999
T. 34 N., R. 10 E., accepted April 30, 1999
T. 29 N., R. 11 E., accepted April 30, 1999
T. 30 N., R. 14 E., accepted April 30, 1999
T. 29 N., R. 12 E., accepted April 30, 1999

T. 29 N., R. 15 E., accepted April 30, 1999
T. 31 N., R. 13 E., accepted April 30, 1999
T. 30 N., R. 13 E., accepted April 30, 1999
T. 29 N., R. 13 E., accepted April 30, 1999
T. 31 N., R. 14 E., accepted April 30, 1999
T. 29 N., R. 14 E., accepted April 30, 1999
T. 32 N., R. 15 E., accepted April 30, 1999
T. 31 N., R. 15 E., accepted April 30, 1999
T. 30 N., R. 15 E., accepted April 30, 1999
T. 36 N., R. 12 E., accepted June 30, 1999
T. 32 N., R. 10 E., accepted June 30, 1999
T. 27 N., R. 15 E., accepted June 30, 1999
T. 27 N., R. 10 E., accepted June 30, 1999
T. 28 N., R. 12 E., accepted June 30, 1999
T. 28 N., R. 12 E., accepted June 30, 1999
T. 28 N., R. 13 E., accepted June 30, 1999
T. 27 N., R. 13 E., accepted June 30, 1999
T. 28 N., R. 14 E., accepted June 30, 1999
T. 34 N., R. 12 E., accepted June 30, 1999
T. 28 N., R. 15 E., accepted June 30, 1999
T. 31 N., R. 9 E., accepted June 30, 1999
T. 28 N., R. 16 E., accepted June 30, 1999
T. 27 N., R. 16 E., accepted June 30, 1999
T. 36 N., R. 11 E., accepted June 30, 1999
T. 34 N., R. 11 E., accepted June 30, 1999
T. 32 N., R. 8 E., accepted June 30, 1999
T. 27 N., R. 14 E., accepted June 30, 1999
T. 31 N., R. 8 E., accepted June 30, 1999
T. 35 N., R. 12 E., accepted June 30, 1999
T. 32 N., R. 8 E., accepted June 30, 1999
T. 26 N., R. 10 E., accepted June 30, 1999
T. 27 N., R. 9 E., accepted June 30, 1999
T. 34 N., R. 14 E., accepted June 30, 1999
T. 35 N., R. 14 E., accepted June 30, 1999
T. 36 N., R. 14 E., accepted June 30, 1999
T. 33 N., R. 13 E., accepted June 30, 1999
T. 34 N., R. 13 E., accepted June 30, 1999
T. 35 N., R. 13 E., accepted June 30, 1999
T. 36 N., R. 13 E., accepted June 30, 1999
T. 33 N., R. 14 E., accepted June 30, 1999
T. 35 N., R. 34 E., accepted August 12, 1999
T. 39 N., R. 37 E., accepted August 12, 1999
T. 40 N., R. 36 E., accepted August 12, 1999
T. 39 N., R. 35 E., accepted August 12, 1999
T. 40 N., R. 35 E., accepted August 12, 1999
T. 35 N., R. 36 E., accepted August 12, 1999
T. 36 N., R. 36 E., accepted August 12, 1999
T. 35 N., R. 35 E., accepted August 12, 1999
T. 37 N., R. 34 E., accepted August 12, 1999
T. 37 N., R. 35 E., accepted August 12, 1999
T. 37 N., R. 34 E., accepted August 12, 1999
T. 36 N., R. 35 E., accepted August 12, 1999

The plats will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S. W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plats may be obtained from the above office upon required payment.

The above-listed plats represent Amended Protraction Diagrams.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: September 3, 1999.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 99–24222 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1820–01, GP9–0251; OR–55174]

Notice of Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, Bureau of Land Management proposes to withdraw approximately 619,000 acres of Federal lands, 73,900 acres of Federal minerals, and 37,400 acres of Federal surface lands to protect the nationally significant ecologic and biologic diversity values of the Steens Mountain area. Subject to valid existing rights, this notice segregates the Federal lands and minerals described below for up to 2 years from the non-discretionary public land and mining laws.

FOR FURTHER INFORMATION CONTACT: Miles Brown, BLM, Andrews Resource Area Manager, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, 541–573–4425.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the nationally significant ecologic and biologic diversity of the Steens Mountain area, which contains outstanding scenic and recreation values, and special status plant and animal species and their habitats, while the Department of the Interior considers whether a special management designation for the area is warranted and the views of the public on such a designation. The proposal, if finalized, would withdraw, subject to valid existing rights, the following described Federal lands and minerals from the non-discretionary public land and mining laws. The Federal lands and minerals will remain open to the discretionary public land and mineral laws. Non-Federal lands and minerals are not intended to be included in this proposal unless they are subsequently acquired by the United States. The lands and minerals proposed for withdrawal are depicted on the map entitled ''Steens Surface and Sub-Surface Estates'' dated August 11, 1999 located in official file OR–55174 at the Bureau of Land Management Oregon State Office, 1515 S.W. 5th Avenue, Portland, Oregon, 97208.

1. Federal Lands/Federal Minerals

Willamette Meridian

T. 28 S., R. 31 E.,
Sec. 24, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 25, E½NE¼, NW¼NE¼, NE¼NW¼, and NE¼SE¼.
T. 29 S., R. 31 E.,
Sec. 1, lot 1, SE¼NE¼, and E½SE¼;
Sec. 12, NE¼NE¼;
Sec. 24, E½SE¼;
Sec. 25, E½E½ and SW¼SW¼;
Sec. 35, E½NE¼ and SE¼.
T. 30 S., R. 31 E.,
Sec. 1;
Sec. 2, lots 1 to 4, inclusive, S½N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 11, NE¼ and N½SE¼;
Sec. 12, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 13, N½NE¼;
Sec. 25, E½SE¼SE¼.
T. 28 S., R. 32 E.,
Sec. 17;
Sec. 18, lot 4, S½NE¼, SE½SW¼, and SE¼;
Secs. 19 to 22, inclusive;
Sec. 23, SW¼ and S½SE¼;
Sec. 24, SW¼SW¼;
Sec. 25, NW¼NW¼, S½NW¼, and SW¼;
Secs. 26 to 35, inclusive.
T. 29 S., R. 32 E.,
Sec. 1, lot 4, SW¼NW¼, and SW¼;
Secs. 2 to 6, inclusive;
Sec. 7, lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Secs. 9 and 10;
Sec. 11, W½E½ and W½;
Secs. 13 and 14;
Sec. 15, N½N½, SE¼NE¼, and E½SE¼;
Sec. 19, lot 4;
Sec. 23, N½N½;
Sec. 24, NE¼, E½NW¼, NW¼NW¼, and NE¼SE¼;
Sec. 26, SW¼SW¼;
Sec. 27, S½SW¼ and SE¼;
Sec. 28;
Sec. 29, NE¼NE¼, S½N½, and S½;
Sec. 30, lots 1 to 4, inclusive, NW¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 31, lots 1 to 4, inclusive, E½W½, and SE¼;
Sec. 32, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Secs. 33 and 34;
Sec. 35, NW¼NW¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼.
T. 30 S., R. 32 E.,
Sec. 1, lot 1, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 2, lots 2 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and SE¼;
Sec. 4;
Sec. 5, lots 1, 3, and 4, S½N½, and S½;
Secs. 6 to 10, inclusive;
Sec. 11, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 12, NE¼, E½NW¼, and N½SE¼;
Sec. 13, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 14, 15, and 17;
Sec. 18, lots 1 and 2, NE¼, and E½NW¼;
Sec. 20, NE¼ and N½SE¼;
Secs. 21 to 26, inclusive;
Sec. 27, N½, N½S½, and SE¼SE¼;
Sec. 28, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 30, lot 4 and SE¼SW¼;
Sec. 31;

Sec. 32, SW¼ and W½SE¼;
Sec. 35, N½, N½SW¼, and NW¼SE¼;
Sec. 36, W½NW¼.
T. 32 S., R. 32 E.,
Sec. 2, SW¼SE¼, and that portion of W½ lying southerly of the centerline of State Highway No. 205;
Sec. 3, that portion lying southerly of the centerline of State Highway No. 205;
Sec. 9, that portion of E½NE¼, S½SW¼NE¼, NW¼, E½SW¼, and SE¼ lying southeasterly of the centerline of State Highway. No. 205;
Sec. 10, that portion lying southerly of the centerline of State Highway No. 205;
Sec. 11, SW¼NE¼, NW¼, and S½;
Sec. 12, SW¼ and S½SE¼;
Secs. 13, 14, and 15;
Sec. 16, that portion lying southeasterly of the centerline of State Highway No. 205;
Sec. 17, that portion lying southeasterly of the centerline of State Highway No. 205;
Sec. 20, that portion of the NE¼NE¼ lying southeasterly of the centerline of State Highway No. 205;
Sec. 21 to 25, inclusive;
Sec. 26, E½, S½NW¼, and SW¼;
Sec. 27, S½NE¼, NW¼, and S½;
Sec. 28, N½;
Sec. 29, E½SE¼;
Sec. 32, SE¼NE¼, E½SE¼, SW¼SE¼, and that portion of N½N½ lying southeasterly of the centerline of State Highway No. 205;
Sec. 36, N½N½.
T. 33 S., R. 32 E.,
Secs. 1 to 4, inclusive;
Sec. 5, that portion lying southeasterly of the centerline of State Highway No. 205;
Sec. 6, that portion lying southeasterly of the centerline of State Highway No. 205;
Sec. 7, that portion of N½NE¼, SW¼SE¼, and SW¼ lying southeasterly of the centerline of State Highway No. 205;
Secs. 8 and 9;
Sec. 10, N½, W½SW¼, SE¼SW¼, and SE¼;
Sec. 11;
Sec. 12, E½, NW¼NW¼, S½NW¼, and SW¼;
Sec. 13;
Sec. 14, N½, N½SW¼, and SE¼;
Secs. 15 and 17;
Sec. 18, that portion of lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, and 16 lying southeasterly of the centerline of State Highway No. 205;
Sec. 19, that portion of lots 1, 2, and 3, E½E½, and E½NW¼ lying easterly of the centerline of State Highway No. 205;
Secs. 20, 21, and 22;
Sec. 23, N½, N½SW¼, SW¼SW¼, and SE¼;
Secs. 24 to 29, inclusive;
Sec. 30, that portion of lot 3 and E½E½ lying easterly of the centerline of State Highway No. 205;
Sec. 31, that portion of E½NE¼ lying easterly of the centerline of State Highway No. 205;
Sec. 32, N½, E½SW¼, and SE¼;
Sec. 33, N½NE¼, SW¼NE¼, SE¼, and W½;
Secs. 34 and 35;
Sec. 36, W½.
T. 34 S., R. 32 E.,
Secs. 1 to 4, inclusive;
Sec. 5, that portion of lots 1, 2, and 7, and S½NE¼, E½SW¼, and SE¼ lying easterly of the centerline of Harney County Road No. 202;
Sec. 8, that portion of lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, and W½SE¼ lying easterly of the centerline of Harney County Road No. 202;
Sec. 9, N½NE¼, SW¼NE¼, W½, and SE¼;
Secs. 10 to 15, inclusive;
Sec. 21, that portion of lots 1 to 4, inclusive, lying easterly of the centerline of Harney County Road No. 202;
Sec. 22, lots 1, 2, and 3, E½, E½NW¼, and NE¼SW¼;
Secs. 23 to 26, inclusive;
Sec. 27, lots 3 and 4, E½NE¼, E½SW¼, and SE¼;
Sec. 34, that portion of lots 1 to 6, inclusive, and S½NE¼, N½SW¼, SE¼SW¼, and SE¼ lying easterly of the centerline of Harney County Road No. 202;
Sec. 35.
T. 35 S., R. 32 E.,
Secs. 1 and 2;
Sec. 3, lots 4 and 5, S½NE¼, and SE¼;
Sec. 10, that portion of E½E½ and NW¼NE¼ lying easterly of the centerline of Harney County Road No. 202;
Secs. 11 to 14, inclusive;
Sec. 15, that portion of E½E½ lying easterly of the centerline of Harney County Road No. 202;
Sec. 23, that portion of N½, NE¼SW¼, and SE¼ lying easterly of the centerline of Harney County Road No. 202;
Sec. 24;
Sec. 25, that portion of N½N½, SW¼NE¼, and S½SE¼ lying easterly of the centerline of Harney County Road No. 202.
T. 31 S., R. 32½ E.,
Sec. 1, lots 3 and 4, and SW¼;
Sec. 2;
Sec. 3, lots 1, 2, and 3, E½SW¼, and SE¼;
Sec. 9, S½NE¼, and SE¼;
Secs. 10 and 11;
Sec. 12, SW¼NE¼, W½, and W½SE¼;
Secs. 13, 14, and 15;
Sec. 21, E½NE¼ and NE¼SE¼;
Secs. 22 to 27, inclusive;
Sec. 28, E½E½;
Sec. 33, E½E½;
Secs. 34 and 35;
Sec. 36, E½E½.
T. 32 S., R. 32½ E.,
Secs. 1, 2, and 3;
Sec. 4, lot 1, SE¼NE¼, S½SW¼, NE¼SE¼, and S½SE¼;
Sec. 5, SE¼SE¼;
Sec. 8, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 9 to 15, inclusive;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 19 to 35, inclusive;
Sec. 36, E½E½.
T. 33 S., R. 32½ E.,
Secs. 1 to 15, inclusive;
Sec. 16, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, SE¼NW¼, and E½SW¼;
Secs. 19 and 20;
Sec. 21, N½, N½SW¼, and SE¼;
Secs. 22 to 36, inclusive.
T. 34 S., R. 32½ E.,
Secs. 1 to 15, inclusive;
Secs. 17 to 24, inclusive;
Sec. 25, N½, SW¼, N½SE¼, and SW¼SE¼;
Secs. 26, 27, and 28;
Sec. 29, N½, NE¼SW¼, and SE¼;
Sec. 30, lots 1, 2, and 4, NE¼, E½NW¼, SE¼SW¼, and SW¼SE¼;
Secs. 31 to 35, inclusive.
T. 35 S., R. 32½ E.,
Secs. 1 to 6, inclusive;
Sec. 7, lots 1 to 4, inclusive, E½, E½NW¼, and SE¼SW¼;
Secs. 8 to 13, inclusive;
Sec. 14, N½N½, S½NE¼, and E½SE¼;
Sec. 15, N½NW¼;
Sec. 17;
Sec. 18, lots 1, 3, and 4, E½, and E½W½;
Secs. 19 and 20;
Sec. 21, N½;
Sec. 22, NE¼ and S½NW¼;
Sec. 23, N½NE¼ and NE¼NW¼;
Sec. 24, N½N½, SE¼NE¼, and NE¼SE¼;
Sec. 26, SW¼, W½SE¼, and SE¼SE¼;
Sec. 27, N½;
Sec. 28, NE¼ and S½;
Sec. 29, S½;
Sec. 30, lots 1 and 2, E½NW¼, NE¼SW¼, and SE¼;
Sec. 32, lots 3 and 4, N½, NE¼SW¼, and N½SE¼;
Sec. 34.
T. 35½ S., R. 32½ E.,
Sec. 20, lots 1 and 2, S½SE¼;
Secs. 22 and 28;
Sec. 32, NE¼ and N½SE¼;
Sec. 34.
T. 36 S., R. 32½ E.,
Secs. 2, 10, and 14;
Sec. 15, S½;
Sec. 21, that portion lying easterly of the centerline of Harney County Road No. 202;
Sec. 22, NE¼NE¼, SW¼NE¼, NW¼NW¼, SE¼NW¼, and S½;
Sec. 23, N½NE¼, SW¼NE¼, NW¼, and S½;
Secs. 25, 26, and 27;
Sec. 28, that portion lying easterly of the centerline of Harney County Road No. 202;
Sec. 29, that portion lying easterly of the centerline of Harney County Road No. 202;
Sec. 32, that portion lying easterly of the centerline of Harney County Road No. 202;
Sec. 33, that portion lying easterly of the centerline of Harney County Road No. 202;
Secs. 34 and 35.
T. 37 S., R. 32½ E.,
Sec. 1;
Secs. 2 and 3, those portions lying northeasterly of the centerline of Harney County Road No. 202;
Sec. 4, that portion of N½ lying northeasterly of the centerline of Harney County Road No. 202;

Sec. 5, that portion of E½NE¼ lying northeasterly of the centerline of Harney County Road No. 202;
Sec. 11, that portion lying northeasterly of the centerline of Harney County Road No. 202;
Sec. 12, that portion of NW¼NE¼ and W½ lying northeasterly of the centerline of Harney County Road No. 202.
T. 31 S., R 32¾ E.,
Secs. 1 to 4, inclusive;
Sec. 5, lots 1, 7, and 8;
Sec. 6, lots 2 to 7, inclusive;
Sec. 7, lots 1 to 4, inclusive, E½W½, and SE¼;
Sec. 8, E½ and S½SW¼;
Secs. 9 to 15, inclusive;
Sec. 17;
Sec. 18, E½;
Sec. 19, lots 2, 3 and 4, E½SW¼, and W½SE¼;
Secs. 20 to 23, inclusive;
Sec. 24, N½, SW¼, and N½SE¼;
Sec. 25, W½W½;
Secs. 26 to 36, inclusive.
T. 32 S., R. 32¾ E.,
Sec. 1, lot 1, SE¼NE¼, and N½SE¼;
Sec. 2, lots 2, 3, and 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 3 to 10, inclusive;
Sec. 11, SW¼NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 14, W½E½ and W½;
Sec. 15;
Sec. 17, N½ and E½SE¼;
Secs. 18 and 19;
Sec. 20, S½;
Sec. 21, N½NE¼ and W½SW¼;
Sec. 22, N½ and E½SE¼;
Sec. 23, NW¼NE¼ and W½;
Sec. 25, S½NW¼, SW¼, NE¼SE¼, and W½SE¼;
Sec. 26, S½NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 27, SW¼, N½SE¼, and SW¼SE¼;
Secs. 28 to 32, inclusive;
Sec. 33, NE¼NE¼, W½NE¼, W½, and W½SE¼;
Sec. 34, N½NW¼;
Sec. 35, E½ and E½W½.
T. 33 S., R. 32¾ E.,
Sec. 1, lots 1 to 4, inclusive, and SW¼NE¼, and S½SW¼;
Sec. 2, lots 1, 2, and 3, and SE¼NW¼;
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;
Sec. 5, lots 2, 3, and 4, SW¼SW¼, and SE¼SE¼;
Sec. 6, lots 1 to 7, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 7;
Sec. 8, E½, W½W½, and SE¼SW¼;
Sec. 9;
Sec. 10, S½NW¼, SW¼, and S½SE¼;
Sec. 11, S½SE¼;
Sec. 12, W½SW¼;
Sec. 13;
Sec. 14, NE¼NE¼, S½N½, NW¼NW¼, and S½;
Secs. 15 to 35, inclusive;
Sec. 36, S½NW¼ and N½SE¼.
T. 34 S., R. 32¾ E.,
Secs. 1 to 10, inclusive;
Sec. 11, N½ and SW¼;
Sec. 12;
Sec. 13, E½ and S½SW¼;
Sec. 14, W½NW¼ and SE¼SE¼;
Secs. 15, 17, 18, and 19;
Sec. 20, N½;
Sec. 21, N½ and SW¼;
Sec. 22, N½NE¼, SW¼NE¼, and NW¼;
Sec. 23, E½ and SW¼;
Sec. 24, N½, SW¼, and W½SE¼;
Sec. 25, W½E½, W½, and SE¼SE¼;
Sec. 26, E½NE¼ and SE¼;
Sec. 28;
Sec. 29, S½;
Secs. 30 to 33, inclusive;
Sec. 34, W½SW¼;
Sec. 35.
T. 35 S., R. 32¾
Sec. 1, E½SW¼;
Sec. 2, lots 1, 2, and 3, SE¼NW¼, SW¼, and S½SE¼;
Sec. 3, lot 4 and S½;
Sec. 4, lots 1 to 4, inclusive, and S½;
Secs. 5 and 6;
Sec. 7, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, E½NW¼, and NE¼SW¼;
Sec. 8, E½ and N½NW¼;
Sec. 9, E½NE¼ and W½SW¼;
Sec. 10, N½N½ and SE¼NE¼;
Sec. 11, N½N½;
Sec. 12, E½;
Sec. 13, E½NE¼ and S½;
Sec. 17, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 18, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20;
Sec. 21, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 22, NW¼NW¼, S½N½, and N½S½;
Sec. 23, NE¼ and S½;
Secs. 24 and 25;
Sec. 26, N½;
Sec. 27, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 28, NE¼, E½NW¼, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 29, SE¼NE¼;
Sec. 30, SE¼SE¼.
T. 35½ S., R. 32¾ E.,
Sec. 24, W½;
Sec. 26, NE¼NE¼, S½NE¼, SE¼SW¼, and SE¼.
T. 36 S., R. 32¾ E.,
Sec. 2, E½;
Sec. 12;
Sec. 13, NW¼NW¼ and S½;
Sec. 14;
Sec. 20, SE¼SE¼;
Secs. 23 to 27, inclusive;
Sec. 28, N½, SW¼, N½SE¼, and SE¼SE¼;
Secs. 30 and 31;
Sec. 32, W½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 33, SW¼NE¼, W½, and W½SE¼;
Sec. 34, E½, N½NW¼, SE¼NW¼, and NE¼SW¼;
Sec. 35.
T. 37 S., R. 32¾ E.,
Secs. 1 and 2;
Sec. 3, lots 1 and 2, S½NE¼, NE¼SE¼, and SW¼SE¼;
Sec. 4, lots 2, 3, and 4, S½N½ and S½;
Secs. 5 and 6;
Sec. 7, those portions of lots 1 to 4, inclusive, NE¼, E½NW¼, and E½SE¼ lying northeasterly of the centerline of Harney County Road No. 202;
Secs. 8 to 15, inclusive;
Sec. 17, that portion of the E½ and NE¼NW¼ lying northeasterly of the centerline of Harney County Road No. 202;
Secs. 21, 22, and 23, those portions lying northeasterly of the centerline of Harney County Road No. 202;
Sec. 24;
Secs. 25, 26, and 35, that portion lying northeasterly of the centerline of Harney County Road No. 202.
T. 28 S., R. 33 E.,
Sec. 19, that portion of the SE¼SE¼ lying southeasterly of the centerline of Harney County Road No. 404;
Sec. 26, W½NE¼ and W½NW¼;
Sec. 27, N½, SW¼, and W½SE¼;
Sec. 34, NW¼NE¼ and N½NW¼;
Sec. 35, NE¼NW¼.
T. 29 S., R. 33 E.,
Sec. 2, S½SW¼ and W½SE¼;
Sec. 3, SE¼;
Sec. 10, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 11, W½E½ and W½;
Sec. 12, NE¼SW¼ and S½SE¼;
Sec. 13, NE¼, SW¼SW¼, and E½SE¼;
Sec. 14, NW¼NE¼, S½NE¼, W½, and SE¼;
Secs. 15 to 18, inclusive;
Sec. 19, lots 1, 2, and 3, N½NE¼, SE¼NE¼, E½NW¼, and NE¼SW¼;
Secs. 20 to 23, inclusive;
Sec. 24, S½NE¼, W½, and SE¼;
Secs. 25 and 26;
Sec. 27, N½, N½SW¼, and SE¼SE¼;
Sec. 28, N½ and N½S½;
Sec. 29, N½NE¼ and SE¼NE¼;
Sec. 33, SE¼NE¼ and E½SE¼;
Sec. 34, NE¼NE¼, S½NE¼, NE¼NW¼, SW¼NW¼, E½SW¼, and SE¼;
Sec. 35.
T. 30 S., R. 33 E.,
Scs. 1 and 2;
Sec. 3, lots 1, 2, and 3, S½N½, NE¼SW¼, and SE¼;
Sec. 6, lots 5, 6, and 7, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and 3, NE¼, E½W½, W½SE¼, and SE¼SE¼;
Sec. 8, E½ and E½W½;
Sec. 9, S½NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 10, E½NE¼, W½NW¼, NW¼SW¼, and NE¼SE¼;
Secs. 11 and 12;
Sec. 13, N½;
Sec. 14, NE¼, NE¼NW¼, SW¼SW¼, and N½SE¼;
Sec. 15, S½NE¼, NW¼, and S½;
Sec. 17, NE¼NE¼, SW¼NE¼, NW¼, and S½;
Sec. 18, lots 3 and 4, NW¼NE¼, SE¼NE¼, SE¼NW¼, and NE¼SE¼;
Sec. 19, lot 1, 3, and 4, NE¼NW¼, E½SW¼, and SE¼;
Sec. 20, NW¼NW¼ and S½;
Sec. 21;
Sec. 22, NE¼, N½NW¼, and S½SW¼;
Sec. 23, NW¼ and N½SW¼;
Sec. 24, N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 25, NE¼NE¼, SE¼NW¼, SW¼SW¼, and SE¼;
Sec. 26, NW¼NE¼, NE¼NW¼, and SE¼;

Sec. 27, W½NE¼, NW¼, and S½; Secs. 28 to 32, inclusive;
Sec. 34;
Sec. 35, N½NE¼ and SW¼SW¼.
T. 31 S., R. 33 E.,
Sec. 2;
Sec. 3, lots 1 to 4, inclusive, and lots 6, 7, and 8;
Sec. 4, lot 5;
Sec. 5;
Sec. 6, lots 1, 4, and 5;
Sec. 7, W½;
Sec. 8, N½NE¼, SW¼NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 9, W½NW¼ and SE¼;
Sec. 10, E½ and E½NW¼;
Sec. 11, lots 1, 2, 3, 4, 6, and 7;
Sec. 14, lots 2 to 8, inclusive;
Sec. 15, E½E½, NW¼NE¼, and W½W½;
Sec. 17, E½;
Sec. 18, NW¼NW¼ and SW¼;
Sec. 19, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 20, NE¼NE¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 21, W½E½ and W½;
Sec. 22, E½E½;
Secs. 23 and 26;
Sec. 27, W½SW¼;
Sec. 28, N½, SW¼SW¼, and SE¼;
Sec. 29, N½, N½SW¼, and W½SE¼;
Sec. 30, N½NE¼, SE¼NE¼, and W½NW¼;
Sec. 33, N½, E½SW¼, and SE¼;
Sec. 34, S½NE¼, W½, and N½SE¼;
Sec. 35, lots 1 to 6, inclusive.
T. 32 S., R. 33 E.,
Sec. 3, lots 3 and 4, SW¼NW¼, and W½SW¼;
Sec. 4, lots 1, 2, and 3, SW¼NE¼, SE¼SW¼, and SE¼;
Sec. 5, lot 2, SW¼NW¼, and W½SW¼;
Sec. 6;
Sec. 8, S½SE¼;
Sec. 9, E½NE¼, NW¼NE¼, E½NW¼, NE¼SW¼, S½SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 10, W½NW¼;
Sec. 11, lots 3 and 6;
Sec. 14, lots 2 and 5;
Sec. 17, W½NE¼, E½NW¼, SW¼, and NW¼SE¼;
Sec. 19, SE¼NE¼ and E½SE¼;
Sec. 20, NW¼ and W½SW¼;
Sec. 21, W½SE¼;
Sec. 22, NE¼NE¼, S½NE¼, E½NW¼, SE¼SW¼, NE½SE¼, and W½SE¼;
Sec. 23, lots 1, 4, 5, and 8;
Sec. 26, lots 1, 4, 5, and 8;
Sec. 27, SE¼NW¼, NE¼SW¼, S½S½, and NE¼SE¼;
Sec. 28, S½S½;
Sec. 29, W½NW¼ and S½;
Sec. 30, E½E½;
Secs. 31 and 32;
Sec. 33, NE¼NE¼, W½NE¼, W½, and W½SE¼;
Sec. 34, NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼.
T. 32½ S., R. 33 E.,
Sec. 20, lots 1 to 4, inclusive;
Sec. 21, lots 1 to 4, inclusive, and S½SE¼;
Sec. 22, lots 3 and 4, and S½SW¼;
Sec. 23, lots 1 and 2, and S½S½;
Sec. 24, lots 1, 2, and 4, and SE¼SW¼;
Sec. 25, lots 1, 2, and 4, N½NW¼, SE¼NW¼, and SW¼;
Sec. 26;
Sec. 27, W½ and SE¼;
Sec. 28, NE¼ and N½SE¼;
Sec. 32, W½SW¼, SE¼SW¼, N½SE¼, and SW¼SE¼;
Sec. 33, S½NE¼ and W½SW¼;
Sec. 34, N½, N½SW¼, and SE¼;
Sec. 35.
T. 33 S., R. 33 E.,
Secs. 1 and 2;
Sec. 3, lots 1 and 2, S½NE¼, and S½;
Sec. 4, lots 3 and 4, S½NW¼, and S½;
Sec. 5, lots 2, 3, and 4, SW¼NE¼, S½NW¼, and S½;
Secs. 8 to 15, inclusive;
Sec. 16, N½N½;
Sec. 17;
Secs. 20 to 29, inclusive, and secs. 32 to 35, inclusive.
T. 34 S., R. 33 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 to 4, inclusive, S½N½, N½S½, and S½SE¼;
Sec. 5, SW¼SE¼;
Sec. 8, S½NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, E½NE¼;
Secs. 10 to 14, inclusive;
Sec. 15, E½ and N½NW¼;
Sec. 17, NE¼NE¼, W½E½, and W½;
Sec. 21, N½NE¼, NE¼NW¼, and W½SE¼;
Sec. 22, E½, SE¼NW¼, and E½SW¼;
Secs. 23 to 26, inclusive;
Sec. 27, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 28, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 29, S½N½ and S½;
Secs. 32 to 35, inclusive.
T. 35 S., R. 33 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼;
Sec. 2, lots 1, 2, and 4, and SE¼NE¼;
Secs. 3, 4, 5, 8, and 9;
Sec. 10, N½, SW¼, and N½SE¼;
Sec. 12;
Sec. 14, NW¼ and S½;
Sec. 15, S½NE¼SW¼, SE¼SW¼, S½N½SE¼, and S½SE¼;
Sec. 17, lots 1 and 2, and NE¼;
Sec. 22, W½;
Sec. 23, N½NE¼, SW¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, W½, N½NE¼SE¼, N½S½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, and SE¼SE¼;
Sec. 24, E½ and E½W½;
Sec. 26, NW¼;
Sec. 27, E½E½, N½NW¼NE¼, SW¼NE¼, N½N½NW¼, SW¼NW¼, N½SE¼NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, NW¼SE¼, and N½SW¼SE¼;
Sec. 28, N½NE¼, SW¼NE¼, W½, and SE¼;
Sec. 32;
Sec. 34, E½, W½NW¼, and SW¼;
Sec. 35, S½SW¼NW¼, S½N½SW¼NW¼, W½SW¼, and that portion of NW¼NW¼ and N½N½SW¼NW¼ lying southwesterly of a diagonal line from the northwest corner of said
Sec. 35, to the southeast corner of the N½N½SW¼NW¼ of said sec. 35.
T. 36 S., R. 33 E.,
Sec. 4, lots 1 and 2, S½NE¼, and SE¼;
Secs. 6 and 8;
Sec. 13, NE¼, SE¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 17, N½NE¼NW¼ and N½NW¼SW¼;
Sec. 18, lots 1, 2, and 3, E½, E½NW¼, and NE¼SW¼;
Secs. 19 and 20;
Sec. 21, W½NE¼, SE¼NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 22, lot 5, N½SW¼, and SW¼SW¼;
Sec. 23, NE¼NE¼;
Secs. 24, 25, and 26;
Sec. 28, NE¼NE¼, E½NW¼, SW¼NW¼, and W½SW¼;
Secs. 29 to 32, inclusive;
Sec. 33, S½N½, N½S½, SW¼SW¼, and SE¼SE¼;
Sec. 34, lots 2, 3, and 4;
Sec. 35;
And that portion of the township and range denoted as Alvord Lake on the official plat of survey.
T. 37 S., R. 33 E.,
Secs. 1, 2, and 3;
Sec. 4, lot 4, S½NW¼, and SW¼;
Secs. 5 to 8, inclusive;
Sec. 9, W½;
Sec. 10, N½, E½SW¼, and SE¼;
Sec. 11, N½ and SE¼;
Secs. 12 and 13;
Sec. 14, E½, N½NW¼, and S½SW¼;
Sec. 15;
Sec. 17, E½E½, NW¼NW¼, S½SW¼, and SW¼SE¼;
Secs. 18 to 22, inclusive;
Secs. 23 to 32, inclusive, those portions lying northerly of the centerline of BLM Road No. 7285–0–OO and Harney County Road No. 202;
And that portion of the township and range denoted as Alvord Lake on the official plat of survey.
T. 28 S., R. 34 E.,
Sec. 19, lot 4, SE¼SW¼, and S½SE¼;
Sec. 20, S½SW¼;
Sec. 28, S½SW¼ and SW¼SE¼;
Sec. 29, SW¼NE¼, W½, and SE¼;
Sec. 30, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, NE¼, E½NW¼, NW¼NW¼, S½S½, and NE¼SE¼;
Secs. 33 and 34;
Sec. 35, S½NE¼, W½, and SE¼;
Sec. 36, S½N½ and S½.
T. 29 S., R. 34 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, SW¼SW¼, and SW¼SE¼;
Sec. 3, lots 1 to 4, inclusive, SE¼NE¼, S½NW¼, SE¼SW¼, and S½SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, SW¼, and W½SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and N½SE¼;
Sec. 7;
Sec. 8, NE¼, NE¼NW¼, SW¼NW¼, and S½;
Sec. 9, E½E½, NW¼NE¼, NE¼NW¼, SW¼NW¼, and SW¼;
Secs. 10 and 11;
Sec. 12, W½NE¼, E½NW¼, NW¼NW¼, NW¼SW¼, S½S½, and NW¼SE¼;
Sec. 13, N½, SW¼, N½SE¼, and SE¼SE¼;

Secs. 14 and 15;
Sec. 17, N½NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 18;
Sec. 19, E½ and E½W½;
Sec. 20;
Sec. 21, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 22, NE¼NE¼, W½E½, W½, and SE¼SE¼;
Sec. 23, N½ and NE¼SE¼;
Sec. 24, N½, N½S½, SE¼SW¼, and S½ SE¼;
Sec. 25, NE¼, E½NW¼, and S½;
Sec. 26, W½NW¼, SW¼, and E½SE¼;
Secs. 27 to 32, inclusive;
Sec. 33, N½, N½SW¼, and SE¼;
Sec. 34, N½, N½SW¼, SW¼SW¼, and SE¼;
Sec. 35, NW¼ and W½SW¼.

T. 30 S., R. 34 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, and S½;
Sec. 2, lot 4, SW¼NW¼, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 4, lots 1 and 4, SE¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 5 and 6;
Sec. 7, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Secs. 8 and 9;
Sec. 10, SE¼NE¼, SW¼NW¼, and S½;
Secs. 11, 12, and 13;
Sec. 14, N½, N½SE¼, and SE¼SE¼;
Sec. 15, N½N½, S½NW¼, and W½SW¼;
Sec. 16, E½E½ and SW¼;
Sec. 17, NE¼ and N½NW¼;
Sec. 19, lots 1 to 4, inclusive, and S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, SW¼;
Sec. 21;
Sec. 22, N½, N½S½, and S½SW¼;
Sec. 23, NE¼NE¼, S½N½, and S½;
Sec. 24, N½ and NE¼SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, N½, N½S½, and S½SE¼;
Sec. 27, W½ and W½SE¼;
Secs. 28 and 29;
Sec. 30, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 31, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 32, W½NE¼, NW¼, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 33, NE¼, SW¼SW¼, and E½SE¼;
Sec. 34, W½NE¼, NW¼, and S½;
Sec. 35, NE¼ and S½.

T. 30½ S., R. 34 E.,
Secs. 25 and 26;
Sec. 27, lots 1 and 2, SE¼NE¼, and E½SE¼;
Sec. 28, lots 1, 2, and 3, S½NE¼, and SE¼NW¼;
Sec. 29, lot 2 and SW¼NE¼;
Sec. 30, lots 1 to 7, inclusive, and SE¼SW¼;
Sec. 31, lot 1, SE¼NE¼, E½NW¼, and W½SE¼;
Sec. 33, SE¼NE¼ and NE¼SE¼;
Sec. 34, SW¼NW¼ and W½SW¼;
Sec. 35, E½, N½NW¼, and SE¼NW¼;
Sec. 36, N½ and SW¼.

T. 31 S., R. 34 E.,
Sec. 1;
Sec. 2, lot 1 and SE¼NE¼;
Sec. 3, lots 1, 2, and 3, S½NE¼, SE¼NW¼, and NW¼SE¼;
Sec. 4, lot 3, SW¼NE¼, and S½NW¼;
Sec. 5, N½SW¼ and E½SE¼;
Sec. 6, lots 2, 5, 6, and 7, SW¼NE¼, E½SW¼, and W½SE¼;
Sec. 7, lots 1 to 4, inclusive, W½E½, and E½W½;
Sec. 10, E½NE¼;
Sec. 11, N½ and NE¼SE¼;
Sec. 12;
Sec. 13, lots 1, 2, and 3, W½NE¼, and NE¼NW¼;
Sec. 18, lots 1 to 4, inclusive, and W½E½, and E½W½;
Sec. 19, lots 1, 2, and 3, E½, and E½W½;
Sec. 24, lot 2, SW¼NE¼, E½SW¼, and SE¼;
Sec. 25, E½ and E½W½;
Sec. 30, lots 2 and 3, NE¼, E½NW¼, and W½SE¼;
Sec. 31, lot 3 and E½W½.

T. 32 S., R. 34 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, SE¼NW¼, and S½;
Sec. 6, lots 5, 6, and 7;
Sec. 7, lots 1 to 4, inclusive, E½SW¼, and SE¼;
Sec. 12;
Sec. 13, N½;
Sec. 17, W½SW¼;
Sec. 18;
Sec. 19, lots 1, 2, and 4, N½NE¼, and NE¼NW¼;
Sec. 20, NW¼NW¼, S½NW¼, and S½;
Sec. 21, E½E½, W½SW¼, and SE¼SW¼;
Secs. 22 and 27;
Sec. 28, E½NE¼, NW¼, and S½;
Sec. 29;
Sec. 30, lots 1, 2, and 3, N½NE¼, SE¼NE¼, E½SW¼, and SE¼;
Sec. 31, lot 2, E½, E½NW¼, and E½SW¼;
Secs. 32, 33, and 34;
Sec. 35, W½.

T. 33 S., R. 34 E.,
Sec. 2, lots 3 and 4, S½NW¼, and SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, E½SW¼, and SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and W½SW¼;
Secs. 5 to 8, inclusive;
Sec. 9, S½N½, NW¼NW¼, and S½;
Sec. 10, W½;
Sec. 15;
Sec. 16, lots 1 to 4, inclusive;
Secs. 17 to 21, inclusive;
Sec. 22, W½E½ and W½;
Sec. 27, N½SW¼ and NW¼SE¼;
Secs. 28 to 32, inclusive;
Sec. 33, W½NE¼, W½, and N½SE¼.

T. 34 S., R. 34 E.,
Sec. 4, lot 4, S½NW¼, and SW¼;
Secs. 5 to 8, inclusive;
Sec. 9, NW¼NW¼, W½SW¼, and SE¼SW¼;
Secs. 17, 18, and 19;
Sec. 20, N½NE¼, W½, and SE¼;
Sec. 22, SW¼SE¼;
Sec. 23, SE¼NE¼, W½SW¼, SE¼SW¼, and SE¼;
Secs. 24, 25, and 26;
Sec. 27, E½, E½W½, SW¼NW¼, and W½SW¼;
Sec. 28, SE¼SE¼;
Sec. 29, SE¼NE¼, W½, and SE¼;
Secs. 30 and 31;
Sec. 32, NW¼NE¼, W½, and SW¼SE¼;
Sec. 33, E½NE¼, N½S½, SE¼SW¼, and S½SE¼;
Secs. 34 and 35.

T. 35 S., R. 34 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1, 2, and 3, S½N½, and S½;
Sec. 5, lots 2, 3, and 4, S½N½, and S½;
Sec. 6;
Sec. 7, lots 1 and 2, E½, and E½NW¼;
Sec. 8;
Sec. 9, N½NE¼;
Sec. 10;
Sec. 11, N½, NE¼SW¼, and N½SE¼;
Sec. 12;
Sec. 13, NE¼NE¼;
Sec. 14;
Sec. 17, NE¼;
Secs. 18, 20, 22, 24, 26, 28, 30, 32, and 34.

T. 36 S., R. 34 E.,
Sec. 4;
Sec. 6, lots 1, 2, and 3, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 9, S½NW¼ and S½;
Secs. 10, 15 and 17;
Sec. 18, lots 2, 3, and 4, E½, and E½W½;
Secs. 19 to 23, inclusive;
Sec. 24, NW¼;
Sec. 26, W½;
Sec. 27, E½E½, NW¼, W½SW¼, SE¼SW¼, and SW¼SE¼;
Secs. 28 to 33, inclusive;
Sec. 34, that portion lying westerly of the centerline of BLM Road No. 7283–0–OO.

T. 37 S., R. 34 E.,
Sec. 3, that portion lying westerly of the centerline of BLM Road No. 7283–0–OO;
Secs. 4 to 9, inclusive;
Secs. 10 and 15, those portions lying westerly of the centerline of BLM Road No. 7283–0–OO;
Secs. 17 and 18;
Secs. 19, 20, and 21, those portions lying northerly of the centerline of BLM Road No. 7285–0–OO;
Sec. 22, that portion lying westerly of the centerline of BLM Road No. 7283–0–00 and lying northerly of the centerline of BLM Road No. 7285–0–OO.

T. 28 S., R. 35 E.,
Sec. 31, lot 4.

T. 29 S., R. 35 E.,
Sec. 4, S½S½;
Sec. 5, SE¼SW¼ and S½SE¼;
Sec. 6, lots 2 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lot 1, NE¼, E½NW¼, and S½SE¼;
Sec. 8, N½, S½SW¼, and E½SE¼;
Sec. 9, N½, SW¼, E½SE¼, and SW¼SE¼;
Sec. 10, SW¼NW¼ and S½;
Sec. 11, SW¼;
Sec. 13, N½SW¼ and SE¼;
Sec. 14, NE¼, E½NW¼, SW¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 15, NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 17, N½, SW¼SW¼, and SE¼;
Sec. 18, lots 2, 3, and 4, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 19;

Sec. 20, NW¼NE¼ and W½;
Sec. 21, E½ and NE¼NW¼;
Sec. 22;
Sec. 23, W½ and S½SE¼;
Sec. 24, N½NE¼, SE¼NE¼, W½SW¼, SE¼SW¼, and NE¼SE¼;
Sec. 25, SW¼NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, and S½SE¼;
Sec. 26, W½NE¼, SE¼NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 27;
Sec. 28, E½E½, W½SW¼, and SE¼SW¼;
Sec. 29, W½NE¼, W½, and SE¼;
Secs. 30, 31, and 32;
Sec. 33, NW¼, W½SW¼, and SE¼SW¼;
Sec. 34, E½ and E½NW¼;
Sec. 35, E½, SW¼NW¼, and SW¼;
Sec. 36, S½.

T.. 30 S., R. 35 E.,
Sec. 1, SE¼SE¼;
Sec. 2, lots 2, 3, and 4, S½N½, and S½;
Sec. 3, lots 1, 2, and 4, S½N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 4, lots 1, 3, and 4, S½N½, and S½;
Secs. 5, 6, and 7;
Sec. 8, N½, SW¼, and N½SE¼;
Sec. 9, N½;
Sec. 10, N½NE¼, SE¼NE¼, NW¼, and NE¼SE¼;
Sec. 11;
Sec. 12, NE¼, S½NW¼, and S½;
Sec. 13;
Sec. 14, N½NE¼, SE¼NE¼, SW¼NW¼, and S½;
Sec. 15, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 17, W½;
Secs. 18 and 19;
Sec. 20, NW¼ and S½;
Sec. 21, SW¼NW¼ and W½SW¼;
Sec. 22, E½E½;
Secs. 23 to 26, inclusive;
Sec. 27, E½;
Sec. 28, W½NW¼, SE¼NW¼, and SW¼;
Secs. 29 to 32, inclusive;
Sec. 33, W½E½, W½, and SE¼SE¼;
Sec. 34, NE¼ and S½;
Sec. 35;
And that portion of the Township denoted as Juniper Lake on the official plat of survey.

T. 31 S., R. 35 E.,
Sec. 1, those portions of lots 1, 2, 3, 6, 7, 8, 10, 11, and 13 lying northerly of the centerline of Harney County Road No. D 201;
Sec. 2, lots 2 to 7, inclusive, lots 10 to 14, inclusive, lots 19, 20, and 21;
Sec. 3, lots 1 to 31, inclusive;
Sec. 4, lots 1 and 2, lots 4 to 35, inclusive, lots 38, 39, 40, and S½;
Sec. 5, lots 1 to 32, inclusive, lots 34 to 39, inclusive, and S½;
Sec. 6;
Secs. 7, 8, and 9;
Sec. 10, that portion of SW¼ lying westerly of the centerline of Harney County Road No. 201;
Sec. 15, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 17, W½E½ and W½;
Sec. 18;
Sec. 19, lots 1 to 4, inclusive, NE¼, E½NW¼, NE¼SW¼, and SE¼;
Sec. 20;
Sec. 21, those portions of N½ and N½SW¼ lying westerly of the centerline of Harney County Road No. 201;
Sec. 28, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 29, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 30, lots 1 to 4, inclusive, E½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, that portion lying westerly of the centerline of Harney County Road No. 201.

T. 32 S., R. 35 E.,
Sec. 5, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 6, lots 3 to 7, inclusive, and those portions of S½NE¼, SE¼NW¼, E½SW¼, and SE¼ lying westerly of the centerline of Harney County Road No. 201;
Sec. 7, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 8, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 18, that portion of E½ lying westerly of the centerline of Harney County Road No. 201;
Sec. 19, those portions of lots 3 and 4, E½, SE¼NW¼, and E½SW¼ lying westerly of the centerline of Harney County Road No. 201;
Sec. 30, those portions of lots 1 to 4, inclusive, lying westerly of the centerline of Harney County Road No. 201;
Sec. 31, that portion lying westerly of the centerline of Harney County Road No. 201; And that portion of the Township denoted as Mann's Lake on the official plat of survey.

T. 33 S., R. 35 E.,
Sec. 6, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 7, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 13, those portions of S½NE¼, SE¼NW¼, and S½ lying southerly of the centerline of BLM Road Nos. 7282–2–DO and 7282–0–OO;
Sec. 14, that portion lying southerly of the centerline of BLM Road No. 7282–0–OO;
Sec. 15, that portion lying southerly of the centerline of BLM Road No. 7282–0–OO;
Sec. 18, that portion lying westerly of the centerline of Harney County Road No. 201;
Sec. 21, that portion lying southerly of the centerline of BLM Road No. 7282–0–OO;
Sec. 22, that portion lying southerly of the centerline of BLM Road No. 7282–0–OO;
Secs. 23 to 28, inclusive;
Secs. 33, 34, and 35.

T. 34 S., R. 35 E.,
Secs. 1 to 4, inclusive,
Secs. 9 to 15, inclusive, and
Secs. 19 to 24, inclusive;
Secs. 25 and 26, those portions lying northerly of the centerline of BLM Road No. 7282–2–OO;
Secs. 27 to 33, inclusive;
Sec. 34, W½E½ and W½.

T. 35 S., R. 35 E.,
Sec. 3, lots 2, 3, and 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 4 to 9, inclusive;
Sec. 10, W½E½ and W½;
Sec. 15, W½;
Sec. 17, N½, N½S½, SE¼SW¼, and SE¼SE¼;
Secs. 18 and 20;
Sec. 21, N½, N½S½, and S½SE¼;
Sec. 22, W½;
Secs. 28 and 30.

T. 36 S., R. 35 E.,
Sec. 8, W½;
Sec. 18, lots 1 to 4, inclusive, W½NE¼, and E½NW¼.

T. 29 S., R. 36 E.,
Sec. 4, S½SW¼ and SW¼SE¼;
Sec. 8, SE¼SE¼;
Sec. 9;
Sec. 10, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 13, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼, and NW¼SE¼;
Secs. 14 and 15;
Sec. 17, E½, E½NW¼, SW¼NW¼, and SW¼;
Sec. 18, lots 3 and 4, SE¼SW¼, and SE¼;
Secs. 19 to 22, inclusive;
Sec. 23, N½, SW¼, and W½SE¼;
Sec. 24, NW¼NW¼ and SE¼;
Sec. 25, that portion of SE¼ lying northerly of the centerline of Harney County Road No. 201;
Sec. 26, that portion lying northwesterly of the centerline of Harney County Road No. 201;
Secs. 27, 28, and 29;
Sec. 30, lots 1 and 4, N½NE¼, SE¼NE¼, NE¼NW¼, and SE¼SW¼;
Sec. 31;
Sec. 32, N½, N½SW¼, SW¼SW¼, and SE¼;
Sec. 33;
Sec. 34, that portion lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 35, that portion lying northwesterly of the centerline of Harney County Road No. 201.

T. 30 S., R. 36 E.,
Sec. 3, that portion lying northwesterly of the centerline of Harney County Road No. 201;
Secs. 4 to 8, inclusive;
Sec. 9, that portion lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 10, that portion lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, NE¼, E½W½, and W½SE¼;
Sec. 19, lots 1 to 4, inclusive, W½NE¼, E½W½, and SE¼;
Sec. 20, those portions of N½ and E½SE¼ lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 21, that portion lying northwesterly of the centerline of Harney County Road No. 201;

Sec. 29, those portions of E½NE¼ and SE¼ lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 31, lots 3 and 4, and those portions of E½SW¼ and SE¼ lying northwesterly of the centerline of Harney County Road No. 201;
Sec. 32, that portion lying northwesterly of the centerline of Harney County Road No. 201.
T. 33 S., R. 36 E.,
Sec. 17, that portion lying southerly of the centerline of BLM Road No. 7282–2–DO;
Sec. 18, that portion lying westerly of the centerline of BLM Road No. 7282–2–DO;
Sec. 19, that portion lying southerly of the centerline of BLM Road No. 7282–2–DO and that portion of lot 1 lying northwesterly of the centerline of BLM Road No. 7282–2–DO;
Sec. 20, that portion lying southerly of the centerline of BLM Road No. 7282–2–DO;
Sec. 21, that portion lying southwesterly of the centerline of BLM Road No. 7282–2–DO;
Sec. 27, that portion lying westerly of the centerline of BLM Road No. 7282–2–ED;
Sec. 28, that portion lying westerly of the centerline of BLM Road No. 7282–2–ED;
Secs. 29 to 33, inclusive.
T. 34 S., R. 36 E.,
Sec. 4, that portion lying northerly of the centerline of BLM Road No. 7283–2–EA and westerly of the centerline of BLM Road No. 7282–2–ED;
Sec. 5, that portion lying northeasterly of the centerline of BLM Road No. 7283–2–EA; secs. 6, 7, 18, 19, and 20, those portions lying westerly of the centerline of BLM Road No. 7283–2–EA;
Sec. 29, that portion lying northerly of the centerline of BLM Road No. 7282–2–OO and westerly of the centerline of BLM Road No. 7283–2–EA;
Sec. 30, that portion lying northerly of the centerline of BLM Road No. 7282–2–OO.

The areas described aggregate approximately 619,000 acres in Harney County.

2. Non-Federal Surface/Federal Minerals

Willamette Meridian

T. 29 S., R. 32 E.,
Sec. 27, SE¼NE¼.
T. 32 S., R. 32 E.,
Sec. 20, that portion of S½NE¼ and SE¼ lying easterly of the centerline of Harney County Road No. 202;
Sec. 29, E½NE¼.
T. 33 S., R. 32 E.,
Sec. 18, that portion of lot 13 lying southeasterly of the centerline of State Highway No. 205;
Sec. 19, that portion of lot 4 and E½SW¼ lying easterly of the centerline of State Highway No. 205;
Sec. 30, that portion of lots 1 and 2 lying easterly of the centerline of State Highway No. 205.
T. 34 S., R. 32 E.,
Sec. 22, lot 4 and SE¼SW¼;
Sec. 27, lots 1 and 2, W½NE¼, and E½NW¼.
T. 35 S., R. 32 E.,
Sec. 25, that portion of SE¼NE¼, E½SW¼, and N½SE¼, lying easterly of the centerline of Harney County Road No. 202.
T. 31 S., R. 32½ E.,
Sec. 16, SE¼NE¼.
T. 32 S., R. 32½ E.,
Sec. 18, NW¼NE¼ and NE¼NW¼.
T. 35 S., R. 32½ E.,
Sec. 14, S½NW¼, SW¼, and W½SE¼;
Sec. 15, E½, S½NW¼, and SW¼;
Sec. 21, S½;
Sec. 22, N½NW¼;
Sec. 23, SW¼NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 24, W½SW¼ and SE¼SW¼;
Sec. 25, NW¼;
Sec. 26, N½ and NE¼SE¼;
Sec. 28, NW¼;
Sec. 29, N½;
Sec. 30, lots 3 and 4, NE¼, and SE¼SW¼;
Sec. 32, lots 1 and 2, and NW¼SW¼.
T. 36 S., R. 32½ E.,
Sec. 4, that portion of lot 3, SW¼NE¼, SE¼NW¼, E½SW¼, NW¼SE¼, and S½SE¼ lying easterly of the centerline of Harney County Road No. 202.
T. 37 S., R. 32½ E.,
Sec. 4, that portion of S½ lying northeasterly of the centerline of Harney County Road No. 202.
T. 31 S., R. 32¾ E.,
Sec. 5, lots 3 and 6;
Sec. 7, NE¼;
Sec. 8, NW¼ and N½SW¼;
Sec. 19 NE¼, E½NW¼, and E¼SE¼;
Sec. 24, S½SE¼;
Sec. 25, SW¼NE¼ and E½W½.
T. 32 S., R. 32¾ E.,
Sec. 1, lots 2, 3, and 4, SW¼NE¼, S½NW¼, SW¼, and S½SE¼;
Sec. 2, lot 1, SE¼NE¼, and E½SE¼;
Sec. 12, SE¼NE¼ and NE¼SE¼;
Sec. 13, SE¼NE¼ and NE¼SE¼;
Sec. 17, SW¼ and W½SE¼;
Sec. 20, N½NW¼;
Sec. 21, SE¼;
Sec. 22, NE¼SW¼;
Sec. 23, SE¼NE¼ and NE¼SE¼;
Sec. 24, S½NE¼, SW¼NW¼, NW¼SW¼, and SE¼;
Sec. 25, N½N½;
Sec. 26, N½NE¼ and SW¼SW¼;
Sec. 27, E½NE¼, N½NW¼, SW¼NW¼, and SE¼SE¼;
Sec. 33, SE¼NE¼ and E½SE¼;
Sec. 34, N½NE¼, SE¼NE¼, and S½SW¼;
Sec. 35, W½NW¼ and NW¼SW¼.
T. 33 S., R. 32¾ E.,
Sec. 1, SE¼NE¼, S½NW¼, N½SW¼, NW¼SE¼, and S½SE¼;
Sec. 2, lot 4, S½NE¼, SW¼NW¼, E½SW¼, and SE¼;
Sec. 3, NE¼SW¼ and W½SE¼;
Sec. 4, lot 1 and SE¼;
Sec. 5, lot 1, S½N½, N½S½, SE¼SW¼, and SW¼SE¼;
Sec. 6, SE¼NE¼ and NE¼SE¼;
Sec. 8, E½NW¼ and NE¼SW¼;
Sec. 10, N½NE¼, SE¼NE¼, and NW¼NW¼;
Sec. 11, N½, NE¼SW¼, and N½SE¼;
Sec. 12, SW¼NE¼, W½NW¼, SE¼NW¼, E½SW¼, and W½SE¼.
T. 34 S., R. 32¾ E.,
Sec. 13, N½NW¼ and SE¼NW¼;
Sec. 14, NW¼NE¼, E½NW¼, W½SW¼, SE¼SW¼, NE¼SE¼, and SW¼SE¼;
Sec. 20, S½;
Sec. 21, SE¼;
Sec. 22, SE¼NE¼ and S½;
Sec. 23, NW¼;
Sec. 24, E½SE¼;
Sec. 25, NE¼NE¼;
Sec. 26, W½NE¼ and W½;
Sec. 27, NE¼ and W½;
Sec. 29, N½;
Sec. 34, N½, E½SW¼, and SE¼.
T. 35 S., R. 32¾ E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, W½SW¼, and SE¼;
Sec. 2, lot 4, S½NE¼, SW¼NW¼, and N½SE¼;
Sec. 3, lots 1, 2, and 3, and S½N½;
Sec. 4, S½N½;
Sec. 8, S½NW¼ and SW¼;
Sec. 9, W½E½, NW¼, E½SW¼, and SE¼SE¼;
Sec. 10, SW¼NE¼, S½NW¼, N½SE¼, and SE¼SE¼;
Sec. 11, S½N½ and S½;
Sec. 12, NW¼ and W½SW¼;
Sec. 13, SW¼NE¼, W½NW¼, and SE¼NW¼;
Sec. 14;
Sec. 15, NE¼NE¼, NW¼NW¼, S½N½, and S½;
Sec. 17, NW¼NW¼;
Sec. 18, NE¼NE¼;
Sec. 19, lots 1, 2, and 4, N½NE¼, E½NW¼, and S½SE¼;
Sec. 22, N½NE¼, NE¼NW¼, and S½S½;
Sec. 23, NW¼;
Sec. 27, N½, N½SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 28, NE¼SE¼;
Sec. 29, S½NW¼ and SW¼;
Sec. 30, lots 3 and 4, W½NE¼, SE¼NE¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 34, E½NE¼ and SE¼.
T. 35½ S., R. 32¾ E.,
Sec. 24, E½;
Sec. 30, W½;
Sec. 32, S½;
Sec. 34, N½.
T. 36 S., R. 32¾ E.,
Sec. 33, E½SE¼.
T. 37 S., R. 32¾ E.,
Sec. 3, lot 4, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 4, lot 1.
T. 30 S., R. 33 E.,
Sec. 33.
T. 31 S., R. 33 E.,
Sec. 4, lots 3, 4, and 6;
Sec. 6, lots 3 and 6;
Sec. 7, W½NE¼ and SE¼;
Sec. 9, S½NE¼ and E½NW¼;
Sec. 10, SW¼NW¼ and SW¼;
Sec. 15, SW¼NE¼, E½NW¼, and NW¼SE¼;
Sec. 17, SW¼SW¼;
Sec. 18, NE¼, NE¼NW¼, and S½NW¼;
Sec. 21, E½SE¼;
Sec. 27, S½NE¼, NW¼, E½SW¼, and SE¼;
Sec. 28, N½SW¼ and SE¼SW¼;
Sec. 29, SE¼SW¼ and E½SE¼;
Sec. 30, NW¼SW¼ and S½SE¼;
Sec. 31, N½, E½SW¼, and SE¼;
Sec. 32, W½;
Sec. 34, N½NE¼.
T. 32 S., R. 33 E.,
Sec. 2, lots 4, 5, and 8;

Sec. 4, SE¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 5, lots 1, 3, and 4, S½NE¼, SE¼NW¼, and SE¼;
Sec. 7, N½, N½SW¼, and SE¼;
Sec. 8, N½NE¼ and W½;
Sec. 9, W½NW¼ and NW¼SW¼;
Sec. 10, NE¼NE¼, S½NE¼, NW¼SW¼, and SE¼;
Sec. 11, lots 1 and 2;
Sec. 17, W½NW¼ and SW¼SE¼;
Sec. 18, E½E½, NW¼NE¼, SW¼NW¼, and NW¼SW¼;
Sec. 19, NE¼NE¼, SW¼NE¼, S½NW¼, NW¼SW¼, S½SW¼, and W½SE¼;
Sec. 20, E½ and E½SW¼;
Sec. 21, NW¼NE¼, S½NE¼, W½, and E½SE¼;
Sec. 22, W½W½ and NE¼SW¼;
Sec. 27, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 28, E½NE¼, W½NW¼, and N½S½;
Sec. 29, NE¼ and E½NW¼;
Sec. 30, W½E½ and W½;
Sec. 33, SE¼NE¼ and E½SE¼;
Sec. 34, SW¼NW¼ and W½SW¼.

T. 32½ S., R. 33 E.,
Sec. 20, SW¼SW¼;
Sec. 22, lots 1 and 2, and S½SE¼;
Sec. 23, lots 3 and 4;
Sec. 27, NE¼;
Sec. 28, S½NW¼, SW¼, and S½SE¼;
Sec. 29, S½N½, E½SW¼, and SE¼;
Sec. 32, N½, NE¼SW¼, and SE¼SE¼;
Sec. 33, N½N½, S½NW¼, E½SW¼, and SE¼;
Sec. 34, S½SW¼.

T. 33 S., R. 33 E.,
Sec. 3, lots 3 and 4, and S½NW¼;
Sec. 4, lots 1 and 2, and S½NE¼;
Sec. 5, lot 1 and SE¼NE¼.

T. 34 S., R. 33 E.,
Sec. 5, lots 1 to 4, inclusive, and SW¼NE¼, S½NW¼, and S½SW¼;
Sec. 8, NE¼, N½NW¼, NE¼SE¼, and S½SE¼;
Sec, 9, W½NE¼, NW¼, and S½;
Sec. 15, S½NW¼ and SW¼;
Sec. 17, SE¼NE¼ and E½SE¼;
Sec. 20;
Sec. 21, S½N½, NW¼NW¼, SW¼, and E½SE¼;
Sec. 22, NE¼NW¼ and W½W½;
Sec. 27, NW¼NW¼;
Sec. 28, NE¼NE¼;
Sec. 29, N½N½.

T. 35 S., R. 33 E.,
Sec. 20;
Sec. 28, SE¼NE¼;
Sec. 34, E½NW¼.

T. 28 S., R. 34 E.,
Sec. 31, lots 2, 3, and 4, E½SW¼, W½SE¼, and SE¼SE¼.

T. 29 S., R. 34 E.,
Sec. 6, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and N½SE¼;
Sec. 12, E½NE¼ and NE¼SE¼;
Sec. 22, SE¼NE¼ and NE¼SE¼;
Sec. 23, SW¼ and W½SE¼;
Sec. 25, W½NW¼;
Sec. 26, NE¼ and E½NW¼.

T. 30 S., R. 34 E.,
Sec. 14, SW¼ and SW¼SE¼;
Sec. 15, S½NE¼, E½SW¼, and SE¼;
Sec. 22, S½SE¼;
Sec. 23, NW¼NE¼ and N½NW¼;
Sec. 25, S½NW¼, SW¼, and S½SE¼;
Sec. 27, NE¼;
Sec. 31, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 32, NW¼SW¼ and S½SW¼;
Sec. 33, E½SW¼ and W½SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NE¼NW¼.

T. 30½ S., R. 34 E.,
Sec. 27, lots 3 and 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 28, lot 4, SW¼NW¼ and E½SE¼;
Sec. 29, lot 1, 3, and 4, and SE¼NE¼;
Sec. 30, S½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 31, E½E½ and NW¼NE¼;
Sec. 32, S½SW¼ and SE¼SE¼;
Sec. 33, NE¼NE¼, SW¼NE¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 34, NW¼NW¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 35, SW¼NW¼ and NE¼SW¼.

T. 31 S., R. 34 E.,
Sec. 2, lot 4, SW¼NW¼, and SW¼;
Sec. 3, lot 4, SW¼NW¼, SW¼, SW¼SE¼, and E½SE¼;
Sec. 4, lots 1, 2, and 4, SE¼NE¼, SW¼, and E½SE¼;
Sec. 5, lots 3 and 4, S½SW¼, and W½SE¼;
Sec. 6, lot 1;
Sec. 8, N½NE¼, SE¼NE¼, NE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 9, N½NW¼, SE¼NW¼, and NE¼SW¼;
Sec. 11, N½SW¼;
Sec. 13, NW¼NW¼, SE¼NW¼, SW¼, and NW¼SE¼;
Sec. 14, SE¼NE¼, W½, and E½SE¼;
Sec. 15, S½NE¼ and NE¼SE¼;
Sec. 17, NW¼NE¼, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 18, SE¼NE¼ and E½SE¼;
Sec. 19, lot 4;
Sec. 20, N½NW¼;
Sec. 22, S½N½, E½SW¼, NW¼SE¼, and S½SE¼;
Sec. 23, E½NE¼ and W½W½;
Sec. 24, N½NW¼ and SW¼NW¼;
Sec. 26, NW¼NW¼, S½NW¼, SW¼, and W½SE¼;
Sec. 27, E½, NE¼NW¼, and SE¼SW¼;
Sec. 28, SE¼NW¼ and W½W½;
Sec. 29;
Sec. 30, lot 1 and E½SE¼;
Sec. 31, E½;
Sec. 32, lots 1 and 2, N½ , NE¼SW¼, and N½SE¼;
Sec. 33, lots 2, 3, and 4, NW¼, and N½SW¼;
Sec. 34, NE¼, E½NW¼, and N½SE¼;
Sec. 35, W½NW¼ and NW¼SW¼.

T. 32 S., R. 34 E.,
Sec. 4, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, and SW¼;
Sec. 5, lot 3, SE¼NE¼, SE¼NW¼, and E½SE¼;
Sec. 6, lot 2;
Sec. 7, NE¼ and SE¼NW¼;
Sec. 8, NE¼NE¼, S½NE¼, W½, and SW¼SE¼;
Sec. 9, SE¼SW¼ and SW¼SE¼;
Sec. 17, W½NE¼ and NW¼;
Sec. 19, S½NE¼, SE¼NW¼, and SE¼;
Sec. 21, NE¼SW¼ and W½SE¼;
Sec. 28, W½NE¼.

T. 33 S., R. 34 E.,
Sec. 3, W½SW¼.

T. 28 S., R. 35 E.,
Secs. 25 and 26;
Sec. 27, N½, E½SW¼, SW¼SW¼, and SE¼;
Sec. 31, lots 1 and 2, E½, and E½NW¼;
Sec. 32, E½NE¼, SW¼NE¼, SW¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 33;
Sec. 34, N½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 35;
Sec. 36, SW¼.

T. 29 S., R. 35 E.,
Secs. 1 and 2;
Sec. 3, lots 2, 3, and 4, S½N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 5, lots 1, 2, and 3, SE¼NE¼;
Sec. 7, lots 2, 3, and 4;
Sec. 10, N½NE¼;
Sec. 11, NE¼, N½NW¼, and NE¼SE¼;
Sec. 12, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 13, N½NE¼, SE¼NE¼, and S½SW¼;
Sec. 14, SE¼SE¼;
Sec. 17, N½SW¼;
Sec. 18, lot 1, NE¼, E½NW¼, and NE¼SE¼;
Sec. 20, NE¼NE¼, S½NE¼, and SE¼;
Sec. 21, W½NW¼;
Sec. 23, NE¼ and N½SE¼;
Sec. 24, SW¼NE¼, NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 28, SW¼NE¼, W½NW¼, and SE¼NW¼;
Sec. 29, E½NE¼;
Sec. 33, E½ and NE¼SW¼;
Sec. 34, W½NW¼ and SW¼.

T. 30 S., R. 35 E.,
Sec. 1, SE¼NE¼, S½SW¼, N½SE¼, and SW¼SE¼;
Sec. 4, lot 2;
Sec. 8, SW¼SE¼;
Sec. 9, SW¼ and S½SE¼;
Sec. 10, SW¼NE¼;
Sec. 12, N½NW¼;
Sec. 15, NW¼NE¼, S½NW¼, SW¼, and SW¼SE¼;
Sec. 17, SW¼SE¼;
Sec. 20, NE¼;
Sec. 21, SE¼NW¼ and E½SW¼;
Sec. 22, W½E½, E½W½, SW¼NW¼, and NW¼SW¼;
Sec. 27, NE¼NW¼ and SW¼;
Sec. 28, W½E½ and NE¼NW¼;
Sec. 33, NE¼SE¼;
Sec. 34, NW¼.

T. 31 S., R. 35 E.,
Sec. 4, lots 36 and 37;
Sec. 5, lots 33 and 40.

T. 28 S., R. 36 E.,
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, NE¼, E½W½, W½SE¼, and SE¼SE¼;
Secs. 31 and 32.

T. 29 S., R. 36 E.,
Secs. 2 and 3;
Sec. 4, lots 1 and 4, S½N½, N½SE¼, and SE¼SE¼;
Sec. 5, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;

Secs. 6 and 7;
Sec. 8, N½, SW¼, and NW¼SE¼;
Sec. 10, NE¼ and NE¼NW¼;
Sec. 11, N½, N½S½, and SE¼SE¼;
Sec. 13, N½N½;
Sec. 17, NW¼NW¼;
Sec. 18, lots 1 and 2, NE¼, E½NW¼, and NE¼SW¼.

The areas described aggregate approximately 73,900 acres in Harney County.

3. Federal Surface/Non-Federal minerals

Willamette Meridian

T. 28 S., R. 31 E.,
Sec. 36, SE¼NE¼ and NE¼SE¼.
T. 29 S., R. 31 E.,
Sec. 36, W½.
T. 28 S., R. 32 E.,
Sec. 16, W½.
T. 30 S., R. 32 E.,
Sec. 3, SW¼;
Sec. 16;
Sec. 34, SE¼NE¼ and E½SE¼;
Sec. 35, S½S½ and NE¼SE¼;
Sec. 36, E½, E½W½, and W½SW¼.
T. 32 S., R. 32 E.,
Sec. 26, N½NW¼;
Sec. 27, N½NE¼;
Sec. 32, that portion of SW¼NE¼, NW¼SE¼, SW¼, and S½NW¼ lying southeasterly of the centerline of State Highway No. 205;
Sec. 36, S½N½ and S½.
T. 33 S., R. 32 E.,
Sec. 16;
Sec. 36, NE¼, N½SE¼, and SE¼SE¼.
T. 34 S., R. 32 E.,
Sec. 16, that portion lying easterly of the centerline Harney County Road No. 202;
Sec. 36.
T. 31 S. R. 32½ E.,
Sec. 16, S½SE¼;
Sec. 36, W½E½ and W½.
T. 32 S., R. 32½ E.,
Sec. 16;
Sec. 36, W½E½ and W½.
T. 33 S., R. 32½ E.,
Sec. 16, NW¼NW¼.
T. 34 S., R. 32½ E.,
Secs. 16 and 36.
T. 35 S., R. 32½ E.,
Sec. 16, S½.
T. 36 S., R. 32½ E.,
Sec. 36.
T. 31 S., R. 32¾ E.,
Sec. 16.
T. 32 S., R. 32¾ E.,
Sec. 11, NW¼NE¼.
T. 33 S., R. 32¾ E.,
Sec. 36, NE¼, N½NW¼, SW¼, and S½SE¼.
T. 34 S., R. 32¾ E.,
Sec. 36, W½.
T. 35 S., R. 32¾ E.,
Sec. 16, W½ and SE¼;
Sec. 36.
T. 35½. S., R. 32¾ E.,
Sec. 36.
T. 36 S., R. 32¾ E.,
Sec. 36, NE¼, S½NW¼, and S½.
T. 37 S., R. 32¾ E.,
Sec. 16, that portion lying northeasterly of the centerline of Harney County Road No. 202.
T. 29 S., R. 33 E.,
Sec. 2, S½NW¼ and N½SW¼;
Sec. 3, lots 1 and 2, and S½NE¼;
Sec. 36, NE¼ and N½NW¼.
T. 30 S., R. 33 E.,
Sec. 16, N½NE¼ and SE¼NE¼.
T. 31 S., R. 33 E.,
Sec. 18, SE¼;
Sec. 19, NE¼NE¼;
Sec. 20, W½NE¼, SE¼NE¼, NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.
T. 32½ S., R. 33 E.,
Sec. 36, NE¼NW¼, W½W½, and NE¼SW¼.
T. 33 S., R. 33 E.,
Sec. 16, S½N½ and S½.
T. 34 S., R. 33 E.,
Sec. 36.
T. 35 S., R. 33 E.,
Sec. 13, S½SE¼SW¼, S½N½SE¼SW¼, S½SW¼SE¼, S½N½SW¼SE¼, S½N½SE¼SE¼, and N½S½SE¼SE¼;
Sec. 16;
Sec. 36, E½.
T. 36 S., R. 33 E.,
Sec. 16, NW¼NE¼, W½W½, and SE¼SW¼.
T. 29 S., R. 34 E.,
Sec. 16, SE¼NW¼, NE¼SW¼, and W½SE¼;
Sec. 36, SE¼NE¼.
T. 30 S., R. 34 E.,
Sec. 16, W½E½, and NW¼.
T. 30½ S., R. 34 E.,
Sec. 28, SW¼ and W½SE¼;
Sec. 29, SE¼;
Sec. 32, N½NE¼;
Sec. 33, NW¼NE¼, N½NW¼, and SW¼NW¼.
T. 31 S., R. 34 E.,
Sec. 36.
T. 34 S., R. 34 E.,
Sec. 36.
T. 35 S., R. 34 E.,
Sec. 7, lots 3 and 4, and E½SW¼;
Sec. 9, S½NE¼, NE¼NW¼, SW¼NW¼, and S½;
Sec. 11, NW¼SW¼ and S½S½;
Sec. 13, NW¼NE¼, SE¼NE¼, NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 15, W½;
Sec. 16;
Sec. 17, W½;
Secs. 19 and 21;
Sec. 23, N½ and SW¼;
Sec. 25;
Sec. 27, W½ and SE¼;
Sec. 29, W½ and SE¼;
Sec. 31, lots 1 to 4, inclusive, NE¼, and E½W½;
Sec. 33, W½ and SE¼;
Secs. 35 and 36.
T. 36 S., R. 34 E.,
Sec. 3;
Sec. 5, lots 1 to 4, inclusive, SE¼NE¼, SE¼NW¼, and S½;
Sec. 9, N½NE¼ and NW¼NW¼;
Sec. 16, S½.
T. 37 S., R. 34 E.,
Sec. 16.
T. 28 S., R. 35 E.,
Sec. 31, lot 3 and E½SW¼.
T. 29 S., R. 35 E.,
Sec. 3, SW¼SW¼;
Sec. 5, lot 4, SW¼NE¼, S½NW¼, and N½SE¼;
Sec. 6, lot 1;
Sec. 8, NW¼SE¼;
Sec. 9, NW¼SE¼;
Sec. 10, S½NE¼ and E½NW¼;
Sec. 11, S½NW¼, W½SE¼, and SE¼SE¼;
Sec. 12, SW¼SW¼;
Sec. 13, SW¼NE¼ and NW¼;
Sec. 16, S½NE¼, W½, and SE¼;
Sec. 28, NE¼SW¼ and W½SE¼;
Sec. 36, N½.
T. 31 S., R. 35 E.,
Sec. 16, that portion of E½W½ and E½ lying westerly of the centerline of Harney County Road No. 201.
T. 33 S., R. 35 E.,
Sec. 36.
T. 34 S., R. 35 E.,
Sec. 16.
T. 35 S., R. 35 E.,
Sec. 16;
Sec. 17, SW¼SW¼ and SW¼SE¼;
Sec. 19;
Sec. 21, S½SW¼;
Sec. 33, NW¼.
T. 36 S., R. 35 E.,
Sec. 5, SE¼.
T. 29 S., R. 36 E.,
Sec. 4, N½SW¼;
Sec. 5, SE¼NE¼ and E½SE¼;
Sec. 8, NE¼SE¼ and SW¼SE¼;
Sec. 10, NW¼NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 11, S½SW¼ and SW¼SE¼;
Sec. 16.
T. 30 S., R. 36 E.,
Sec. 16, that portion lying northwesterly of the centerline of Harney County Road No. 201.

The areas described aggregate approximately 37,400 acres in Harney County.

4. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands and minerals will be segregated as specified above, subject to valid existing rights, unless the application is denied or canceled or the withdrawal is finalized prior to the end of the segregation. Further, the segregation does not preclude the issuance of licenses, permits, cooperative agreements, or discretionary land use authorizations, upon approval of the authorized officer of the Bureau of Land Management. The proposal includes withdrawing the reserved Federal mineral interest underlying private surface, but would not affect surface rights of those private lands. All previously authorized activities and permitted uses of the segregated lands may be continued in accordance with the terms of the authorization.

5. Any non-Federal lands within the boundary described above, if acquired by the United States, would become subject to the terms and conditions of this withdrawal.

Dated: September 8, 1999.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 99–23812 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Restoration Plan and Environmental Assessment for the March 28, 1993, Colonial Pipeline Oil Spill Near Reston, Virginia

ACTION: Notice of availability of the Final Restoration Plan and Environmental Assessment for the March 28, 1993, Colonial Pipeline Oil Spill near Reston, Virginia.

SUMMARY: The Final Restoration Plan and Environmental Assessment for the March 28, 1993, Colonial Pipeline Oil Spill near Reston, Virginia, has been completed. Pursuant to the Council on Environmental Quality regulations, the Trustees, representing the National Park Service, U.S. Fish and Wildlife Service, Commonwealth of Virginia, and District of Columbia, in 1998 prepared and made available for a 30-day public review the Draft Restoration Plan and Environmental Assessment for that Oil Spill (the EA). During the review period, the Trustees held a public meeting in Herndon, Virginia, to discuss the EA. See the notice of availability for the EA published in the **Federal Register** on October 23, 1998 (63 FR 56939).

Following the 30-day public availability period, the Trustees selected the preferred alternative, described in Sections 3.1 and 3.2 of the EA, and determined that the implementation of the preferred alternative will not cause a significant environmental impact. See the notice of availability for the Decision Notice and Finding of No Significant Impact (DN/FONSI) published in the **Federal Register** on July 20, 1999 (64 FR 38915). In making that selection and determination, the Trustees considered the information and analysis contained in the EA and the comments received during the 30-day public availability period. As a result, the Trustees adopted certain modifications to the preferred alternative. Those modifications are described in the Final Restoration Plan and Environmental Assessment.

The preferred alternative contains both primary and compensatory restoration actions. Natural recovery is the primary restoration action selected to return injured natural resources to their baseline conditions. A package of multiple compensatory restoration actions, including various wildlife habitat and recreational use enhancement projects, was selected to replace the interim loss of natural resource services. The goal of primary and compensatory restoration is to make the environment and the public whole for injuries to, or loss of, natural resources and services resulting from the oil spill. This follows on the 1998 judicial settlement resolving the Federal, State, and District claims for penalties and natural resource damages with the responsible party, Colonial Pipeline Company.

SUPPLEMENTARY INFORMATION: Requests for copies of the Final Restoration Plan and Environmental Assessment, or for any additional information, should be directed to Daniel Hamson, National Park Service, Environmental Quality Division, 1849 C Street, N.W. (Mail Stop 2749), Washington, D.C. 20240, Telephone: (202) 208–7504.

Dated: September 10, 1999.

Sharon Kliwinski,

Acting Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 99–24304 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement for the Lower St. Croix National Scenic Riverway, MN and WI

AGENCIES: National Park Service, Minnesota Department of Natural Resources, Wisconsin Department of Natural Resources.

ACTION: Notice of Availability of the Draft Cooperative Management Plan/ Draft Environmental Impact Statement for the Lower St. Croix National Scenic Riverway, Minnesota and Wisconsin.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service, Minnesota Department of Natural Resources, and Wisconsin Department of Natural Resources announce the availability of the Draft Cooperative Management Plan/Draft Environmental Impact Statement (DCMP/DEIS) for the Lower St. Croix National Scenic Riverway. This notice also announces public open houses for the purpose of receiving public comments on the Draft DCMP/DEIS.

The purpose of the Cooperative Management Plan is to set forth the basic management philosophy for the riverway and to provide the strategies for addressing issues and achieving identified management objectives. The DCMP/DEIS describes and analyzes the environmental impacts of a proposed action and four action alternatives for the future management direction of the riverway. The DCMP/DEIS also evaluates a preferred management structure and two management structure options for the riverway. No action alternatives are evaluated for both management direction and management structure.

The responsible officials are Mr. William Schenk, Midwest Regional Director, National Park Service; Mr. Allen Garber, Commissioner, Minnesota Department of Natural Resources; and Mr. George Meyer, Secretary, Wisconsin Department of Natural Resources.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DCMP/ DEIS must be received no later than November 30, 1999. Public open houses for information about, or to make comment on the DCMP/DEIS will be held on Monday, October 25, 1 to 4 p.m. and 7 to 10 p.m. at the Phipps Center for the Arts, 109 Locust Street, Hudson, Wisconsin and on Tuesday, October 26, 1999 from 1 to 4 p.m. and from 7 to 10 p.m. at the National Guard Armory, 107 Chestnut Street East, Stillwater, Minnesota.

ADDRESSES: Comments on the DGMP/ DEIS should be submitted to the Planning Coordinator, Lower St. Croix National Scenic Riverway, 117 Main Street South, Stillwater, Minnesota 55082. Copies of the DCMP/DEIS are available by request by writing the same address, by phone 651–439–7122, or by e-mail from randy—thoreson@nps.gov. The document also can be downloaded via the Internet at http://www.nps.gov/ planning/current.htm.

FOR FURTHER INFORMATION CONTACT: Randy Thoreson, Planning Coordinator, Lower St. Croix National Scenic Riverway at the address and telephone listed above.

SUPPLEMENTARY INFORMATION: The Lower St. Croix National Scenic Riverway is a narrow corridor that runs for 52 miles along the boundary of Minnesota and Wisconsin, from St. Croix Falls/Taylors Falls to the confluence with the Mississippi River at Prescott/Point Douglas. The National Park Service manages a portion of the upper 27 miles of lands and waters of this corridor. The states of Minnesota and Wisconsin administer the lower 25 miles. The states and the federal government jointly conduct planning for the riverway.

Commentors should be aware that National Park Service practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual commentors may request that we withhold their home address from the

planning record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the planning record a commentor's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: September 3, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 99–24305 Filed 9–16–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–172C]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to Final Notice.

SUMMARY: This document contains a correction to the final notice (DEA–172N), published Thursday, May 13, 1999 (64 FR 25910). That final notice contained the list of ''laboratory supplies'' which constitutes the Special Surveillance List that was required to be published by the Attorney General pursuant to Title 21, United States Code, Section 842(a).

EFFECTIVE DATE: September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of this correction, implements provisions of the Comprehensive Methamphetamine Control Act of 1996 (MCA) which was signed into law on October 3, 1996. The MCA provides for a civil penalty of not more than $250,000 for the distribution of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with reckless disregard for the illegal uses to which such laboratory supply will be put. The term ''laboratory supply'' is defined as ''a listed chemical or any chemical, substance or item on a Special Surveillance List published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals.'' As required by the MCA, DEA published this Special Surveillance List on May 13, 1999.

Need for Correction

As published, the final notice erroneously indicated that the Special Surveillance List includes all listed chemicals ''as specified in 21 CFR 1310.02(a) or (b).'' This citation was in error and should have read ''as specified in 21 CFR 1310.02(a) or (b) or 21 U.S.C. 802 (34) or (35).''

Additionally, the final notice incorrectly stated that ''it advises individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person anytime after a two week period following receipt of written notification by the Attorney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.''

In fact, the MCA does not require that the Attorney General issue a written notification in order to impose civil penalties for the distribution of a laboratory supply to persons who use, attempt to use or distribute the laboratory supply for the unlawful production of controlled substances or listed chemicals, if that distribution was made with ''reckless disregard'' for the illegal uses to which the laboratory supply would be put.

The two week notification period, referenced in the final notice, pertains to the MCA provision of ''rebuttable presumption of reckless disregard''. Specifically, if the Attorney General issues a written notification that a laboratory supply sold by the firm has been used by a customer (or distributed further by that customer) for the unlawful production of controlled substances or listed chemicals, then there is a ''rebuttable presumption of reckless disregard'' at trial, if the notified firm distributes a laboratory supply to the customer two weeks or more after the notification.

This correction is therefore being published to clarify MCA provisions applicable to the Special Surveillance List.

Correction of Publication

Accordingly, the publication on May 13, 1999 of the final notice (DEA–172–N), which was the subject of FR Doc. 99–12037, is corrected as follows:

1. On page 25911, in the third column, in the first paragraph under the heading ''Special Surveillance List Published Pursuant to Title 21, United States Code, Section 842(a)(11)'', subheading ''Chemicals'', the text is corrected to read as follows:

All listed chemicals as specified in 21 CFR § 1310.02 (a) or (b) or 21 U.S.C. § 802 (34) or (35). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

Ammonia Gas
Ammonium Formate
Bromobenzene
1, 1-Carbonyldiimidazole
Cyclohexanone
1, 1-Dichloro-1-fluoroethane (e.g. Freon 141B)
Diethylamine and its salts
2, 5-Dimethoxyphenethylamine and its salts
Formamide
Formic Acid
Hypophosphorous Acid
Lithium Metal
Lithium Aluminum Hydride
Magnesium Metal (Turnings)
Mercuric Chloride
N-Methylformamide
Organomagnesium Halides (Grignard Reagents) e.g. ethylmagnesium bromide and phenylmagnesium bromide)
Phenylethanolamine and its salts
Phosphorus Pentachloride
Potassium Dichromate
Pyridine and its salts
Red Phosphorus
Sodium Dichromate
Sodium Metal
Thionyl Chloride
ortho-Toluidine
Trichloromonofluoromethane (e.g. Freon-11, Carrene-2)
Trichlorotrifluoroethane (e.g. Freon 113)

Equipment

Hydrogenators
Tableting Machines
Encapsulating Machines
22 Liter Heating Mantels

2. On page 25912, in the first column, under the heading, ''Small Business Impact and Regulatory Flexibility Concerns'', the second paragraph is corrected to read as follows:

This notice serves two purposes. First, it informs individuals and firms of the potential use of items on the list for the production of listed chemicals and

illicit drugs. Second, it advises individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person who uses or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with ''reckless disregard'' for the illegal uses to which such laboratory supply would be put. Moreover, there is a ''rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and two weeks or more after the notification the notified firm distributes a laboratory supply to the customer.

Dated: September 7, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–24103 Filed 9–16–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Standards for the Registration of Apprenticeship Programs Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the registered apprenticeship programs under Title 29 CFR Part 29 (Labor Standards for the Registration of Apprenticeship Programs). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before November 16, 1999.

ADDRESSEES: Anthony Swoope, Director, Bureau of Apprenticeship and Training, 200 Constitution Ave., NW, Room 4649, Washington, DC 20210; E-mail Internet address: aswoope@doleta.gov; Telephone number: (202) 219–5921 (this is not a toll-free number); Fax number: (202) 219–5011 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937 authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare * * *. ''Section 2 of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory Committees * * *.'' (29 U.S.C. 50a).

Title 29 CFR Part 29 sets forth labor standards to safeguard the welfare of apprentices, and to extend the application of such standards by prescribing policies and procedures concerning registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. These labor standards, policies and procedures cover the registration, cancellation, and deregistration of apprenticeship programs and the apprenticeship agreements; the recognition of a State agency as the appropriate agency for registering local apprenticeship programs for certain Federal purposes; and matters relating thereto.

II. Review Focus

The Department of Labor is particularly interested in comments which;

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Recordkeeping and data collection activities regarding registered apprenticeship are by-products of the registration system. Organizations which apply for apprenticeship sponsorship enter into an agreement with the agreement with the Federal Government or cognizant State government to operate their proposed programs consistent with 29 CFR Part 29. Apprenticeship sponsors are not required to file reports regarding their apprentices other than individual registration and update information as an apprentice moves through their program. This extension request includes instructions for completing Item 9., Apprenticeship wages, on ETA Form 671.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Title 29 CFR Part 29, Labor Standards for the Registration of Apprenticeship Programs.

OMB Number: 1205–0223 for 29 CFR Part 29.

OMB Number: 1205–0223 for 29 CFR Part 29.

Agency Number: ETA Form 671.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on the recruitment, selection, employment and training of each apprentices pertaining to determination of compliance with the regulation. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification

standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are 4 years or more in duration; therefore, it is important to maintain the records for at least 5 years.

Affected Public: Apprentices, Sponsors, State Apprenticeship Councils or Agencies, Tribal Government.

ETA Form 671.

Total Respondents: 197,278

Frequency: 1-time basis.

Total Responses: 197, 278.

Average Time per Response: See Chart.

Estimated Total Burden Hours: 39,200.

OR CHART FOR MULTIPLE FORMS/INFORMATION COLLECTIONS

Sec.	Total respondents	Frequency	Total responses	Average time per response	Burden
29.3	110,540	1-time basis	110,540	¼ hour/app	27,635
29.6	84,435	1-time basis	84,435	1/12 hour/app	7,036
29.5	2,263	1-time basis	2,263	2 hours	4,526
29.7	40	1-time basis	40	1/12 hr/spon	3.3
29.12	30	1-time basis			
29.13					
Totals			197,278		39,200

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 14, 1999.

Anthony Swoope,

Director, Bureau of Apprenticeship and Training.

[FR Doc. 99–24265 Filed 9–16–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY990020 (MAR. 12, 1999)

Volume II

VIRGINIA
VA990006 (MAR. 12, 1999)
VA990013 (MAR. 12, 1999)

Volume III

FLORIDA
FL990001 (MAR. 12, 1999)
GEORGIA
GA990033 (MAR. 12, 1999)
GA990050 (MAR. 12, 1999)
GA990053 (MAR. 12, 1999)
GA990065 (MAR. 12, 1999)
GA990093 (MAR. 12, 1999)
GA990094 (MAR. 12, 1999)

Volume IV

MICHIGAN
MI990002 (MAR. 12, 1999)
MI990003 (MAR. 12, 1999)
MI990004 (MAR. 12, 1999)
MI990017 (MAR. 12, 1999)
MI990031 (MAR. 12, 1999)
MI990036 (MAR. 12, 1999)
MI990040 (MAR. 12, 1999)
MI990041 (MAR. 12, 1999)
MI990046 (MAR. 12, 1999)
MI990064 (MAR. 12, 1999)
MI990081 (MAR. 12, 1999)
MI990084 (MAR. 12, 1999)

Volume V

KANSAS
KS990008 (MAR. 12, 1999)
KS990009 (MAR. 12, 1999)
KS990012 (MAR. 12, 1999)
KS990016 (MAR. 12, 1999)
KS990069 (MAR. 12, 1999)
KS990070 (MAR. 12, 1999)
NEBRASKA
NE990003 (MAR. 12, 1999)
NE990011 (MAR. 12, 1999)
TEXAS
TX990007 (MAR. 12, 1999)
TX990033 (MAR. 12, 1999)
TX990034 (MAR. 12, 1999)
TX990035 (MAR. 12, 1999)
TX990037 (MAR. 12, 1999)
TX990046 (MAR. 12, 1999)
TX990069 (MAR. 12, 1999)

Volume VI

NONE

Volume VII

CALIFORNIA
CA990001 (MAR. 12, 1999)
CA990002 (MAR. 12, 1999)
CA990004 (MAR. 12, 1999)
CA990031 (MAR. 12, 1999)
CA990032 (MAR. 12, 1999)
CA990033 (MAR. 12, 1999)
CA990035 (MAR. 12, 1999)
CA990036 (MAR. 12, 1999)
CA990037 (MAR. 12, 1999)
CA990038 (MAR. 12, 1999)
CA990039 (MAR. 12, 1999)
CA990040 (MAR. 12, 1999)
CA990041 (MAR. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determination issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-Copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 9th day of September 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–24010 Filed 9–16–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–18]

Inspection Certification Records for Slings; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed increase, and extension of, the information collection requirements (inspection and certification records) contained in the standard on Slings, 29 CFR 1910.184(e)(3)(i), (e)(4), (f)(4)(ii), (g)(1), (g)(8)(ii), and (i)(8)(ii).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used.
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 16, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–18, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements (inspection certification records) contained in the standard on Slings (29 CFR 1910.184) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal

agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) The information collection requirements (the inspection and certification records) in the standard on Slings (29 CFR 1910.184) require employers to: Generate and maintain records regarding the inspection of alloy steel chain slings, obtain and retain certificates showing that the equipment manufacturer (or equivalent entity) proof tested new, repaired, or reconditioned alloy steel chain slings, wire rope slings that have welded end attachments, and repaired synthetic web slings. These requirements also specify that employers affix a durable marking to metal mesh slings stating the rated capacity for the vertical basket hitch and choker hitch loadings, repaired metal mesh slings must indicate the date and type of repair, as well as the person or organization performing the repair, using permanent marking or tagging, or by maintaining a written record.

II. Proposed Actions

OSHA proposes to increase its earlier estimate of 1,071 burden hours to 21,435 burden hours for the provisions requiring inspection and certification records in the standard on Slings (29 CFR 1910.184).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Inspection and Certification Records for Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 155,675.

Frequency: Annually.

Average Time per Response: Varies from three minutes (0.05 hour) to 15 minutes (0.25 hour).

Estimated Total Burden Hours: 21,435.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 13th day of September 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–24266 Filed 9–16–99; 8:45 am]

BILLING CODE 4510–26–M

OFFICE OF MANAGEMENT AND BUDGET

Accounting for Internal Use Software

AGENCY: Office of Management and Budget.

ACTION: Notice of Document Availability.

SUMMARY: This Notice indicates the availability of the tenth Statement of Federal Financial Accounting Standards (SFFAS), ''Accounting for Internal Use Software.'' The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB).

ADDRESSES: Copies of SFFAS No. 10, ''Accounting for Internal Use Software,'' may be obtained for $4.00 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00524–2.

FOR FURTHER INFORMATION CONTACT: Kim Geier (telephone: 202-395–6905), Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the tenth Statement of Federal Financial Accounting Standards (SFFAS), ''Accounting for Internal Use Software.'' The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB) on October 9, 1998.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/OMB/, under the caption ''**Federal Register**.''

Sheila Conley,

Acting Controller.

[FR Doc. 99–24217 Filed 9–16–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS No. 5, Accounting for Liabilities of the Federal Government

AGENCY: Office of Management and Budget.

ACTION: Notice of Document Availability.

SUMMARY: This Notice indicates the availability of the twelfth Statement of Federal Financial Accounting Standards (SFFAS), ''Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS No. 5, Accounting for Liabilities of the Federal Government.'' The statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB).

ADDRESSES: Copies of SFFAS No. 12, ''Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS No. 5, Accounting for Liabilities of the Federal Government,'' may be obtained for $2.50 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800), Stock No. 041–001–00527–7.

FOR FURTHER INFORMATION CONTACT: Kim Geier (telephone: 202-395–6905), Office of Federal Financial Management, Office of Management and Budget, 725

17th Street, NW, Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the twelfth Statement of Federal Financial Accounting Standards (SFFAS), ''Recognition of Contingent Liabilities Arising from Litigation: An Amendment of SFFAS No. 5, Accounting for Liabilities of the Federal Government.'' The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by the Office of Management and Budget (OMB) on February 1, 1999.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon accounting principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, a notice of document availability is published in the **Federal Register** and distributed throughout the Federal Government.

This Notice is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/OMB/, under the caption ''**Federal Register**.''

Sheila Conley,

Acting Controller.

[FR Doc. 99–24218 Filed 9–16–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27073]

Filings Under the Public Holding Company Act of 1935, as Amended (''Act'')

September 10, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 5, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 5, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6458)

Indiana Michigan Power Company (''I&M''), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under sections 9(a), 10 and 12(d) of the Act and rule 54 under the Act to an application-declaration previously filed under the Act.

By orders dated June 11, 1980, June 25, 1980, December 4, 1984, December 12, 1984, August 2, 1985, October 5, 1994 and June 26, 1995 (HCAR Nos. 21618, 21642, 23514, 23528, 23781, 26136 and 26319) (''Orders''), I&M was authorized to enter into and amend agreements (collective, ''Agreements'') with the City of Rockport, Indiana (''City'') in connection with the construction and installation of pollution control facilities at I&M's Rockport Generating Station (''Facilities''). Under the Agreements, the City may issue and sell, in several series, its pollution control revenue bonds and pollution control refunding bond (''Refunding Bonds'') (together, ''Bonds'').

The Orders also authorized I&M to convey the Facilities to the City and to reacquire them at a purchase price, payable on an installment basis semi-annually, in amounts that enable the City to pay, when due, the interest and principal on the Bonds and certain other fees and expenses. Currently, the City has issued three series of Bonds in an outstanding aggregate principal amount of $150 million.

It is now proposed that, under the terms of the Agreements, I&M will cause the City to issue and sell, prior to June 30, 1999, one or more additional series of Refunding Bonds (''1999 Bonds'') in the aggregate principal amount of up to $50 million. The 1999 Bonds will mature on a date not more than thirty years from the date of issuance. The proceeds will be used to provide for the early redemption of the entire outstanding principal amount of $50 million of the City's Series 1985 A Floating Rate Weekly Demand Bonds, due August 1, 2014.

National Fuel Gas Company, et al. (70–9525)

National Fuel Gas Company (''NFG''), 10 Lafayette Square, Buffalo, New York 14203, a public utility holding company registered under the Act, and its nonutility subsidiaries National Fuel Gas Supply Corporation (''Supply''), 10 Lafayette Square, Buffalo, New York 14203; National Fuel Resources, Inc. (''Resources''), 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221; Seneca Resources Corporation (''Seneca''); and Upstate Energy, Inc. (''Upstate Energy,'' and together with Supply, Resources and Seneca, the ''Nonutility Subsidiaries''), both located at 1201 Louisiana Street, Suite 400, Houston, Texas 77002, have filed an application under sections 9(a) and 10 of the Act, sections 2(a) and 2(b) of the Gas Related Activities Act of 1990, and rule 54 under the Act.

Supply, an interstate pipeline company, transports and stores natural gas for NFG's only public utility subsidiary, National Fuel Gas Distribution Corporation (''Distribution'') and for other utilities, pipelines, marketers, and large industrial customers in the northeastern United States. Seneca is engaged in the business of exploration and development of natural gas and oil producing reserves, chiefly in the on-shore and off-shore Gulf Coast region of Texas, Louisiana and Alabama, the Appalachian region, the Rocky Mountain region, and California. Resources markets natural gas, electricity, and other forms of energy to approximately 5,400 industrial commercial, and residential customers under long-term agreements, and provides other related energy services to these end-use customers. Upstate Energy engages in wholesale natural gas marketing and related activities.

As more particularly discussed below, NFG requests authority through December 31, 2003 to acquire, through the Nonutility Subsidiaries, the equity and debt securities of one or more companies that are engaged in, or that are formed to engage in, certain categories of nonutility gas-related operations outside the United States (''Foreign Energy Affiliates''). NFG and the Nonutility Subsidiaries propose to

invest up to $300 million (''Investment Limitation'') in the securities of Foreign Energy Affiliates. In addition, Resources and Update Energy request authority to engage directly in energy commodity marketing, brokering and related activities in Canada.

Specifically, Seneca proposes to acquire the securities of, or other interests in, entities engaged in natural gas and oil exploration and production operations outside the United States. Paralleling its domestic exploration and production activities. Seneca intends to invest in entities with Canadian operations located where pipeline facilities are available to deliver reserves to customers of Distribution or of other NFG subsidiaries. Seneca anticipates that it will concentrate initially on investing in Foreign Energy Affiliates with operations in the Western Canada Sedimentary Basin. Seneca requests that the Commission reserve jurisdiction over its investments in Foreign Energy Affiliates outside of the United States and Canada.

Supply proposes to acquire the securities of, or other interests in, companies formed to construct and operate new pipeline and gas storage facilities outside the United States. Supply anticipates that it will initially focus on projects that are planned or under construction in Canada, Mexico, and South America. Supply has not yet identified any specific foreign pipeline or storage venture in which it wished to invest, and it request that the Commission reserve jurisdiction over any investment it makes in a Foreign Energy Affiliate.

Resources and Upstate Energy propose to engage directly or indirectly in natural gas and other energy commodity marketing, brokering, and related activities outside the United States. Specifically, Resources and Upstate Energy request authority to invest in the aggregate either directly or indirectly, through one or more Foreign Energy Affiliates, up to $50 million of the Investment Limitation in Canadian nonutility facilities related to these activities. These would include natural gas or oil storage facilities, natural gas gathering and processing facilities, pipeline spurs to serve industrial customers, and meters, regulators, and similar nonutility equipment. The Canadian marketing and brokering operations of Resources and Upstate Energy would be substantially identical to their U.S. operations, although Canadian regulatory laws may impose different limitations or restrictions on these operations. The proposed brokering activities would involve acting as a middle man, usually for a fee, in energy commodity transactions. Marketing transactions could take a variety of forms. They may consist of purchases and sales of gas and other energy commodities where performance normally will be physical delivery of the underlying commodity. The may also include transactions that may or may not be settled by physical delivery, such as swaps or exchanges of energy commodities, and the sale of purchase of options, exchanged-traded futures contracts, or other derivative products to support marketing and brokering transactions.

By order dated February 12, 1997 (HCAR No. 26666), the Commission reserved jurisdiction over Resources's energy marketing and brokering business outside the United States. Resources requests that the Commission release jurisdiction over its conduct of this business in Canada. Upstate Energy and Resources request that the Commission reserve jurisdiction over the conduct of this business outside the United States and Canada.

NFG intends to provide the Nonutility Subsidiaries with funds and credit support necessary to enable them to acquire the securities of, or other interests in, Foreign Energy Affiliates. These investments by NFG in the Nonutility Subsidiaries would be funded by available cash and the proceeds to external financing previously approved by a Commission order dated March 20, 1998 (HCAR No. 26847) (''Financing Order''). The Nonutility Subsidiaries may borrow through the NFG system money pool to fund the activities proposed in the application. NFG may provide guarantees or other forms of credit support to or on behalf of the Nonutility Subsidiaries in this connection, subject to the authority of the Financing Order. NFG states that it would not attempt to recover any loss sustained through the proposed foreign gas-related activities, or compensate for any inadequate return on its investment in them, through higher rates to Distribution's customers.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–24216 Filed 9–16–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 20, 1999.

A closed meeting will be held on Tuesday, September 21, 1999, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 21, 1999, at 10:00 a.m. will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 14, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–24390 Filed 9–15–99; 12:38 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Announcement OVA–99–001]

Award Notice for the Veterans Business Outreach Program Under Program

AGENCY: Small Business Administration.

ACTION: Notice of award.

SUMMARY: The Small Business Administration (SBA), Office of Veterans Affairs (OVA) announces the award of four cooperative agreements for the Veterans Business Outreach Program. These awards are a result of Program Announcement No. OVA–99–001. The awardees are as follows:

The University of West Florida, 19 West Garden Street, Suite 300, Pensacola, FL 32501

TEP Consulting, Inc., 858 Dogwood Court, P.O. Box 245, Herndon, VA 20172–0245

The Research Foundation of the State University of New York, 1400 Washington Avenue, AD216, Albany, NY 12222

The University of Texas Pan American, Office of Center Operations and Community Services, 1201 W. University Drive, Edinburg, TX 78535

The University of Texas—Pan American, TEP Consulting, Inc., The University of West Florida in Pensacola, and The Research Foundation of the State University of New York. The recipients of the awards will provide strategic entrepreneurial development and management services to service-disabled U.S. veterans and small businesses owned, controlled, and operated or established by service-disabled veterans.

FOR FURTHER INFORMATION CONTACT: Reginald Teamer, 202–205–7331 or Carol Greenfield, 202–205–7090.

Clifton Toulson, Jr.,

Assistant Administrator for Veterans Affairs.

[FR Doc. 99–24210 Filed 9–16–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Establishment of Point of Contact Between SBA and Small Business Concerns With Respect to Failure To Comply With Federal Rules or Regulations Due to Y2K Problems

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Through this notice, SBA establishes a point of contact with small business concerns who fail to comply with Federal rules or regulations due to Y2K problems. This action is required by section 18 of the Y2K Act (Pub. L. 106–37).

DATES: Effective September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Mark A. Spellman, Office of General Counsel, 409 Third Street, SW, Suite 700, Washington, DC 20416, (202) 205–6642.

SUPPLEMENTARY INFORMATION: On July 20, 1999, the President signed H.R. 775, the ''Y2K Act.'' The Act provides temporary relief for small business concerns that cannot comply with Federal rules and regulations because of Y2K problems.

Among other things, the Y2K Act requires agencies to waive civil penalties for a first time violation of any federally enforceable rule by a small business (defined as 50 employees or less), due to a Y2K failure, if the small business meets the standards for a waiver. An agency must provide a waiver of civil penalties for a first-time violation, if the small business concern demonstrates, and the agency determines that:

1. The small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

2. A first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

3. The first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

4. Upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

5. The small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if:

1. The small business concern's failure to comply with Federal rules or regulations resulted in actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

2. The small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

This relief does not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

The Act requires that each agency must establish a point of contact for small businesses ''with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations.''

SBA's point of contact for this purpose is Mark A. Spellman, Office of General Counsel, 409 Third Street, SW, Suite 700, Washington, DC 20416, (202) 205–6642.

David R. Kohler,

Acting General Counsel.

[FR Doc. 99–24209 Filed 9–16–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3084]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(a)(2)(1996), the Secretary of State announces the following emergency Arms Control and Nonproliferation Advisory Board (ACNAB) meeting:

Date/Location

September 20, 1999—State Department Building, 2201 C Street, NW, Room 1105,Washington, DC 20520

Due to the recent developments regarding negotiations on the Biological Weapons Convention Verification Protocol, it was necessary that this meeting be scheduled on less than 15 days notice.

Pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(d) (1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that the Board meeting will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The Board will review specific arms control and nonproliferation issues.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Board, at (202) 647–1192.

Dated: September 13, 1999.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board.

[FR Doc. 99–24430 Filed 9–15–99; 2:33 pm]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee open meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Thursday, October 21, 1999, from 8:00 a.m. to 1:00 p.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW, Washington, DC, in the Bessie Coleman Conference Center (second floor). This will be the thirtieth meeting of the COMSTAC.

The agenda for the meeting will include reports from the COMSTAC Working Groups; a legislative update on Congressional activities involving commercial space transportation; an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]); and an update from the Office of Science and Technology Policy regarding the federal interagency review on the future management and use of the U.S. space launch bases and ranges. The meeting is open to the public; however, space is limited.

Meetings of the Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support Working Groups will be held on Wednesday, October 20, 1999. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 267–8308; E-mail brenda.parker@faa.dot.gov.

Issued in Washington, DC, September 10, 1999.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–24264 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Aroostook County, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared to improve transportation efficiency in Aroostook County, Maine. The EIS will examine highway infrastructure improvements to enhance transportation mobility and accessibility to and from Aroostook County, as well as within the County. These improvements are being considered as a means to improve the region's economy by improving access to jobs and services and by reducing travel time to markets outside Maine's northern-most county. The purpose of this study is to identify a Preferred Corridor only.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Linker Manager, Right of Way and Environmental Programs, Maine Division, Federal Highway Administration, 40 Western Ave. Augusta, Maine 04330, Tel. 207/622–8355, ext. 23; Ray Faucher, Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/287–3172.

SUPPLEMENTARY INFORMATION: The purpose of this EIS is to establish a one-half mile wide corridor for future highway development. The area under consideration, from the towns of Smyrna Mills to Madawaska, is quite large and is bounded on the west by Route 11, on the south by I–95, and on the north and east by the Canadian border. The enclosed area is roughly twice the size of the state of Rhode Island. The EIS will study up to seven corridors alternatives, including upgrades within existing highway corridors and corridors on new location. The seven corridors, plus the no-action alternative, will be selected through a screening process of up to 20 preliminary corridors. The corridors will be selected for review based on their ability to provide transportation benefits and their environmental impacts. It is anticipated that highway segments with logical termini and independent utility will be constructed in the future within the selected corridor. Each segment will be supported by a separate environmental document in the later construction phase.

An 18-member public advisory committee has been established to represent the interests within the study area and to assist in the preparation of the EIS. Public scoping meetings will be held and are scheduled for the following locations: the Frenchville Community Center in Frenchville, September 14, 1999; the Northern Maine Technical College in Presque Isle, September 15, 1999; and the Miller Civil Center in Houlton on September 16, 1999.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 27, 1999.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 99–24228 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being sought and the petitioner's arguments in favor of relief.

Mass Transit Administration; FRA Waiver Petition No. FRA–1999–5987

The Mass Transit Administration of the Maryland Department of Transportation (MTA), dba as Marc Train Service, seeks a permanent waiver of compliance from certain provisions of the Roadway Worker Protection Standards, 49 CFR Part 214, Subpart C. MTA seeks a waiver of 49 CFR 214.329 which states:

Roadway workers in a roadway work group who foul any track outside of working limits shall be given warning of approaching trains by one or more watchmen/lookouts in accordance with the following provisions:

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.

(b) Watchmen/lookouts assigned to provide train approach warning shall devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.

(c) The means used by a watchman/lookout to communicate a train approach warning shall be distinctive and shall clearly signify to all recipients of the warning that a train or other on-track equipment is approaching.

(d) Every roadway worker who depends upon train approach warning for on-track safety shall maintain a position that will enable him or her to receive a train approach warning communicated by a watchman/ lookout at any time while on-track safety is provided by train approach warning.

(e) Watchmen/lookouts shall communicate train approach warnings by a means that does not require a warned employee to be looking in any particular direction at the time of the warning, and that can be detected by the warned employee regardless of noise or distraction of work.

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of Sec. 214.349.

(g) Every watchman/lookout shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform.

MTA requests permission to use radios to provide notification of approaching trains. In addition to use of radios, backup protection would be provided by lookouts, which would provide less than 15 seconds clearing time as required by Sec. 214.329(a), but would provide adequate time for workers clearing crosswalks with hand tools to vacate the fouling envelope.

This waiver applies to employees contracted to MTA who are engaged in the clearing of snow at commuter rail stations. MTA commuter rail stations are located on CSXT and National Railroad Passenger Corporation (Amtrak) rail lines. The MTA contractors, who are trained by MTA on Roadway Worker Protection procedures, remove snow from station platforms clear of the fouling envelope. MTA has 20 stations on CSX where walkways cross the tracks at grade which are used by passengers, including eight stations where the walkways provide ADA access. Amtrak employees provide protection when snow is cleared from walkways on that railroad.

In order to comply with the requirements of 214.329, MTA must place up to four lookouts to relay a visual warning of an approaching trains at certain stations when clearing snow from crosswalks. MTA is concerned about exposing non-railroad contract employees to injury due to the inherent risk involved in walking along a railroad right of way in snowy or icy conditions to position an advance lookout. While the number of lookouts vary by station, lookouts are required to provide 2933 feet sight distance requiring them to walk up to half a mile at certain locations.

MTA's procedure requires a lookout, with a radio, to be located on a bridge or road sufficiently far from the crosswalk to provide a minimum of 30 seconds clearing time. Work cannot begin until the lookout with the radio has established contact with the lookout stationed directly adjacent to the worker. The outlying lookout must transmit a message every five seconds indicating that no trains are approaching. If the lookout adjacent to the worker does not hear a transmission in at least ten seconds he or she must assume radio failure and remove the worker from the fouling envelope. As a backup, a secondary lookout will be placed at each station, with a clear view and within visual and audible range of the worker, who can provide a minimum of 10–15 seconds warning. The clearing time of the worker on the crosswalk is two to three seconds. This backup lookout is a secondary, and not the primary means of protection.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA 1999–5987) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, D.C. on September 10, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–24253 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6078]

Insurer Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 1994 reporting year. Section 33112(c) of Title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Due to the voluminous content of this report, interested persons may obtain a copy of this report by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are from 9:30 a.m. to 5:00 p.m., Monday through Friday. Requests should refer to Docket No. 96–130; Notice 04.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as: increased criminal penalties for those who traffic in stolen vehicles and parts; curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment; establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts; and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

Title VI (which has since been recodefied as 49 U.S.C. Chapter 331), was designed to impede the theft of motor vehicles by creating a theft prevention standard which required manufacturers of designated high-theft car lines to inscribe or affix a vehicle identification number onto the major component and replacement parts of all vehicle lines selected as high theft. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The ''Anti-Car Theft Act of 1992'' amended the law relating to the parts-marking of major component parts on designated high-theft vehicles. One amendment made by the Anti-Car Theft Act was to 49 U.S.C. 33101(10), where the definition of ''passenger motor vehicle'' now includes a ''multipurpose passenger vehicle or light-duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti-Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR Part 541).

Section 33112 of Title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles; rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This is the tenth report and it discloses the same subject information and follows the same reporting format.

Issued on: September 13, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–24241 Filed 9–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33777]

RailAmerica, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation

RailAmerica, Inc. (RailAmerica), a noncarrier holding company, has filed a verified notice of exemption to continue in control of Florida Rail Lines, Inc. (Florida Rail), a noncarrier, and to acquire control of Toledo, Peoria and Western Railroad Corporation (TPW), Marksman Corporation (Marksman), and Toledo, Peoria & Western Railway Corporation (Railway). Florida Rail will acquire 100% of the outstanding stock of TPW. TPW owns 100% of the stock of Marksman,[1] and Marksman owns 100% of the stock of Railway.[2]

The transaction was scheduled to be consummated on or shortly after August 31, 1999.

On July 30, 1999, RailAmerica also filed a motion for protective order under 49 CFR 1104.14 and a protective order was granted.[3]

RailAmerica states that, at the time of its filing of the notice of exemption, it controlled 11 common carrier Class III rail carriers operating in 8 states.[4]

RailAmerica states that: (i) These railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33777, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on (1) Gary A. Laasko, Esq., RailAmerica, Inc., 5300 Broken Sound Boulevard N.W., Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, David M. Konschnik, Director, Office of Proceedings.

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[1] *See The Toledo, Peoria and Western Railroad Corporation—Continuance in Control Exemption—Marksman Corporation,* STB Finance Docket No. 33483 (STB served Oct. 16, 1997).

[2] *See Marksman Corporation—Lease and Operation Exemption—J.K. Line, Inc.,* STB Finance Docket No. 33481 (STB served Oct. 16, 1997).

[3] *See RailAmerica, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation,* STB Finance Docket No. 33777 (STB served Aug. 5, 1999).

[4] *See RailAmerica, Inc.—Continuance in Control Exemption—Ventura County Railroad Company,* STB Finance Docket No. 33650 (STB served Sept. 24, 1998).

Decided: September 10, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–24178 Filed 9–16–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33798]

Canadian National Railway Company—Trackage Rights Exemption—New York Central Lines LLC

New York Central Lines LLC (NYC) has agreed to grant limited, non-exclusive overhead trackage rights to Canadian National Railway Company (CN) over a segment of NYC's lines between CP 437 on Belt Line Branch and the NYC/South Buffalo Railroad (SBRR) connection at the west end of NYC's Seneca Yard near Chicago Line milepost 5.0, both in the vicinity of Buffalo, NY, via: (i)(a) Chicago Line between CP 437 and CP 2, or (b) Compromise Branch between CP 437 and CP 2; and (ii) NYC's designated Seneca Yard trackage between CP 2 and CP 5, a total distance of approximately 7–8 miles, depending upon route, including NYC Seneca Yard trackage that CN requires to reasonably conduct interchange with SBRR.

The transaction is scheduled to be consummated on or shortly after September 10, 1999.

The purpose of the trackage rights is generally to improve service and transit times for CN's traffic moving through the Buffalo area, and to facilitate CN's interchange with SBRR.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33798, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 16th Street, NW, Washington, DC 20006.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: September 10, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–24179 Filed 9–16–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of cancellation of meeting.

SUMMARY: The Bureau of Transportation Statistics (BTS) is canceling the meeting of its Advisory Council on Transportation Statistics (ACTS) scheduled for September 17, 1999, at 10:00 a.m. The meeting was announced in the **Federal Register** on September 10, 1999 (64 FR 49273). BTS will announce an alternative date as soon as possible.

Ashish Sen,

Director.

[FR Doc. 99–24401 Filed 9–15–99; 12:15 pm]

BILLING CODE 4910–FE–P

DEPARTMENT OF VETERANS AFFAIRS

Advsiory Committee on Geriatrics and Gerontology, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on September 29–30, 1999, at the Department of Veterans Affairs, in Room 230, located at 810 Vermont Avenue, NW, Washington, DC. The purpose of the GGAC is to advise the Secretary of Veterans Affairs and the Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers. The Committee will meet from 8:30 a.m. until 5:00 p.m. (EST) on September 29 and from 9:00 a.m. until noon (EST) on September 30.

The agenda for September 29 will begin with a discussion of VA activities in Geriatrics and Extended Care. The first day's agenda will also include a discussion on the current expansion of the GRECC program and highlight the GRECC Director's meeting. On September 30, the Committee will address strategic planning for the GGAC.

The meeting will be open to the public. Individuals who wish to attend the meeting should contact Jacqueline Holmes, Program Assistant, Geriatrics and Extended Care Strategic Health Care Group at (202) 273–8539.

Dated: September 9, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–24240 Filed 9–16–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 180

Friday, September 17, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 9908128228–9228–01]

RIN 0625–AA56

Regulation Concerning Preliminary Critical Circumstances Findings

Correction

In rule document 99–23208 beginning on page 48706, in the issue of Wednesday, September 8, 1999, make the following correction:

On page 48706, in the first column, in the **DATES:** section, in the first line, ''August 8, 1999'' should read ''September 8, 1999''.

[FR Doc. C9–23208 Filed 9–16–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act

Correction

In notice document 99–23599, beginning on page 49236, in the issue of Friday, September 10, 1999, in the third column, in the first paragraph, in the fourth line from the bottom, ''$47,000'' should read ''$470, 000''.

[FR Doc. C9–23599 Filed 9–16–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday
September 17, 1999

Part II

Environmental Protection Agency

40 CFR Parts 9, 141 and 142
Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141 and 142

[FRL–6433–1]

RIN 2040–AD15

Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency (EPA) to establish criteria for a program to monitor unregulated contaminants and, by August 6, 1999, to publish a list of contaminants to be monitored. To conform to the Amendments, today EPA is promulgating the Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems (PWSs), which revises substantially the existing regulations for unregulated contaminant monitoring.

This final rule includes a list of contaminants to be monitored, procedures for selecting a representative nationwide sample of small PWSs that will be required to monitor, the frequency and schedule for monitoring, the sampling points, the approved analytical methods to be used, and procedures for entering the monitoring data in the National Drinking Water Contaminant Occurrence Database (NCOD), as required under section 1445 of SDWA, as amended. The data in the database will be used to identify contaminants on the Drinking Water Contaminant Candidate List (CCL), to support the Administrator's determination of whether or not to develop drinking water standards for a particular contaminant, and to develop standards for the contaminants that the Administrator selects.

DATES: *Effective Date*: The final rule is effective January 1, 2001.

For purposes of judicial review, this final rule is promulgated as on 1 p.m. Eastern time on October 1, 1999 as provided in 40 CFR 23.7.

The incorporation by reference of the publications listed in today's rule is approved by the Director of the **Federal Register** as of January 1, 2001.

ADDRESSES: Documents relevant to this action are available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays, at the Water Docket, East Tower Basement, U.S. EPA, 401 M Street, SW, Washington DC. For access to docket (Docket No. W–98–02) materials, please call (202) 260–3027 between 9 a.m. and 3:30 p.m, Eastern Time, Monday through Friday, to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Charles Job, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC–4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7084. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Regional Contacts

I. Jane Downing, JFK Federal Bldg., Room 2203, Boston, MA 02203. Phone: 617–918–1571.
II. Bruce Kiselica, 290 Broadway, Room 2432, New York, NY 10007–1866. Phone: 212–637–3879.
III. Michelle Hoover, 1650 Arch Street, Philadelphia, PA 19103–2029. Phone: 215–814–5258.
IV. Janine Morris, 345 Courtland Street, NE, Atlanta, GA 30365. Phone: 404–562–9480.
V. Thomas Poleck, 77 West Jackson Blvd., Chicago, IL 60604–3507. Phone: 312–886–2407.
VI. Larry Wright, 1445 Ross Avenue, Dallas, TX 75202. Phone: 214–665–7150.
VII. Stan Calow, 726 Minnesota Ave., Kansas City, KS 66101. Phone: 913–551–7410.
VIII. Rod Glebe, One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202. Phone: 303–312–6627.
IX. Bruce Macler, 75 Hawthorne Street, San Francisco, CA 94105. Phone: 415–744–1884.
X. Gene Taylor, 1200 Sixth Avenue, Seattle, WA 98101. Phone: 206–553–1389.

Abbreviations and Acronyms Used in the Preamble and Final Rule

2,4-DNT—2,4-dinitrotoluene
2,6-DNT—2,6-dinitrotoluene
4,4′-DDE—4,4′-dichloro dichlorophenyl ethylene, a degradation product of DDT
Alachlor ESA—alachlor ethanesulfonic acid, a degradation product of alachlor
AOAC—Association of Official Analytical Chemists
APHA—American Public Health Association
ASDWA—Association of State Drinking Water Administrators
ASTM—American Society for Testing and Materials
BGM—Buffalo Green Monkey cells, a specific cell line used to grow viruses
CAS—Chemical Abstract Service
CASRN—Chemical Abstract Service Registry Number
CCL—Contaminant Candidate List
CCR—Consumer Confidence Reports
CERCLA—Comprehensive Environmental Response, Compensation & Liability Act
CFR—Code of Federal Regulations
CFU—colony forming unit
CFU/mL—colony forming units per milliliter
CWS—community water system
DCPA—dimethyl tetrachloroterephthalate, chemical name of the herbicide dacthal
DCPA mono- and di-acid degradates—degradation products of DCPA
DDE—dichloro dichlorophenyl ethylene, a degradation product of DDT
DDT—dichloro diphenyl trichloroethane, a general insecticide
DNA—deoxyribonucleic acid
EDL—estimated detection limit
EPA—Environmental Protection Agency
EPTC—s-ethyl-dipropylthiocarbamate, an herbicide
EPTDS—Entry Point to the Distribution System
ESA—ethanesulfonic acid, a degradation product of alachlor
FACA—Federal Advisory Committee Act
FTE—full-time equivalent
GC—gas chromatography, a laboratory method
GLI method—Great Lakes Instruments method
GW—ground water
GWUDI—ground water under the direct influence (of surface water)
HPLC—high performance liquid chromatography, a laboratory method
ICR—Information Collection Request/Rule
IRFA—initial regulatory flexibility analysis
IMS—immunomagnetic separation
IRIS—Integrated Risk Information System
IS—internal standard
LLE—liquid/liquid extraction, a laboratory method
MAC—*Mycobacterium avium* complex
MOA—Memorandum of Agreement
MCL—maximum contaminant level
MDL—method detection limit
MRL—minimum reporting level
MS—mass spectrometry, a laboratory method
MSD—sample matrix spike duplicate
MTBE—methyl-tertiary-butyl-ether, a gasoline additive
NAWQA—National Water Quality Assessment Program
NCOD—National Drinking Water Contaminant Occurrence Database
NDWAC—National Drinking Water Advisory Council
NERL—National Environmental Research Laboratory
NPS—National Pesticide Survey
NTIS—National Technical Information Service
NTNCWS—non-transient non-community water system
NTTAA—National Technology Transfer and Advancement Act
OGWDW—Office of Ground Water and Drinking Water
OMB—Office of Management and Budget
PAH—Poly-aromatic hydrocarbon
PB—particle beam
PBMS—Performance-Based Measurement System
pCi/L—picocuries per liter
PCR—polymerase chain reaction

^{210}Pb—Lead-210 (also Pb-210), a lead isotope and radionuclide; part of the uranium decay series
^{210}Po—Polonium-210 (also Po-210), a polonium isotope and radionuclide; part of the uranium decay series
PWS—Public Water System
PWSF—Public Water System Facility
QA—quality assurance
QC—quality control
RDX—royal demolition explosive, hexahydro-1,3,5-trinitro-1,3,5-triazine
RFA—Regulatory Flexibility Act
RPD—relative percent difference
RSD—relative standard deviation
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD—standard deviation
SDWA—Safe Drinking Water Act
SDWIS—Safe Drinking Water Information System
SDWIS FED—the Federal Safe Drinking Water Information System
SM—Standard Methods
SMF—Standard Compliance Monitoring Framework
SMS—sample matrix spike
SOC—synthetic organic compound
SPE—solid phase extraction, a laboratory method
SRF—State Revolving Fund
STORET—Storage and Retrieval System
SW—surface water
TBD—to be determined
TNCWS—transient non-community water system
UCMR—Unregulated Contaminant Monitoring Regulation/Rule
UCM—Unregulated Contaminant Monitoring
UMRA—Unfunded Mandates Reform Act of 1995
USEPA—United States Environmental Protection Agency
UV—ultraviolet
VOC—volatile organic compound
µg/L—micrograms per liter

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Potentially Regulated Entities

The regulated entities are public water systems. All large community and non-transient non-community water systems serving more than 10,000 persons are required to monitor. A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year. Only a national representative sample of community and non-transient non-community systems serving 10,000 or fewer persons would be required to monitor. Transient non-community systems (i.e., systems that do not regularly serve at least 25 of the same persons over six months per year) would not be required to monitor. States, Territories, and Tribes, with primacy to administer the regulatory program for public water systems under the Safe Drinking Water Act sometimes conduct analyses to measure for contaminants in water samples and are regulated by this action. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	SIC
State, Territorial and Tribal Governments ..	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that themselves operate community and non-transient non-community water systems required to monitor.	9511
Industry	Private operators of community and non-transient non-community water systems required to monitor.	4941
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	9511

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 of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Statutory Authority

SDWA section 1445(a)(2), as amended in 1996, requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish, by August 6, 1999, a list of contaminants to be monitored. To meet these requirements, today's rule EPA substantially revises the existing Unregulated Contaminant Monitoring (UCM) Program, which is codified at 40 CFR 141.40. This final rule revises the regulations at 40 CFR 9.1, 141.35, 141.40, 142.16 and deletes and reserves 142.15(c)(3). The rule covers: (1) the frequency and schedule for monitoring, based on PWS size, water source, and likelihood of finding contaminants; (2) a new, shorter list of contaminants for which systems will monitor; (3) procedures for selecting and monitoring a nationally representative sample of small PWSs (those serving 10,000 or fewer persons), and; (4) procedures for entering the monitoring data in the National Drinking Water Contaminant Occurrence Data Base (NCOD), as required under section 1445.

II. Major Program Revisions

Since its inception in 1988, the UCM Program has collected occurrence data to help EPA determine which contaminants EPA should regulate based on contaminant concentrations in PWSs and the contaminants' adverse health effects levels. Today's rule is designed to improve and enhance this program in several important ways:

(1) A statistical approach to select only 800 representative systems for monitoring from the national total of 65,600 small systems reduces the monitoring burden of the water supply industry; the burden on small systems is significantly further reduced in that EPA will pay for virtually all of the costs associated with monitoring for the small systems that are part of the representative sample;

(2) A smaller number of contaminants to be monitored also reduces the testing and reporting burden of the water industry overall;

(3) The required information to be reported about each contaminant has been refined to improve the data quality for regulatory decisions; and

(4) Direct reporting of data for regulatory determination and development from systems to EPA reduces State reporting burden, and the opportunity for electronic reporting reduces the potential for data entry and submission.

A three-tier monitoring approach allows monitoring to start promptly for contaminants with approved analytical methods, while accommodating the need to delay implementation for contaminants needing further methods development. The rule also allows use of a State-EPA Memorandum of

Agreement, providing direct implementation in each State rather than implementation through primacy revisions, to address the three-tiered approach of the UCMR.

This program is a cornerstone of the ''sound science'' approach to future drinking water regulations, which is a goal of the 1996 SDWA Amendments. Data generated by this final rule will be used to: (1) evaluate and prioritize contaminants on the Contaminant Candidate List (CCL) and refine the CCL; (2) support the Administrator's determination of whether to regulate a contaminant under the drinking water program; and, (3) support the development of drinking water regulations.

In a related, cost-savings action, EPA published a Direct Final Rule (64 FR 1494) on January 8, 1999, suspending the monitoring requirements in effect for small systems serving 10,000 or fewer persons. The third round of monitoring by small systems under the existing list of unregulated contaminants would have overlapped with the monitoring required under this final rule. The Direct Final Rule saved small systems and States the cost of unnecessary monitoring. EPA believes it obtained sufficient data from the previous monitoring rounds to make decisions concerning the occurrence of the unregulated contaminants on its prior monitoring list for these systems. Large systems were not included in this Direct Final Rule since they had already begun the third round of monitoring in January 1998. This large system monitoring will provide confirming information on the occurrence of those contaminants. However, this final regulation cancels further monitoring by large systems for the existing list of contaminants effective January 1, 2001. Until that date, large systems must continue to monitor for the 48 contaminants listed in 40 CFR 141.40 (and also listed in Table 1 of ''Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems,'' **Federal Register**, vol. 64, no. 83, April 30, 1999, p. 23401 (64 FR 23401)).

III. Regulatory Background

The requirements for unregulated contaminant monitoring were first established by the 1986 SDWA Amendments. Under this law, EPA implemented the drinking water standards in phases, with each phase having a set of contaminants for which maximum contaminant levels in drinking water were established. The phases also included unregulated contaminants for which more information was needed before decisions could be made regarding regulation of the contaminants. EPA included unregulated contaminant monitoring requirements in the Phase I chemical regulation, under 40 CFR 141.40(a)–(e). The Phase II regulation later superceded the Phase I rule, and some of the Phase I unregulated contaminants became regulated under Phase II. Additional contaminants were also added to the list of unregulated contaminants. The Phase V chemical regulation further modified the list of contaminants, as additional unregulated contaminants became regulated.

The basic monitoring and reporting requirements for unregulated contaminants were the same under the Phase I, Phase II, and Phase V regulations. PWSs were required to report their monitoring results to the primacy agencies (either the State or EPA), with States, in turn, reporting to EPA. Only systems serving fewer than 150 service connections were exempt from monitoring—provided they made their facilities available for monitoring by the States. Repeat monitoring was required every 5 years.

Section 125 of the 1996 SDWA Amendments substantially revised unregulated contaminant monitoring program. The new program includes: (1) a new list of contaminants (i.e., the Unregulated Contaminant Monitoring Regulation (UCMR) (1999) List; (2) a representative sample of PWSs serving 10,000 or fewer persons to monitor; (3) placement of the monitoring data in the NCOD, and; (4) notification of consumers that the monitoring results are available.

The 1996 amendments limit the number of contaminants to be monitored on the UCMR list to a maximum of 30. The amendments specify that only a representative sample of small systems are required to monitor, and that EPA must pay the reasonable costs of analyzing the samples taken by those systems. EPA will use the data generated by this monitoring effort in the development of future drinking water regulations.

Today's final rule will completely replace the requirements of the existing rule on the final rule's effective date of January 1, 2001. The existing requirements of 40 CFR 141.35 and 141.40 still apply to large systems serving more than 10,000 persons, (since their third round of monitoring had begun in January 1998) until January 1, 2001, as noted above in II. Major Program Revisions.

IV. Process of Preparing the Final Rule

EPA has been developing the final revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for public water systems since 1997. In December, 1997, EPA's UCMR development workgroup held a stakeholders meeting to obtain input from the public on major issues and options affecting the program and emanating from the Safe Drinking Water Act, as amended in 1996. EPA held a second stakeholders meeting in May 1998, on options under serious consideration for the UCMR. EPA engaged eleven external expert reviewers from March 1 through April 22, 1999 to examine and comment on the technical aspects of the proposed rule. These technical reviewers evaluated and commented on the chemical and microbiological contaminant analytical methods and reporting requirements, the statistical approach for the representative sample of small systems, and the sampling and monitoring approach. The comments of the technical reviewers were available to the public through the official docket and on the Internet through EPA's Office of Ground Water and Drinking Water electronic homepage.

EPA published the proposed rule in the **Federal Register** on April 30, 1999, for public comment. The comment period closed on June 14, with submissions from 39 commenters meeting the deadline and addressing all major aspects of the proposed regulation. EPA received one hundred sixteen comments after the public comment period closed, principally concerning the inclusion of perchlorate on the UCMR monitoring list. EPA considered and addressed all comments in the process of developing this final regulation.

V. Concise Description of Today's Action

A. Which Systems Must Monitor

Owners and operators of community and non-transient noncommunity water systems must monitor for unregulated contaminants if they serve more than 10,000 persons or if they are part of the representative sample of small systems serving 10,000 or fewer persons that will be randomly selected to monitor for these contaminants. Transient systems are not required to monitor for unregulated contaminants. Only purchased water systems that are identified by EPA or the State to sample at locations of low disinfectant residual or longest residence time are required to monitor for distribution system contaminants.

B. System Monitoring Requirements

The contaminants included in this action are: 2,4-dinitrotoluene, 2,6-dinitrotoluene, DCPA mono acid degradate, DCPA di acid degradate, 4,4′-DDE, EPTC, molinate, MTBE, nitrobenzene, terbacil, acetochlor, and perchlorate. Systems must also analyze for water quality parameters including, for chemical contaminants: pH; and for microbiological contaminants: pH, temperature, turbidity, free disinfectant residual and total disinfectant residual. Surface water systems must monitor during four consecutive quarters. Ground water systems must monitor two times five to seven months apart. One sampling event for surface and ground water systems must be during the vulnerable time of May 1 to July 31, or during an alternate vulnerable time selected by the State. Monitoring must be conducted at the entry point to the distribution system, or at other sampling locations previously specified by the State for compliance monitoring, for sampling points representative of each principal, non-emergency water source in use over the one year of monitoring. Large and small systems must monitor according to the quality control procedures described. Laboratories that are certified to use the indicated methods for the contaminants listed are automatically certified to analyze for unregulated contaminants. Small systems that are part of the representative sample which become part of State Monitoring Plans must follow instructions given them for unregulated contaminant sampling and shipment to the designated laboratory.

C. System Reporting Requirements

After testing for the contaminants on the monitoring list, the systems must report the results electronically to, or in an alternate format previously arranged with, EPA within 30 days following the month they receive the results. EPA will report the results for the small systems that are selected to be part of the State Monitoring Plans. EPA will hold the data for 60 days to allow for quality control review by systems and States before placing the data in the National Drinking Water Contaminant Occurrence Database.

Data required to be reported include: Public Water System (PWS) Identification Number; Sample Identification Number; Sample Collection Date; Contaminant/Parameter; Analytical Results—Sign; Analytical Result—Value; Analytical Result—Unit of Measure; Analytical Method Number; Public Water System Facility Identification Number—Source, Treatment Plant and Sampling Point; Sample Analysis Type; Detection Level; Detection Level Unit of Measure; Batch Identification Number; Spiking Concentration; Analytical Precision; Analytical Accuracy; Presence/Absence.

A system can have a laboratory report the results for it, but the system retains the responsibility for reporting. A system can report previously collected data as long as the data meet the requirements specified in 40 CFR 141.40(a) (3), (4), (5) and Appendix A and include the applicable water quality parameters and data listed previously that are required to be reported.

D. State and Tribal Participation

States and Tribes can enter into a Memorandum of Agreement (MOA) with the EPA concerning the implementation of the monitoring program. The MOA must address the following: accepting or modifying the State Monitoring Plan for small systems, determining an alternate vulnerable time, modifying the timing of monitoring, identifying sampling points for small systems, notifying small and large systems of their monitoring responsibilities, and providing instructions to systems. A State can remove a system from the State Monitoring Plan, after EPA review, as long as removal is not based on prior information on the occurrence or non-occurrence of contaminants at the system or the vulnerability of the system to the contaminants. States can decide not to participate in an MOA, in which case the EPA will establish a State Monitoring Plan. The governors of seven or more States can petition EPA to add contaminants to the monitoring list. States can apply to EPA to waive monitoring for large systems if they can demonstrate that the contaminants for which a monitoring waiver is sought have not occurred in the State in the past 15 years.

VI. Final Changes in the Unregulated Contaminant Monitoring Program

A. Revised List of Unregulated Contaminants To Be Monitored

1. Criteria for Selecting Contaminants for the UCMR

(a) Revising the UCMR (1999) List

Section 1445(a)(2)(B) requires EPA to list not more than 30 unregulated contaminants to be monitored by public water systems. EPA used the 1998 Contaminant Candidate List (CCL), established under section 1412(b)(1)(B) of SDWA, as the primary basis for selecting contaminants for future monitoring under the UCMR. Development of the CCL is discussed in the preamble to the proposed rule at 64 FR 23402. EPA believes, and nearly all public commenters addressing the use of the CCL as the basis for the UCMR List indicated, that the CCL process already uses the best available information on contaminants of concern and emerging contaminants that may need regulation. SDWA section 1445 (a)(2)(B)(ii) provides for the governors of seven or more States to petition the Agency to add contaminants to the UCMR List. This petition process allows for the flexibility to include contaminants that are emerging as concerns between the five-year listing cycles.

The CCL lists 26 chemical and 8 microbiological contaminants as occurrence priorities because additional data on their occurrence in drinking water are needed to help decide whether they should be regulated. The proposed rule did not address the two contaminants identified in the preparation of the CCL as highly localized in occurrence: perchlorate and RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine). EPA now has information indicating that the occurrence of these contaminants is more widespread than originally thought. In response to this information, some of which was provided in public comments, EPA has added perchlorate and RDX to the final UCMR (1999) List. Perchlorate was added to the UCMR (1999) List because EPA feels that there is enough information on its occurrence in public water systems to warrant its inclusion in a national monitoring program. Since it was not included on the proposed UCMR (1999) List, EPA did not take comment on its analytical method, minimum reporting level, or sampling location. EPA is currently engaged in final validation of an analytical method for perchlorate. This validation is important because earlier analytical methods did not make adjustments for interferences from sulfate and chloride, thus reducing or eliminating detected concentrations. EPA feels that with this validation, the analytical method should be sufficiently ready for monitoring, and thus EPA has included perchlorate on the UCMR List 1. EPA plans to publish, for public comment, the analytical method, minimum reporting level, and sampling location for perchlorate shortly after the promulgation of this final rule. RDX now appears on UCMR (1999) List 2, indicating that additional information is available, and initial monitoring of occurrence in public water systems should occur but that its method needs further refinement.

Additionally, based on technical peer review and public comments, EPA moved Aeromonas from UCMR (1999) List 1 to UCMR (1999) List 2 in Table 1, because its analytical method is not expected to be validated until 2000 or 2001. Also, in response to public comments that the Agency include as many contaminants that could be tested under the same multi-analyte method as possible in Assessment Monitoring, EPA moved acetochlor to List 1 from List 2. This action is based on information that only minor refinements are needed in the method and those can be resolved before the effective date of today's rule. As a result, the analytical method is reserved until the details of the method are resolved. EPA plans to publish a revision to this final rule to approve an analytical method for acetochlor shortly after this rule's promulgation. EPA will likely publish a joint request for public comment on the analytical methods for perchlorate and acetochlor. EPA intends to approve and publish the methods as early as possible to allow monitoring to begin on January 1, 2001, and to allow for the reporting of any data obtained prior to January 1, 2001 to meet the requirements of this final Rule.

For the remaining contaminants on the CCL Occurrence Priorities List, EPA has evaluated the availability of analytical methods published by EPA or voluntary consensus standards organizations, such as the American Society for Testing and Materials (ASTM) and Standard Methods (SM). In addition, EPA prioritized analytical methods development activities for those compounds and microorganisms for which suitable analytical methods are not currently available. As listed in List 1 of Table 1, EPA identified 10 of the 12 listed chemical contaminants for which analytical methods are now available. UCMR (1999) List 1 contaminants are those for which monitoring is required under today's Rule, with the added note that analytical methods have yet to be approved for perchlorate and acetochlor. UCMR (1999) List 2 of Table 1 lists 16 contaminants for which analytical methods are being refined: 14 chemical contaminants, Aeromonas (a microorganism), and polonium-210 (discussed in Table 1). UCMR (1999) List 3 of Table 1 identifies seven microbiological contaminants and lead-210 for which analytical methods are being researched. Monitoring for contaminants on UCMR (1999) Lists 2 and 3 is not required until EPA promulgates revisions to this rule to specify analytical methods and related sampling requirements for them.

EPA requested comment on the addition to the UCMR (1999) List of two naturally occurring radionuclides with health concerns at low levels, lead-210 (pb-210), and polonium-210 (po-210). Both nuclides are in the uranium decay series, which also includes radium-226 and radon-222. Lead-210, with a half-life of 22 years, and one of its degradates, polonium-210, with a half-life of 138 days, have been found in drinking water. EPA is aware of the occurrence of these contaminants in shallow aquifers in Florida (Harada, et al., 1989; Upchurch, 1991), and in at least two other States. Because of potential occurrence, consequent health risks, and in response to public comments, EPA has added polonium-210 and lead-210 to the UCMR (1999) List and has placed them on Lists 2 and 3 respectively.

(b) Regulatory Approach for the UCMR (1999) List

EPA establishes in § 141.40(a)(3) that the contaminants listed in Lists 1–3 comprise the UCMR (1999) List, categorized based on the availability of analytical methods. UCMR (1999) List 1 is the basis for Assessment Monitoring. Assessment Monitoring will occur at all 2,774 large community and non-transient non-community public water systems serving more than 10,000 persons and at a representative sample of approximately 800 systems serving 10,000 or fewer persons identified in State Monitoring Plans. UCMR (1999) List 2 will be the basis for two Screening Surveys of approximately 300 systems each, statistically selected from those systems required to conduct Assessment Monitoring. UCMR (1999) List 3 will be used for Pre-Screen Testing at up to 200 systems selected because of their potential vulnerability to the specific contaminants. This monitoring approach is described in detail under Section VI.C, ''Type of Monitoring Required of Public Water Systems Based on Listing Group.'' Assessment Monitoring (and associated ''Index system'' monitoring) is the only monitoring that would be required by today's action. This includes contaminants for which EPA expects to have developed analytical methods before implementation: perchlorate and acetochlor.

For contaminants on UCMR (1999) List 2 for which analytical methods are developed by the time of initial monitoring in 2001, EPA will amend this rule to require the first Screening Survey to be conducted at selected systems. For those contaminants on List 2 and List 3 that do not have well developed methods by the time of initial monitoring in 2001, EPA will issue a revision to this regulation to activate monitoring for them at the time when the methods are considered implementable, up to the limit of 30 contaminants to be monitored within the five-year contaminant listing cycle. Monitoring for those contaminants will then begin at a date specified in that prospective regulation. Therefore, monitoring of contaminants on UCMR (1999) Lists 2 and 3 is not required by today's action. Monitoring of these contaminants will only occur when EPA publishes a revision to this regulation specifying the analytical methods to be used and the period during which monitoring is to be completed.

(c) Analytical Methods Applicable to the UCMR (1999) List

The UCMR (1999) List development process focuses primarily on the availability of analytical methods for the listed contaminants and the level of information available for them at the time of its development. The discussion below highlights analytical method considerations in listing the contaminants for monitoring. Only the contaminants identified on UCMR (1999) List 1, will be monitored as a result of today's action, with the exceptions of perchlorate and acetochlor, for which analytical methods have yet to be approved. Contaminants on UCMR (1999) Lists 2 and 3 are included on the final UCMR (1999) List, but will not be activated for monitoring until EPA proposes and promulgates analytical methods that can be used to reliably measure their occurrence in drinking water. At that time, EPA will propose regulations for the monitoring of UCMR (1999) List 2 and 3 contaminants.

(i) Chemical Analytical Methods

The ability to correctly identify a chemical contaminant is directly related to the type of chemical and the analytical method used. Compounds such as disinfection byproducts are far less likely to be misidentified than pesticides because they are typically present at relatively high concentrations in disinfected waters, while pesticides are much less likely to occur, or occur at lower concentrations. The analytical method selected will determine the accuracy of the qualitative identification. In general, the most reliable qualitative identifications will come from methods that use mass spectral data for contaminant identification. However, these methods are typically less sensitive than methods that rely on less selective detectors.

Before EPA establishes a Maximum Contaminant Level (MCL), the Agency relies on an analytical method suitable for routine monitoring. It is likely that analytical methods in general use by laboratories performing drinking water analyses may not exist for some of the final compounds to be measured in the UCMR program. Complex analytical methods or methods requiring special handling often require more experienced laboratories than the laboratories performing routine compliance monitoring. Even when analytical methods that are in general use by analytical laboratories are available, limiting the analyses to a small number of laboratories operating under strict quality control requirements improves the precision and accuracy of the analyses, thereby increasing the usefulness of the data.

The option favored by many stakeholders for conducting the chemical laboratory analyses and made final today by EPA is the following:

For PWSs serving more than 10,000 people, the PWS is responsible for sample collection and analyses for Assessment Monitoring. This monitoring may be conducted at the same time as the required compliance monitoring, to the extent possible. For Assessment Monitoring, however, EPA requires in § 141.40(a)(3) and § 141.40 Appendix A, quality control procedures for both sampling and testing to ensure that the data collected under this regulation are of sufficient quality to meet the requirements of the related regulatory decisions. Thus, today's action specifies the analytical methods and procedures to be used in obtaining these data. The sampling and associated quality control requirements cover time frame, frequency, sample collection and submission, and review and reporting of results. The laboratory analytical quality control requirements address the use of a certified laboratory, sample collection/preservation, analytical methods, method detection limits, calibration, quality control samples, method performance tests, detection confirmation, and reporting. PWSs serving 10,000 or fewer persons must send their Assessment Monitoring samples to laboratories designated by EPA, since the Agency must pay for the reasonable costs of testing.

The purpose of the quality control requirements is to ensure that, since EPA will only be able to obtain results from 3,574 systems (2,774 large systems and a representative sample of 800 systems from 65,600 systems serving 10,000 or fewer persons), the Agency obtains the most reliable data possible. EPA is specifying the use of certain analytical methods that are currently available for monitoring (see Table 3, UCMR (1999) List, column 3). While these methods are routinely used by commercial and public water system laboratories (including some that are currently used for compliance monitoring), they have not been routinely used for the contaminants on the UCMR (1999) List. Note that, as shown in § 141.40(a)(3), Table 1, methods other than those that EPA has developed may be approved for use, but quality control procedures must also be followed, as specified in § 141.40(a)(3), (4) and (5), and Appendix A.

For the compounds included in this regulation, the following summary, Table 1, Status of Analytical Methods for Chemical Contaminants on the UCMR (1999) List, presents a brief overview of methods availability for each chemical contaminant.

TABLE 1.—STATUS OF ANALYTICAL METHODS FOR CHEMICAL CONTAMINANTS ON THE UCMR (1999) LIST

	CAS No.	Analytical methods	Status of availability
UCMR (1999) List 1—Chemical Contaminant			
2,4-dinitrotoluene	121–14–2	EPA 525.2	Method is adequate for monitoring.
2,6-dinitrotoluene	606–20–2	EPA 525.2	Method is adequate for monitoring.
4,4'-DDE	72–55–9	EPA 508 EPA 508.1 EPA 525.2 D5812–96 AOAC 990.06	Methods are adequate for monitoring.
Acetochlor	34256–82–1	In validation process	EPA anticipates that this compound can be added to the scope of EPA Method 525.2.
DCPA di acid degradate	2136–79–0	EPA 515.1 EPA 515.2 D5317–93 AOAC 992.32	No method is available to measure the mono and di acid forms separately. All of the approved methods identify total mono and di acid forms.
DCPA mono acid degradate	887–54–7	EPA 515.1 EPA 515.2 D5317–93 AOAC 992.32	No method is available to measure the mono and di acid forms separately. All of the approved methods identify total mono and di acid forms.
EPTC	759–94–4	EPA 507 EPA 525.2 D5475–93 AOAC 991.07	Methods are adequate for monitoring.
Molinate	2212–67–1	EPA 507 EPA 525.2 D5475–93 AOAC 991.07	Methods are adequate for monitoring.
MTBE	1634–04–4	EPA 524.2 D5790–95 SM6210D SM6200B	Methods are adequate for monitoring.
Nitrobenzene	98–95–3	EPA 524.2 D5790–95 SM6210D SM6200B	Methods are adequate for monitoring.

TABLE 1.—STATUS OF ANALYTICAL METHODS FOR CHEMICAL CONTAMINANTS ON THE UCMR (1999) LIST—Continued

	CAS No.	Analytical methods	Status of availability
Perchlorate	14797–73–0	In validation process	EPA is currently conducting analytical methods development to support the analyses of perchlorate. This new method will be based on the currently available ion chromatography methods, but will include a criteria detailing when a laboratory must perform a sample clean-up procedure to minimize the impact of elevated concentrations of chloride, sulfate or other dissolved solids.
Terbacil	5902–51–2	EPA 507 EPA 525.2 D5475–93 AOAC 991.07	Methods are adequate for monitoring.
UCMR (1999) List 2—Chemical Contaminant			
1,2-diphenylhydrazine	122–66–7	In development	Some methods evaluated but inadequate for monitoring. Priority for analytical method development. EPA anticipates that contaminant will be added to the scope of EPA Method 525.2.
2,4,6-trichlorophenol	88–06–2	In development	EPA Method 552 evaluated but subject to false positives from interferences of the derivitized byproduct of the contaminant. EPA anticipates that contaminant will be included in a new SPE/GC/MS method currently under development.
2,4-dichlorophenol	120–83–2	In development	EPA Method 552 evaluated but subject to quantitative uncertainty due to inadequate derivatization of the contaminant. EPA anticipates that contaminant will be included in a new SPE/GC/MS method currently under development.
2,4-dinitrophenol	51–28–5	In development	Some methods evaluated but inadequate for monitoring. EPA anticipates that contaminant will be included in a new SPE/GC/MS method currently under development.
2-methylphenol	95–48–7	In development	Some methods evaluated but inadequate for monitoring. EPA anticipates that contaminant will be included in a new SPE/GC/MS method currently under development.
Alachlor ESA and degradation byproducts of acetanilide pesticides.		To be determined	EPA is evaluating which specific contaminants will be included within this group of compounds. Analytical methods will be determined for the targeted contaminants.
Diazinon	333–41–5	In development	Diazinon is listed as a contaminant in several EPA and voluntary consensus standard organization methods but it is subject to rapid aqueous degradation. Preservation research currently being conducted to develop a preservation technique that would permit adding this compound to EPA Method 525.2.
Disulfoton	298–04–4	In development	Disulfoton is listed as a contaminant in several EPA and voluntary consensus standard organization methods but it is subject to rapid aqueous degradation. Preservation research currently being conducted to develop a preservation technique that would permit adding this compound to EPA Method 525.2.
Diuron	330–54–1	In development	While this compound is included in the scope of NPS Method 4 (LLE/HLPC/UV) and EPA Method 553 (SPE/HPLC/MS), these methods are not adequate for this monitoring. EPA anticipates that this compound can be included in a new SPE/HPLC/UV method currently being developed.
Fonofos	944–22–9	In development	Fonofos is listed as a contaminant in several EPA and voluntary consensus standard organization methods but it is subject to rapid aqueous degradation. Preservation research is currently being conducted to develop a preservation technique that would permit adding this compound to EPA Method 525.2.
Linuron	330–55–2	In development	While this compound is included in the scope of NPS Method 4 (LLE/HLPC/UV) and EPA Method 553 (SPE/HPLC/MS), these methods are not adequate for this monitoring. EPA anticipates that this compound can be included in a new SPE/HPLC/UV method currently being developed.
Polonium-210 (^{210}Po)	13981–52–7	In development	Radiochemistry laboratory capacity is limited.

TABLE 1.—STATUS OF ANALYTICAL METHODS FOR CHEMICAL CONTAMINANTS ON THE UCMR (1999) LIST—Continued

	CAS No.	Analytical methods	Status of availability
Prometon	1610–18–0	In development	Prometon is listed as a contaminant in several EPA and voluntary consensus standard organization methods but it is subject to rapid aqueous degradation in non-acidified samples and is not readily extracted in acidified samples. Preservation research is currently being conducted to add neutralizing the pH of acidified samples just prior to extraction. This would permit adding this compound to EPA Method 525.2.
RDX	121–82–4	In development	No EPA or consensus methods organization analytical methods for the analysis of RDX in water are currently available.
Terbufos	13071–79–9	In development	Terbufos is listed as a contaminant in several EPA and voluntary consensus standard organization methods but it is subject to rapid aqueous degradation. Preservation research is currently being conducted to develop a preservation technique that would permit adding this compound to EPA Method 525.2.
UCMR (1999) List 3—Chemical Contaminant			
Lead-210 (^{210}Pb)	14255–04–0	In development	Method is time-consuming and expensive. Radiochemistry laboratory capacity is limited.

(ii) Microbiological Analytical Methods

The discussion of data quality for chemical analytical methods also applies to microbiological testing when analytical methods are developed for CCL microorganisms. When microorganisms were proposed for the CCL, EPA recognized that analytical methods were not well developed for the majority of them. Because of the lack of available analytical methods, some of the CCL microorganisms were grouped either into one category where information was available about methodologies indicating a need to further refine them, or another category where more research, including research on detection methods and occurrence, was needed. At the present time, and based on technical peer review and public comment, *Aeromonas* is the only one of the microorganisms for which more occurrence data are needed that also has an analytical method likely to be sufficiently developed for monitoring in time for implementation of the Screening Surveys. Three other microorganisms have methods available, but are in need of further methods development. These microorganisms (Cyanobacteria, Echoviruses, and Coxsackieviruses) may be candidates for the Screening Surveys if methods development proceeds expeditiously (§ 141.40(a)(3), Table 1, List 2), but are currently identified for Pre-Screen Testing (Table 1, List 3). The remaining four microorganisms currently lack satisfactory methods and will be evaluated for Pre-Screen Testing.

Several microorganisms on the CCL are actually groups of microorganism taxa. In some cases, the taxa have so many members that, given the limited resources available for UCMR monitoring, EPA may have to prioritize which strains, species, or serotypes are the most important to consider and target those for monitoring or further study. Decisions will have to be made on the basis of health risk, disinfection resistance, occurrence in water, and other factors. To address the need to prioritize which microorganisms should be targeted for monitoring, EPA's Office of Research and Development is assisting the Office of Ground Water and Drinking Water in establishing a research program for health effects, treatment, and analytical methods.

TABLE 2.—STATUS OF ANALYTICAL METHODS FOR MICROBIOLOGICAL CONTAMINANTS ON THE UCMR (1999) LIST

	Availability of analytical method	Status of availability
List 2—Microbiological Contaminant		
Aeromonas	Analytical method likely to be available for monitoring.	Current modification and evaluation of a published membrane filtration method (Havelaar et al., 1987) indicates that this method will be suitable for the monitoring program.
List 3—Microbiological Contaminant		
Cyanobacteria (blue-green algae, other freshwater algae and their toxins).	Methods available but not standardized.	Methods are available for counting cyanobacteria but new, standardized methods are needed for direct counts of targeted species with filtration methods or a counting chamber. Standardized analytical methods are also needed to detect the more important cyanobacterial toxins.
Echoviruses	Methods available but not standardized.	Echoviruses can be cultured on BGM cells and detected by the ICR method but require supplemental methods such as serological typing to distinguish echoviruses from other viruses. Cost of cell culture assays plus serotyping can be high. RT/PCR methods are subject to interferences and do not demonstrate infectivity. Combined cell culture and PCR, which demonstrates infectivity, may be considered.

TABLE 2.—STATUS OF ANALYTICAL METHODS FOR MICROBIOLOGICAL CONTAMINANTS ON THE UCMR (1999) LIST—Continued

	Availability of analytical method	Status of availability
Coxsackieviruses	Methods available but not standardized.	Group B coxsackieviruses are easy to grow in tissue culture but group A coxsackievirus detection in cell culture is variable. Culturable coxsackieviruses can be detected with the ICR method but serological typing is needed to distinguish coxsackieviruses from other viruses. RT/PCR methods are subject to interferences and do not demonstrate infectivity. New, standardized methods are needed. Combined cell culture and PCR methods may be considered.
Helicobacter pylori	No suitable method currently available.	*Helicobacter pylori* is difficult to cultivate because of its slow growth rate and the need for a low oxygen environment. No selective medium exists that will discriminate H. pylori from background bacteria. A culture-based method that demonstrates viability is preferred. Methods are needed for selective growth and identification. IMS has been used to concentrate *Helicobacter pylori*. Methods using PCR alone have been used but have not been validated by EPA. In general, PCR methods are not preferred due to interferences and their inability to demonstrate viability. A combined cultural and molecular method may be considered.
Microsporidia	No suitable method currently available.	No methods are available for the monitoring of the two species of human microsporidia which may have a waterborne route of transmission [*Enterocytozoon bienuesi* and *Encephalitozoon* (formerly *Septata*) *intestinalis*]. Spores could possibly be detected by methods similar to those being developed for *Cryptosporidium parvum*. Potential methods may utilize water filtration, clean-up with IMS, and detection using microscopy with either fluorescent antibody or gene probe procedures. Provided that procedures are validated by EPA, reverse-transcriptase (RT)—PCR techniques may be considered for monitoring, although PCR methods in general are not preferred at this time due to interferences and their inability to demonstrate viability. Due to the small size of microsporidia, problems could be encountered during filtration.
Adenoviruses	No suitable method currently available.	Adenoviruses serotypes 1 to 39 and 42 to 47 can be grown in tissue culture but enteric adenoviruses 40 to 41 are difficult to grow. Several selective tissue culture methods and detection methods have been reported. A selective, standardized method is needed for monitoring. PCR methods are not preferred, as they are subject to interferences and do not demonstrate infectivity. A combined cell culture and PCR method may be considered.
Caliciviruses	No suitable method currently available.	No tissue culture methods exist for the two genogroups of caliciviruses on the CCL (the Norwalk-like and the Snow Mountain-like agents). No sensitive or fully developed detection methods exist. PCR methods are not preferred, as they are subject to interferences and do not demonstrate infectivity. A combined cell culture and PCR method may be considered if a suitable cell line is found.

2. List of Contaminants To Be Monitored

(a) Final UCMR (1999) List

Section 141.40 (a)(3) Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, presents EPA's list of unregulated contaminants for monitoring under Section 1445(a)(2)(B)(i) of the 1996 Amendments for the first five-year listing cycle. The monitoring program for these contaminants is a three-tiered approach based on the availability of information about each contaminant and the availability of analytical methods for each contaminant. This approach is described in Section C., Type of Monitoring Required of Public Water Systems Based on Listing Group. The final monitoring program divides the listed unregulated contaminants into three lists: List 1, for which Assessment Monitoring will be required, List 2, designated for the Screening Surveys; and List 3, designated for Pre-Screen Testing. Today's final regulation only requires Assessment Monitoring for UCMR (1999) List 1 contaminants beginning on January 1, 2001, with the exceptions of perchlorate and acetochlor, for which analytical methods have not yet been approved (but are planned to have monitoring begin on that date, also, after rulemaking to specify their analytical methods). The monitoring for contaminants on Lists 2 and 3 will only be required after EPA promulgates further rules.

Technical peer review and public comments strongly supported the three-tier approach of the UCMR program. As a result, EPA requires in today's action Assessment Monitoring for the contaminants on UCMR (1999) List 1, because analytical methods for these contaminants currently exist or will shortly be validated. EPA will shortly publish a request for public comment on a revision to this final rule to implement the analytical methods and other sampling requirements for perchlorate and acetochlor. Also, by future rulemaking, EPA plans to implement the Screening Survey (List 2) monitoring in groups of contaminants, rather than one contaminant at a time, to minimize sampling and testing costs since some of the contaminants may be tested by the

same method. EPA intends to take a similar approach with the contaminants on List 3, the Pre-Screen Testing. EPA plans to require, through future rulemaking, Pre-Screen Testing for contaminants for which EPA determines that new analytical methods can measure their existence in locations where they are most likely to be found. All analytical methods for contaminants on Lists 2 and 3 would be peer reviewed, following EPA's policy for peer review, before the Agency proposes regulations which would require public water systems to monitor for them.

In § 141.40 (a)(3), Table 1, UCMR (1999) List 1 contaminants, for Assessment Monitoring, are chemical contaminants for which analytical methods capable of generating the quantity and quality of data required under the UCMR are currently available, or expected to be available shortly after today's final rule. Monitoring for these contaminants is required under today's final UCMR, with the exceptions of perchlorate and acetochlor, as noted.

UCMR (1999) List 2 contaminants (14 organic chemicals, one radiochemical and one microorganism), for the Screening Surveys, are those for which EPA is currently refining analytical methods. Development of these methods should be sufficient for Screening Surveys to be conducted in the first three years of the listing cycle, but may occur in the later years of the cycle. These contaminants are characterized in today's final rule at § 141.40(a)(3), Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, List 2.

UCMR (1999) List 3 contaminants (seven microbiological contaminants or contaminant groups and one inorganic chemical), for Pre-Screen Testing, are those for which EPA has begun or shortly will begin analytical methods development, but completion of those efforts is not expected prior to the Assessment Monitoring required under implementation of this regulation. Instead, these contaminants will be tested for in Pre-Screen Testing. These contaminants are listed in today's final rule at § 141.40(a)(3) as Table 1, Unregulated Contaminant Monitoring List, List 3.

Tables 3 and 4, in IV.A.1.(c), Analytical Methods Applicable to the UCMR (1999) List, present a summary of the status of the methods for all the contaminants on this list.

EPA believes that this three-tiered approach to the UCMR, which was recommended by stakeholders, reflects a balance between the implementability of current analytical methods and the need to obtain data in time frames that are useful for responding to concerns about the contaminants identified.

(b) Number of Contaminants on the UCMR (1999) List

Thirty-six contaminants are on today's final UCMR (1999) List. SDWA Section 1445 (a)(2)(B)(i) states that in August 1999 and every five years thereafter ''the Administrator shall issue a list of * * * not more than 30 unregulated contaminants to be monitored by public water systems and to be included in the national drinking water occurrence data base * * *'' EPA interprets this to mean that the UCMR list may contain more than 30 contaminants, as long as monitoring is not required for more than 30 contaminants during a five-year listing cycle. Public comments were split on whether the monitoring list should have more than 30 contaminants. EPA believes that maintaining a monitoring list with more than 30 contaminants, while requiring monitoring for no more than 30, is responsive to public concerns about contaminants in drinking water. This interpretation and approach also supports EPA's efforts to respond to and encourage analytical methods development for emerging contaminants.

Any PWS may voluntarily submit data to EPA, including data for contaminants that a PWS may monitor that are on the UCMR (1999) List of 36 contaminants, but that are not on the final list of 30 contaminants actually required for UCMR monitoring. EPA is preparing a guidance document specifying the procedures for future voluntary submission of such data to the National Drinking Water Contaminant Occurrence Database (NCOD).

B. Public Water Systems Subject to the UCMR

The monitoring in this final rule focuses ultimately on determination of, on a national basis, the occurrence or likely occurrence of contaminants in drinking water delivered by community water systems (CWS) and non-transient non-community water systems (NTNCWS). For regulatory purposes, public water systems are categorized as ''community water systems,'' or ''non-community water systems.'' Community water systems (CWSs) are specifically defined as ''public water systems which serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents.'' (40 CFR 141.2) A ''non-community water system'' means any other public water system. Non-community water systems include nontranisent non-community water systems (NTNCWSs) and transient non-community water systems. Non-community water systems are available to serve the public, but are not used on a year-round basis in most cases. Non-transient systems regularly serve at least 25 of the same persons over six months per year (e.g., schools). Transient systems do not regularly serve at least 25 of the same persons over six months per year. Additionally, some community water systems purchase all or part of their water supply from other water systems. Purchased water systems may be at the end of a distribution system from the water system selling the water.

One of the factors considered in establishing the UCMR program is the number of persons served by a system. With respect to size, about 2,774 large systems (each serving more than 10,000 persons) provide drinking water to about 80 percent of the U.S. population served by public water systems. Under today's final regulation, all large systems will be required to monitor the unregulated contaminants specified in § 141.40(a)(3), List 1 of Table 1, UCMR (1999) List, with the exception of perchlorate and acetochlor for which analytical methods have not been promulgated. In response to public comment on purchased water systems representing the end of a distribution system, purchased water systems are also included in this monitoring requirement for microbiological contaminants that occur primarily in distribution systems with maximum residence times or low disinfectant residuals which may allow microorganisms that have human health effects to survive and reproduce.

Section 1445(a)(2)(A) requires that the UCMR ensure that only a representative sample of systems serving 10,000 or fewer persons (small systems) monitor for unregulated contaminants. Small community water systems and small non-transient, non-community water systems total 65,636 systems. From this total number of small systems, EPA will select a national representative sample of 800 small systems. EPA is excluding transient non-community systems from UCMR requirements. The variation in the 97,000 transient systems would be difficult to reflect in a national representative sample and would be very costly to monitor. Furthermore, projecting contaminant exposure results from such systems would be complex and inconclusive because of the transient nature of the population that uses them. The results from the very small community and non-transient non-community systems (NTNCWS) can be extrapolated to the transient non-community systems. Public comments

supported not including these systems in the representative sample. One commenter suggested that transient systems be the subject of a special survey since they may be a pathway of exposure for a specific segment of the population. At this time, EPA is not planning any special surveys of transient systems because they are such a large and diffuse category and it is difficult to compile and evaluate population exposure information for this category of water systems.

EPA will pay for the reasonable costs of monitoring by the small systems selected for the representative sample, as long as the systems are part of a State Monitoring Plan. The EPA will select systems to monitor through the use of a random number generator according to a national representative sample selection plan developed primarily on the basis of population served by PWSs in each State. This detailed selection plan is necessary to ensure that the sample is statistically valid and representative of all small water systems nationally. This plan is also necessary because EPA typically has the least information about these systems and needs a consistent base of data for regulation development. EPA will use a national sample of approximately 800 systems serving 10,000 or fewer persons which the EPA will statistically draw from all small CWSs and NTNCWSs nationally. Section F, ''Representative Sample of Systems Serving 10,000 or Fewer Persons,'' provides the details of the sample selection plan, including the sample size. The number of systems selected within each size category of systems will be based on the proportion of population served by that size category. System selection will be further allocated across water source type and distributed across all states.

The State-based component of this national representative sample, called a State Monitoring Plan (or State Plan), will include the list of systems statistically selected for UCMR monitoring. Other state responsibilities will be defined in the Memorandum of Agreement issued between the States and EPA. The State can review, and modify if necessary, the list of systems in the State Plan. The resulting State Plans will then be part of a national sample framework, providing the representative national sample requisite to drawing national conclusions for contaminant exposure.

To provide a more capable understanding of contaminants and conditions affecting small systems, and to provide additional quality assurance, EPA will randomly select up to 30 small public water systems from the systems in State Monitoring Plans as ''Index'' systems. Index systems must monitor every year during the five year UCMR listing cycle. These systems will also be required to report information on system operating conditions (such as water source, pumping rates, and environmental setting). This information will assist EPA in more fully evaluating small system operations and future regulations of small systems. EPA will conduct the sampling and testing for Index systems. At the time of sampling, EPA will also gather other system information to characterize the environmental setting affecting the system including precipitation, land and water resource use, and environmental factors (such as soil type and geology).

Also, up to 150 additional small systems might be selected for the Pre-Screen Testing. The systems for the Pre-Screen Testing will be selected on the basis of their representativeness of systems most vulnerable to the particular UCMR (1999) List 3 contaminants for which methods have been refined. The statistical selection of the 800 systems for the national representative sample may not include the systems determined to be most vulnerable to these contaminants, hence; the States and EPA may need to select additional systems for this targeted testing.

External expert peer review and public comments supported the statistical approach described to select small systems for the national representative sample and State Monitoring Plans.

C. Type of Monitoring Required of Public Water Systems Based on Listing Group

At the UCMR Stakeholders Meeting on June 3–4, 1998, a diverse group of stakeholders suggested that the UCMR Program be developed through a progression of monitoring levels based on contaminant group characteristics. These characteristics reflect current information about both the occurrence of and method availability for the contaminants. Occurrence information and methods availability will determine which phase, or tier, of monitoring the contaminants will be placed. Both EPA and stakeholders are also concerned about contaminants that may be ''emerging'' as contaminants of concern. These emerging contaminants have not been monitored before, but have the potential to be found near or in drinking water supplies or recently have been identified as potential health problems. It is not likely that there exists approved EPA analytical methods for the ''emerging contaminants of concern''. Typically, ''research'' analytical methods are used to detect such emerging contaminants and may be expensive. EPA will have to either develop an approved method for inclusion in a regulatory approach, or perhaps substitute a regulatory approach with a study using a single laboratory and a ''research'' analytical method. The resources needed to develop an approved analytical method will face competing resource demands for other contaminants on the CCL that also require analytical method development. In recognition of these considerations, as described above, the final rule incorporates an approach with three monitoring levels, or tiers, referred to as ''Assessment Monitoring,'' ''Screening Survey,'' and ''Pre-Screen Testing''.

1. Assessment Monitoring

The first type of monitoring in the three-tiered monitoring program of today's rule pertains to the group of contaminants for which analytical methods are currently available and are specified in § 141.40(a)(3), Table 1, UCMR (1999) List 1, Assessment Monitoring Importantly, these contaminants are ones for which initial data for PWSs indicate that the contaminants occur in at least two States or ten public water systems and should be monitored to assess national occurrence through the UCMR. Based on today's rule, all contaminants in § 141.40(a)(3), Table 1, List 1 must be monitored in the Assessment Monitoring tier of the UCMR Program, except perchlorate and acetochlor, for which analytical methods are soon to be finalized.

In § 141.40, EPA indicates that each system must conduct UCMR ''Assessment Monitoring'' of List 1 contaminants for a twelve-month period in the first three years (i.e., 2001 through 2003) of a five-year UCMR contaminant listing cycle (i.e., 2001 through 2005). Large systems must complete this monitoring in any twelve-month period within the years 2001 to 2003. Small systems in State Monitoring Plans must complete the monitoring according to the scheduled monitoring identified in those plans within the period of 2001 to 2003. Section F, ''Representative Sample of Systems Serving 10,000 or fewer persons,'' describes in detail the selection of the subset of small systems required to monitor. The State could specify in the State Monitoring Plans a schedule that would correlate with compliance monitoring. This arrangement should enable systems to complete UCMR

sampling coincident with their compliance monitoring for regulated contaminants during one of the years when compliance monitoring is required. However, EPA recognizes that some large systems may not be required to monitor for any regulated contaminants during the five-year UCMR listing cycle. In that case, such large systems could monitor for the unregulated contaminants during any twelve-month period within the three years they choose. This approach, as originally proposed, is responsive to public comments that UCMR monitoring be able to be conducted in conjunction with compliance monitoring.

EPA is requiring that surface water systems monitor for four consecutive quarters in the designated, or, in the case of large systems, selected, monitoring year, and that ground water systems monitor two times approximately five to seven months apart in their monitoring year. Under Assessment Monitoring, systems serving more than 10,000 persons must conduct and pay for their own sample collection and testing. Small systems included in State Monitoring Plans must collect the samples with EPA-supplied equipment and send the samples to EPA-specified laboratories. EPA will pay for the testing and reporting. Although the laboratory may report the information directly to EPA and provide a copy to the State, the system still has final reporting responsibility to ensure that results are reported to EPA and copied to the State. Frequency and location of monitoring are discussed in section D, ''Monitoring Requirements under the Final UCMR.''

2. Screening Surveys

The contaminants that EPA is considering for the Screening Survey are listed in § 141.40(a)(3), Table 1, List 2. These contaminants are those for which analytical methods are under development and for which EPA has less occurrence data than for the contaminants on List 1. The purpose of the Screening Survey is to analyze for contaminants where the use of newly developed, non-routine analytical methods are required. To do this and still maintain adequate quality of the occurrence data, EPA will use only a select, controlled group of laboratories. In addition, the Screening Survey approach might allow EPA to maximize scientifically-defensible occurrence data for emerging contaminants of concern more quickly than could be obtained through a more standard unregulated contaminant monitoring effort. The Screening Survey could, for example, be useful where questions concerning whether a contaminant of concern is in fact occurring in drinking water and the range of concentration of that occurrence. The Screening Survey is also intended to allow EPA to screen contaminants to see if they occur at high frequencies or concentrations that justify inclusion in future unregulated contaminant Assessment Monitoring or at sufficiently low frequencies that do not require further monitoring, but allow the Agency to evaluate standard development.

The contaminants in UCMR (1999) List 2 will be monitored by a smaller, statistically selected sample from all (large and small) community and non-transient non-community water systems (about 300 systems total). These systems will be selected through a random number generator. Systems will not have to initiate Screening Surveys until after EPA promulgates requirements for Screening Surveys. The sample size needed for estimating frequencies of contaminant occurrence are smaller if the actual occurrence frequencies are close to 0 or to 100 percent. When a contaminant is consistently present or consistently absent it requires fewer samples to determine its frequency with adequate statistical confidence than if it occurs about half the time. Only 300 PWSs are needed to determine if a contaminant is present 5 percent of the time or less frequently, at a 99 percent confidence level and with a 3 percent margin of error. (The same criteria require 1,844 samples when the frequency could be any number.) If the contaminant occurrence findings are above the thresholds established for the Screening Survey, EPA will include the contaminant in the next Assessment Monitoring round (projected to begin in 2006) of the UCMR Program. The statistical threshold for positive results from this monitoring to determine if further monitoring is warranted might be 1 to 2 percent of systems with detections. If the contaminant occurrence were under the threshold, then no further testing would be required, and the contaminant may be removed from the list in a future UCM rulemaking. EPA requested public comment on whether the statistical threshold of 1 to 2 percent of systems is adequate to make a determination that further Assessment Monitoring should be conducted to determine the extent of contaminant occurrence, and, if not, what percent should be used as the threshold for such a determination. One commenter suggested that EPA should use a threshold of 3 to 5 percent, but did not provide any rationale. EPA believes that 1 to 2 percent is consistent with the approach that this monitoring is a Screening Survey to determine whether the contaminant(s) are occurring in any public water system. One to 2 percent occurrence is equal to 3 to 6 systems for the sample, but statistically this can be extrapolated to 600 to 1,200 systems out of all small systems that may have an occurrence of the contaminants. For a sample size of 300, occurrence of a contaminant on the monitoring list in any system would indicate that the contaminant occurs at a frequency greater than 0 (zero). Therefore, EPA should give further consideration to the occurrence and concentration of such a contaminant and may evaluate the extent of its occurrence nationally. EPA considers this extent of occurrence to be significant and to warrant more extensive monitoring, perhaps even through Assessment Monitoring. Another commenter indicated that EPA should evaluate other factors and not just the extent of occurrence before deciding to regulate a contaminant. EPA agrees with this comment and will continue to evaluate other factors.

The anticipated analytical methods that might be used for Screening Surveys are identified in § 141.40(a)(3), Table 1, List 2, as ''Analytical Methods.'' These methods are being refined for the particular contaminants on List 2 and are not expected to be ready for use in an Assessment Monitoring program. Therefore, as analytical methods are developed for groups of contaminants on List 2, EPA will propose a rule modification for public comment and will promulgate analytical methods, minimum reporting levels and the location and timeframe for sampling for each contaminant.

Additionally, EPA requested public comment on two potential outcomes from the Screening Survey: (1) if the contaminant is observed at very few or no PWSs (i.e., less than the threshold of 1 to 2 percent of systems), then the contaminant may be dropped from the UCMR (1999) List 2 and no further monitoring for it will occur; and, (2) if the contaminant is observed extensively (i.e., in a higher percentage of PWSs, such as 5 to 10 percent) and EPA has health effects data for the contaminant that indicate a significant concern, then that specific contaminant may move directly to the regulation development stage. In these cases, there may be no Assessment Monitoring tier of monitoring activity to provide additional occurrence data for that contaminant. One commenter expressed concern that EPA would move directly to regulation development after obtaining results from Screening Surveys for a contaminant and stated

that EPA should move the contaminant up to Assessment Monitoring before taking any action. EPA believes that an occurrence of a contaminant in 5 or 10 percent of systems, for example, in the screening survey may be sufficient to determine whether or not to initiate regulation development. EPA may decide that it needs more information, in which case, EPA could move the contaminant to Assessment Monitoring (List 1) for more extensive monitoring to inform the regulatory process, but this may not always be necessary.

With respect to funding the Screening Survey, EPA will pay for the testing and reporting (as described in Preamble section V.G., Reporting of Monitoring Results) for systems serving 10,000 or fewer persons. Systems serving 10,000 or fewer persons will be responsible for sample collection and preparing the samples for shipment. EPA will pay for the shipment of these samples to an EPA-designated laboratory for testing and for reporting of monitoring results to EPA, with a copy to the State.

For large systems serving more than 10,000 persons, EPA requested public comment on whether it should set performance standards and allow systems to conduct their own laboratory analyses in compliance with the standards, or should approve a limited but sufficient number of laboratories to do lab analyses for large systems, providing for quality control across a manageable number of laboratories while allowing competitive pricing of services. Most commenters, including water system operators, favored EPA approval of a limited number of laboratories, but noted that a sufficient number of laboratories were needed so that competitive pricing would be available.

EPA expects the Screening Surveys will occur one or two times during the five-year listing cycle of 2001 through 2005. EPA expects that this Screening Survey monitoring will occur for groups of contaminants, rather than for one contaminant at a time, depending on when the different methods are promulgated and the timing of their promulgation. Systems selected for the Screening Surveys will monitor at the same frequency as for contaminants under Assessment Monitoring. Should approval and implementation of the analytical method for a particular contaminant become delayed, the contaminant might be moved into the category of Pre-Screen Testing, described next.

3. Pre-Screen Testing

The third tier of the final monitoring program is ''Pre-Screen Testing'', which will be conducted for contaminants with analytical methods that are in an early stage of development and at systems that are determined to be most vulnerable to the occurrence of contaminants on the Pre-Screen Testing list. Pre-Screen Testing means sampling, testing, and reporting of the listed contaminants that have newly emerged as drinking water concerns and, in most cases, for which methods are in an early stage of development. Pre-Screen Testing will be performed to determine whether a listed contaminant occurs in sufficient frequency in the most vulnerable systems or sampling locations to warrant its being included in future Assessment Monitoring or Screening Surveys. Pre-Screen Testing will only be required after additional rulemaking.

EPA will select a limited number of systems (up to 200) to conduct Pre-Screen Testing, possibly using a random number generator, selected from up to 25 of the most vulnerable systems identified by each State, or by EPA if a State decides not to participate in the Pre-Screen Testing system selection process. Up to 200 systems, a smaller sample size than under the Screening Survey or Assessment Monitoring, are considered sufficient for this type of monitoring because monitoring will occur at systems determined to be vulnerable to occurrence of the contaminants, based on the characteristics of the contaminants, system operation, climatic conditions, and land and water resource use. This monitoring is to determine whether the contaminant can be found in any public water system under most likely occurrence conditions specific to the contaminant. This tier of monitoring is not designed to determine the extent of occurrence. A portion (e.g., 100 to 150) of these 200 systems may be a different subset of small systems serving 10,000 or fewer persons than those selected for the national representative sample. The reason for this different subset is that States should identify the systems that are representative of the most vulnerable conditions for the contaminants specified for Pre-Screen Testing. These most vulnerable systems may not be those conducting Assessment Monitoring or the Screening Survey. It is possible, though, that some overlap of systems doing Assessment Monitoring and those selected for Pre-Screen Testing could occur.

Under Pre-Screen Testing, EPA will designate or approve a laboratory or laboratories to conduct sample analysis. The reason for this testing approach is that the analytical methods expected to be used will be emerging from research development, and most laboratories will not have any experience with them. For these laboratories to utilize the new methods could involve extensive investment in equipment and training. Rather than requiring this investment for contaminants which have uncertain occurrence in public water systems, EPA will develop and promulgate appropriate methods. EPA will also require that these methods be used by designated or approved laboratories. Pre-Screen Testing analysis is conducted at systems most likely to have the contaminants to determine whether further action is warranted and additional method development is needed.

Under this approach, once EPA has developed methods and promulgated the rule to test for List 3 contaminants, it will request States to identify at least 5 and not more than 25 systems (based on the population served by PWSs in each State) most vulnerable to the listed contaminants. States will select these systems from all community and non-transient non-community systems of all sizes. Selection criteria for these systems include States' determination of systems most vulnerable to the specified contaminants and numbers of systems per State based on the population served in each size category of system. The States will send the list of systems, any modification of their State Monitoring Plans, and the reasons for their list and modifications (considering the characteristics of the contaminants, precipitation, system operation, and environmental conditions) to the EPA. EPA will select up to 200 PWSs nationwide, from the pool of State-identified vulnerable systems, that must submit samples of the specified contaminants. Some small systems selected may not be part of the national representative sample of 800 small systems selected for Assessment Monitoring. Hence, some small systems may only be required to sample for Pre-Screen Testing. States or EPA will provide instructions to the systems for the necessary sampling and subsequent shipping to the EPA laboratory. At this time, EPA believes that the contaminants for which Pre-Screen Testing will likely be required are those listed in the final rule at § 141.40(a)(3) Table 1, List 3. Sampling and testing done for Pre-Screen Testing will most likely be required in the later years of the five-year UCMR listing cycle. This approach will assist EPA in refining the methods for these contaminants. If EPA finds any substantial frequency of occurrence of Pre-Screen Testing contaminants, the contaminants could

become part of either the Screening Survey or part of Assessment Monitoring in future UCMR lists. Since the methods for these contaminants will have to be applied under highly controlled analytical conditions, EPA will pay for the shipping and analyses of these samples for small systems selected to participate. Large systems will pay for the shipping and testing of samples at EPA approved laboratories.

Public comments requested that EPA provide guidance on the selection of ''most vulnerable'' systems and on reporting requirements for Pre-Screen Testing. EPA plans to provide this guidance during the years 2001 and 2002, and obtain public comment before the guidance is final.

D. Monitoring Requirements Under the Final UCMR

1. Monitoring Frequency

(a) Systems Serving More Than 10,000 Persons

(i) Chemical Contaminants.

The number of persons served affects exposure to contaminants and resources necessary to monitor. The final UCMR program requires large systems serving more than 10,000 persons to monitor at each entry point to the distribution system, or other representative compliance monitoring location specified by the State, whether or not the system applies treatment. If a system applies treatment, then it must monitor after treatment. In response to public comment, EPA modified the rule to allow alternative sampling points to be used: sampling points identified by the State for compliance monitoring under 40 CFR 141.24(f)(1), (2), and (3), and/or source (raw) water sampling points, if the State uses source water monitoring as a more stringent monitoring requirement. If monitoring at source (raw) water sampling points indicates detection of any of the contaminants on the monitoring list, then the system in most cases will be required to shift its unregulated contaminant monitoring to the entry point to the distribution system. These flexibilities in the sampling location should enable systems and States to coordinate compliance and unregulated contaminant monitoring more extensively.

The law requires EPA to consider the source of water relative to unregulated contaminant monitoring requirements (SDWA Section 1445(a)(2)(A)). Over the twelve-month period of monitoring, the regulation requires that systems sample from all entry points to the distribution system, or other sampling points specified, representing all principal, non-emergency sources of water used over the monitoring period. Surface water-supplied systems will monitor each of these points every three months for a twelve-month period and ground water-supplied systems will monitor each of these points two times five to seven months apart within a twelve-month period. Today's final monitoring frequency for surface water systems is the same as in the previous program. For ground water systems, the two sampling events must be approximately six months apart, increasing the frequency from one sample in five years under the previous program to two. The reasons for this increase are that while ground water typically moves slowly, one sample is insufficient to characterize water quality at any particular location and will not provide evidence of any changes over a longer period of time. Furthermore, some ground water environments transmit water more rapidly, potentially resulting in changes in water quality over shorter timeframes. From a statistical standpoint, one sample is not representative and will not allow the data to be used for exposure assessment which uses an average annual value. This frequency applied to the average of 6.2 entry points to the distribution system for systems serving more than 10,000 persons will provide sufficient data for an adequate statistical analysis of the varied conditions in which these systems are located.

One of the monitoring events for both surface water and ground water systems must occur at the most vulnerable time of year for the PWS. The rationale for this approach is that it provides data representing potential variation in contaminant concentration over the course of a year. This potential variation in concentration is necessary to evaluate exposure related to contaminant occurrence. Some systems perform compliance monitoring on a quarterly basis and can collect UCMR samples coincident with their compliance samples, and therefore provide data on the range of variation. Other systems may only conduct compliance monitoring once every third year and will therefore have to collect additional samples under the UCMR. While one UCMR sample could be collected coincident with this compliance sample, EPA is requiring for ground water-supplied systems to take a second sample five to seven months later. This requirement will provide the necessary data on seasonal variation over a year to allow consistent exposure assessments to be done with a range of concentrations. Stakeholders supported this option. EPA originally proposed that the second sample be collected exactly six months later. State commenters indicated a need to provide flexibility to accommodate changes in monitoring schedules. Therefore, EPA modified the regulation to allow monitoring five to seven months before or after the initial vulnerable period sampling event.

(ii) Microbiological Contaminants

For microbiological contaminants, the sampling frequency will be two times within one year, with samples collected each time at two different locations after treatment in the distribution system: a site representative of water in the distribution system received by the general population that the system serves and a site in the distribution system representing the maximum residence time or lowest disinfectant residual, depending on the contaminant. The frequency should capture the most vulnerable time as well as a time five to seven months later to provide an average exposure. Furthermore, precipitation patterns may be a major factor in contaminant occurrence. Thus, frequency of sampling should be tailored to the most vulnerable times because increased seasonal precipitation may carry these contaminants at higher concentrations than other times during the year.

(b) Systems Serving 10,000 or Fewer Persons

The final rule states that approximately one third of the small systems (serving 10,000 or fewer persons) selected through the representative sample, be sampled each year over a three-year period at the frequencies indicated in Section D, ''Monitoring Requirements Under the Final UCMR'' (1)(a) above. This allows a relatively even submission of samples to be managed and tested by the EPA laboratory. EPA will pay for the reasonable costs of monitoring (i.e., containers, shipping, testing and reporting) for this representative sample of systems, including Assessment Monitoring, Screening Survey, and Pre-Screen Testing, and will conduct the analyses at its designated laboratories. EPA, therefore will need to be able to manage the number of samples being received at any time to closely correspond to the analytical capacity of its laboratories. Some public commenters suggested that sampling for microbiological contaminants not occur at the maximum residence time in the distribution system, but at the point of lowest disinfectant residual, since the

monitoring of concern is for effectiveness of treatment and booster disinfection stations that may be in use in long distribution lines. In response, EPA added another sampling point at the ''lowest disinfectant residual'' in the distribution system. However, EPA maintained the original sampling point location of ''maximum residence time'' because, given potential chemical degradation over long periods of time in a distribution system, such as for disinfection byproducts, the location of maximum residence time can often be the location of lowest disinfectant residual and, therefore, highest likelihood of microbiological contaminants.

Public comments also addressed the flexibility in monitoring schedules to allow for unforeseen events or factors in field sampling. Specifically, States asked that system sampling schedules allow for sampling over a month within a quarter, rather than exactly three months later. EPA modified the final rule to allow sampling by small and large surface water systems to occur within the same month in each quarter and for small and large ground water systems, to occur any time five to seven months before or after the initially selected month within the vulnerable time.

2. Monitoring Time for Vulnerable Period

Water quality studies and monitoring throughout the United States have clearly shown that contaminant occurrence and/or concentration vary over time, both seasonally as well as from year to year. The seasonality of occurrence, or period of peak concentration of contaminants, commonly varies with seasonal changes in the hydrologic cycle in relation to the source of contaminants and their fate and transport characteristics. Particularly for land-applied or land-disposed contaminants, the increased flux of water mobilizes the contaminants and moves them into surface or ground water flow systems. For the most vulnerable of water systems, such as surface waters, unconfined shallow ground water and karst flow systems, for example, higher levels of contaminant concentrations typically occur during annual runoff and recharge periods. For much of the United States, east of the Rocky Mountains, many studies have shown that the season of greatest vulnerability for contaminant occurrence is the late-spring, early-summer runoff-recharge period, particularly for contaminants such as pesticides and nitrate (e.g., Larson et al., 1997; Barbash and Resek, 1996; Hallberg, 1989a,b). For deeper, more confined ground water systems, defining vulnerable periods is much more difficult. The exact flow path and time of travel are much greater and more complex and are dependent upon many factors unique to a particular well and aquifer setting (e.g., Hallberg and Keeney, 1993). There is no generality that can be applied to these latter settings.

Because occurrence may vary seasonally, it is important to try to capture these vulnerable periods in a one-time survey of contaminant occurrence such as the UCMR. Statistical studies of sampling strategies in surface water (e.g., Battaglin and Hay, 1996) have shown that incorporating sampling during spring and early summer runoff periods provides a more accurate representation of annual occurrence than random quarterly sampling (that can avoid these months). Ground water studies (e.g., Pinsky et al., 1997) suggest that the more vulnerable ground water settings also show peaks during these periods. The default vulnerable period for sampling for the UCMR has been designated to coincide with this period of peak vulnerability for much of the United States: one sample must be collected during May, June, or July, unless the State has better information to designate another period. Also, for surface waters, three additional samples will be collected throughout the year, and for ground water systems, one additional sample will be collected five to seven months before or after the vulnerable time. This additional sampling will also capture the winter recharge and runoff period that may be more vulnerable in the western coastal regions or warmer southern climates for some contaminants. In the case of some deeper ground water systems, States or systems may have additional knowledge of seasonal vulnerability patterns, in which case the State can designate an alternative period for sampling.

Public comments generally supported monitoring in a vulnerable time, but desired flexibility in establishing the time and frequency. The rule already provided flexibility in selecting a time within the May to July period for a sampling event. However, because the statistical approach requires consistency, today's rule enables a State to determine the alternate vulnerable time for monitoring, rather than each system using its own criteria for choosing a vulnerable time. With respect to frequency, the statistical approach requires that systems monitor with the same frequency so that a national frequency distribution can be developed. This precludes the State or a system from establishing its own monitoring frequency.

Two commenters indicated that pumping rate and not hydrologic factors accounted for variations in contaminant concentration, with higher pumping rates coinciding with higher concentrations. No specific data were offered in support of these comments. EPA believes that many factors may account for higher contaminant concentrations during certain seasons. While pumping rate may be a factor, hydrologic factors are documented as having a significant influence in concentrations of pesticides and other contaminants, as noted previously. A State may use pumping rates as a basis for designating an alternative vulnerable time if determined appropriate.

3. Monitoring Location

In § 141.40(a)(3), today's action identifies entry points to the distribution system (EPTDS) after any treatment, or the sampling points specified by the State for compliance monitoring under 40 CFR 141.24(f)(1), (2), and (3), representative of each principal, non-emergency water source in use over the twelve-month period of Assessment Monitoring, as the sampling locations for List 1 contaminants. Also, two sites in the distribution system (a site representative of water in the distribution system received by the general population that the system serves and a site in the distribution system representing the maximum residence time or the lowest disinfectant residual) are designated for microbiological or distribution system contaminants. Sampling at entry points to the distribution system after any treatment follows the existing regulatory approach for currently regulated contaminants and provides data for exposure assessment.

(a) Chemical Contaminants

The chemicals in this final rule (UCMR (1999) List 1) are all compounds that can enter a public water supply from the external environment (in contrast to disinfection byproducts, for example). The monitoring location is at the entry point to the distribution system after treatment, representative of each principal non-emergency source of water in use over the twelve-month monitoring period, which will ensure a nationally consistent data set and will provide consistent data for exposure assessment. In response to State and water system commenters, EPA also provided flexibility in the final rule to allow sampling of source (raw) water sampling points. However, if a listed contaminant is detected through source

water sampling and testing, then the monitoring location must be shifted to the entry point to the distribution system (unless there is no treatment) and follow the monitoring frequency specified in the rule for the contaminant and water source type.

(b) Microbiological Contaminants

The sampling locations for microbiological contaminants are different from those for chemical contaminants because the most likely locations with microbiological contaminants may be in the distribution system, or, for some systems, in source water. Two sampling locations were considered in the development of this regulation and are included in the reporting requirements under 40 CFR 141.35(d). No microbiological contaminant is on List 1 for Assessment Monitoring so the two sampling points are not now required. When microbiological contaminant monitoring is required, one of the samples will be at the site below a representative entry point to the distribution system that is used for taking total coliform samples; this sample will represent general exposure. The second sample will be in the distribution system that has the maximum residence time or lowest disinfectant residual, representing the extreme exposure of the population at this point in the distribution system. These sampling points were suggested by stakeholders. EPA will consider activating these sampling points for microbiological contaminants when their analytical methods are determined to be ready for Assessment Monitoring, Screening Survey or Pre-Screen Testing through separate rulemaking. Over the twelve-month period of monitoring, systems would sample at locations representing each principal, non-emergency source of water used over the monitoring period, to the extent possible. One commenter suggested that distribution system samples be taken at sites used for sampling total trihalomethanes (TTHMs). EPA will consider TTHM sites when it proposes methods for microbiological contaminants or other contaminants likely to occur in distribution systems.

Currently, it is not possible to assess whether or not all of the microbiological contaminants (including those on List 3) are likely to be found at any one sampling location, or that one sampling location is best to potentially identify all microbiological contaminants. The occurrence data needs may differ for different contaminants. Different portions of the water supply and distribution system may be more likely locations of particular microbiological contaminants/occurrences. Therefore, the sampling location for each microbiological contaminant may need to be contaminant-specific and related to the likelihood of occurrence.

As a result, for the microbiological contaminants on Lists 2 and 3 of the rule today, EPA has not identified a sampling location or locations. For some of the microbiological contaminants, source water may be the most appropriate sampling location. EPA will specify sampling locations at the time public comment is requested on the specific monitoring requirements for microbiological contaminants.

4. Quality Control Procedures for Sampling and Testing

To assure that the data collected under this final regulation are of sufficient quality to meet the requirements of its intended uses, EPA is requiring the use of the analytical methods and procedures in § 141.40(a)(3), (4), and (5) and Appendix A for monitoring. Also, additional guidance for quality control and analytical confirmation are specified in the ''UCMR Analytical Methods and Quality Control Manual'', available by the time this rule is published. This final regulation covers quality control steps for all sampling and testing under this program. Today's final rule requires that all monitored systems follow these methods and procedures in organizing and conducting their UCMR sampling and testing. Systems must also ensure that the laboratories they use to analyze samples use these approved methods and procedures. The specific quality control requirements addressed in § 141.40(a)(3), (4) and (5) and Appendix A of the final rule include: sample collection/preservation; sample transport; sample and sample extract holding time and storage; sample analyses/quality control requirements, including quality control (QC) requirements, calibration, calibration verification, laboratory reagent (method) blank, quality control sample, laboratory duplicates, sample matrix spike and matrix spike duplicate, internal standard, surrogate standard, method detection limit determination, minimum reporting level; confirmation; and reporting requirements. EPA believes that specifying the quality control requirements for UCMR sampling and testing will enable the Agency to have a high degree of confidence in determining the extent and range of concentrations for the contaminants on the UCMR (1999) List, since they are not regularly tested for nationally.

5. Monitoring of Routinely Tested Water Quality Parameters

In addition to the contaminants to be monitored, several chemical and physical parameters are important indicators of water quality and may contribute to the likelihood of contaminants being found in drinking water. EPA requested public comment on whether it should require the monitoring and reporting of these routinely tested parameters, usually associated with water quality analyses, to provide for a more thorough scientific understanding of the occurrence of unregulated contaminants. These chemical and physical parameters are not added to the UCMR (1999) List because they are not contaminants, but rather they provide supplementary data about the sample results which will facilitate their interpretation and use in regulatory decisions. Public comments indicated that for some systems and States, these chemical and physical parameters are routinely tested for, and in others, they are not. One commenter stated that temperature and pH were important for chemical contaminant occurrence and degradation. Another commenter indicated that analyzing for these water quality parameters is essential to managing his system's water. In response, EPA has revised the rule to require that for organic and inorganic chemical samples, pH be reported for the sampling event of each sampling point. Since no supporting information was provided, EPA determined that while temperature may be important for microorganisms, it is not expected to affect the results for chemical contaminants because the storage and transit temperature requirements in the approved methods will minimize the loss of target contaminants due to any physical, chemical or biological processes. For microbiological contaminants, temperature, pH, free disinfectant residual, and total disinfectant residual must be reported. These required water quality parameters are listed in § 141.40 (a)(4)(i) Table 2, Water Quality Parameters To Be Monitored With UCMR Contaminants. These water quality parameters must be reported as analytical results along with other results and data elements.

6. Relation to Compliance Monitoring Requirements

Currently, compliance monitoring for regulated contaminants is coordinated on a three-year cycle. All public water systems that are required to monitor for specific contaminants a minimum of one year out of every three, six, or nine

years, depending on the contaminant and its occurrence in the system. The existing unregulated contaminant monitoring requirements and the final revised UCMR require monitoring during one year out of every five years. EPA provides flexibility in this final UCMR so that public water systems: (a) only have to monitor for unregulated contaminants during one twelve-month period every five years (unless the State, at its discretion, determines that PWSs should conduct more frequent monitoring); (b) can use previously State-specified compliance sampling points, including source water sampling points; and (c) choose a sampling time within quarters or three-month periods specified in the rule. Hence, the compliance monitoring and the UCMR monitoring can be coordinated, to the extent practical, by conducting UCMR monitoring during a coincident year during which compliance monitoring is required. The years within which the unregulated contaminant monitoring are required to occur are specified in § 141.40(a)(3), Table 1, Unregulated Contaminant Monitoring List, column 6.

7. Previous Monitoring of the Contaminants on the Final UCMR (1999) List

Some PWSs may already have monitored for or want to monitor before the rule's effective date of January 1, 2001, for some of the contaminants identified on the final UCMR (1999) List because of local or State concerns about the possibility of those contaminants occurring in drinking water. At the time of proposal, EPA was concerned about allowing systems to report monitoring results for samples taken and tested prior to promulgation of the UCMR. EPA was concerned that such results might not be comparable to results obtained under this revised UCMR Program because of differences in sampling and analytical protocols, as well as the sampling schedule. Other factors thought to compound the problem of comparability included: (1) monitoring methods may have changed or improved; (2) water quality changes over time; and, (3) today's action requires reporting of a net increase of seven additional data elements, which will allow various, consistent comparisons to be made and data to be aggregated nationally based on current sound-science and quality assurance/quality control consistency. However, EPA received comments recommending that previously collected data should be accepted for the unregulated contaminants on the monitoring list as long as they meet all the requirements of this final rule. In response, EPA reevaluated the circumstances under which previously collected (also referred to as ''grandfathered'' or ''grandparented'') data could be accepted, given the statistical and quality assurance/quality control requirements of the UCMR Program. EPA has modified the regulation to allow previously collected data to be reported, as long as the data meet the sampling, testing and reporting requirements specified in 40 CFR 141.35(d) and 141.40(a)(3), (4), (5) and Appendix A. This change will allow for early monitoring and reporting for MTBE, as long as it meets the requirements of the UCMR. By doing so, EPA is responding to one of the recommendations of the Blue Ribbon Panel on Oxygenates in Gasoline, a panel appointed by EPA Administrator Browner, to evaluate the issues posed by the use of MTBE in gasoline. This recommendation consisted of accelerating the implementation of the UCMR, by allowing systems to sample for MTBE prior to the implementation date of January 1, 2001.

E. Waivers

1. Waivers for Systems Serving More Than 10,000 Persons

Section 1445(a)(2)(F) of SDWA allows a State to obtain a waiver of UCMR monitoring for specific contaminants if the State demonstrates that the UCMR listing criteria do not apply in that State. These criteria are:

(a) the criteria for listing a contaminant in the occurrence priorities list in the CCL or the regulatory process identifying contaminant occurrence in two or more States; and

(b) whether an analytical method exists for the contaminant.

When a State makes such a demonstration for a waiver of a specific contaminant on the monitoring list, EPA may waive monitoring for that contaminant in that State for large systems (serving more than 10,000 persons) only.

Stakeholders indicated that waiver requirements should be sufficiently stringent to obtain the most representative national data possible, including non-detections of contaminants on the UCMR (1999) List. Since only the UCMR listing criteria in (a) are relevant to a State-specific waiver and based on stakeholders' concern that the waiver be narrowly applied, EPA is requiring that this waiver be applied only where the State can demonstrate that the contaminant has not been used, applied, stored, disposed, released, or detected in the source waters or distribution systems in the State in the past 15 years and that the contaminant does not occur naturally (such as growth in a system or air deposition) in the State. Source Water Assessments provided for under Sections 1453 and 1428(b) of SDWA may be used as the basis for these waivers if the assessments specifically address the contaminant(s) on the UCMR List for which a waiver is sought. Table 3, Uses and Environmental Sources of Contaminants for the Monitoring List, presents the uses and sources of the contaminants included for the final UCMR (1999) List. A State can apply for a waiver from monitoring for specific contaminants, but must receive EPA approval to waive the monitoring.

While some chemical contaminants may only be discharged into the environment in regional or local areas, microbiological contaminants may be ubiquitous. However, previous monitoring results over time may provide information useful to waiver determinations for microbiological contaminants.

Public comments on system-specific waivers ranged from not allowing waivers for any systems to providing waiver procedures for individual systems. EPA decided that such waivers are not provided by the statute and would be generally inconsistent with the nature of a program that relies on nationally representative data. Detections and non-detections are equally important in deciding whether to regulate a contaminant. If waivers are given to systems not expected to have occurrence of a particular contaminant or group of contaminants, then the resulting data set will be biased toward systems having detections, potentially contributing to an incorrect conclusion about contaminant occurrence and regulation. EPA did not change the rule to allow other circumstances under which contaminant monitoring waivers could be given.

2. Waivers for Small Systems in State Plans

EPA is not allowing waivers to be granted for small systems serving 10,000 or fewer persons in State Plans for the national representative sample. Stakeholders also supported this position. The systems in State Plans will be statistically selected with the assumption that all systems in a particular size category and water source type have an equal probability of being selected. Non-detections are just as important as detections of contaminants for national analysis. Waiving contaminants to be monitored in certain States not expecting to have such contaminants biases the

representative sample toward detections. Selecting the small systems to be included in the State Monitoring Plans for the representative sample through a statistical process effectively waives ninety-seven percent of the systems from the final monitoring requirements (based on using 99 percent confidence level with three percent allowable error). Therefore, EPA rejected waivers for systems serving fewer than 10,000 persons because this approach is contradictory to obtaining a scientifically sound data set that provides the basis for a scientific statistical analysis. The rule was not changed in this regard.

TABLE 3.—USES AND ENVIRONMENTAL SOURCES OF CONTAMINANTS FOR THE MONITORING LIST

Contaminant name	CASRN	Use or environmental source
Proposed Chemical Contaminants		
1,2-diphenylhydrazine	122–66–7	Used in the production of benzidine and anti-inflammatory drugs.
2-methyl-phenol	95–48–7	Released in automobile and diesel exhaust, coal tar and petroleum refining, and wood pulping.
2,4-dichlorophenol	120–83–2	Chemical intermediate in herbicide production.
2,4-dinitrophenol	51–28–5	Released from mines, metal, and petroleum plants.
2,4-dinitrotoluene	121–14–2	Used in the production of isocyanate and explosives.
2,4,6-trichlorophenol	88–06–2	By-product of fossil fuel burning, used as bactericide and wood/glue preservative.
2,6-dinitrotoluene	606–20–2	Used as mixture with 2,4-DNT (similar uses).
Acetochlor	34256–82–1	Herbicide used with cabbage, citrus, coffee, and corn crops.
Alachlor ESA	.....	Degradation product of alachlor, an herbicide used with corn, bean, peanut, and soybean crops to control grasses and weeds.
DCPA di-acid degradate	2136–79–0	Degradation product of DCPA, an herbicide used on grasses and weeds with fruit and vegetable crops.
DCPA mono-acid degradate	887–54–7	Degradation product of DCPA, an herbicide used on grasses and weeds with fruit and vegetable crops.
DDE	72–55–9	Degradation product of DDT, a general insecticide.
Diazinon	333–41–5	Insecticide used with rice, fruit, vineyards, and corn crops.
Disulfoton	298–04–4	Insecticide used with cereal, cotton, tobacco, and potato crops.
Diuron	330–54–1	Herbicide used on grasses in orchards and wheat crops.
EPTC	759–94–4	Herbicide used on annual grasses, weeds, in potatoes and corn.
Fonofos	944–22–9	Soil insecticide used on worms and centipedes.
Lead-210 (Pb-210)	14255–04–0	Part of the uranium decay series, naturally occurring.
Linuron	330–55–2	Herbicide used with corn, soybean, cotton, and wheat crops.
Molinate	2212–67–1	Selective herbicide used with rice, controls watergrass.
MTBE	1634–04–4	Octane enhancer in unleaded gasoline.
Nitrobenzene	98–95–3	Used in the production of aniline, which is used to make dyes, herbicides, and drugs.
Perchlorate	14797–73–0	Oxygen additive in solid fuel propellant for rockets, missiles, and fireworks.
Polonium-210 (Po-210)	13981–52–7	Part of the uranium decay series, naturally occurring.
Prometon	1610–18–0	Herbicide used on annual and perennial weeds and grasses.
RDX	121–82–4	Used in explosives; ammunition plants.
Terbacil	5902–51–2	Herbicide used with sugarcane, alfalfa, and some fruit, etc.
Terbufos	13071–79–9	Insecticide used with corn, sugar beet, and grain sorghum crops.
Microbiological Contaminants		
Adenoviruses	N/A	Fecal sources; hand to mouth transmission.
Aeromonas	N/A	Present in all freshwater and brackish water.
Cyanobacteria (Blue-green algae), other freshwater algae and their toxins.	N/A	Bloom in surface water bodies; produce toxins.
Caliciviruses	N/A	Contaminated food and water, raw shellfish.
Coxsackieviruses	N/A	Fecal sources; hand to mouth transmission.
Echoviruses	N/A	Fecal sources; hand to mouth transmission.
Helicobacter pylori	N/A	Fecal sources; hand to mouth transmission.
Microsporidia	N/A	Occur in rivers, ponds, lakes, and unfiltered water.

F. Representative Sample of Systems Serving 10,000 or Fewer Persons

As required by section 1445(a)(2)(A) and (C), the regulation requires that only a representative sample of public water systems serving 10,000 or fewer persons must monitor for unregulated contaminants. As previously explained, only community and non-transient non-community systems are required to monitor for unregulated contaminants under this action. Therefore, the representative sample will include only community and non-transient non-community systems serving 10,000 or fewer persons. The representative sample must be of sufficient size to gather the necessary information on occurrence of unregulated contaminants to determine whether or not to regulate them, while not burdening every water system with the expense of monitoring. The number of systems selected within each of three size ranges of small systems will be based on the proportion of the State's population served by systems in that size range. (An example appears in Section 5.(a), ''State Plans for the Representative Sample''.) The small systems in the national representative sample will be selected using a stratified random sampling process. This process will utilize a random number generator to choose a statistically determined number of systems in each State, considering the proportion of the population served by CWSs and NTNCWSs by water source type (i.e., ground or surface water) and system

size category (i.e., 25 to 500 persons, 501 to 3,300, and 3,301 to 10,000) within the water source type. The regulation stipulates that the national representative sample is the basis for the State Monitoring Plan in each state. The use of this statistical approach is designed to take into account different system sizes, types of systems, the source of supply, contaminants likely to be found, and geographic location. EPA believes that the statistical process for selecting systems to monitor must yield data that are sufficient to answer questions about occurrence of contaminants on a national scale for use in exposure assessments and technology evaluations of alternative treatments at a PWS and in its watershed. These data should also be sufficient to answer questions on a broad multi-state scale, such as systems classified by size or source of water, particularly when combined with data for the 2,774 large systems.

Under this action, small system monitoring will be too sparse to answer questions about occurrence at the scale of a single State. The number of systems required for evaluation of occurrence in a single State is far greater than, and thus more costly than, those needed for the broader national evaluations required under the Act to determine whether or not to regulate a contaminant and to assist in developing future drinking water regulations.

1. System Size

Based on statistics reported in the Safe Drinking Water Information System (SDWIS) database, the following numbers of systems (1997 data) by size will approximate the universe from which a representative sample of systems serving 10,000 or fewer people will be taken for the national representative sample plan. These system size categories are used in other statutory and regulatory characterizations of systems, and are applied under the existing rule for unregulated contaminant monitoring for the scheduling of sampling. The relevant system and population information (1997) for systems serving 10,000 or fewer persons is:

No. of people served in PWS size range	No. of PWSs in size range	Population served nationally	
		CWS	NTNCWS
25–500	48,100	5,249,577	2,379,034
501–3,300	14,126	19,918,106	2,724,728
3,301–10,000	3,410	25,236,059	401,579
Total	65,636	50,403,742	5,505,341

Considering all community water systems and nontransient non-community water systems that do not purchase their water supplies, 65,636 PWSs are in the size range for small systems as defined in Section 1445. In response to public comments that indicated the appropriateness of including purchased water systems, EPA revised this rule to cover systems purchasing water from other systems if their distribution systems are the locations of the maximum residence time or lowest disinfectant residual in relation to the combined water seller-purchaser distribution system. Purchased water systems will not be required to monitor for contaminants for which the sampling location is specified as the entry point to the distribution system because they could bias results by potentially causing double counting of contaminant occurrence.

2. System Type

(a) Public Water System Monitoring

Under today's action, all public water systems serving 10,000 or fewer persons, except transient non-community systems, will be considered for monitoring, but only a subset will be selected for the national representative sample. Purchased water systems will be excluded from UCMR monitoring for contaminants where the sampling point is identified as the entry point to the distribution system. Public water systems owned and/or operated on Tribal lands by Tribes will have the same probability of being selected for the national representative sample as any other system in its water source-system size category. EPA will identify the size of the representative sample and the specific systems required to monitor and send the list of systems to the States for review and inclusion in State Monitoring Plans (discussed in Section V. F. 5).

(b) Nontransient Non-Community Water Systems

Nontransient non-community water systems (NTNCWSs) represent schools, hospitals and other facilities in communities that serve the resident population but have their own water supply systems. Approximately 20,000 systems of this type exist in the United States. Today's final regulation at § 141.40(a)(1)(iii) includes NTNCWSs as a separate type of water system to be included in the representative sample for monitoring. Typically, these systems are closely associated with a local resident population and may be a significant source of water consumed by that population over a lifetime. The selection of NTNCWSs will use the same statistical process as for CWSs, with systems grouped within a State by water source type and size category. NTNCWSs are considered separately to avoid double-counting the population served when conducting exposure assessments of both small CWSs and NTNCWSs, while allowing weighting of lifetime water consumption by system type.

(c) Transient Non-Community Systems

Transient non-community water systems represent systems providing drinking water to transient populations such as at a restaurant in a rural location or a highway roadside rest area. About 97,000 of these systems exist in the United States; their location and type are highly variable. It will be difficult to extrapolate exposure from monitoring results, given the very short-term nature of the systems' use by individuals who may not be in the area for more than a few hours or days. Because of problems with implementation and cost for sampling such a large and highly variable set of typically very small systems, EPA has excluded transient systems from all unregulated contaminant monitoring requirements in this final rule. In this regard, this action is consistent with the current UCMR Program. Four of the five public commenters addressing transient systems supported exclusion of transient systems from requirements for unregulated contaminant monitoring.

3. Geographic Location

SDWA Section 1445 specifies that State plans should consider ''geographic location'' when selecting a representative sample. This is

accomplished at the broadest level by selecting systems from each State. However, within a State, the sources of water may not be evenly distributed across that State, especially surface waters. Cities transfer water across watershed boundaries, or move water from one State to another. To best represent water being consumed by individuals, EPA defines ''geographic location'' in the representative sample for the final rule today as the location of the source of water, rather than as an even distribution of points across the State. For example, if 40 percent of the people in a State obtain their water from one water source type (e.g., surface water), 40 percent of the systems selected for the representative state sample should be from that source type, even if this results in points unevenly distributed across the State. This distribution should be accommodated by allocating systems based on the population served nationally and in each State stratified by water source and system size category.

4. Likelihood of Finding Contaminants

Section 1445(a)(2)(A) requires that the UCMR Program take into account the likelihood of finding a contaminant in establishing variable monitoring requirements for systems. The final rule allows the UCMR Program to focus on monitoring for contaminants that are expected to be found nationally or within several regions of the United States. Therefore, the expectation of finding the contaminants nationally is fundamental to the approach of the representative sample and its statistical method of selection. The ''likelihood of finding contaminants'' factor is accommodated by the step-wise three-tiered approach of Pre-Screen Testing, Screening Survey and Assessment Monitoring.

5. State Plans for the Representative Sample

As discussed previously, Section 1445 (a)(2)(C) allows States to develop State Monitoring Plans (also referred to as ''State Plans'') to assess the occurrence of unregulated contaminants for small systems in the State. EPA believes that the development of State Plans is affected by two other considerations: (i) the State plans must fit together into a national representative sample so that it is, in fact, nationally ''representative,'' and (ii) EPA will pay for the reasonable costs of testing and laboratory analysis necessary to carry out monitoring at State Plans, pursuant to Section 1445(a)(2)(C)(ii).

(a) Representative State Plans

To have representativeness at the national level while at the same time allowing each State to develop a ''State Plan,'' the testing for which EPA will fund, the Agency will take the following approach. Based on a statistical random selection process applied to all CWSs and NTNCWSs nationally using the average population served by systems and water source type (surface or ground water to ensure geographic coverage) within service-size categories (25–500, 501–3,300, 3,301–10,000 persons), EPA will select at least twice as many CWSs and NTNCWSs as required for the national representative sample. EPA will use a random number generator to select these systems. These systems will be divided into an ''initial plan'' list and a ''replacement list'' to allow for replacement of systems on the list with systems from the replacement list, by States. The representative sample will be allocated on a State basis, and then stratified by water source type and then by service size category within each water source type. EPA will use the percentages of the populations served in each water source-system size category to further allocate the systems in each State. The ''initial plan'' list of systems will identify those systems tentatively selected by EPA for each State. To establish a State Plan for small system monitoring, a State may enter into a Memorandum of Agreement (MOA) with EPA to take a partnership role in the development and implementation of the State Plan. By agreeing to participate in the process for the State plan through the MOA, the State must accept the EPA-selected systems on the ''initial plan'' as its plan, or review the list to determine which systems should be removed from the list because of such factors as closure, merger, or water purchase arrangement and submit a modified plan. The State must replace the system(s) they remove from the list with the water system(s) from the ''replacement list'' in the order the systems are listed in the replacement list, thus creating a ''modified plan.'' The State, in either case, must inform the EPA of the State's choice of plan (i.e., ''initial'' plan or ''modified'' plan) along with reasons for removing and replacing systems on the ''initial plan'' within 60 days of receiving the ''initial plan.'' If the State decides not to enter into an MOA with EPA for the State Plan process, then the EPA will consult with the State before the State adopts the ''initial plan'' as its State Plan. In a State with an MOA, the State Plan will include a process for the State to inform the public water systems of their responsibility to monitor and report results, their vulnerable time period, other monitoring times, sampling instructions, and of their participation in the screening survey and pre-screen testing. The EPA will inform systems of their inclusion in the representative sample if the State chooses not to enter into an MOA for the State Plan. This approach ensures a nationally representative set of systems and allows a State flexibility to modify EPA's ''initial plan'' with minimal burden. EPA will develop and provide initial plans to States and Tribes in the first half of year 2000 to allow sufficient time for State/Tribal review and modification, and for informing systems selected for the State Plans.

Statistical Approach. Under today's action, the representative sample of small public water systems will be composed of a subset of systems which, in the aggregate, represent the public water systems of the three small system size categories within the United States. Within a State, public water systems will need to be selected so that the proportion of persons served by the systems sampled is as close as possible to the proportion of persons served by that system size category within each water source type for that State. The portion of the national representative sample within a State's boundaries will become that State's Monitoring Plan, after review and possible adjustment by the State, and then EPA review.

For the small systems considered, a representative sample size of approximately 800 systems will provide a confidence level of 99 percent with an allowable error of plus or minus 1 percent. This number of systems is statistically derived to allow population weighting for exposure assessment. Because of population weighting in the selection of the representative sample, systems are a surrogate for the number of people being monitored for unregulated contaminants in their drinking water. Since population exposure assessment is the principal use of the data in the regulation development process, the quantity of interest is the fraction of people exposed, rather than the fraction of systems affected. However, the law requires measuring contaminant occurrence at systems and it is more efficient to measure at systems. So the population weighted plan allows EPA to recognize systems providing drinking water to their service population as a surrogate for people. When the goal is exposure assessment, then a population weighted sampling plan for systems is optimal. The results can also be used to

estimate the number of systems affected, although the selected population weighted plan is not optimal for this purpose.

The results will also be useful for analysis of contaminant occurrence at small systems in national analyses by water source and system size categories or strata, with a confidence level of 95 percent and a one percent margin of error. EPA will allocate systems to each State, water source type and system size category by: (1) estimating the population served by all small CWSs in each State, (2) dividing this population into the population served in each water source type-system size combination to derive a percentage, and (3) multiplying the percentage by the number of small systems in the State, with the result being the number of systems allocated to each water source-system size category. This allocation is a statistical stratification of systems by water source type and system size category. The approach ensures that each State has systems allocated to it for its State Plan. To accomplish this allocation of systems to each State, EPA will add a sufficient number of small CWSs and NTNCWSs to the statistically derived number for the representative sample to allow each State to have a plan that will then fit into the national representative sample, with each State having at least two systems. Once monitored, the results of the representative sample of small systems will then be combined with large system results in an overall national analysis of contaminant occurrence in systems. EPA believes that this sample size will provide an adequate level of confidence, considering size, type (community and non-transient non-community water systems), geographic location (State), and water source. EPA also believes that this approach provides sufficient information for the decision processes drawing on UCMR monitoring data for systems serving 10,000 or fewer persons, while keeping testing costs at a manageable level. This number of systems should be sufficient to statistically evaluate whether a contaminant occurs in a specified proportion, such as 2 or 3 percent of the population (using systems as a surrogate). This number of systems, confidence level and allowable error will enable EPA to: (1) evaluate the statistical significance of contaminant occurrence with low frequency and (2) compute the percent of systems for occurrence nationally, combining the results of both small and large systems.

Further rationale for using a small number of systems and small allowable error (confidence interval) in calculating the number of systems to be included in the representative sample is provided in the monitoring results from previous unregulated contaminant monitoring under the existing program. EPA has results from over 28,000 systems from the unregulated contaminant monitoring activities of 1988 to 1992 (the first round of unregulated contaminant monitoring under the existing program) that indicate that of the 34 contaminants required to be monitored at that time, 30 occurred at less than 2 percent of systems and, of those, 27 occurred at less than 1 percent of systems. Ten of these contaminants were selected for the Contaminant Candidate List ''Regulatory Priorities'' (see 64 FR 23403) and all of the ten contaminants occurred at less than 2 percent of systems and eight, at less than 1 percent. Of the eight contaminants occurring at less than one percent of systems, four have health effects values within the concentration range of contaminant occurrence (bromomethane [a pesticide], 1,3-dichloropropene [a pesticide], hexachlorobutadiene [a solvent], and 1,1,2,2-tetrachloroethane [a solvent]), and consequently may be considered for future regulation. These data point at the need to focus at the low end of occurrence. Using a small allowable error minimizes the chance of EPA incorrectly deciding whether or not to regulate a contaminant based on occurrence. Once EPA evaluates health effects data, contaminant occurrence among States and systems, contaminant sources, treatment technologies, and other relevant information, the small allowable error allows EPA to make regulatory determinations with a high degree of confidence.

If, based on prior information (e.g., from a Screening Survey or Pre-screen Testing), EPA determines that the listed contaminants occur in a different percent of systems at a different statistical confidence level and/or allowable error providing scientifically defensible monitoring results, then EPA may apply a different likely percent of systems, confidence level, and/or allowable error to determine a smaller representative sample size. The statistical approach for specifying the number of systems by water source type (ground water, surface water or ground water under the direct influence of surface water) and systems size is as follows:

The number of systems, *n*, required in the representative sample is determined by the allowable error ($\pm d$) around the estimate for *p*, the proportion of systems (a population-weighted surrogate for people) which exceed a criteria (e.g., detection level) of interest. Based on the binomial distribution in statistics, the number of systems *n* which must be sampled for a likely proportion *p* of people (systems as a surrogate) with contaminant occurrence within the allowable error *d* with confidence $(1-a)$ is approximately:

$$n = \frac{z^2_{(a/2)}p(1-p)}{d^2} \qquad (1)$$

The number of systems to be sampled, *n*, does not depend on the total number of systems available. The number from the standard normal distribution, *z*, is obtained from a table of the standard normal distribution, representing a collection of data following a ''bell-shaped curve'' which have a (standardized) mean of zero and standard deviation of one. The significance level, *a*, is the chance of the statistical interval of interest not containing the true value of the number being estimated, which, in this case, is the percent of systems where contaminants of concern on the UCMR List occur. The true value for the percentage of systems where contaminants of concern occur can only be known if all systems are sampled, which is not a possibility since Section 1445(a)(2)(A) requires that only a representative subset of small systems be required to monitor for unregulated contaminants. Using this equation (1), the matrix below presents the required sample sizes for several values of allowable error margins and confidence levels. For the national representative sample, an allowable error of ±0.01 at a confidence level of 99 percent and a likely proportion of systems with contaminant occurrence of 1 percent was chosen. The possibilities for sample size, confidence level and allowable error considered in developing this approach are:

SAMPLE SIZES FROM A UNIVERSE OF 65,600 SYSTEMS BASED ON: CONFIDENCE LEVEL

Confidence Level (1-*a*)	*d*, Allowable Error			
	.03	.02	.01	.005
90%	30	67	266	1,065
95%	42	95	380	1,521
99%	73	165	659	2,636

EPA believes that a representative sample size of 659 systems to be sufficient to draw conclusions about contaminant occurrence for small systems, based on 99 percent (.99) confidence level, ± a 1 percent (.01) allowable margin of error (confidence interval), and target percent of contaminant occurrence in 1 percent of systems. EPA chose a confidence level of 99 percent because it wanted high confidence that the true proportion was included in its sample results. A 5 percent chance that the window of error did not include the true proportion was considered too large, given the amount of money invested in monitoring and regulatory decisions. Based on the monitoring program, a 1 percent risk (100 − 99 percent confidence) that EPA missed the target was more acceptable.

A small allowable error (narrow confidence interval), such as ±1 percent (±0.01), is important for evaluating the expected low percentages of contaminant occurrence in systems because EPA wants to be able to determine when the monitoring results show that the percent of systems is distinguishable from zero or some other small value close to zero. Determining this outcome will help EPA decide which contaminants should receive primary focus for possible regulation after the results are evaluated with health effects data.

To further consider the implications of the table above, suppose that after sampling these 659 systems, the proportion *p* which equaled or exceeded a detection level was 4 percent (0.04). The estimate of the true (unknown) proportion will be 0.04±0.02, or 4 to 6 percent. This interval has a 99 percent likelihood of containing the true proportion of systems having an occurrence of the contaminant of concern. There is a 1 percent (0.01) chance (*a*) that the true proportion is outside this estimated interval. A larger allowable error, *d*, (e.g., 3 percent) results in a wider estimate window. Knowing only that the proportion is somewhere within a window of 6 percent (e.g., between 1 and 7 percent) was too large a window of error if the percent of systems having occurrence of the UCMR (1999) List contaminants is less than 3 percent, which may be possible based on information from previous unregulated contaminant monitoring. In such a situation, it will be difficult to determine whether the percent of systems with contaminant occurrence was significantly different than zero or some small number.

For the purposes of data interpretation in the future, EPA has determined that, rather than using the normal approximation to the binomial distribution, the Agency should use the Wilson score interval method (Newcombe, 1998) which results in a confidence interval around the estimate of the percent of systems with contaminant occurrence which is narrower on the left or ''zero'' side of the estimate and wider on the right side of the estimate. One advantage to this interval is that it does not include zero whenever the estimated exposure is non-zero.

Additionally, EPA will increase the representative sample size of CWSs to 721 to increase the statistical power of the smallest system category. EPA will also add 79 systems to the NTNCWS sample size (using the same approach of applying the percentage of population served by NTNCWSs in each State to derive the number of systems allocated to each State). A total of 800 CWSs and NTNCWSs are included as the national representative sample. This allocation facilitates assigning systems to each State in the representative sample, allowing each State to have at least two systems.

Technical peer review of the statistical approach found it to be sound for the purposes of estimating contaminant occurrence to assess population exposure to the contaminants from Assessment Monitoring. Both internal and external peer review indicated the possibility of using another statistical method (such as the Poisson approximation to the binomial distribution or Wilson score interval method) to derive the number of systems in the national representative sample and to interpret the data at a given confidence level and error once they are reported. Additionally, the public commenters supported the statistical approach for deriving and implementing the national representative sample of small systems.

The representative sample of 721 small CWSs and 79 NTNCWSs will be disaggregated to the State level, and stratified by water source type (ground water or surface water) and system size (the three size categories of 25–500, 501–3,300, and 3,301–10,000 persons). The stratification by State, water source type and system size is described in the following example.

Example. To determine the number of PWSs (CWSs and NTNCWSs) randomly selected for unregulated contaminant monitoring as part of the national representative sample, the following figures are used as the starting point and are approximations for the purposes of example only:

US population: 265,000,000

US population served by small PWSs serving ≤ 10,000 persons: 50,000,000

State A's population served by small PWSs serving 10,000 or fewer persons equals 1,251,340 persons, which divided by 50,000,000 persons served nationally by small water systems equals 2.5 percent, or the percent of State A's population served by small systems of the national population served by small systems. Multiplying 2.5 percent (0.025) times the 659 systems nationally equals 16.48, rounded to 16, which is the number of small systems allocated to State A for its representative sample. Mathematically, this can be expressed as:

$$\frac{1{,}251{,}340 \text{ persons in State A}}{50.000{,}000 \text{ persons in U.S.}} \times 659 \text{ systems in sample for U.S.} = 16 \text{ systems in State A's sample}$$

State A's population served by small PWSs supplied by surface water (SW) or ground water under the direct influence of surface water (GWUDI) equals 449,920 persons.

State A's population served by small PWSs supplied by ground water (GW) equals 801,420 persons.

For each water source type (surface or ground water), the population served by small systems is further divided into the size category. The next step is to divide the population in each size category by the population served by small systems in State A (1,251,340 persons), and then multiply that result by the number of small systems allocated to State A (18 systems), to obtain the number of systems in that size category for the water source type that will be in the State Plan (identified below as ''State Plan Allocation''). For each water source type, the example results for State A are:

SW/GWUDI SYSTEMS IN STATE A

[Numbers of systems rounded to nearest whole number]

System size (persons served)	Population served by size category		Number of persons served in state A		Systems allocated to state A		State plan allocation
10,000–3,301	281,200 persons	÷	1,251,340	×	16	=	4
3,300–501	154,660 persons	÷	1,251,340	×	16	=	2
500–25	14,060 persons	÷	1,251,340	×	16	=	0
Total		....		....		....	6 systems

GW SYSTEMS IN STATE A

[Numbers of systems rounded to nearest whole number]

System size (persons served)	Population served by size category		Number of persons served in state A		Systems allocated to state A		State plan allocation
10,000–3,301	421,800 persons	÷	1,251,340	×	16	=	5
3,300–500	239,020 persons	÷	1,251,340	×	16	=	3
500–25	140,600 persons	÷	1,251,340	×	16	=	2
Total		....		....		....	10 systems

The total of 6 surface water and 10 ground water systems equals 16 systems, the number to State A's Plan. The replacement list of systems will also be developed and provided at this level of detail.

Sampling Plan. The sampling plan that EPA is considering is outlined here. As shown in the first matrix of confidence levels, the overall confidence level is established at 99 percent (0.99). The small water systems were allocated on the basis of population served, except in the very small strata, which EPA supplemented to bring the statistical inferential ability up to 95 percent in all cells of the confidence level matrix.

System Size Category	Desired Confidence Levels by Source Type		
	Ground Water	Surface Water	All Sources
Very Small (25–500 persons)	0.95	0.95	0.95
Small (501–3,300 persons)	0.95	0.95	0.95
Medium (3,300–10,000 persons)	0.95	0.95	0.95
All System Categories	0.95	0.95	0.99

SAMPLING PLAN

System Size Category	Planned national water system allocation by source type		
	Ground water	Surface water	All sources
Very Small (25–500 persons)	67	64	131
Small (501–3,300 persons)	186	74	260
Medium (3,300–10,000 persons)	189	141	330
All System Categories Subtotal	442	279	721
NTNCWS Subtotal	.....	.....	79
Total	.....	.....	800

Both the very small ground water and surface water systems categories contained too few systems to have a confidence level of 95 percent. The very small ground water category needed 6 additional systems and the very small surface water category needed 56 systems to bring them up to the 95 percent confidence level. These numbers of systems will be allocated to each State based on the number of persons served in each subcategory within the State. (Note that the example presented above did not reflect an additional allocation to the ''very small'' strata for surface or ground water systems for State A. Such an outcome would result because State A had a low number of people in this category relative to other States and would not be allocated an additional system in this plan.)

EPA has prepared a background document titled ''National Representative Sample of Small Public Water Systems: Statistical Design and State Plans for the Unregulated Contaminant Monitoring Regulation'' to describe in more detail this selection process and its relation to the State Plans. The background document is available by calling the EPA Safe Drinking Water Hotline at (800) 426–4791, or by viewing it on EPA's Internet Homepage for the Office of Ground Water and Drinking Water (www.epa.gov/safewater).

EPA asked for public comment on whether it should consider using a targeted approach for selecting systems in the national representative sample based on prior knowledge of contaminant use or occurrence, system operation or other locational information, rather than this stratified random selection approach. Internal and external peer reviewers and public commenters agreed that a targeted approach would bias the national results.

Several aspects of potential bias are of concern to EPA: (1) prior information on targeted use of a contaminant may not be perfect which may lead to missing the target zone; (2) targeting leads to biased results that would be expected to have a larger percentage of detections, potentially overstating occurrence of the contaminant; (3) targeting areas of known or expected contaminant use or occurrence for monitoring does not provide a representative national picture of occurrence, because both detections and nondetections of contaminants are equally important in determining national occurrence in the decision process of whether or not to regulate a contaminant; and (4) targeting areas of known or expected use or occurrence does not take into account that surface waters can carry the contaminant out of the targeted area.

The State Monitoring Plans will also include a representative sample of small systems that will be combined with a set of randomly selected large systems for Screening Survey monitoring of UCMR (1999) List 2 contaminants. The number of small systems, selected through the same statistical process from the systems used to conduct Assessment Monitoring, will be smaller (perhaps 150 to 200 systems out of a total number of about 300 small and large systems) because the purpose of the Screening Survey is to test for contaminant presence in systems rather than testing for concentrations in an established percentage (such as 2 or 3 percent) of systems, as is the case for Assessment Monitoring. If a contaminant occurs in a small percent (e.g., 0.5 percent) of systems, then the contaminant will be considered to occur at a level that will indicate that it should be included in the next round of Assessment Monitoring.

EPA needs to balance the number of systems included in the national representative sample required for statistical validity with the cost of paying for the testing. EPA believes that the final rule's approach balances the number of systems to be tested with the cost and also balances a nationally representative sample with the allowance for State plans. The final approach also relieves States from having to develop the statistical design and specify the systems to be monitored.

(b) Systems Selected for Pre-Screen Testing

If a State enters into an MOA with EPA, it can participate in the Pre-Screen Testing program. States must specify from 5 up to 25 systems as the systems most vulnerable to the contaminants on UCMR (1999) List 3. EPA will determine the number of systems to be selected in any State based on the population served by CWSs and NTNCWSs in a State. The States must modify their State Plans to identify the small systems selected for Pre-Screen Testing and notify the EPA of their addition to those Plans.

(c) Tribal Water Systems

Public water systems serving less than 10,000 persons that are located on Tribal lands in Indian country will be treated as an individual stratum for the representative sample. The stratified random selection process described previously allocates systems within water source and size category by population served. A PWS in Indian country will have the same probability of being selected as any other water system in another State based on the proportion of the population served by water source and system size category. Because no State has jurisdiction over such systems, EPA will consult with the appropriate tribal government concerning whether any initially selected system should be replaced due to merger, closure, or purchase of water from another system. The resulting set of systems will be the ''State Plan'' for Indian country.

Public comments relative to Tribal water systems requested that Tribal systems be specified through a stratified random selection process like the other systems in the national representative sample to avoid biasing the results. EPA agrees and plans to identify Tribal systems through the same stratified random selection process that is applied to the other systems.

(d) ''Index'' Systems

EPA generally has less information about systems serving 10,000 or fewer persons than about systems serving more than 10,000 persons. This lack of information on these systems and their operation affects EPA's ability to tailor regulations to systems of this size. To provide an improved understanding of small systems, EPA will select up to 30 small public water systems as ''Index'' systems and EPA will conduct Assessment Monitoring at these systems during each of the five years for which the UCMR List and national representative sample must be established. EPA is requiring more frequent monitoring from these systems than the systems selected for Assessment Monitoring. Index systems must be selected from the systems designated in State Monitoring Plans using a random number generator. EPA will pay for this monitoring, including provision of sample equipment, shipment of samples, testing, and reporting. EPA will help Index systems collect samples by sending a field technician to each Index system to obtain the samples. Index system sampling is being conducted to: ensure sample collection quality for the 30 systems; provide information of temporal variation encountered during the monitoring cycle; and better understand the needs of small public water systems in future regulations. The Index system sampling program is designed to ensure that future regulations better reflect the conditions under which small systems operate. Owners/operators of Index systems are required to assist EPA in identifying

appropriate sampling locations and provide information on wells and intakes in use at the time of sampling, well casing and screen depth (if known) for those wells, and the pumping rates of each well or intake at the time of sampling. The monitoring results for the Index systems will be used to characterize the UCMR results to other small systems in the national representative sample with this frequency and for this additional information. EPA or its representative will also collect information on precipitation, land use and other environmental factors (e.g., soils and geology) to provide the Agency with information on other conditions potentially affecting drinking water quality of small systems. This Index system monitoring will facilitate extrapolation of Assessment Monitoring results nationally for systems of this size. A description of the selection process for Index systems using a random number generator will be presented in the background document, noted above, titled ''National Representative Sample of Small Public Water Systems: Statistical Design and State Plans for the Unregulated Contaminant Monitoring Regulation.''

Public comments received concerning Index systems were generally supportive of the approach to provide additional information to tailor future regulations to small systems.

(e) Other State Data

Some States may sample and test additional systems beyond those included in the State Monitoring Plan. Any additional systems sampled by States should not be combined with those of the State Monitoring Plan for the purpose of computing national estimates of contamination. While providing useful information for protecting the health of persons using drinking water from these systems, this additional data will bias the results of the national representative sample if included. However, if the State wants to report the results of such monitoring, EPA could receive the data through the Safe Drinking Water Information System (SDWIS) for input to the NCOD. EPA plans to develop acceptance criteria to allow such data to be placed in the NCOD. Public comments supported EPA's position that any data from additional systems not in the State Monitoring Plan should not be combined with data from the representative sample of small systems because it would bias the national results.

G. Reporting of Monitoring Results

Today's final regulation replaces the reporting requirements at 40 CFR 141.35 to make the reported occurrence results more useful for sound scientific analyses.

1. Reporting Requirements (Data Elements)

UCMR data are one of four types of data that will potentially be reported to the NCOD as required by Section 1445(g). The other types of data that may be included in the NCOD are: (1) regulated contaminant occurrence data below the maximum contaminant level (MCL) but above the minimum reporting level (MRL) (a regulation may be developed to obtain this data during 2000); (2) source water monitoring data; and (3) other data from special studies and research. Since these data will come from varying sources, they may have different reporting requirements. The PWS data from unregulated contaminant monitoring may have the smallest number of data elements to be reported because of the greater level of control over the quality of the data through the laboratory certification programs and the monitoring and quality control requirements in the final rule today.

EPA engaged in an extensive process of stakeholder and technical review when developing the NCOD to identify information reporting requirements that allow data from different sources to be adequately evaluated, compared, and interpreted. The NCOD information requirements process identified additional data elements that must be considered for UCMR reporting with unregulated contaminant sample test results. These data elements are especially important because many of the contaminants may not be routinely tested for and will need sample test data quality indicators to assist in interpreting the results. These additional data elements for the unregulated contaminants, and the reasons EPA adds them to the previous reporting requirements in this rule, are explained briefly in the following table. EPA requested public comment on these additional reporting requirements identified in Table 4, Final Additional Data Elements for the UCMR. The only comments EPA received, other than support for the additional data elements to be reported, were to clarify Minimum Reporting Level and Method Detection Level reporting and their difference from Instrument Detection Level and Estimated Detection Level and to use ''presence/absence'' for microbiological contaminants only. A technical peer reviewer also suggested that spiking concentration be added to the reporting requirements to allow evaluation of the methods being used, since the methods are still being refined. The reader is referred to the document titled, ''Public Comment and Response Summary'' for the Unregulated Contaminant Monitoring Regulation for a discussion of these comments. The complete list of data elements for the UCMR appears in the rule at § 141.35(d), Table 1.

TABLE 4.—FINAL ADDITIONAL DATA ELEMENTS FOR THE UCMR

Final data element	Definition	Reason for reporting
Public Water System Facility Identification Number—Source, Treatment Plant and Sampling Point.	An identification number established by the State, or, at the State's discretion, the PWS, that is unique to the system for an intake for each source of water, a treatment plant and a sampling point. Within each PWS, each intake, treatment plant and sampling point must receive a unique identification number, including, for intake; surface water intake, ground water well or wellfield centroid; and including, for sampling point; entry points to the distribution system, wellhead (or wellfield), intake, or locations within the distribution system. The same identification number must be used consistently throughout the history of unregulated contaminant monitoring to represent the facility.	Identify source water, treatment plant and sampling location for use in evaluating contaminant source controls in regulation development. The source intake/well identification number can be related to latitude and longitude for use in geographic analysis of land use, soils, geology and precipitation for alternative treatment and control analysis. Treatment plant identification number can be related to treatment information for that plant to use in analysis of alternative treatments. Sampling point identification number will allow the sample test result to be consistently associated with the same sample location over time for trend analysis.

TABLE 4.—FINAL ADDITIONAL DATA ELEMENTS FOR THE UCMR—Continued

Final data element	Definition	Reason for reporting
Sample Analysis Type	The type of sample collected. Permitted values include: (a) Field Sample—sample collected and submitted for analysis under this rule. (b) Batch Spike/Spike Duplicate Samples—Samples associated with a batch for calculating analytical precision and accuracy. A batch is a collection of 22 samples analyzed together, of which two are the spike and spike duplicate samples, that are tested for analyte concentrations.	Indicates field and spiked sample to ensure that the sample test result is used for the appropriate analysis (e.g., contaminant concentration trends, sample test performance, etc.).
Detection Level	''Detection level'' refers to the detection limit applied to both the method and equipment. Detection limits are the lowest concentration of a target contaminant that a given method or piece of equipment can reliably ascertain and report as greater than zero (i.e., Instrument Detection Limit, Method Detection Limit, Estimated Detection Limit).	Indicates lowest quantifiable measurement level applied through the method to the sample to allow comparison with other sample test results.
Detection Level Unit of Measure	The unit of measure to express the concentration, count, or other value of a contaminant level for the detection level reported. (e.g., µg/L, colony forming units/mL (CFU/mL), etc.).	Indicates the reporting unit for the detection limit.
Batch Identification Number	A unique number assigned by the laboratory analyzing samples to a specific batch of samples. The number comprises 9 digits for the laboratory identification number, 4 digits for the year, 2 digits for the month, 2 digits for the day, and 2 digits for the batch of samples.	Allows calculation and comparison of precision and accuracy among batches of samples and association of precision and accuracy with each sample in a batch to sort results based on data quality.
Spiking Concentration	The concentration of method analytes added to a sample to be analyzed for calculating analytical precision and accuracy.	Allows calculation of precision and accuracy for a batch of samples and an evaluation of the method.
Analytical Precision	For purposes of the UCMR, Analytical Precision is defined as the relative percent difference (RPD) between spiked matrix duplicates. The RPD for the spiked matrix duplicates analyzed in the same batch of samples as the analytical result being reported is to be entered in this field. Precision is calculated as RPD between spiked matrix duplicates using, RPD = $[(X_1 - X_2) / \{(X_1 + X_2)/2\}] \times 100$.	Indicates variability among laboratory results as measured by testing replicate field or duplicate spiked samples, and is a key measure of sample test performance.
Analytical Accuracy	For the purposes of the UCMR, accuracy is defined as the percent recovery of the contaminant in the spiked matrix sample analyzed in the same analytical batch as the sample result being reported and calculated using;. % recovery = [(amt. found in Spiked sample—amt. found in sample) / amt. spiked] x 100.	Indicates whether test results are within a group of measurements corresponding to the true value of the results, and is a key measure of sample test performance.
Presence/Absence	*Chemicals:* Presence—a response was produced by the analysis (i.e., greater than or equal to the MDL but less than the MRL)/Absence—no response was produced by the analysis (i.e., less than the MDL). *Microbiologicals:* Presence—indicates a response was produced by the analysis/Absence—indicates no response was produced by the analysis.	Chemicals: Indicates results that do not have a quantifiable value and whether, for a positive result, the chemical concentration is between the MRL and the MDL to allow more thorough assessment of the method's capability to identify the contaminant. Microbiologicals: Allows measure under conditions and for microorganisms that are not able to be counted.

Note that EPA deleted ''composite'' from the proposed set of data elements since the final rule does not allow compositing. Since this program is designed to measure actual occurrence of contaminants, compositing (the combining of samples from several sampling points of a water system) will dilute concentrations of contaminants to be measured. Stakeholders supported the deletion of compositing, and believed it to be contrary to the objectives of the UCMR. No public comments were received on this subject.

Also note that ''Public Water System Facility Source Intake Identification Number'' must currently be reported under existing reporting requirements for SDWIS under 40 CFR 142.15(b)(1). The UCMR will expand this requirement to include the unique identification numbers for treatment plant and sampling point, which may not change over time. EPA is not requiring, through today's action, the reporting of treatment data (treatment objectives and processes) since these data are already required to be reported by January 1, 2000, for all systems. (Safe Drinking Water Information System

FACT SHEET, Revised Inventory Reporting Requirements, June 1998)

The rationale for including these data elements is that EPA needs the detailed information concerning the sample test, location, and treatment that will allow the results to be used in making a determination of whether or not to regulate the contaminant and to develop regulations. The specific reasons are identified in Table 4. To avoid duplicate and costly resampling efforts, EPA believes that systems should obtain and report the most complete information the first time a sample is tested.

The information requirements process for development of the NCOD identified technical questions that need to be answered in the regulatory process that the UCMR is to support. These data elements are associated with these questions. While the list of data elements will increase by five (from 12 to 17) in today's final UCMR (as compared to the existing UCMR), reporting them the first time precludes the need to obtain the information through another process. Because the 1996 SDWA Amendments expanded the determinations and types of analyses that need to be conducted to develop a rule, including these data elements is responsive to the new regulatory environment in which drinking water regulations must be developed.

These new data elements will not be a major burden for a PWS. Only four of the elements must be supplied by the PWS: the PWS ID; the Facility ID; the sample number; and sample collection date. All other elements can be supplied by the laboratory.

States commented that EPA should not require system inventory data if those data are required under another reporting arrangement in 40 CFR 142.15(b)(1). As a result, EPA modified this final rule eliminating inventory data elements that are required for other reporting. Today's rule requires that Public Water System Facility ID be reported. Coupled with the PWS ID, the facility ID can be linked to sampling site information and locational data necessary for thorough analyses of the data.

As explained earlier, EPA also requires owners/operators of Index systems that are part of State Plans for the national representative sample to provide data concerning well casing, screen depths and pumping rates at each well or intake at the time of monitoring. This reporting will allow EPA to tailor regulations to systems serving 10,000 or fewer persons by relating sample test results to conditions that affect capture of contaminants by ground water and surface water supplied systems.

2. Reporting to the Primacy Agency

Today's rule changes reporting relationships for unregulated contaminant monitoring data. The statute requires that the results be reported to the primary enforcement (or ''primacy'') authority for the system. Many States and systems raised questions about the necessity and utility of requiring State primacy for the UCMR. In response to these comments, EPA has decided to directly implement the UCMR, while allowing States to participate in State Plan review and implementation through MOAs rather than through State primacy. Some States noted that UCMR data will primarily be used by EPA to make regulatory determinations, and that such data are not required by the State to assess compliance for public health. The States however, need these data for their program records and implementation. In response to these comments, EPA is not requiring the State to report the data, but is requiring the PWS to report the data electronically to EPA, unless otherwise arranged, with a copy to the State. EPA will issue guidance on the process of reporting to EPA electronically or in other formats and providing a copy of the results to the State. Since EPA is paying for small systems' testing and reporting, the Agency will set up an electronic reporting system for these systems that are required to report. EPA will report the data to the States for these small systems. EPA will hold the data of small and large systems for 60 days to allow systems and States to review the data before placing the data in the NCOD, as required by SDWA. EPA encourages States to review the data as time allows because their review is critical to identifying drinking water quality issues that may not be obvious at the national level. This review provides an additional level of data quality control before EPA uses the data in regulatory decisions.

3. Timing of Reporting

In response to public comments from States and systems requesting more time to report these data, EPA modified the rule at § 141.35(c) to require large PWSs to report their monitoring results within thirty days, rather than ten days, after the month in which they receive the results from the laboratory. This requirement provides additional time for systems to review the UCMR results before reporting them to EPA.

4. Method of Reporting

SDWA Section 1445 (a)(2)(D) states that each PWS that monitors for unregulated contaminants must provide the monitoring results to the primacy authority for the system. Today's final rule requires electronic reporting by PWSs to EPA, while providing a copy of the results to the State (§ 141.35(e)). The rule also allows EPA to specify another method for reporting by a PWS, if necessary. Public commenters supported allowing an alternate reporting method for PWSs if they could not report electronically. Note that EPA will pay for the testing and laboratory analysis of samples for small systems in State Monitoring Plans. Since EPA plans to establish electronic recordkeeping of the results from systems in State Plans, electronic reporting for these systems will be done through the assistance of EPA. EPA might consider specifying another method for reporting when a system serving over 10,000 persons has not developed the capability to report electronic results. However, most laboratories have this capability and could probably provide this service for the PWS.

5. Public Notification of Availability of Results

SDWA Section 1445 (a)(2)(E) requires notification of the results of the UCMR program to be made available to persons served by the system. The results of UCMR monitoring for CWSs will be reported through annual Consumer Confidence Reports (CCR), as required by § 141.153 (d). For NTNCWSs, UCMR monitoring results will be reported according to requirements of the revised public notification rule as proposed May 13, 1999 at 64 FR 25963. Failure to monitor for unregulated contaminants required through the UCMR will also be reportable under the public notification rule.

The results that will be reported through the CCR and public notification rules should be based on the same monitoring data that the States will receive under the UCMR and will be required to be reported to the NCOD. Information in the NCOD will be available to the public.

VII. Section-by-Section Analysis of Public Comment and EPA Response

This portion of the preamble is devoted to highlighting major changes in the specific sections and paragraphs of the revisions to the Unregulated Contaminant Monitoring Regulation, including 40 CFR 141.35, 141.40, 142.15(c), and 142.16, in the order that they appear in the Code of Federal

Regulations and are promulgated here as a final rule today. The details of the peer review and public comments and EPA's responses can be found in two background documents: External Peer Reviews of the Unregulated Contaminant Monitoring Regulation, and Public Comment and Response Summary for the Unregulated Contaminant Monitoring Regulation.

A. Section 141.35—Reporting of Unregulated Contaminant Monitoring Results

1. Does this reporting apply to me?

This paragraph notes that § 141.35 applies to the owner or operator of any PWS required to monitor for unregulated contaminants under § 141.40. Exceptions to the reporting requirements are also noted. The majority of comments received on this topic suggested that water systems using purchased water should be required to monitor for contaminants occurring in distribution lines, such as microbiological contaminants. Like the proposed rule, today's final rule states that small systems serving 10,000 or fewer persons need not report their results to EPA because EPA will pay and arrange for testing and reporting of the results. To improve the logical flow of the rule, EPA moved this exception to this paragraph from the paragraph immediately below it.

In response to these comments, EPA has modified this section, noting that water systems that purchase all of their water will be included in the UCMR for contaminants having distribution system sampling points, including points of maximum residence time or points of lowest disinfectant residual.

A few commenters suggested it was inappropriate for only the small systems selected as part of the national representative sample to report UCMR results and not other small systems. In response, EPA notes that Section 1445(a)(2)(D) of the SDWA states that all systems required to conduct unregulated contaminant monitoring must report the results. Because only a nationally representative sample of small systems will be required to monitor under the UCMR, only those systems will have to report the results.

2. To whom must I report?

This section explains the reporting requirements for systems that will monitor for unregulated contaminants.

Under today's rule, a system must report the results of unregulated contaminant monitoring to EPA and provide a copy to the State. This is a change from the proposal and is based on EPA's decision, in response to public comment, to implement this rule through MOAs with State agencies rather than through the primacy process. EPA will hold the data for 60 days to allow systems and States time to conduct a quality control review before entering the data into the NCOD. This is discussed in more detail in IX.A. Implementation of the Rule. The system also must notify the public of the monitoring results as provided in Subpart O (Consumer Confidence Reports) and proposed Subpart Q (Public Notification) of this part.

Even though small systems do not report their results because EPA will do that for them, small systems must still comply with the public notification requirements for these results.

3. When do I report monitoring results?

This section specifies that a PWS must report the results of unregulated contaminant monitoring within thirty days following the month in which they receive the results from the laboratory.

Today's final rule is slightly different from that of the proposed rule. Rather than reporting within 10 days of receiving monitoring results, it extends the deadline for reporting results to thirty days after the month in which the results are received from the laboratory. This change provides more time for the system to review the data before reporting. This is in response to comments received indicating that the requirement that systems report results within 10 days after receiving results from the laboratory is too short a period. Additionally, commenters were concerned with adequate time to review and understand the data before reporting them to EPA. Also, as noted previously, EPA will wait 60 days before placing the data in the National Drinking Water Contaminant Occurrence Database (NCOD) to allow additional time for systems, States and EPA to ensure quality control of the data.

Consistent with the decision to not require States to adopt this rule as part of primacy, EPA has also clarified that EPA, not the State primacy agency, will specify the required monitoring period.

A commenter was concerned with the costs associated with reporting UCMR results quarterly and requested that PWSs be allowed to report data in an annual batch. EPA is maintaining the requirement of quarterly reporting because EPA does not believe that annual reporting would allow EPA to use the data as input to the next round of the CCL and UCMR lists, which is a principal objective of the rule. Also, large PWSs already report quarterly. Additionally, EPA plans to evaluate the data early to determine whether modifications are needed in the analytical methods.

4. What information must I report?

This section lists and defines the data elements that must be reported. In addition to analytical results and quality control, EPA is requiring information on the PWS from which the analyzed sample was taken.

Today's rule modifies somewhat the unregulated contaminant monitoring reporting requirements in the proposed rule (Table 8 of ''Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems,'' **Federal Register**, vol. 64, no. 83, April 30, 1999, pages 23426 to 23428) and reorders the sample data elements. For example, for microbiological monitoring, future requirements may specify either a sampling point in the distribution system that has the maximum residence time or, under today's rule, the lowest disinfectant residual, in response to comments concerning systems using disinfectant booster stations where the disinfectant residual is low. These sampling point types were added to the data element listing. Questions were raised as to how the UCMR would accommodate water systems that have mixed sources (i.e., use blended/mixed surface water and ground water). In response, the data element, Water Source Type, will be modified in the Safe Drinking Water Information System (SDWIS) Inventory Reporting Requirements to address this issue: the valid choices for this data element will include purchased/non-purchased blended/mixed water. See 40 CFR 141.35(d) Table 1 of the rule for more information.

Sample collection date must be reported as 4-digit year, 2-digit month, and 2-digit day under the final rule to ensure year 2000 compliance, and to refine date records, as suggested by peer reviewers. Also added to the sample data elements is a sample batch identification number, which is assigned by the laboratory to each batch of samples analyzed with the spike and spike duplicate sample at the spiking concentration to allow analysis of method performance. The list of permitted sample analysis types is reduced to field sample and batch spike/spike duplicate since these will be the only required sample types reported for unregulated contaminant monitoring.

During the public comment period, a comment was received suggesting that inventory data elements should be provided officially by the States through

the inventory data reporting process, rather than by systems with their sample results. EPA agrees that inventory data elements are already reported by a different mechanism. Therefore, EPA has removed the data elements that are or will be included in the Safe Drinking Water Information System (SDWIS) Inventory Reporting Requirements: sampling point type, water source type, public water system facility type, latitude of the public water system facility for source and treatment plant, and longitude of the public water system facility for source and treatment plant. This change in data elements under today's rule provides for the revision or addition in inventory data reporting for the data elements not included in the rule to address:

(A) for sampling point type, an expansion of allowable choices to include: raw/untreated water, finished water from treatment system, finished/treated water from entry point to the distribution system after treatment, finished/treated water from within the distribution system, finished/treated water from the distribution system at the location of maximum residence time or lowest disinfectant residual, finished/treated water from the distribution system at the location of lowest disinfectant residual, finished/treated water from household/drinking water tap, finished/treated water from unknown location, and other finished/treated water;

(B) for water source type, to include allowable choices of: surface water from a stream or purchased surface water from a stream, surface water from a lake or reservoir, or purchased surface water from a lake or reservoir, ground water under the direct influence of surface water or purchased ground water under the direct influence of surface water, ground water or purchased ground water, and blended/mixed surface water and ground water, or purchased blended/mixed surface water and ground water;

(C) for public water system facility type, to include, for the purposes of UCMR, the allowable choices of: intake (for surface water sources), well or wellfield (for ground water sources), treatment plant, sampling point, entry point to distribution system, reservoir, booster station, and unknown;

(D) latitude of the public water system facility for source and treatment plant; and

(E) longitude of the public water system facility for source and treatment plant. Additionally, the SDWIS inventory reporting requirements will address associating the PWS facility identification number of any sampling point with the PWS facility identification number of its respective treatment plant. Furthermore, the reason that the latitude and longitude of the treatment plant should be reported is to allow the association of other data, such as health effects information, with a point closest to the affected population, since the ultimate use of the UCMR data is for input to exposure assessment in determining whether or not to regulate a contaminant.

Comments were received suggesting that EPA include the maximum reporting level (MRL) in the data elements. It is not necessary to include the MRL in the data elements because the MRL is specified in the rule in § 141.40(a)(3) Table 1. The rule wording is clarified so that a particular laboratory having the capability for reliable lower detection may report concentrations below the MRL.

Some commenters had concerns about the inclusion of a presence/absence data element. For microbiological contaminants, this data element may be needed because analytical methods do not always allow for quantification of the target organism in the sample and may only allow for a qualitative response, i.e., presence or absence. For chemical contaminants it can be used for reporting the detection of chemical contaminants below the MRL but above the MDL.

5. How must I report this information?

This section explains that the unregulated contaminant monitoring results must be reported in electronic or in another format specified by EPA, such as a template on paper that can be scanned and entered into the NCOD electronically.

A question was raised as to how EPA will be able to accept electronic data from diverse laboratory information systems at the many laboratories that may be reporting data. It was also suggested that EPA work with States and water suppliers to develop formats to make electronic submission easier. EPA is considering the development of software that may be downloaded from the EPA website to enable systems and their laboratories to electronically report data. This may be the same electronic data form that allows PWSs to report data to NCOD/SDWIS.

Some commenters indicated that the State should have the option to specify an alternate reporting method, particularly with respect to small systems. It was also suggested that EPA should write the rule so as not to preclude reporting directly to States and EPA from the laboratories for small systems, as well as for large systems. The laboratory, whether EPA-approved or an EPA-designated (i.e., contract) laboratory, could report to systems, States, and EPA. As noted previously, EPA will report the data for small systems.

As noted, the final rule is modified to require systems to report to EPA. EPA will require electronic reporting, unless some other format must be used for a particular system. This situation may be established in consultation with the State and described in subsequent guidance that EPA will prepare on the UCMR reporting process.

One commenter also expressed the need for an electronic legal equivalency of a signed hard copy of a laboratory report. Since there is no requirement for electronic reporting of a signed laboratory report, EPA will not require an electronic legal equivalency. Systems may want a signed hard copy for their own records.

6. Can the laboratory to which I send samples report the results for me?

This section states that a laboratory can report the sample results, so long as it provides the system with a copy for review and record keeping.

The Agency was asked to clarify that it is the responsibility of the PWS owner/operator to report data to EPA, even if the laboratory reports the results. In response to comments, the rule wording has been clarified to stress that the PWS is responsible for reporting information and ensuring that the laboratory provides the results to EPA and the State.

7. Can I report previously collected data to meet the testing and reporting requirements for the contaminants in § 141.40(a)(3)?

This paragraph was added in response to many comments received requesting a provision for systems to report relevant unregulated contaminant data collected before implementation of today's rule, in lieu of allowing only UCMR data collected after the rule's effective date. The general consensus was that some large systems may already have monitored for or want to monitor before 2001 for these contaminants, especially if it fits within their monitoring cycle. This paragraph specifies that, as long as systems meet the requirements specified in § 141.40(a)(3), (4), (5) and Appendix A for monitoring and in § 141.35 (d) for reporting, the data collected before the effective date of this rule can be submitted to meet the testing and reporting requirements for the contaminants in § 141.40(a)(3).

B. Section 141.40—Monitoring Requirements for Unregulated Contaminants

1. Requirements for Owners and Operators of Public Water Systems

(a) Do I have to monitor for unregulated contaminants?

This section eliminates unregulated contaminant monitoring requirements for owners and operators of transient, non-community water systems. It also specifies the monitoring requirements for large systems that do and do not purchase their entire water supply from another system and for small systems selected for the program that do and do not purchase their entire water supply from other systems.

Today's rule describes specific monitoring requirements for large and small systems that purchase their entire water supply from other systems. This is in response to the many commenters who indicated that PWSs using purchased water should be included in the UCMR for microbiological contaminants, or other contaminants that may arise in the distribution system. As a result, EPA modified the rule to require that water systems that purchase all of their water will be included in the UCMR for contaminants having distribution system sampling points.

(b) How would I be selected for the monitoring under the State Monitoring Plan, the screening survey, or the pre-screen testing?

This section is basically unchanged from the proposed rule since commenters broadly supported the 3-tier approach to the monitoring program. It explains that only a representative sample of small systems, randomly selected by EPA, will be required to conduct assessment monitoring for unregulated contaminants as part of a State Monitoring Plan. A subset of these systems will be randomly selected as Index systems and required to submit additional information. Each State will have the opportunity to modify the list of selected systems.

(c) For which contaminants must I monitor?

The Unregulated Contaminant Monitoring List is presented in this section. It comprises List 1, the chemical contaminants to be monitored under Assessment Monitoring; List 2, the chemical and microbiological contaminants to be monitored under the Screening Survey; and List 3, the chemical and microbiological contaminants to be monitored under Pre-Screen Testing.

In response to many comments, today's rule makes changes in the contaminant lists as presented in the proposed rule. For List 1, the chemicals perchlorate and acetochlor are added and the microbiological contaminant *Aeromonas* is removed and moved to List 2. The analytical methods for perchlorate and acetochlor are reserved. The methods are expected to be ready in the near future, at which time, a rule revision will be published for comment and promulgated to ensure these contaminants can be monitored on or before January 2001. Nitrobenzene, also on List 1, has an approved method, but it requires careful implementation. Acetochlor (now on List 1) is removed from List 2, and RDX and the radionuclide polonium-210 are added to List 2. The sampling locations for List 1 and 2 contaminants are Entry Points to the Distribution System (EPTDS), except for *Aeromonas* and polonium-210, for which the sampling points are reserved until the methods are further validated and promulgated. The radionuclide lead-210 is added to List 3. Sampling locations for the radionuclides and microogranisms are reserved, as are the dates for the period during which monitoring must be completed. These dates will be determined at a later time. To activate monitoring for the contaminants on Lists 2 and 3, the methods and related sampling requirements must be specified in future rulemaking revising this regulation.

Many commenters indicated that it would be premature to include *Aeromonas* on List 1 since the specified method has not been sufficiently field tested. It was also suggested that the rule should be clear about its focus on *Aeromonas* the genus, not the species *A. hydrophila.*

In response, EPA has moved Aeromonas to List 2. The CCL specifies *Aeromonas hydrophila*; however, the proposed analytical method identifies to the level of the *Aeromonas hydrophila* complex, which is a group of about 7 to 12 *Aeromonas* species. To identify to the species level would increase the cost and complexity of the analysis and, given funding considerations, would limit the size of the *Aeromonas* monitoring program that could be done. Given the cost of the analyses and how frequently *Aeromonas* has been found in previous finished water surveys, a panel of EPA scientists (CCL Microbiology Meeting, Cincinnati, OH, July 9, 1998) agreed that identifying to the *Aeromonas hydrophila* complex (rather than the species) level was adequate for the purpose of the UCMR. A final method has not yet been written for *Aeromonas.* The current draft analytical method for *Aeromonas,* draft EPA Method 1602, does not include verification tests since a final decision on the inclusion of verification tests into the method will be made after method validation studies. Since the method validation studies have not been completed, EPA has placed *Aeromonas* on List 2, to be monitored after the method is ready.

In response to over 100 public comments and peer review considerations addressing the inclusion of perchlorate in the UCMR, EPA has added it to List 1. EPA did not originally propose monitoring for perchlorate under this portion of the regulation based on three general concerns: its apparent local/regional, rather than nationwide, occurrence at the time EPA assembled the monitoring list; current analytical methods do not adequately address potential interferences from chloride, sulfate or other dissolved solids; and no laboratories are certified for performing analyses using the methods for perchlorate. Based on many comments that showed perchlorate occurrence in many locations around the nation, EPA placed perchlorate on List 1. The analytical method for perchlorate is listed as ''reserved'' in the UCMR pending imminent conclusion of EPA refinement and review of the analytical method. Since EPA did not initially include a perchlorate analytical method in the proposal to this regulation, it will be necessary for EPA to issue an additional regulation to formally propose and promulgate a perchlorate analytical method prior to initiating monitoring for perchlorate under the UCMR.

Therefore, following promulgation of the UCMR (including the ''reserved'' perchlorate method reference), EPA will be proposing a new regulation specifying both the approved analytical method for the analyses of perchlorate, and the implementation of a laboratory approval system, where labs are certified to test for perchlorate. EPA is currently conducting analytical methods development to support the analyses of perchlorate. This new method will be based on the currently available ion chromatography methods, but will include a criteria detailing when a laboratory must perform a sample clean-up procedure to minimize the impact of elevated concentrations of chloride, sulfate or other dissolved solids. The laboratory approval system will be based upon previous certification of the laboratory for the analyses of compliance monitoring samples using

either EPA Method 300.0 or 300.1, and the successful analyses of a perchlorate performance evaluation sample.

EPA asked for comment on and a few commenters recommended the addition of RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine) to the UCMR. In response, EPA has placed RDX on List 2, as its method needs further refinement. EPA will propose and promulgate an analytical method for RDX prior to requiring monitoring for RDX under the UCMR.

EPA also received comments suggesting that it move acetochlor, 2,4-dichlorophenol and 2,4,6-trichlorophenol from List 2 to List 1, and require systems to use EPA Method 525.2 to analyze for acetochlor and either a new SPE/GC/MS method modified for EPA Method 525.2 or a modified EPA Method 552 to analyze for the phenols. EPA has moved acetochlor to List 1, since the analysis of acetochlor using EPA Method 525.2 is expected to be approved prior to UCMR implementation. The evaluation of the use of EPA Method 525.2 will be finalized after acetochlor preservation studies have been completed. EPA will propose and promulgate an analytical method, likely EPA Method 525.2, for acetochlor prior to requiring monitoring for acetochlor under the UCMR.

EPA did not move 2,4-dichlorophenol and 2,4,6-trichlorophenol to List 1 since the progress of method development for these contaminants is not equivalent to that of acetochlor. EPA has determined that the phenols are not compatible with EPA Method 525.2 and expects to require a separate SPE/GC/MS method currently under development. A modification to EPA Method 552 was also suggested. The suggested diazomethane modification to EPA Method 552 is not an option permitted in Method 552 as an EPA approved method and must be evaluated, reviewed and approved before allowing it to be used as an EPA method.

As noted in this comment, dichlorophenol and 2,4,6-trichlorophenol can only be analyzed using method 552, when the diazomethane used is sufficiently strong. This does not lead to the type of reproducibility needed to approve this method in a variety of analytical laboratories that may produce diazomethane of varying strengths. If the diazomethane is not as strong as that indicated in this comment, the recovery of dichlorophenol can drop to 10%. In addition, 2,4,6-trichlorophenol is subject to interferences caused by the derivatization product of 2,4-dichlorophenol, regardless of the strength of the diazomethane. Method 552 is not approved for the analyses of any other UCMR analytes. Therefore, use of Method 552 for these 2 compounds would then require the laboratory to use a separate method for the analyses of the other phenols included in the UCMR. Instead of requiring 2 methods for these analyses, EPA is currently conducting the method development necessary to provide a solid phase extraction GC/MS method, that does not require derivatization, for the analyses of all of the phenols included in the UCMR as well as other phenols not currently listed. This will provide a single solid phase extraction, GC/MS method for the analyses of all of the phenols included in the UCMR. Therefore, 2,4-dichlorophenol and 2,4,6-trichlorophenol will remain on List 2.

As suggested by several commenters, EPA has added polonium-210 and lead-210 to the UCMR Lists. New information indicates that methods for these contaminants may be easier to conduct than originally envisioned. However, EPA research and an external expert reviewer with experience with radionuclides note that the currently available methods for lead-210 and polonium-210 may be very time consuming and will require an experienced analyst. There are also significant laboratory capacity and capability concerns. Few, if any, laboratories currently performing compliance drinking water radiochemistry have any experience with polonium-210 or particularly lead-210. The method for lead-210, in particular, needs further refinement. Therefore, EPA has added polonium-210 to List 2 and lead-210 to List 3. Before requiring monitoring for these contaminants, EPA will need to address issues related to radionuclide laboratory capacity and certification.

The recommendation was also made that the Agency add EPA Method 502.2 for the measurement of MTBE. Several public comments suggested that EPA Method 502.2 was reliable, and that if it is not added, then there could be added burden on PWSs using GC methods. EPA considered the commenters concerns; however, the Agency is not allowing the use of EPA Method 502.2 for MTBE. MTBE is not included in EPA Method 502.2 because MTBE cannot be reliably measured by either of the detectors used in the method, and its stability has not been tested using the preservatives listed in that method.

Some commenters also suggested the use of EPA 525.2 for nitrobenzene since they have problems using the methods listed in this regulation. Nitrobenzene will remain on List 1 with EPA Method 524.2, and voluntary consensus standard methods D5790–95 and SM6210D being approved for its analysis. However, the commenters are correct that some laboratories have had problems measuring nitrobenzene using these methods. When laboratories do not use the three stage trap listed in the method, nitrobenzene cannot be detected at reasonable concentrations in either standards or samples. Since they will therefore clearly fail the quality control requirements of the method, data will only be generated by laboratories that can provide useful data based on full method implementation. While the data provided by a commenter and confirmed by current EPA methods development research demonstrate that nitrobenzene can be analyzed using EPA Method 525.2, the preservation of nitrobenzene using Method 525.2 conditions has not been demonstrated. The methods development research needed to determine that nitrobenzene can be preserved using the sampling procedures specified in EPA Method 525.2 is currently being conducted. If nitrobenzene is compatible with this method's preservation requirements, then EPA will propose and promulgate an analytical method for nitrobenzene prior to requiring monitoring for nitrobenzene.

As for the use of EPA Method 525.2 for the analyses of nitrobenzene, research recently conducted in the OGWDW laboratory clearly indicated that nitrobenzene cannot be accurately analyzed using Method 525.2. Recoveries of nitrobenzene were less then 10% when samples were extracted using the conditions specified in method 525.2. In conversations with the laboratory submitting this comment, EPA was informed that the data submitted in this comment was not developed using the procedures specified in EPA Method 525.2. In addition, no analyte stability data is available for the storage of nitrobenzene in samples preserved as specified in method 525.2 or in extracts generated using method 525.2. Therefore, EPA Method 525.2 will not be approved for the analyses of nitrobenzene.

One commenter suggested that EPA Method 632 is a simple method with adequate sensitivity for measuring diuron and linuron. EPA Method 632 is a modification of the National Pesticide Survey Method 4, which EPA has found is not reliable for diuron and linuron.

One commenter requested that an HPLC method that can measure each of the two DCPA acid degradates separately be approved for their analyses. However, this method was published in a journal not by EPA or

any of the consensus methods organizations. This method, to the best of EPA's knowledge, is only being used in a limited number of laboratories and therefore has not had the level of validation necessary for use in this type of occurrence data gathering effort. In addition, since the methods that were approved measure the two DCPA degradates as a single analyte, approving a method that measures them differently would cause concern about data reporting and interpretation.

(d) What general monitoring requirements must I follow for List 1 monitoring?

This section specifies what is generally required of all systems participating in Assessment Monitoring. It also details additional monitoring requirements unique to large and to small systems.

Several commenters expressed support for collecting routine water quality parameters (WQPs) and agreed that WQPs provide useful information and a solid framework within which to explain and understand monitoring results, especially for microbiological contaminants. Several did not believe that reporting or testing of WQPs is necessary, noting that WQPs are not routinely collected for all systems, and expressing particular concern that small ground water systems without treatment do not collect information on chlorine residuals.

Water quality parameters are important for microbiological contaminants and may affect degradation of chemical contaminants. However, EPA is limiting the set of additional parameters, in response to comments. EPA is requiring reporting of additional parameters, as appropriate to the contaminant type, including pH, turbidity, temperature, and free and total disinfectant residuals. In addition, today's rule specifies the contaminant type and EPA Method, Standard Method, or other voluntary consensus standard that may be used to measure these parameters. Small ground water systems that do not disinfect would have no residuals to measure or report, so this will not be a burden. Furthermore, for small systems serving 10,000 or fewer persons, EPA will pay for the testing of these water quality parameters as part of the testing program for unregulated contaminants.

The monitoring requirements for large systems remain unchanged from the proposed rule. Text covering small systems has been clarified (1) to indicate that the State may inform small systems of sampling arrangements other than those listed in this section, (2) that EPA-designated laboratories will provide sampling equipment, and (3) the EPA will specify sample collection times.

It was suggested that the Agency use total trihalomethane (TTHM) monitoring sites for the microbiological contaminants. In general, commenters requested that more explicit designations be given for microbiological sampling sites. EPA has noted that it expects that system specific sites of normal and maximum residence time and normal and lowest chlorine residual will be designated when revisions to this final rule are made for contaminants of concern in distribution systems. These sites have been designated for other rules, related to total coliform and total trihalomethane/disinfectant byproduct sampling. Further, EPA will propose and promulgate appropriate monitoring sites for microbiological contaminants prior to requiring monitoring for *Aeromonas* and other contaminants of interest in distribution systems. The TTHM monitoring sites may be appropriate and, if so, will be included in the future rulemaking.

(e) What specific sampling and quality control requirements must I follow for monitoring of List 1 contaminants?

This section details the requirements for all systems, including sample collection, shipping time and reviewing and reporting results. It also prohibits compositing samples. Also provided in this section are requirements unique to large and small PWSs that are part of the State Monitoring Plan.

Today's text has been clarified to indicate that the State or EPA may inform all systems of sampling arrangements other than those specified in the rule. Other changes from the proposed rule related to large systems include clarifications on the frequency of sampling for chemical and microbiological contaminants conducted by surface water and ground water systems, as well as expanded information on sampling locations.

Regarding small systems that are part of a State Monitoring Plan, today's rule notes that the State or EPA may inform the system of sampling arrangements other than those specified in the proposed rule. It also notes that EPA's laboratory will send additional instructions for sampling if the first sampling event was not properly conducted.

(i) All systems

Overall requirements for all systems relative to (A) sample collection and shipping time, (B) no compositing of samples, and (C) review and reporting of results were not changed from the proposed to final rule.

(ii) Large systems

Specific sampling requirements for large systems are in this section.

(A) Timeframe

One commenter indicated that EPA should adapt the UCMR process to the 3-year compliance monitoring cycle. The rule already states that coordination with the 3-year compliance monitoring cycle is appropriate.

(B) Frequency

Many commenters were concerned that requiring ground water samples 6 months apart was not flexible enough to accommodate other monitoring schedules. Several commenters also suggested that systems using groundwater only be required to collect one sample per year because ground water systems do not vary much in water quality.

EPA has modified the rule to provide flexibility to the system to pick one of the three months in the vulnerable time and then one of three months 5 to 7 months earlier or later than the vulnerable time. This schedule should preserve the longer time between ground water samples desired for calculating an average annual concentration for exposure assessment.

EPA will maintain the two samples for ground water systems. Ground water systems encompass a wide range of conditions and many utilize unconfined settings that do exhibit temporal variability. To assess exposure from a one-year sampling activity, most experts EPA consulted and most stakeholders agreed that the program must try to capture the range of contaminant concentrations that occur to ensure representativeness of the results over time nationally. Two samples are the minimum to estimate an average exposure; one sample will be targeted toward the season of elevated concentrations (the vulnerable monitoring time). Many experts and reviewers suggested more frequent sampling, but the current design was deemed a reasonable compromise between data needs and burden. The UCMR frequency adds one additional sample over five years for a ground water site, not one every year. While some systems may not exhibit much variability, and some deep systems may not exhibit any synthetic contaminants, the UCMR must include the full range of water system conditions to develop an accurate estimate of national occurrence and exposure. Additionally, with the UCMR monitoring being

coordinated with compliance monitoring (to the extent possible), approximately one-third of systems affected by the rule will monitor each year. Therefore, UCMR Assessment Monitoring is expected to be conducted over a range of hydrologic patterns.

This wide range of ground water conditions also effects the nature of vulnerable periods. Some ground water systems show clear seasonal patterns, some show different scale of variability, and some show no variations (for some types of contaminants). For these new contaminants, EPA set a default vulnerable period (May, June, or July) that would fit the majority of vulnerable seasonal patterns around the United States. Expert technical reviewers and stakeholders concurred with this period. However, the State can specify a different period, based on their knowledge of local conditions. EPA decided not to allow systems to establish vulnerable periods because of the need for national consistency to support a sound statistical approach. Allowing each system to establish a vulnerable time would introduce significant variability in the program implementation, contrary to the consistency basis of the statistical approach for an unbiased sample. EPA decided that flexibility at the State level to select an alternate vulnerable monitoring time was the maximum allowable variability that should be incorporated into the implementation of the program.

(C) Location

A few commenters suggested that EPA allow source water monitoring, particularly in States where source water monitoring is used as a more stringent location for compliance monitoring. In related comments, the Agency was asked to provide further information about entry points to the distribution system (EPTDS), particularly with respect to groundwater systems with multiple wellhead and/or using multiple aquifers, suggesting that representative samples might be collected instead of from every entry point.

The sampling location for chemical contaminants is given on List 1 as the EPTDS and is now further defined to include the compliance monitoring point specified by the State or EPA under 40 CFR Part 141. In implementing compliance monitoring, the States and EPA have made determinations of where representative samples are collected, and this rule will incorporate these determinations and be consistent with ongoing monitoring. However, if the compliance monitoring point specified by the State is a source (raw) water site, and a UCMR contaminant is detected, then sampling must be conducted at the EPTDS unless the State or EPA determines that no treatment or processing was in place that would affect the measurement of the contaminants. In that case, the additional sampling at the EPTDS would not be required.

(D) Sampling instructions

This section did not change and EPA did not receive any comments on it.

(E) Testing and analytical methods

Several commenters raised questions about the process for laboratory certification under the rule. As noted in the rule, laboratories are automatically certified for the analysis of UCMR chemicals if they are already certified to conduct compliance monitoring for a chemical included in the same method being approved for UCMR analysis. Since the Standard Methods, ASTM, and AOAC methods approved in the UCMR use the same technology as the EPA method listed for the same analyte, laboratories certified for compliance monitoring using the EPA method may also use any of these methods approved for the same analyte. As the method to be used for the analysis of perchlorate will be based upon the currently available single analyte methods for the analysis of perchlorate, EPA will need to conduct a performance evaluation study of labs to approve them for perchlorate monitoring before January 2001. Details of this approval system will be included in a public notice and comment period prior to conducting approval for perchlorate analysis.

(F) Sampling deviations

This section did not change and EPA did not receive any comments on it.

(G) Testing

This section did not change and EPA did not receive any comments on it.

(iii) Small systems that are part of the State Monitoring Plan

In the Preamble of the proposed rule, EPA asked for public comment on whether a random selection of small systems across the nation was appropriate for a representative sample of small systems or a targeted sampling approach based on prior information about contaminant occurrence or use should be applied. Most commenters, and particularly expert technical reviewers, addressing this issue supported the random selection of systems as an unbiased, scientifically sound approach.

EPA determined after consulting statisticians inside and outside EPA that a targeted approach would increase sampling errors unless the sample size is increased. A random sample is necessary to provide small system data roughly equivalent to large system data. Further stratification could introduce non-random sampling errors unless the sample size is increased. Targeted monitoring may also miss the target area if little is known about the actual location of use of a contaminant or if the contaminant is used beyond the specified target area. Additionally, surface waters will carry contaminants beyond the target area to surface water supplied drinking water systems downstream that need to be considered for UCMR monitoring. Also, targeting would be very difficult with the number of contaminants the UCMR is designed to measure. Finally, stratified sampling also requires extensive knowledge about a variety of factors beyond the fate and transport of a contaminant in the environment.

(A) Frequency

Comments and EPA response were addressed under (ii) Large Systems, above.

(B) Location

Comments and EPA response were addressed under (ii) Large Systems, above.

(C) Sampling deviations

State commenters asked about resampling if sampling errors occurred. EPA modified this paragraph to include provisions for resampling using additional instructions from the State or EPA.

(D) Sample kits

No comments were received on this section. It is unchanged.

(E) Sampling instructions

States indicated that some flexibility was needed within a month's timeframe to accommodate changes in sampling schedules that could not be accounted for up-front. In response, EPA changed the specifications. The State Plan will specify the year and day, plus or minus 2 weeks, to allow flexibility and/or to account for changes related to the State's determination of an alternate vulnerable sampling period. The State may pick another year and day to coincide with compliance monitoring.

(F) Duplicate samples

No comments were received on this section. It is unchanged.

(G) Sampling forms

No comments were received on this section. It is unchanged.

(H) Sample submission

At least ten States expressed concerns about the ability of small system owner/operators to properly collect samples for UCMR requirements, which would, therefore, affect the quality of the UCMR results. These States suggested that they could collect UCMR samples for systems in the State Monitoring Plans since, in most States, the number of small systems would be limited, and some of them already conduct compliance field sampling for small systems.

The rule allows for States to sample. States can address field sampling in their Memorandum of Agreement between the State and EPA. EPA would welcome the assistance of States in collecting samples from small systems to ensure high quality data for future decisions concerning whether or not to regulate unregulated contaminants.

(f) What additional requirements must I follow if my system is selected as an Index system?

This section explains that systems selected as Index systems must help EPA or the State identify appropriate sampling locations and provide information on the wells and intakes that are in use at the time of sampling, on well casing and screen depths (if known) for those wells, and the pumping rate of each well or intake at the time of sampling. However, EPA will provide field technical support to collect samples at index systems and assist the systems with compilation of this information, as well as reporting these data.

Comments were supportive and no substantive changes were made to this section.

(g) What must I do if my system is selected for the Screening Survey or Pre-Screen Testing?

This section explains what is required of large and small systems selected to participate in the Screening Survey or in Pre-Screen Testing. Today's rule notes that large systems must report test results to States and EPA. EPA will be developing guidance for this reporting process.

(h) What is a violation of this rule?

EPA added a new § 141.40(a)(8) that clarifies violations of this rule. This clarification will help public water systems understand the consequences of a failure to monitor. The changes state that any failure to monitor or report will be a monitoring or reporting violation.

2. Requirements for State and Tribal Participation

(a) How can I as the director of a State or Tribal drinking water program participate in unregulated contaminant monitoring, including the State Monitoring Plan for small systems, and the Screening Survey and Pre-Screen Testing of all systems?

Today's final rule incorporates a variety of changes from the proposed rule in response to public comments. Many comments were received requesting that EPA directly implement the UCMR, rather than require States to obtain primacy. In response to these comments, adoption of this rule is no longer a condition of maintaining PWS primacy. EPA will proceed with direct implementation. However, EPA recognizes the important role of the States in this program and has modified the rule to encourage States and EPA to enter into Memoranda of Agreement (MOA) to facilitate State participation and implementation. EPA also recognizes that, in the absence of the option for an MOA, the three-tier monitoring approach of the UCMR would require States to apply for primacy revisions under this program three separate times (separately for each of the three lists) over five years; moreover, the primacy application period extends beyond the start of monitoring for each of the three tiers. Through the MOA, EPA and the State may also address other aspects of this final rule's implementation, including compliance tracking and enforcement.

This section explains that the director of a State or Tribal drinking water program can complete an MOA with EPA that describes the State's or Tribe's activities in accepting or modifying the initial monitoring plan, determining an alternative vulnerable time for sampling, modifying the timing of monitoring, identifying sampling points for small systems, notifying large and small systems of their monitoring responsibilities, providing instructions to systems that are part of the State Monitoring Plan, and participating in the Screening Survey and Pre-Screen Testing.

Regarding the initial plan, EPA will specify the small systems, rather than just their number, and the year and day plus or minus two weeks—rather than the week, month, and year in the proposed rule—that each small system must monitor for List 1 contaminants. A State can request that a system which purchases all its water from another system, as clarified in today's rule, be removed from the initial monitoring list, except if it is required to monitor for contaminants in the distribution system.

Public comments also suggested that States be allowed to remove systems from the monitoring list for justifiable and compelling reasons. States may remove systems from the plan if the systems have closed, merged, or purchase all of their water from another system. However, in response to comments, purchased water systems may be selected to monitor contaminants in the distribution system, since purchased water systems tend to have locations furthest from the treatment plant. In these cases, they would be added to the plan as sampling points in the distribution system for the systems first selected. In a change from the proposed rule, States may now remove systems from the list for other reasons, subject to review by EPA, as long as the decision to remove systems from the list is not based on contaminant occurrence, non-occurrence, or potential vulnerability of a system to a contaminant. Not removing systems based on prior or presumed information about contaminants preserves the statistical principle of an unbiased sample.

A State must explain in the State Plan sent to EPA why it believes a system should be removed, but the final decision rests with EPA, as EPA is responsible for ensuring the integrity of the national representative sample.

Systems are expected to monitor between May 1 and July 31, as the default vulnerable period, but today's rule allows a State to determine if there is a different period when any of the small systems in the initial plan, or any of the large systems that must monitor, are more vulnerable to contamination. If so, a State must notify the affected systems of when they are to take samples. If a State changes the vulnerable time for monitoring, the rule now indicates, in response to comments, that the State should also consider that the effects on modifying the timing of monitoring. The States would notify EPA of their determination through the submission of their revised Plan to EPA.

The proposed rule required States to provide EPA with plans for notifying each PWS selected in the initial or modified monitoring plan of their responsibilities and to provide them with instructions for monitoring. Under today's rule, establishing the State role of informing systems of their responsibilities is part of the State-EPA MOA.

As was the case under the proposed rule, a State entering an MOA with EPA must provide instructions to systems that are part of the State Monitoring Plan implementation; EPA will provide guidance on the instructions. Today's final rule adds new language requiring a State to inform EPA at least 6 months before the first monitoring is to occur if the State plans to do the sampling or to make alternative arrangements for the sampling at systems in the plan. The State also must address the alternative monitoring arrangements in the MOA with EPA. These alternative monitoring arrangements could include the State sampling at small systems, a change from, but not precluded in, the proposed rule.

Today's rule enables States, through a State-EPA MOA, to participate in Screening Survey monitoring by small systems as well as large systems. To participate, a State must review its State Monitoring Plan to ensure that no systems have closed, merged, or purchase water from other systems (unless the system is to conduct microbiological monitoring) and then make any necessary changes. States also must notify selected systems of the Screening Survey requirements.

Under today's rule, States may participate in Pre-Screen Testing in two ways. First, within 60 days of receiving EPA's letter concerning the initiation of Pre-Screen Testing for specific contaminants, a participating State must identify between 5 and 25 systems determined to be representative of the systems most vulnerable to the List 3 contaminants. Second, if Pre-Screen Testing is part of the MOA, a State now must notify each selected system's owner or operator of the Pre-Screen Testing requirements.

Today's rule also notes that if a State decides not to prepare an MOA with EPA to develop the State Monitoring Plan for small systems, the initial plan provided by EPA will become the State Monitoring Plan for a State or Tribe. Under the proposed rule, the initial plan became the State plan if a State did not accept the initial plan or submit a request to EPA to modify the initial plan within 60 days.

A commenter raised concerns about whether Tribal systems would be selected in a random manner to avoid bias toward selecting vulnerable systems. EPA will select Tribal systems at random. The rule treats Tribal systems the same as other systems with equal probability of selection.

A commenter was concerned about who would inform systems of their responsibility to monitor. As noted above, the State still plays a critical role in the successful implementation of the program, including informing the systems. If the State elects not to enter into an MOA, EPA will inform systems of their responsibilities.

Several commenters asked whether States should review List 2 systems in the representative sample at a later date to check the status of the systems prior to the Screening Survey. A provision has been made for later State review of List 2 systems in the State Plan to check system status that may have changed since the initial review.

(b) What if I decide not to enter into an MOA?

This is a new section not included in the proposed rule, although it responds to the previous recognition in the proposed rule that a State may not desire to engage in the process of preparing a State Monitoring Plan. This section indicates that EPA will carry out the functions that the State could have conducted.

(c) Can I add contaminants to the Unregulated Contaminant Monitoring List?

This section explains how seven or more State governors can petition the EPA Administrator to add one or more contaminants to the Unregulated Contaminant Monitoring List.

Except for the numbering of this subsection, it is unchanged from the proposed rule.

(d) Can I waive monitoring requirements?

This section explains that monitoring requirements can be waived only with EPA approval and only under very limited conditions.

Except for the numbering of this subsection, it is unchanged from the proposed rule.

A few commenters inquired as to whether EPA would allow individual systems to be waived from monitoring. The statute only provides for State-wide waivers.

C. Appendix A—Quality Control Requirements for Testing All Samples Collected Under § 141.40

This appendix specifies the requirements that a system must follow to control the quality of samples collected and submitted under § 141.40. Areas covered are sample collection/preservation, method detection limit, calibration, reagent blank analysis, quality control sample, matrix spike and duplicate, internal standard calibration, method performance test, detection confirmation, and reporting.

In response to public comments, a few minor technical modifications have been made to the Appendix, modifying specifications for calibration, matrix spikes and matrix spike duplicates, and the number of significant digits specified for MRLs.

D. Section 142.15—Reports by States

Section 142.15(c)(3) is replaced in its entirety by the term ''Reserved'' in today's final regulation because States will not go through a primacy revision process but may be reviewing the data for quality control purposes before EPA places them in the NCOD. The wording in the proposed rule is, therefore, not included.

E. Section 142.16—Special Primacy Requirements

Section 142.16(e) is revised to delete references to § 141.40 that are no longer relevant.

VIII. General Issues From Public Comment and EPA Response

Several additional issues were raised during the technical peer review and public comment processes. They are summarized and addressed next.

A. Data Quality

One commenter indicated that data quality objectives should determine confidence bounds for occurrence and exposure estimates and that resulting DQOs should be maintained for all system sizes. Many data quality specifications, such as confidence levels for the representative sample, are presented in F., Representative sample of systems serving 10,000 persons or fewer. EPA will publish other Data Quality Objectives for the UCMR in the Quality Assurance Project Plan for the program.

Commenters indicated that EPA should give balanced attention to both false negatives and false positives in establishing analytical methods and quality control procedures for the contaminants on the UCMR List. The Agency has evaluated analytical methods developed by both EPA and other voluntary consensus standards organizations that publish analytical methods, such as Standard Methods and the American Society for Testing and Materials. The Agency has not approved analytical methods published only in analytical journals or methods that use techniques that cannot routinely be used by all drinking water analysis laboratories (e.g., acid, base/neutral fractionation, or packed column gas chromatography). Because control of ''false negatives'' is essential to the quality of the data collected under this

final regulation, documentation of the contaminants' stability under the sample and extract holding conditions specified in the analytical method were also evaluated.

B. EPA Funding for Small System Testing

Commenters were concerned about small system testing for which EPA is to pay the costs. They suggested that if there is reduced funding, then EPA should reduce the list, sampling frequency or number of systems sampled. EPA currently has sufficient funds for this rule. If for some reason, funds are reduced, EPA will consider a range of options to respond to this circumstance, but in all cases would ensure that the rule would not impose a significant economic impact on small entities.

C. Lab Certification

Commenters were concerned that EPA needs to identify steps and procedures necessary to maintain certification for unregulated contaminant analysis and clarify how States are to certify laboratories in time for implementation of the rule. EPA will maintain the process for laboratory certification as it is. The rule provides an automatic certification of laboratories that are certified for the same methods applied to at least one other contaminant. No separate certification is required under the current UCMR.

D. Research

Commenters indicated that EPA should commit research funds for Aeromonas and preservation process studies. EPA is developing a detailed research agenda with its Office of Research and Development in support of the contaminants on the CCL.

E. Regulation Format

Some State commenters indicated that they may not be able to incorporate this regulation by reference because it is in question-and-answer format. EPA is no longer requiring States to have primacy to implement the UCMR, so the States will not have to incorporate the UCMR into their regulations. However, States will still be able to participate in the State Monitoring Plan as specified in a Memorandum of Agreement between the State and EPA.

F. Voluntary Data Submittal

One commenter indicated that EPA should encourage voluntary source water data if standardized methods were utilized to substantiate treatment needs. EPA will pursue obtaining data from other reliable sources since additional data will help inform decision processes. Source water data are available from other agencies.

IX. Other Changes Related to the Regulation

A. Implementation of the Rule

Implementation issues addressed in today's final rule include setting an effective date, instituting a memorandum of agreement (MOA) process with interested States; establishing the laboratory testing program; continuing research on methods development; determining the representative national sample and associated State Plans; conducting the sampling, analysis, and reporting; and allowing previously collected monitoring data. The UCMR program, as revised by today's final rule, is illustrated in Figure 1, ''Unregulated Contaminant Monitoring Approach.'' A critical part of this program is funding the testing of samples from the national representative sample of small systems.

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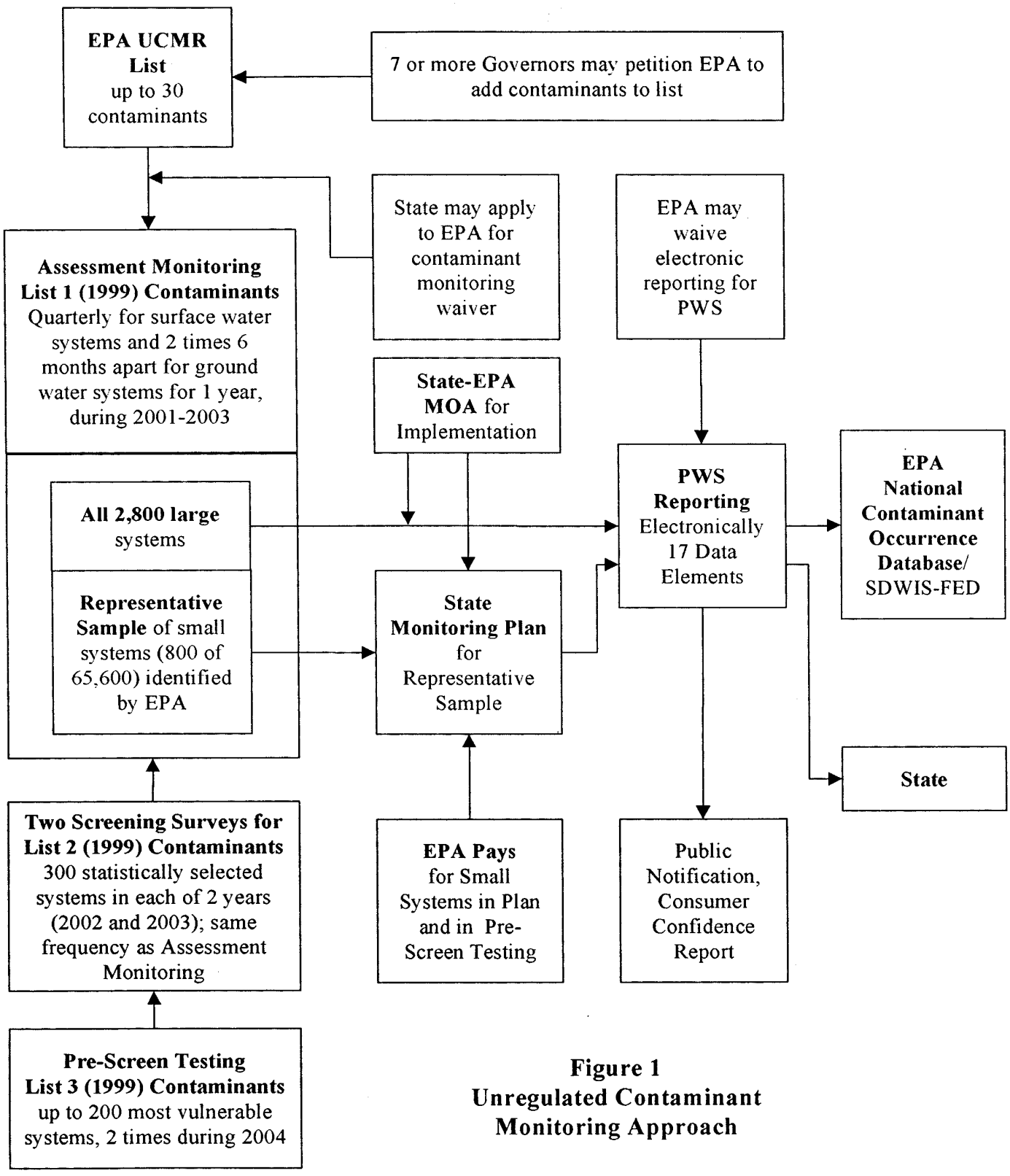

Figure 1
Unregulated Contaminant Monitoring Approach

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1. Setting an Effective Date

EPA has testing methods which are expected to give reliable and reproducible results for 10 of the contaminants on the UCMR Monitoring List to be tested for under Assessment Monitoring. These methods are widely used in the drinking water industry, although not necessarily for the listed contaminants. Testing for these contaminants, and other information about them, will help EPA determine whether to regulate them. Results of the UCMR testing should be available before the next revision of the CCL, in February 2003. Additionally, prior to initiation of the monitoring resulting from this rule, EPA must establish laboratory analysis contracts with laboratories that will do the testing and associated activities (including setting up a database and electronic reporting process) establish Memoranda of Agreement with States to implement the rule, and develop the national representative sample and send each State its allocation for review. Therefore, EPA has set January 1, 2001, as the effective date of the UCMR program, approximately16 months from the promulgation of this final rule. Shortly after this rule is promulgated, EPA will issue another rulemaking for public comment to add methods for perchlorate and acetochlor which were not previously on List 1. This action will allow these contaminants to be tested in 2001 and may allow data collected prior to the effective date to be used to meet the requirements of this final rule.

The 16-month period will enable States to enter into MOAs with EPA to provide support for the implementation of this final rule, to review the initial State Monitoring Plans, and to inform small PWSs of their selection and their responsibilities for monitoring. EPA will use this time to establish its laboratory program to test samples from small systems. Analytical methods are already in use for the contaminants to be tested for under Assessment Monitoring, so 16 months should be sufficient for laboratories that serve large systems to organize and implement the testing program, especially given the assistance provided by the methods and quality control manual. EPA is working to ensure that the manual and the contaminant occurrence reporting guidance documents are available to allow the program's implementation at that time. The requirements for small systems and the sampling and quality control procedures for all systems are specified in § 141.40(a)(3), (4), and (5) and in Appendix A. Figure 2 shows the timing of the major components and activities supporting the UCMR program.

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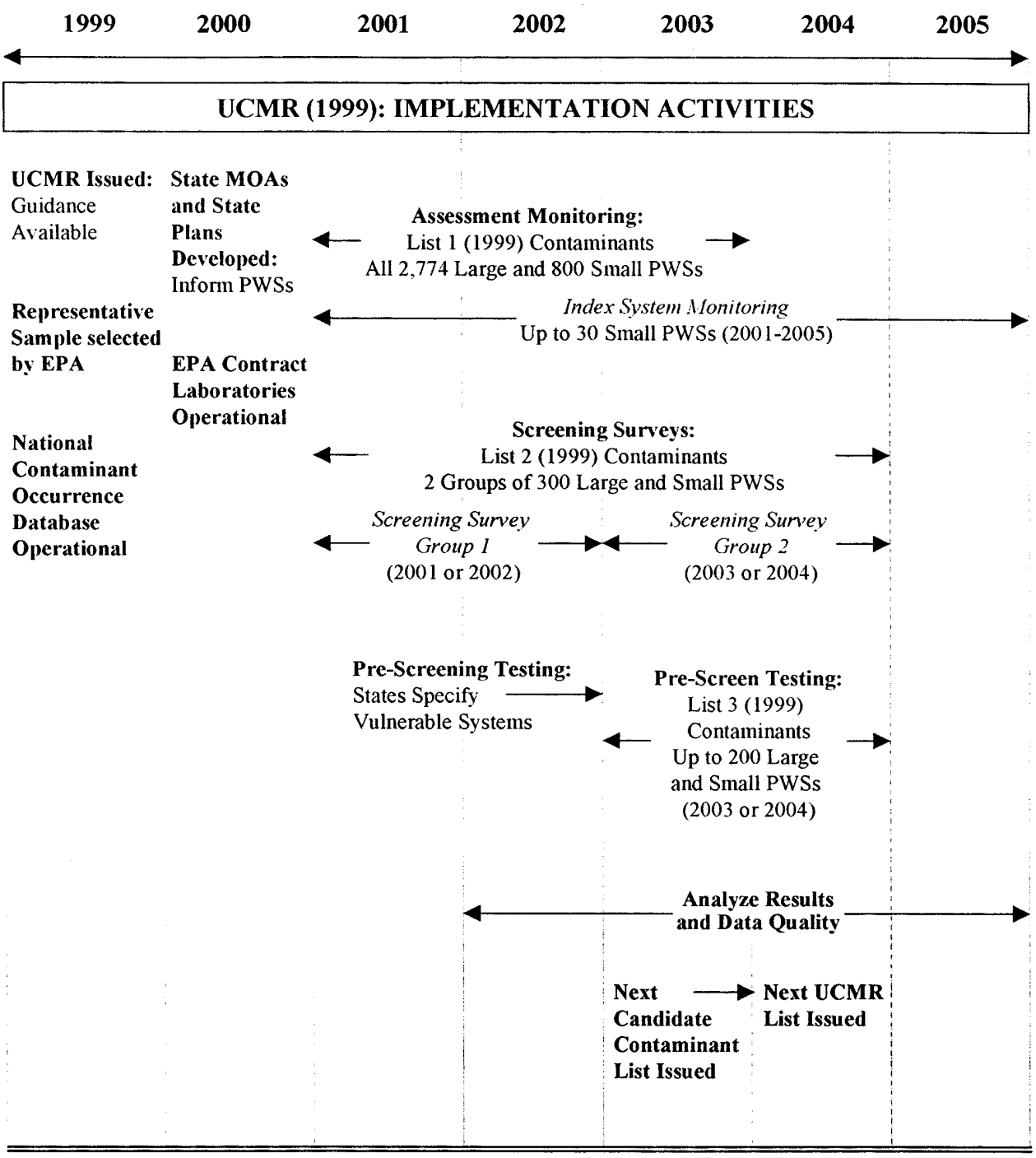

Figure 2
Implementation Timeline of
UCMR (1999) and Related Activities

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2. Analytical Methods for the Testing Program

The required methods are identified in today's rule at § 141.40(a)(3), Table 1, ''Assessment Monitoring.'' Additional sampling and quality control requirements can be found in § 141.40(a)(4) and (5) and in Appendix A. Large systems are required to follow the methods and procedures in § 141.40(a)(3), (4), (5) and Appendix A. Laboratories that test samples from small systems will also have to comply with § 141.40(a)(3), (4), (5), and Appendix A.

EPA has prepared guidance documents to help large systems organize and conduct their unregulated contaminant testing programs. The Agency's draft sampling guidance, ''UCMR Guidance for Operators of Systems Serving 10,000 or Fewer Persons'' provides details on sampling requirements. The Agency's ''Unregulated Contaminant Monitoring Regulation Analytical Methods and Quality Control Manual'' provides detailed guidance on specific method requirements related to the unregulated contaminants on the monitoring list and on quality control for all testing under this program.

3. Testing Program for Large Systems

Implementation of today's rule will result in Assessment Monitoring for List 1 contaminants only (including perchlorate and acetochlor, for which methods will be addressed in a separate rulemaking shortly). Analytical methods are in use for these contaminants, and EPA plans to review laboratories' procedures for their testing during Assessment Monitoring because of this program's stringent data-quality requirements.

The Agency anticipates that the contaminants on List 2, for the Screening Survey, may be monitored during the 5-year listing cycle through a separate rulemaking. EPA will select a statistically valid random sample of about 150 large systems to provide samples to a limited number of EPA-approved laboratories. The Agency's approval will depend on a variety of factors, including its evaluation of (1) laboratory capability, (2) test results of blind samples, (3) experience with similar methodologies, (4) willingness to accept samples from any PWS required to monitor under this regulation, and (5) provision of the testing for List 2 (and List 3) contaminants at a reasonable cost to large systems required to monitor.

Large systems selected for the Screening Survey (or Pre-Screen Testing for List 3 contaminants) will be notified by the State or EPA before the dates established for collecting and submitting samples to determine the presence of contaminants on List 2. For List 2 and 3 contaminants, large systems must send samples to laboratories approved by EPA.

4. Testing Program for Small Systems

Based on a competitive selection process, EPA will designate one to five laboratories that will test Assessment Monitoring samples from approximately 800 small systems in the State Monitoring Plans and, from the index systems, over the program's 5-year cycle. The laboratories will need to be able to provide all necessary sampling equipment to these systems, complete yet easy-to-follow instructions on the equipment's use, and appropriate sample preservation and testing services. They also will have to report electronically the test results to EPA and, in an alternate format specified by EPA if necessary, the PWSs, and provide a copy to the States, according to the reporting requirements of today's rule.

EPA will review and evaluate laboratory procedures to ensure that sufficient testing and data quality standards are met. Today's requirements and the final ''UCMR Analytical Methods and Quality Control Manual'' would be part of the testing contracts that EPA expects to sign with the selected laboratories.

Once a future rule is finalized to implement the Screening Survey for List 2 contaminants, EPA will select a statistically valid random sample of 150 small systems to provide samples during the two to three years in the middle of the 5-year cycle. The laboratories that test for List 1 contaminants for small systems will also test for contaminants on List 2.

5. Continued Development of Analytical Methods

EPA has yet to establish analytical methods for List 2 and List 3 contaminants that can be used widely and at reasonable cost. The Agency is establishing, through its Office of Research and Development, a research program to identify such methods. As analytical methods for the List 2 and List 3 contaminants are developed, EPA will propose and promulgate them as a revision to today's rule and solicit public comments on them. In addition to specifying the analytical methods to be used, these future revisions will establish sampling locations, minimum reporting levels applicable to the contaminants, and the dates sampling is to occur.

6. Determining the Representative National Sample and State Monitoring Plans

EPA requires only a representative sample of up to 800 small systems to monitor for the presence of unregulated contaminants in their drinking water. No later than 6 months prior to the start of Assessment Monitoring, EPA will identify, through a statistical selection process using a random number generator, up to 800 small systems (from approximately 65,600 community and non-transient non-community water systems) and at least 800 alternate systems in case replacements are needed. Each system will have an approximately equal chance of being selected based on its source water type (ground water or surface water) and size category (25 to 500, 501 to 3,300, or 3,301 to 10,000 persons served). EPA will notify each State, tribe, and territory of the selected systems or the systems themselves (i.e., the initial State Monitoring Plan) and the alternates within its jurisdiction.

Each State, tribe and territory can enter into a Memorandum of Agreement (MOA) with EPA to participate in the monitoring program, which will include development and implementation of the State Monitoring Plan. Each State, Tribe, and Territory will have 60 days to review its initial plan and (1) accept the plan as its State Monitoring Plan and inform EPA of that; (2) propose to EPA deletions from and additions to the initial plan, and explain the reasons for the changes, in order to create the State Monitoring Plan; or (3) choose not to participate in an MOA to develop the State Monitoring Plan, in which case, the initial plan sent to the State will become the final State Monitoring Plan.

A State, Tribe, or Territory that chooses option 1 or 2 must also inform EPA of how and when it will notify the selected systems of their responsibilities for monitoring, along with any necessary modifications to the timing of sampling related to vulnerable period determinations or to coordinate with compliance monitoring, at the State's discretion. A State may also choose an alternative ''most vulnerable time'' for its systems to sample if systems are most vulnerable to contamination by unregulated contaminants during a period other than May through July, as specified in today's rule. States that choose option 3 may still elect to notify the selected systems and provide the necessary information about their monitoring responsibilities as long as EPA is notified 6 months prior to the

first unregulated contaminant monitoring.

The systems randomly chosen by EPA to be index systems will also be specified in each State's initial plan. Any required replacements for the index systems will come from a list of randomly selected alternates included in the plan. EPA expects to provide, through the laboratories selected to test for unregulated contaminants, contractor support in collecting, shipping, and testing samples and in gathering additional information to support these index systems.

The Agency's procedures for selecting index systems is described in a technical document, ''National Representative Sample and State Plans for Unregulated Contaminant Monitoring at Public Water Systems Serving 10,000 or Fewer Persons.''

Although monitoring for List 2 contaminants is not required by today's rule, EPA will provide with the initial State Monitoring Plans a list of systems that would monitor for List 2 contaminants once a future rule implementing the Screening Survey is promulgated. The Agency will select randomly about 180 small systems and 120 large systems when it prepares the initial plans. States will review these systems at the same time they review their initial plans. EPA believes that the analytical methods for List 2 contaminants will be ready for use during the first 3 years of the 5-year listing cycle and that the Screening Survey will be undertaken during that period.

For the Pre-Screen Testing, each State may specify 5 to 25 systems that are representative of systems most vulnerable to the contaminants on List 3. EPA will determine the exact number of systems to be selected in each State based on the population served by community and non-transient non-community water systems. Each State must add to its monitoring plan any small systems selected for Pre-Screen Testing and will notify EPA of their addition.

7. Specifying the Vulnerable Monitoring Period

Each State may modify the vulnerable monitoring period specified in § 141.40(a)(5)(ii)(B) for a single system, a group of systems, or all systems selected to perform monitoring. In changing the vulnerable period, the State may consider environmental, precipitation, and system-specific factors. For small systems in the State Monitoring Plan, changes in the vulnerable time must be included in the Plan.

8. Conducting the Sampling

All selected systems must monitor for the unregulated contaminants on List 1 and should coordinate, at State discretion and to the extent practical, with their compliance monitoring schedule for regulated chemicals. For small systems in State Monitoring Plans, States may also select an alternative year and day, plus or minus two weeks, within the 3 year monitoring time frame for Assessment Monitoring as long as approximately one-third of the systems in the State Monitoring Plan monitor in each year of the 3 year period. Surface water-supplied systems must monitor for chemical contaminants every 3 months during a 12-month period, and ground water-supplied systems must monitor for them once approximately every 6 months during a 12-month period of every 5-year testing cycle beginning in the years indicated in column 6 of UCMR Table 1, List 1, § 141.40(a)(3). One sample must be taken at each post-treatment distribution system entry point or other representative sampling point designated by the State for compliance monitoring under 40 CFR 141.24(f) representing all principal, non-emergency water sources in use during the 12-month period, or at each distribution sampling point, during May to July unless the State identifies a period when one, some, or all of its systems are more vulnerable to contamination by List 1 chemicals.

For microbiological contaminants, a PWS must monitor at a site in the distribution system that represents the water supplied to the system's customers and at a site in the distribution system that has the maximum residence time or lowest disinfectant residual, depending on the contaminant. This also would apply to PWS that purchase their water supply from another system. One set of samples must be taken during the system's most vulnerable time, defined as May 1 through July 31 in today's final rule, or at a time designated by the State as the must vulnerable period, and another set of samples must be taken approximately 5–7 months before or after.

The 5-year unregulated contaminant listing cycle can be coordinated with the 3-year compliance monitoring schedule by starting the next 5-year monitoring round in January 2001 and taking UCM samples when compliance sampling is performed, regardless of where the 3-year cycle is in a particular State. Sampling in the rest of the State would occur during the next 2 years, following the State's compliance monitoring schedule. Even though a system is not sampled for regulated contaminants during the 5-year UCMR listing cycle, it may be required to monitor for unregulated contaminants during that time.

9. Establishing Sampling Points

Today's rule specifies that sampling must be done at entry points to the distribution system, or at sampling points designated by the State to be representative compliance monitoring sites under 40 CFR 141.24 (f)(1), (2), or (3). For systems that are required to monitor source (raw) water for compliance purposes, the UCMR program accommodates these compliance sites in the following way: If sampling and testing at source water compliance sampling points results in detection of any UCMR List 1 contaminants, then Assessment Monitoring must shift to entry points to the distribution system for unregulated contaminants unless there is no treatment.

10. Large Systems

For Assessment Monitoring, large systems will follow the sampling requirements in § 141.40. They are explained further in the draft methods and quality control manual.

11. Systems in State Monitoring Plans

EPA's ''UCMR Guidance for Operators of Public Water Systems Serving 10,000 or Fewer Persons'' explains the responsibilities of PWSs that are part of the representative sample and State Monitoring Plan. It also explains further the requirements for operators of small systems, which are found at § 141.40(a)(3), (4), (5) and Appendix A, and addresses sampling including frequency and location, receipt and use of sampling equipment, shipping samples to laboratories, reviewing the results, and reporting. States can use the guidance to give monitoring schedules and instructions to systems when informing them of their responsibility to participate in the representative sample and State Monitoring Plan.

Small systems that are part of a State Monitoring Plan must sample at the locations specified in the regulation, similar to the other systems described previously. EPA will inform the competitively selected laboratories about which systems are included in the State Monitoring Plans and should therefore receive sampling equipment.

Ten percent of the systems in the State Monitoring Plans will be randomly selected to collect duplicate samples for quality control purposes. These samples will be collected using the same

procedures as those for the first sample collection.

12. Screening Survey

The Screening Survey is not part of today's rule. Today's rule only publishes the UCMR (1999) List 2 contaminants that systems will monitor for once the necessary analytical methods are developed, peer reviewed, proposed, and promulgated. When the methods are ready, EPA will issue a rule requiring large and small PWSs to collect water samples and submit them for testing to determine the presence of specified contaminants. EPA will pay for the shipping and testing of samples collected by small systems in State Monitoring Plans.

13. Pre-Screen Testing

Except for publishing the List 3 contaminants as part of the revised UCMR (1999) list, Pre-Screen Testing is not part of today's rule. Once analytical methods for these contaminants are developed, peer reviewed, proposed and promulgated. EPA will promulgate a rule specifying the sample locations and dates, analytical methods to be used, and minimum reporting levels.

Pre-Screen Testing will be a limited sampling and testing effort, conducted under controlled conditions. EPA will ask States to identify, within 90 days of the request, 5 to 25 large and small systems vulnerable to List 3 contaminants so that EPA will have a national set of up to 200 systems to collect samples. The Agency intends to use the results of this testing to determine whether a more representative monitoring effort should be made through Assessment Monitoring or a Screening Survey. Although the samples will come from the most vulnerable systems in the country'and not from a statistically valid, randomly selected group of systems'EPA could decide to regulate one or more of the List 3 contaminants if monitoring and other available information shows a clear and present threat to public health.

Persons taking samples to be tested for certain contaminants may require specific training and skills to ensure the integrity of the samples. In such cases, EPA may contract for sampling services, and the PWS owner/operator would be required only to provide access to the sampling locations.

The Agency will pay for shipping and testing samples from small systems participating in the Pre-Screen Testing. EPA will forward testing results for review by the PWSs and States before posting them on the NCOD where the public can access them. Large systems will pay for sampling, shipping, and testing at EPA-approved laboratories, and they will report the results to EPA and provide a copy to the State. EPA will enter the data into the NCOD.

14. Testing

As explained previously, EPA has prepared a methods and quality control manual for taking samples and analyzing them for contaminants on the monitoring list. The manual covers the requirements found in § 141.40(a)(3), (4), and (5) and Appendix A. EPA will make the manual available to systems, States and other interested parties in hard copy and on the Internet. Laboratories testing for unregulated contaminants at the request of PWSs will need to follow the requirements of § 141.40 and Appendix A. EPA plans to establish a program to review methods implementation and performance of the participating laboratories.

For small PWSs in State Monitoring Plans, EPA will identify through competitive bids one to five laboratories that will test their water samples for the presence of unregulated contaminants. The Agency is doing this so it can pay for the testing of samples from small PWSs. Later this year, EPA will seek bids from laboratories that wish to be considered for this effort. The first samples are expected to be available for testing after January 1, 2001.

For large systems required to test for contaminants on Lists 2 and 3, EPA will open a process to approve on a competitive basis, a limited number of laboratories for these analyses. This approval process will occur as EPA specifies methods for Lists 2 and 3 contaminants.

15. Reporting Requirements

The results of contaminant testing will have to be reported along with the 17 data elements identified in today's rule. Inventory data about systems (including PWS facility identification numbers allowing association of treatment plants to sampling points, and latitude and longitude of treatment plants) reported by States will be addressed separately in Safe Drinking Water Information System Inventory Reporting Requirements. PWSs are responsible for reporting electronically to EPA, unless EPA specifies alternative reporting requirements, such as a standard paper form that can be electronically scanned to make the data available in electronic format for computer storage, retrieval, and use. The PWSs must also provide a copy of the results to their States.

Small systems listed in State Monitoring Plans and large systems will have to report five data elements to the laboratory testing its samples: PWS identification number; PWS facility identification number for source (intake, well or wellfield), treatment plant, and sampling points; water source type; sample identification number; and sample collection date. The remaining data elements will be provided by the laboratory. If systems have not previously reported PWS facility identification number for sources, treatment plants and sampling points prior to their first UCMR report, then they must do so at the time of the first report. This information must be reported so that each sampling point used for UCMR sampling must be able to be associated with its treatment plant(s) and source(s) in use at the time the sampling occurred.

For systems demonstrating that they are not able to report electronically, EPA may specify an alternative reporting format that will allow EPA to enter the system's data into the National Drinking Water Contaminant Occurrence Database. EPA will use the ''Unregulated Contaminant Monitoring Reporting Guidance'' to guide the development of this alternative reporting format.

16. Record Keeping

Today's rule does not change PWSs' responsibility for keeping records of data from unregulated contaminant monitoring, which are presented in § 141.33, for PWSs.

17. Previously Collected Data

Public water systems that have previously collected data on List 1 may submit this information. However, this data must meet the specific testing and reporting requirements as described in today's final rule.

18. Modifying the Monitoring List

As required under SDWA Section 1445, EPA will modify the Unregulated Contaminant Monitoring List, Table 1, every 5 years to include the contaminants of greatest concern at that time. If EPA still requires additional data for some previously listed contaminants, they may remain on the list. Within each 5-year listing cycle, EPA will also modify the monitoring list to include the analytical methods for Lists 2 and 3 contaminants and their related sampling requirements. These modifications will occur through future rulemaking, with opportunity for public comment.

Funding for Testing of Samples for Systems in State Monitoring Plans and for Pre-Screen Testing. EPA will pay the cost of testing samples taken from small

systems pursuant to a State Monitoring Plan. These payments will be made directly to EPA-approved laboratories that meet the requirements of § 141.40(a)(3), (4), (5), and Appendix A, which are further described in the methods and quality control manual. The Agency expects to minimize costs of testing and take advantage of economies of scale through this approach, rather than reimbursing 800 systems for analytical costs at up to 800 different laboratories. Administrative costs will be less with this approach and contracted testing costs for a larger volume of samples should be less.

Two funding sources are available to pay for testing of these small system samples to carry out the provisions of SDWA Section 1445(a)(2)(C). Since FY 1998, EPA has been required to reserve annually $2 million from funds appropriated for the Drinking Water State Revolving Fund (DWSRF) to pay for unregulated contaminant testing. SDWA Section 1445(a)(2)(H) authorizes $10 million each year through FY 2003 to carry out all aspects of the UCMR program, including paying to test samples from small systems under State Monitoring Plans. Currently, $2 million from the DWSRF set-aside for FY 1998 and FY 1999 are available to support unregulated contaminant monitoring for small systems. EPA will use this set-aside in future years to pay for this testing and for the testing of samples drawn from small systems participating in the Screening Survey and Pre-Screen Testing. If funding for the UCMR program changes, however, EPA will need to consider how to accommodate reduced funding. The Agency could, for example, recalculate the representative sample size to a lower confidence level commensurate with available resources.

B. Implementation in Indian Country

Several provisions of this rule apply to State governments, and this preamble section clarifies how they will apply in Indian country.

As explained earlier, EPA intends to include all small systems in Indian country in a single, separate group. Like small systems in each State, small systems anywhere in Indian country may be selected at random to participate in the UCM program. EPA will not, however, notify the State of the systems selected and allow the State to select alternatives for systems that have closed, merged, or that purchase their water from other systems. Instead, EPA will contact the appropriate tribal governments for that purpose. The resulting group of systems will compose the single ''State Plan'' for Indian country. The EPA will notify selected systems of their UCMR responsibilities.

Tribes with ''treatment as a State'' status may enter into an MOA with EPA to provide support in implementing the UCMR for small systems monitoring plans. For systems on tribal lands of Tribes not having ''treatment as a State'' status, EPA will serve as the point of contact with the system and will implement the UCMR with the tribe. In either case, the steps of implementation would be the same as those described previously.

C. Performance-based Measurement System

EPA's Office of Water plans to implement a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs, removing the requirement that only EPA-specified and approved analytical methods be used in SDWA regulatory programs. The requirement to use approved methods for SDWA regulatory programs would, however, be maintained for certain method-defined analytes (e.g., Total Coliform and asbestos), and for data gathering prospective to regulation, such as the contaminant monitoring in this rule.

As noted above, many of the contaminants of interest for the Unregulated Contaminant Monitoring (UCM) program can be classified as ''emerging'' and thus do not have existing performance criteria or reference methods. In addition to collecting information about contaminant occurrence, the UCM program will enable the development of reference methods and performance criteria. UCM testing will provide data to assist the Agency in developing performance criteria that would be proposed with the MCL, monitoring requirements, etc. for an analyte. For these reasons, the Agency is specifying the method to be used for UCM testing. Once, however, a contaminant proceeds to regulation development as an NPDWR, EPA expects to have sufficient data and method development information to be able to propose both performance criteria and a validated reference method, either of which could be used for compliance monitoring of the contaminant.

X. Guidance Manuals

EPA will provide a guidance manual to further explain the quality control measures that laboratories will need to perform for all unregulated contaminant monitoring. For systems that are part of State Plans for representative samples, the sampling guidance, ''UCMR Guidance for Operators of Public Water Systems Serving 10,000 or Fewer Persons'', will be available. Commenters asked for additional time to review the guidances for implementing this regulation. EPA will provide additional time for review and comment on the guidances: (1) UCMR Guidance for Operators of Public Water Systems Serving 10,000 or Fewer Persons; (2) UCMR Integrated Guidance; (3) UCMR Reporting Guidance; (4) Contaminant Selection, Methods, and Sampling: Technical Background Information for the UCMR. The guidance and manual ''UCMR Analytical Methods and Quality Control Manual'' and ''National Representative Sample of Small Public Water Systems: Statistical Design and State Plans for the UCMR'' will be available through the EPA Safe Drinking Water Hotline at 800–426–4791, or through EPA's Office of Ground Water and Drinking Water Homepage at www.epa.gov/safewater at the time of promulgation of this rule. EPA would apply these same testing and quality control procedures to the samples of all monitored systems. These final procedures are discussed in more detail in Section D. ''Monitoring Requirements Under the Final UCMR''.

XI. Costs and Benefits of the Rule

A. Program Cost Estimates

Today's final rule requires that only Assessment Monitoring for List 1 contaminants (12 chemical contaminants) be conducted over a 3-year period by all 2,774 large PWSs and a randomly selected representative sample of 800 small systems. Perchlorate and acetochlor monitoring will be activated under List 1 shortly after today's rule, by a separate regulation that will add the methods for those contaminants. Monitoring for contaminants on Lists 2 and 3 will wait until EPA promulgates rules to initiate the Screening Survey and Pre-Screen Testing.

Labor costs pertain to systems, State primacy agencies, and EPA. They include activities such as reading the regulation, notifying systems selected to participate, sample collection, reporting, record keeping, and data analysis.

Non-labor costs will be incurred primarily by EPA and by large PWSs. They include the cost of shipping samples to laboratories for testing and the cost of the actual laboratory analyses. The Agency also will incur non-labor costs in procuring services to conduct quality assurance surveys at contract laboratories and in collecting

samples at a select number of Index systems.

Laboratory analysis accounts for almost 70 percent of the national cost for a program such as this one. These costs generally are calculated as follows: the number of systems multiplied by the number of sampling points is multiplied by the sampling frequency and then multiplied by the cost of laboratory analysis. (This calculation is repeated for each separate analytical method). Shipping is added to the calculated costs to derive the total direct analytical non-labor costs. Instead of assuming that large systems will pay the full analytical costs for Assessment Monitoring, EPA assumes they will pay smaller ''incremental'' analytical costs because UCMR monitoring will coincide with ongoing Phase II/V compliance monitoring. In some cases, UCMR analyses use the laboratory analytical methods required for ongoing compliance monitoring. Therefore, when unregulated contaminant monitoring and Phase II/V monitoring are conducted concurrently, only incremental fees are charged for the analysis of additional UCMR compounds. Of course, if analyzing samples for some unregulated contaminants requires testing methods that are not currently in use, no cost savings can be realized. Note that, since the methods for perchlorate and acetochlor have a ''Reserved'' status in this rule promulgation, costs for these contaminants will be estimated when the rule revisions for these methods are published.

The details of EPA's cost assumptions and estimates can be found in the Information Collection Request (ICR) prepared for this rule (ICR No. 1882.01), which presents estimated costs and burden for the 1999–2001 period. It was sent to the Office of Management and Budget (OMB) on April 15, 1999. A background cost document, ''Burden and Cost Calculation for the Unregulated Contaminant Monitoring Regulation,'' is attached as an appendix to the ICR. It presents the total and the estimated annual cost and burden for the final rule's first 5-year cycle (from 2001 to 2005). Some of the costs EPA estimated are associated with program start-up and may not recur in future monitoring cycles. Although some of these start-up costs might be incurred before 2001, they are included and averaged as part of the 5-year program costs to simplify the calculations; systems will incur costs only during the 5-year monitoring cycle. Copies of the ICR may be obtained from Sandy Farmer by mail at: Office of Policy Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epa.gov, or by calling: (202) 260–2740. A copy may also be downloaded from the Internet at: http://www.epa.gov/icr.

In preparing the UCMR ICR, EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the public water system inventory, number of entry points per system, and labor rates. To estimate the labor burden for State and some system activities, the Agency used its standard State Resource Model, which is documented in the Resource Analysis Computer Program for State Drinking Water Agencies (January 1993). Other assumptions are discussed next.

1. Assumptions: Assessment Monitoring

EPA's estimated cost of Assessment Monitoring is based on the following assumptions:

- Surface water systems will sample 4 times during 1 year and ground water systems will sample twice during 1 year in the 5-year UCMR program cycle.
- EPA will pay the testing costs for the representative sample of 800 small systems, which will be performed by selected laboratories.
- Large systems will pay for their own testing, which will be performed by laboratories of their choice (in accordance with UCMR program quality control requirements).
- All systems will, to the extent practical, conduct their chemical sampling along with their standard compliance monitoring to reduce labor burden and analytical costs where possible.

In addition, various quality assurance and quality control measures (e.g., 10 percent duplicate samples from the representative systems) will be in effect. Water samples also will be taken from a group of 30 small ''Index systems'' (a subset of the national representative sample of small systems) during all 5 years of the monitoring cycle to assess any trends in temporal occurrence, other data variability, or program problems.

2. Estimated Average Annual Cost for 5-Year Program: Assessment Monitoring Only

EPA estimates that the average annual cost of nationwide Assessment Monitoring is approximately $8.4 million, as follows:

- EPA: $3.1 million, including $2.0 million in testing costs for small systems.
- States: $461,500.
- Small systems: $16,440.
- Large systems: $4.8 million.

The estimated average annual cost (labor plus non-labor) is approximately $21 per participating small system and $1,735 per large system.

These average annual costs do not represent the peak costs expected to be encountered during program implementation. Most of the monitoring, and hence most of the costs, are expected to occur over a 3-year period, allowing for follow-up work and data review, reporting, and analysis. EPA's peak year costs (during the 3 core years of Assessment Monitoring primarily for the representative sample) are estimated to be $3.6 million for Assessment Monitoring. Peak year costs for large systems are projected to be about $8.0 million for Assessment Monitoring.

B. Estimated Net Costs

EPA estimated the UCMR program's net cost by comparing the new program costs, with the estimated costs of the unrevised program (i.e., the baseline costs). The standard labor rates and activities used to estimate the new program costs were also used to determine the baseline costs, and the same water inventory numbers were used for the comparison. A simplifying assumption with respect to the baseline'that all systems serving more than 500 persons monitor during the same 5-year interval—was also made.

The Agency also had to address several differences between the two programs. The regulation replaced by today's rule did not require systems serving 150 or fewer service connections to monitor for unregulated contaminants unless requested to do so by the State. Data in the drinking water program information system suggest that State required about one-third of the systems serving 500 or fewer people to monitor; thus one-third of systems serving 150 or fewer service connections were included in EPA's baseline estimates.

Another significant difference between the previous program and the new one is the list of contaminants for which monitoring is required. The previous regulations required monitoring for 48 chemicals included in Table 1 of the Proposed Rule Preamble (64 FR 23401). (Although monitoring for 14 of the chemicals was discretionary, their associated costs were derived from the analytical method required for the other unregulated contaminants and the regulated volatile organic compounds [VOCs]. Consequently, they do not make a substantive difference in the cost estimates.) Although the previous program required monitoring for more

contaminants than does the program implemented by today's final rule, monitoring requirements of the previous UCMR program were derived from fewer analytical methods, and all were derived from standard methods used for routine compliance samples. Hence, the analytical costs were relatively lower.

Given the above assumptions and full implementation over 5 years, the revised UCMR program will save small drinking water systems an estimated $35.8 million over the estimated baseline. The annual costs for each small system participating in unregulated contaminant monitoring are reduced an estimated $190. Small systems will realize this saving because, unlike the previous program, the new program does not require any of them to pay for the analysis of water samples to determine the presence of unregulated contaminants. Only small systems chosen for the representative national sample will incur any costs, and they will be labor costs only.

Under the UCMR Assessment Monitoring program, large systems will face a $10.2 million increase in costs, primarily from the increase in laboratory analytical costs. Average annual large system costs are estimated to increase by approximately $730 under the new UCMR program.

EPA estimated the baseline costs to the States at $7.5 million over the 2001–2005 monitoring cycle, plus year 2000 start-up costs. Total estimated saving to States under the revised UCMR program is an estimated $5.2 million. This saving will be primarily in labor costs because the States will have oversight interactions with only 800 small water systems, far fewer than previously were involved in unregulated contaminant monitoring.

EPA estimated that it would have cost the Agency $1.9 million to run the previous monitoring program over the 2001–2005 monitoring period, plus start-up costs. The Agency's costs are estimated to almost double under the revised Assessment Monitoring program primarily because it will fund sample shipment and analysis for small systems.

The cost reductions also can be attributed to the ''Suspension of Unregulated Contaminant Monitoring Requirements for Small Public Water Systems (Direct Final Rule),'' which was published in the **Federal Register** on January 8, 1999. It suspended the requirement for small systems to perform another round of monitoring for unregulated contaminants because it would have overlapped with the revised UCMR program. Approximately two-thirds of the systems between 3,300 and 10,000 persons will save the cost of monitoring in 1999 and 2000 by the action of the Direct Final Rule, resulting in a savings of about $5.3 million for these systems.

C. Benefits

Today's rule significantly reduces burden, especially for small water systems. The original UCMR program, initiated in 1988, required all community water systems (CWSs) to monitor for 48 contaminants. States could waive the requirement for systems serving 150 or fewer service connections, although these systems had to be available for monitoring under the regulation. Analysis of the first round of data, from 1988 to 1993, indicates that well over 25,000 PWSs were involved in the original monitoring program. The revised program will involve only 3,574 to 3,724 systems: 2,774 large systems and up to 800 small systems.

The systems that will be regulated under today's rule will monitor for fewer contaminants than was the case under the original UCMR program. EPA will pay the small systems' costs of testing, keeping their burden to a minimum and limiting it to collecting the samples and contacting a shipping service to pick them up for delivery to a laboratory. The Agency also will manage the laboratory testing program for these systems, minimizing the time they interact with the laboratories. The laboratories contracted by EPA to perform the analyses also will provide electronic reporting services for small systems that lack this capability. Consequently, the costs borne by the selected 800 systems will be substantially reduced under the revised program.

Regarding the full UCMR program, cost savings can be attributed to the use of a small sample of small and large systems in the Screening Surveys and Pre-Screen Testing. The two Screening Surveys of 300 systems each and the Pre-Screen Testing of up to 200 systems will allow statistically valid, targeted approaches to be applied to emerging contaminants. These early screening efforts will help EPA determine whether contaminants are already in public water systems and whether they should be monitored for in the subsequent 5-year monitoring cycle. This approach—rather than requiring Assessment Monitoring for all 30 contaminants at all monitored systems—is projected to save large water systems and EPA more than $50 million in annual Assessment Monitoring costs.

State burden also will be reduced. A substantial portion of State burden depends on the number of systems that a State must manage. Although the revised UCMR program introduces some new elements, fewer systems are involved so State oversight activity (e.g., system notification and record keeping) will be reduced.

Today's final rule increases the number of data elements that must be reported from 12 to 17. These data must be reported with each sample to make the monitoring data more useful for analysis. However, the additional burden on systems is minimal, because most of the data elements will be reported to EPA by laboratories which already routinely record many of them.

The long-term benefits of the revised UCMR program are:

- Contaminants whose occurrence in drinking or source water is not widespread will be identified early, which will enable evaluations and decisions to minimize further the monitoring and resources that would otherwise be committed to those contaminants.
- Contaminants whose occurrence in drinking water is widespread will trigger additional research on health effects and treatment as soon as practical to protect the health of sensitive persons.
- The use of a representative sample of small systems (which comprise the majority of PWSs) can provide a scientifically sound, statistically valid data set that can be used for improved analysis and program decisions at reduced cost.

XII. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

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 is not ''economically significant'' as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions 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. This final rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. For the most part, this rule establishes procedures for monitoring of unregulated contaminants on the Agency's CCL. Given EPA's interest in protecting children's health, however, as part of the provisions in the rule allowing State governors and Indian tribes to petition EPA to add contaminants to the Unregulated Contaminant Monitoring List, EPA asks them specifically to include any information that might be available regarding disproportional risks to the health or safety of children. Such information would help inform EPA's decision making regarding future lists.

This final rule is part of the Agency's overall strategy for deciding whether to regulate the contaminants on the CCL (63 FR 10273). Its purpose is to ensure that EPA has data on the occurrence of contaminants on the CCL where those data are lacking. EPA is also taking steps to ensure that the Agency will have data on the health effects of these contaminants on children through its research program. The Agency will use these occurrence and health effects data to decide whether to regulate any of these contaminants.

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 UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, UMRA section 205 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 of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any one year. Total annual costs of today's rule for State, local, and Tribal governments and the private sector, are estimated to be $7.3 million, of which EPA will pay $2.0 million, or 27 percent. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because EPA will pay for the reasonable costs of sample testing for the small PWSs required to sample and test for unregulated contaminants under this rule, including those owned and operated by small governments. The only costs that small systems will pay are the costs attributed to (1) the labor associated with reading the regulations, guidance, and instructions to implement the monitoring requirements, (2) collecting the samples and packing them for shipping to the laboratory (EPA will pay for shipping), and (3) reporting and record keeping. These costs are not significant. Thus, today's rule is not subject to the requirements of UMRA section 203.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0208. An Information Collection Request (ICR) document which presents estimated costs and burdens for the 1999–2001 period has been prepared by EPA (ICR No. 1882.02). A background cost document, ''*Burden and Cost Calculations for the Unregulated Contaminant Monitoring Regulation*,'' is attached as an appendix to the ICR and presents the estimated costs and burdens for the first 5-year cycle of the final rule. A copy of these may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; by email at: farmer.sandy@epa.gov; or by calling: (202) 260–2740. A copy may also be downloaded from the Internet at: http://www.epa.gov/icr.

The information to be collected under today's rule is to fulfill the statutory requirements of section 1445(a)(2) of the Safe Drinking Water Act, as amended in 1996. The data to be collected will describe the source water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants will be evaluated regarding health effects and will be considered for future regulations accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

Burden is defined as 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 use technology and systems to collect, validate, verify, process, maintain, disclose, and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The annual burden and cost estimates described below are for the implementation assumptions put forth in this Rule, which includes only the Assessment Monitoring component of the UCMR Program. For Assessment Monitoring, the respondents are 800 small water systems (in the national representative sample of systems serving 10,000 or fewer people), 2,774 large public water systems, and 56 States and primacy agents (3,630 total respondents). The frequency of response varies across respondents and years. System costs (particularly laboratory analytical costs) vary depending on the number of entry or sampling points.

For the three-year ICR period 1999–2001, small systems will sample and report an average of 2.7 times for the entire period. The burden for small systems is estimated to be an average of 1.5 hours annually per system, with an annual cost of $31. Large systems will sample and report an average of 2.9 times for the entire period, and are estimated to have a 3.3 hour per system annual burden, with a labor cost of $93 per year. Non-labor costs per year for these systems is estimated at $2,798 per system. On average, States are assumed to report quarterly during each UCMR implementation year. It is estimated that each State will incur 141 hours of burden per year, with an annual labor cost of $5,647 for the ICR period 1999–2001. Non-labor costs for States were assumed to be minimal, with 10 percent of the States incurring a one-time $25,000 contractor cost for the optional upgrading of their drinking water databases; an average of $833 per year per State for the ICR period. In aggregate, the average respondent (i.e., small systems, large systems, and the States) incurs an average annual burden of 9.0 hours and a labor plus non-labor cost of $2,400. Because the actual implementation period of the UCMR does not begin until 2001, most of the costs presented here occur during that year. Average annual costs reflect the fact that the UCMR program implementation only overlaps with one of the three ICR years (1999–2001).

The burden and cost per response for the three ICR years for Assessment Monitoring are estimated to be 1.7 hour burden at $35 per response for small systems; 3.4 hours at $95 for labor and $2,847 in analytical costs for large systems; and 52.9 hours at $2,116 for labor for States. In aggregate, the average response (i.e., responses from small systems, large systems, and the States) is associated with a burden of 8.7 hours, with a labor plus non-labor cost of $2,213 per response over the three-year ICR period.

Over the ICR period, the Agency is estimated to incur an annual burden of 9,150 hours, with an average annual cost for labor of $366,000. Non-labor costs for EPA, which are primarily comprised of the analytical and shipping costs for representative set of small systems, and other contractor costs, are estimated at $1.3 million per year over the period 1999–2001. Non-labor costs are primarily attributed to the cost of sample testing for small systems.

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 on its ICR. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in the final rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, the Agency is not required to prepare a regulatory flexibility analysis. Pursuant to RFA section 605(b), 5 U.S.C. 605(b) and for the reasons set forth below, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of RFA analyses for SDWA rulemakings, the Agency defines small entities as systems serving 10,000 or fewer customers because this is the size of system specified in SDWA as requiring special consideration with respect to small system flexibility. This alternative definition was established for all drinking water rules in the Consumer Confidence Reports rulemaking (63 FR 44511–44536 [August 19, 1998]). EPA also consulted with the Small Business Administration about the alternative definition as it relates to small businesses. For further information on the establishment of this definition of small entities, see the referenced **Federal Register** notice.

EPA has determined that the UCMR will affect small water utilities, since it is applicable to a subset of small community and non-transient noncommunity water systems. However, the affected systems are limited to a representative sample of approximately 800 small PWSs, or 1.2 percent of systems serving 10,000 or fewer persons. These systems will be required to conduct monitoring, as specified in the UCMR (i.e., collect and prepare samples for shipping). EPA will assume all costs for testing of the samples and for shipping the samples from these systems to certified laboratories throughout the United States. EPA has set aside $2 million from the DWSRF in Fiscal Years 1998 and 1999, and plans to do so into the future with its authority to set aside DWSRF monies to implement this SDWA provision.

EPA has estimated the impact of today's rule and concludes that the rule will not have a significant economic impact on a substantial number of small entities. The rationale for this conclusion is that EPA plans to pay the full costs of shipping and testing samples for small systems and does not plan, under any scenario, to ask systems to pay these costs. (The costs to these systems will be limited to the labor hours associated with collecting a sample and preparing it for shipping.)

EPA evaluated the cost to small entities under two scenarios. Under either scenario, EPA will assume the cost of shipping and testing samples for small systems. The ''full implementation'' scenario assumes full funding from the DWSRF set-aside through the year 2005, with the full Assessment Monitoring program being implemented. The ''limited implementation'' scenario assumes that EPA will pay for testing with the funds already set aside for this program. Under either scenario, this rule will not have a significant economic impact on a substantial number of small entities, and EPA certifies that fact. Cost summaries for both scenarios are provided below.

1. Full Assessment Monitoring Implementation Scenario

EPA analyzed separately the impact on small privately and publicly owned water systems because of the different economic characteristics of these ownership types. For publicly owned systems, EPA used the ''revenue test,'' which compares a system's annual costs attributed to the rule with the system's annual revenues. EPA used a ''sales test'' for privately owned systems, which involves the analogous comparison of UCMR-related costs to a privately owned system's sales. EPA assumes that the distribution of the national representative sample of small systems will reflect the proportions of publicly and privately owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented below in Table 5.

TABLE 5.—NUMBER OF PUBLICLY AND PRIVATELY OWNED SYSTEMS TO PARTICIPATE IN ASSESSMENT MONITORING

Size category	Publicly owned systems		Privately owned systems		Total—all systems
	Non-index systems	Index systems	Non-index systems	Index systems	
Ground Water Systems:					
500 and under	20	1	76	2	99
501 to 3,300	146	6	67	3	222
3,301 to 10,000	144	7	40	2	193
Subtotal	310	14	183	7	514
Surface Water Systems:					
500 and under	18	0	49	0	67
501 to 3,300	51	2	23	1	77
3,301 to 10,000	106	5	30	1	142
Subtotal	175	7	102	2	286
Total	485	21	285	9	800

The basis for the UCMR RFA certification under full Assessment Monitoring program implementation is as follows: the average annual compliance costs of the rule represent less than 1 percent of revenues/sales for the 800 small water systems that will be affected. The EPA estimates that EPA and system costs for implementing small system sampling for the full UCMR Assessment Monitoring program (2001–2005) will be approximately $10.2 million. Since the Agency specifically structured the rule to avoid significantly affecting a substantial number of small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities, EPA costs comprise approximately 99 percent ($10.1 million) of the total costs. (Note that EPA's contribution to the small system program is assumed to include all small system analytical and shipping costs, as well as all non-labor program support costs.) Table 6 presents the annual costs to small systems and to EPA for the small system sampling program, along with the number of participating small systems during each of the 5 years of the program.

TABLE 6.—EPA COSTS FOR SMALL SYSTEMS UNDER FULL IMPLEMENTATION OF UCMR ASSESSMENT MONITORING

Cost description [1]	2001	2002	2003	2004	2005	Total
Costs to EPA for Small System Program: quality assurance, ongoing coordination, data analysis, analytical costs, shipping costs, and costs for contractor site visits to small Index systems [2]	$3,317,970	$2,647,790	$2,617,790	$856,890	$648,440	$10,088,880
Costs to Small Systems: additional labor for monitoring or monitoring assistance	26,796	25,840	25,840	1,861	1,861	82,198
Total Costs to EPA and Small Systems for UCMR	3,924,769	2,993,810	3,053,630	1,338,752	1,150,297	10,171,078
Number of Systems to be Monitoring each Year: Non-Index and Index in 2001–2003, Index only in 2004–2005 [3]						
Public	182	182	182	107	21	533
Private	104	104	104	81	9	267
Total	286	286	286	188	30	800

[1] AM = Assessment Monitoring.
[2] EPA costs during the year 2001 include some start-up costs that may actually be incurred during the year 2000.
[3] Total number of systems is 800. All 30 Index systems sample during each year 2001–2005. One-third of Non-Index systems sample during each year from 2001–2003. The rows do not add across, because the same 30 Index systems sample during every year of 5-year implementation cycle.

System costs are attributed to the labor required for reading State notification letters, monitoring, reporting, and record keeping. Assuming that systems will efficiently conduct UCMR sampling (e.g., coincident with other required monitoring when feasible), the estimated average annual per system labor burden for full Assessment Monitoring implementation will be $17 (0.8 hours) for ground water systems and $27 (1.3 hours) for surface water systems. In total, ground water and surface water systems average 1.0 hours of burden per year with an average annual cost of $21. Average annual cost, in all cases, is less than 0.2 percent of system revenues/sales. Therefore, as stated previously, the Administrator certifies that this rule, as funded by EPA, will not have a significant economic impact on small entities. Tables 7a and 7b below present the estimated economic impacts in the form of revenue/sales tests for publicly and privately owned systems.

TABLE 7a.—UCMR FULL ASSESSMENT MONITORING IMPLEMENTATION SCENARIO: ANALYSIS FOR PUBLICLY-OWNED SYSTEMS (2001–2005)

System size	Annual number of systems affected [1]		Average annual hours per system (2001–2005)		Average annual cost per system (2001–2005)		"Revenue test" [2] (percent)	
	Number	Percent of US total	Non-index	Index	Non-index	Index	Non-index	Index
Ground Water Systems								
500 and under	4.8	0.01	0.6	2.0	$9.03	$28.28	0.05	0.17
501 to 3,300	35.4	0.29	0.7	2.8	10.12	39.88	0.01	0.04
3,301 to 10,000	35.8	1.49	0.9	3.6	24.02	100.80	0.01	0.02
Surface Water Systems								
500 and under	3.5	0.18	1.1	0.0	16.39	0.00	0.06	0.00
501 to 3,300	12.2	0.67	1.2	4.2	18.03	60.90	0.01	0.03
3,301 to 10,000	25.9	2.58	1.2	4.0	33.24	112.00	0.00	0.02

[1] Calculated as 1/5 of the Non-Index sample, plus all Index systems for each year from 2001–2005; actual sampling for Non-Index systems takes place over three years, while that of Index systems occurs over each of five years.
[2] The "Revenue Test" was used to evaluate the economic impact of an information collection on small government entities (e.g., publicly-owned systems); costs are presented as a percentage of median annual revenue in each size category.

TABLE 7b.—UCMR FULL ASSESSMENT MONITORING IMPLEMENTATION SCENARIO: ANALYSIS FOR PRIVATELY-OWNED SYSTEMS (2001–2005)

System size	Annual number of systems affected [1]		Average annual hours per system (2001–2005)		Average annual cost per system (2001–2005) [1]		"Sales test" [2] (percent)	
	Number	Percent of US total	Non-index	Index	Non-index	Index	Non-index	Index
Ground Water Systems								
500 and under	17.6	0.04	0.6	2.0	$9.03	$28.28	0.06	0.18
501 to 3,300	16.2	0.13	0.7	2.8	10.12	39.88	0.01	0.04
3,301 to 10,000	10.1	0.42	0.9	3.6	24.02	100.80	0.00	0.02
Surface Water Systems								
500 and under	9.7	0.51	1.1	0.0	16.39	0.00	0.07	0.00
501 to 3,300	5.6	0.31	1.2	4.2	18.03	60.90	0.01	0.04
3,301 to 10,000	7.3	0.72	1.2	4.0	33.24	112.00	0.01	0.02

[1] Calculated as 1/5 of the Non-Index sample, plus all Index systems for each year from 2001–2005; actual sampling for Non-Index systems takes place over three years, while that of Index systems occurs over each of five years.
[2] The "Sales Test" was used to evaluate the economic impact of an information collection on small private entities (e.g., privately-owned systems); costs are presented as a percentage of median annual sales in each size category.

2. Limited Implementation Scenario

Despite the expected $2 million annual budget, EPA recognizes that funding levels vary from year to year and thus the Agency cannot guarantee the precise amount that will ultimately be available to implement its UCMR Assessment Monitoring Program (although a considerable portion of those funds are currently on hand). If an amount commensurate with funding the optimal UCMR Assessment Monitoring Program (in terms of numbers of small systems sampled and numbers of contaminants analyzed) is not available, the Agency will adjust the UCMR program to accommodate the available funds. This adjustment may necessitate use of fewer sample sites, testing for fewer contaminants, or both.

Although the Agency considers the scenario of no additional funding to be unlikely, EPA also evaluated the scenario of "current funds only" for purposes of this RFA analysis. In this "current available funds" scenario EPA would receive no funding for small system testing beyond the $4 million set aside from the DWSRF in FY 1998 and FY 1999. EPA anticipates funding this program such that no small system would incur testing costs, as intended in the legislation. Small systems would be responsible only for taking the sample. By analyzing the small system impact under this scenario, EPA can

demonstrate that, regardless of funding levels, the UCMR will not have a significant economic impact on a substantial number of small entities. Given the flexibility of the proposed rule, EPA can ensure scientifically defensible results, balanced with available funding.

In the optimal program, the sample of 800 systems is derived by applying a 99 percent confidence level, with 1 percent error tolerance. To accommodate a $4 million budget, the representative sample of small systems would be reduced to approximately 400 systems. Although this smaller sample would be less rigorous than the anticipated sample of 800 systems, the sample error would still remain within plus or minus 5 percent. These 400 systems would incur only labor costs for collecting and packing the samples, while EPA would pay to ship and test these samples.

With the currently available $4 million, EPA will be able to fund approximately 50 percent of the planned Assessment Monitoring program for small systems. To estimate the costs under this scenario, EPA assumed that only the Assessment Monitoring component of the UCMR would be implemented and that the smaller representative sample would be allocated across system size categories in the same proportions as those in the sample of 800 systems, with 10 of these systems being Index sites, as seen in Table 8. Finally, for the cost analysis of this current funds scenario, EPA assumed that the national representative sample will reflect the proportions of publicly and privately owned systems in the national inventory of public water systems.[1] Because EPA's statistical approach uses a random selection process for systems in the national representative sample, publicly-and privately-owned systems should be selected in the same proportions for that sample as they occur in the set of all community and non-transient non-community water systems in the nation.

The Agency is concerned that a reduced sample size will reduce the statistical likelihood that the observed contaminant occurrence levels will be representative of actual occurrence across the nation. Because of this, the Agency will actively pursue funding for the full program described in this Preamble.

Table 8.—Number of Publicly- and Privately-Owned Systems To Participate in Assessment Monitoring, for Limited Funding Program [1]

Size category	Publicly-owned systems		Privately-owned systems		Total—all systems
	Non-index systems	Index systems	Non-index systems	Index systems	
Ground Water Systems:					
500 and under	10	0	39	1	50
501 to 3,300	75	2	34	1	112
3,301 to 10,000	73	2	21	1	97
Subtotal ground water systems	158	4	94	3	259
Surface Water Systems:					
500 and under	9	0	24	0	33
501 to 3,300	26	1	12	0	39
3,301 to 10,000	54	2	15	0	71
Subtotal surface water systems	89	3	51	0	143
Total	247	7	145	3	402

[1] The Limited Funding Program assumes that the only funds available to run the program are those that are currently in hand—$4 million of set aside funds from Federal Fiscal Years 1998 and 1999. This is a ''worst case'' funding scenario.

Under the limited funding scenario, EPA's costs for Assessment Monitoring would be incurred primarily from 2001 to 2003. Systems are assumed to sample during 1 year of the 3-year period, with one-third of systems sampling during each year. However, Index Systems are assumed to monitor during each of the three Assessment Monitoring years. The distribution of costs to EPA and small systems over the entire 5 years is presented in Table 9.

TABLE 9.—EPA COSTS FOR SMALL SYSTEMS—LIMITED $4 MILLION PROGRAM

Cost description	2001	2002	2003	2004	2005	Total
Costs to EPA for Assessment Monitoring Program: Quality assurance, ongoing coordination, data analysis, shipping costs, testing costs, reporting and analysis costs, and costs for contractor site visits to ''Index'' systems	$1,367,947	$1,082,342	$1,082,342	$280,422	$186,948	$4,000,000
Costs to Small Systems (Assessment Monitoring): including additional labor for monitoring or monitoring assistance	13,162	11,527	11,527	0	0	36,216

[1] Publicly- and privately-owned systems allocations are estimated using data from the 1995 Community Water System Survey. Publicly-owned systems are those that are owned by a city, town, township, village, municipal government, State or federal government, or any other publicly-owned or operated system. Privately-owned systems include those owned by private investors or homeowners' associations.

TABLE 9.—EPA COSTS FOR SMALL SYSTEMS—LIMITED $4 MILLION PROGRAM—Continued

Cost description	2001	2002	2003	2004	2005	Total
Total Costs to EPA and Small Systems for Assessment Monitoring	1,381,109	1,093,869	1,093,869	280,422	186,948	4,036,216
Number of Systems each Year: Assessment Monitoring and Index Systems in 2001–2003: [1]						
Public	89	89	89	0	0	254
Private	51	51	51	0	0	148
Total	140	140	140	0	0	402

[1] Rows do not add across because the 10 Index systems sample during each year 2001–2003. One-third of Non-Index systems sample during each year from 2001–2003.

Under this limited $4 million program, EPA's costs represent approximately 98 percent of the national cost for the small system sampling program. As in full UCMR implementation, small system costs are attributed to the additional labor required for reading State letters, monitoring, reporting, and record keeping. It is estimated that under a limited program of Assessment Monitoring only the average annual per system labor burden will be $14 (0.7 hours) for ground water systems and $25 (1.2 hours) for surface water systems. In total, ground water and surface water systems average 0.9 hours of burden per year, with an average annual cost of $18.

Through revenue and sales tests, determinations of economic impact are presented in Tables 10a and 10b respectively. Under this limited $4 million program, systems will be subject to less required monitoring than in the full UCMR program. For both full Assessment Monitoring implementation and the limited funding scenario, average annual cost is in all cases lower than 1 percent of annual sales/revenues. Thus, even in this worst case, limited implementation scenario, EPA certifies that today's final rule would not impose a significant economic impact on small entities.

TABLE 10a.—UCMR LIMITED IMPLEMENTATION SCENARIO: ANALYSIS FOR PUBLICLY-OWNED SYSTEMS (2001–2005)

System size	Annual number of systems affected [1]		Average annual hours per system (2001–2005)		Average annual cost per system (2001–2005)		"Revenue test" [2] (percent)	
	Number	Percent of US total	Non-index	Index	Non-index	Index	Non-Index	Index
Ground Water Systems								
500 and under	2.1	0.00	0.6	1.3	$8.06	$18.71	0.05	0.11
501 to 3,300	16.2	0.13	0.6	1.5	9.15	22.19	0.01	0.02
3,301 to 10,000	16.1	0.67	0.8	2.0	22.16	57.12	0.00	0.01
Surface Water Systems								
500 and under	1.7	0.09	1.1	0.0	15.41	0.00	0.05	0.00
501 to 3,300	5.6	0.31	1.2	2.6	17.07	38.28	0.01	0.02
3,301 to 10,000	11.8	1.17	1.1	2.5	31.35	70.56	0.00	0.01

[1] Calculated as ⅕ of publicly-owned Non-Index sample, plus all public Index systems for each year from 2001–2003; actual sampling for Non-Index takes place over 3 years, Index in each of 3 years.

[2] The "Revenue Test" was used to evaluate the economic impact of an information collection on small governments (e.g., publicly owned systems); costs are presented as a percentage of median annual revenue in each size category.

TABLE 10b.—UCMR Limited Implementation Scenario: Analysis for Privately-Owned Systems (2001–2005)

System size	Annual number of systems affected [1]		Average annual hours per system (2001–2005)		Average annual cost per system (2001–2005)		"Revenue test" [2] (percent)	
	Number	Percent of US total	Non-index	Index	Non-index	Index	Non-index	Index
Ground Water Systems								
500 and under	8.2	0.02	0.6	1.3	$8.06	$18.71	0.05	0.12
501 to 3,300	7.4	0.06	0.6	1.5	9.15	22.19	0.01	0.02
3,301 to 10,000	4.5	0.19	0.8	2.0	22.16	57.12	0.00	0.01
Surface Water Systems								
500 and under	4.8	0.25	1.1	0.0	15.41	0.00	0.07	0.00
501 to 3,300	2.5	0.14	1.2	2.6	17.07	38.28	0.01	0.03

TABLE 10b.—UCMR Limited Implementation Scenario: Analysis for Privately-Owned Systems (2001–2005)—Continued

System size	Annual number of systems affected [1]		Average annual hours per system (2001–2005)		Average annual cost per system (2001–2005)		"Revenue test" [2] (percent)	
	Number	Percent of US total	Non-index	Index	Non-index	Index	Non-index	Index
3,301 to 10,000	3.3	0.33	1.1	2.5	31.35	70.56	0.01	0.01

[1] Calculated as 1/5 of the Non-Index sample, plus all Index systems for each year from 2001–2005; actual sampling for Non-Index systems takes place over 3 years, while that of Index systems occurs during each of 3 years.

[2] The "Sales Test" was used to evaluate the economic impact of an information collection on small private entities (e.g., privately owned systems); costs are presented as a percentage of median annual sales in each size category.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. No. 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 rulemaking involves technical standards. EPA has decided to use consensus methods published by the three major voluntary consensus method organizations—Standard Methods, AOAC International, and American Society for Testing and Materials (ASTM)—that would be acceptable for compliance determinations under SDWA for the UCMR (1999) List 1. The voluntary consensus methods found are listed in § 141.40(a)(3), Table 1, List 1. For the Assessment Monitoring portion of the final rule, EPA is approving the use of all of the non-EPA analytical methods adopted by these voluntary consensus groups that are applicable to the analyses of these unregulated contaminants when used in conjunction with the required quality-control practices specified in the rule.

A few public comments suggested the updating of consensus methods approved in Table 1, List 1, or an additional method to consider. To that end, the Agency updated the consensus methods listed to include those identified in the most current (20th) edition of Standard Methods (SM). SM 6200B, from the 20th edition, is also approved for volatile analysis; SM 6210D remains on the list but only appears in previous editions. A commenter suggested use of SM 6640 for DCPA mono and di acids for List 1; however, this method does not address hydrolysis, a critical step in the analyses of this contaminant, so EPA is not including it on the list.

EPA conducted a search to identify potentially applicable voluntary consensus standards for chemical and microbiological parameters included in Lists 2 and 3 of this rule. EPA identified and listed in the proposal some general methods specifications that the Agency believes may potentially be used to reliably detect some of the contaminants on List 2. However, EPA was unable to find either an EPA or voluntary consensus method applicable to the monitoring required and none were brought to our attention in comments on the proposed rule. Commenters suggested EPA also approve EPA Method 632 for linuron and diuron, which does not include confirmation or preservation steps; and EPA Method 552 for the phenols, which has low recoveries and interferences among the compounds. For these reasons, EPA has not included these EPA methods for the respective contaminants. No other voluntary consensus standards were brought to the Agency's attention in comments on the proposed rule. EPA is developing acceptable methods to determine the presence of the contaminants on Lists 2 and 3, and will take additional public comment when the rules are proposed for monitoring of List 2 and 3 contaminants.

G. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994), focuses federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities.

By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, the unregulated contaminant monitoring regulation furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies. Using a statistically derived set of systems for the national representative sample that is population-weighted within each system size category allocated across States, the final rule ensures that no group within the population is under represented.

H. Federalism Executive Orders

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 OMB with 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."

EPA has concluded that today's rule will create a mandate on local governments that own or operate PWSs and that the Federal government will not provide the funds necessary to pay all of the direct costs incurred by these governments in complying with the mandate. However, EPA will pay for the

sample testing costs of small systems and has budgeted funds to do so.

In developing this rule, EPA consulted with State, local, and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Prior to the publication of the proposed rule, EPA received input through its public stakeholder process, by conducting public meetings and through targeted mailings. Additionally, EPA received input through its public comment process from 22 States, 13 public water systems and local water agencies, and 130 other commenters, including non-profit organizations, associations, industry, and individuals. EPA also sent out nearly 400 targeted mailings directly to 360 Tribes, Tribal organizations, and small water system organizations to ensure that they were informed of the proposed rule's publication and had an opportunity to comment. The principal concerns raised were that: (1) States did not want to go through the primacy process; (2) EPA should include perchlorate on the monitoring list; (3) EPA should use multi-analyte methods to the extent possible for testing; and (4) EPA should allow previous monitoring data for some of the contaminants on the list. In response to these principal concerns, EPA changed the implementation steps for the regulation from primacy revisions to a Memorandum of Agreement with States. Perchlorate is now on UCMR List 1 (1999) for early monitoring. EPA incorporated as many additional contaminants in List 1 using multi-analyte methods as possible, specifically moving acetochlor from List 2 to List 1. Systems can submit previously collected data to meet the UCMR, as long as the requirements for sampling, testing and reporting are met.

Finally, while there is a new executive order on federalism, Executive Order 13132, it will not go into effect until November 3, 1999. In the interim, under the current Executive Order 12612 on federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. The final rule allows States to decide whether they want to enter a Memorandum of Agreement (MOA) with EPA to implement the monitoring program. If they decide not to enter into an MOA, then EPA will directly implement the monitoring program, since the data are for the purposes of deciding which contaminants to regulate in the future at the Federal level and will not have a direct effect on public health protection under current drinking water standards implemented by States.

I. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Only one Tribal water system serves more than 10,000 persons. All the other Tribal water systems serve 10,000 or fewer persons, and in today's rule have an equal probability of being selected in the national representative sample of small systems, for which EPA will pay the costs of unregulated contaminant testing. Thus, these Tribal water systems will be treated the same as water systems of a State and the impact of the rule on them will not be significant.

This rule will not impose substantial direct compliance costs on such communities either because, with the exception of the one large Tribal water system, the Federal government will provide most of the funds necessary to pay the direct costs incurred by tribal governments in complying with the rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nevertheless, in developing this rule, EPA consulted with representatives of Tribal governments pursuant to both Executive Order 12875 and Executive Order 13084. The extent of EPA's consultation, the nature of the governments' concerns, and EPA's position supporting the need for this rule, are discussed in the preamble section that addresses compliance with Executive Order 12875. Tribes were consulted and raised issues concerning the utility of a targeted, rather than a representative random, sampling approach and the applicability of ''treatment as a State'' under the final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by U.S.C. § 804(2). This rule will be effective January 1, 2001.

XIII. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities to provide early input to regulation development. Activities related to the UCMR included meetings for developing the CCL and the information requirements of the NCOD, as well as specific meetings focused on revising the UCMR monitoring list. During the development of the UCMR, stakeholders from a wide range of public and private entities provided key perspectives. Representatives from public water systems, States, industry, and other organizations attended two stakeholder meetings to discuss options directly related to the UCMR. An additional 17 meetings were held with stakeholders and the public concerning issues related to the UCMR. In total, 21 State health and environmental agencies, 5 water systems, 6 water associations, 6 health associations, 5 industrial associations, 4 environmental organizations, 4 community and consumer organizations, 29 companies, and 7 federal agency offices participated in meetings that were instrumental in the development of today's final rule.

As noted previously, the CCL identifies contaminants for which EPA

may take regulatory action and for which EPA needs additional data. The UCMR list contains contaminants for which additional data are needed before EPA can determine their regulatory status. The meetings to develop the CCL included stakeholder meetings to discuss the list broadly and meetings focused on particular issues conducted through the National Drinking Water Advisory Council's (NDWAC) Working Group on Occurrence and Contaminant Selection, as follows:

- December 2–3, 1996 Stakeholders Meeting.
- April 3–4, 1997 NDWAC Working Group.
- June 23, 1997 NDWAC Working Group.
- July 17, 1997 NDWAC Working Group.
- January 7, 1998 NDWAC Conference Call.

These meetings resulted in the Drinking Water Contaminant Candidate List (63 FR 10274, March 2, 1998). The contaminants in today's rule for unregulated contaminant monitoring are taken in large part from the CCL ''Occurrence Priorities.''

The NCOD development activities included 10 public meetings on information requirements that should be considered for inclusion in the database. These meetings were held between October 1997 and February 1998. The work of the NCOD development team is incorporated as the reporting requirements for sample testing in today's unregulated contaminant monitoring regulation. Several documents concerning the NCOD development which were used in the public meetings are:

- Options for the National Drinking Water Contaminant Occurrence Data Base, Background Document (Working Draft), EPA 815–D–97–001, May 1997.
- National Drinking Water Contaminant Occurrence Data Base—Development Strategy, Background Document (Working Draft), EPA 815–D–97–005, December 1997.
- Options for Design of the National Drinking Water Contaminant Occurrence Data Base, Background Document (Working Draft), EPA 815–D–98–001, January 1998.

EPA held its first stakeholder meeting to discuss options for the development of the Unregulated Contaminant Monitoring Regulation on December 2 and 3, 1997, in Washington, DC. A variety of stakeholders attended that meeting, including representatives of PWSs, States, industry, health and laboratory organizations, and the public. EPA prepared a background document for the meeting, Options for Developing the Unregulated Contaminant Monitoring Regulation (Working Draft), EPA 815–D–97–003, November 1997. A summary of the meeting is also available. EPA held a second stakeholders meeting on June 3 and 4, 1998 to obtain input from interested parties on significant issues evolving from drafting the regulation, which needed further public input. The Agency prepared a public review document for that meeting, Background Information and Draft Annotated Outline for a Proposed Unregulated Contaminant Monitoring Regulation, Background Document, (Working Draft), May 1998. A meeting summary also is available. EPA also sent special requests for review of stakeholder documents to more than 360 Tribes (exclusive of the Alaskan native villages) and to small systems organizations to obtain their input.

In all, EPA held 17 public meetings with stakeholders and interested parties related directly or closely to the final Unregulated Contaminant Monitoring Regulation. Additionally, EPA received 39 comments by the public comment date of June 14, 1999, from a range of the public, including individuals, water systems, States, environmental organizations, and associations. EPA also received 121 comments after the comment period, primarily from individuals concerned with perchlorate being on the Monitoring List.

XIV. References

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List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Analytical methods, Chemicals, Incorporation by Reference, Intergovernmental relations, Microorganisms, Monitoring, Water supply.

40 CFR Part 142

Environmental protection, Analytical methods, Chemicals, Intergovernmental relations, Microorganisms, Monitoring, Water supply.

Dated: August 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 Chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e); 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by removing the entry for ''141.33–141.35''; revising the entry for ''141.40''; and by adding in numerical order under the indicated heading new entries ''141.33–141.34'' and ''141.35'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB control No.
National Primary Drinking Water Regulations	
141.33–141.34	2040–0090
141.35	2040–0208
141.40	2040–0208

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.35 is revised to read as follows:

§ 141.35 Reporting of unregulated contaminant monitoring results.

(a) *Does this reporting apply to me?* (1) This section applies to any owner or operator of a public water system required to monitor for unregulated contaminants under § 141.40. This section requires you to report the results of this monitoring.

(2) *Exception.* You do not need to report results if you are a system serving a population of 10,000 or less, since EPA will arrange for testing and reporting of the results. However, you will still need to comply with consumer confidence reporting and public notification requirements for these results.

(b) *To whom must I report?* You must report the results of unregulated contaminant monitoring to EPA and provide a copy to the State. You must also notify the public of the monitoring results as provided in Subpart O (Consumer Confidence Reports) and Subpart Q (Public Notification) of this part.

(c) *When must I report monitoring results?* You must report the results of unregulated contaminant monitoring within thirty (30) days following the month in which you received the results from the laboratory . EPA will place the data in the national drinking water contaminant occurrence database sixty (60) days after you report the data to allow for quality control review by systems and States.

(d) *What information must I report?* You must report the information specified in the following table for each sample, and for each spiked sample and spike duplicate sample analyzed for quality control purposes and associated with each sample and its sample batch:

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS

Data element	Definition
1. Public Water System (PWS) Identification Number.	The code used to identify each PWS. The code begins with the standard two-character postal State abbreviation; the remaining seven characters are unique to each PWS.
2. Public Water System Facility Identification Number—Source, Treatment Plant, and Sampling Point.	An identification number established by the State, or, at the State's discretion, the PWS, that is unique to the system for an intake for each source of water, a treatment plant and a sampling point. Within each PWS, each intake, treatment plant and sampling point must receive a unique identification number, including, for intake; surface water intake, ground water well or wellfield centroid; and including, for sampling point; entry points to the distribution system, wellhead, intake, locations within the distribution system, or other representative sampling point specified by the State. The same identification number must be used consistently throughout the history of unregulated contaminant monitoring to represent the facility.
3. Sample Collection Date	The date the sample is collected reported as 4-digit year, 2-digit month, and 2-digit day.
4. Sample Identification Number	A numeric value assigned by the PWS or laboratory to uniquely identify a specific sampling occurrence.
5. Contaminant/Parameter	The unregulated contaminant or water quality parameter for which the sample is being analyzed.
6. Analytical Results—Sign	An alphanumeric value indicating whether the sample analysis result was: (a) (<) ''less than'' means the contaminant was not detected or was detected at a level ''less than'' the MRL. (b) (=) ''equal to'' means the contaminant was detected at a level ''equal to'' the value reported in ''Analytical Result—Value.''
7. Analytical Result—Value	The actual numeric value of the analysis for chemical and microbiological results, or the minimum reporting level (MRL) if the analytical result is less than the specified contaminant's MRL
8. Analytical Result—Unit of Measure	The unit of measurement for the analytical results reported. [e.g., micrograms per liter, (μg/L); colony-forming units per milliliter, (CFU/mL), etc.]
9. Analytical Method Number	The identification number of the analytical method used.
10. Sample Analysis Type	The type of sample collected. Permitted values include: (a) Field Sample—sample collected and submitted for analysis under this rule. (b) Batch Spike/Spike Duplicate—Samples associated with a batch used for calculating analytical precision and accuracy. A batch is defined as the set of field samples plus one spiked sample and one spiked duplicate sample analyzed for contaminant concentrations
11. Sample Batch Identification Number	A number assigned by the laboratory to the batch of samples analyzed with the spiked sample (at the spiking concentration reported), to be reported as 9-digit laboratory number (assigned by the State or EPA), 4-digit year, 2-digit month, 2-digit day and 2-digit batch number.
12. Detection Level	''Detection level'' refers to the detection limit applied to both the method and equipment. Detection limit is the lowest concentration of a target contaminant that a given method or piece of equipment can reliably ascertain and report as greater than zero (e.g., Instrument Detection Limit, Method Detection Limit, or Estimated Detection Limit).
13. Detection Level Unit of Measure	The unit of measure to express the concentration, count, or other value of a contaminant level for the detection level reported. (e.g., μg/L, colony forming units/mL (CFU/mL), etc.)

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS—Continued

Data element	Definition
14. Analytical Precision	Precision is the degree of agreement among a set of repeated measurements and is monitored through the use of replicate samples or measurements. For purposes of the Unregulated Contaminant Monitoring Regulation (UCMR), Analytical Precision is defined as the relative percent difference (RPD) between spiked matrix duplicates. The RPD for the spiked matrix duplicates analyzed in the same batch of samples as the analytical result being reported is to be entered in this field. Precision is calculated as Relative Percent Difference (RPD) between spiked matrix duplicates using, $RPD = [(X_1–X_2) / (X_1 + X_2)/2] \times 100$
15. Analytical Accuracy	Accuracy describes how close a result is to the true value measured through the use of spikes, standards, surrogates or performance evaluation samples. For purposes of unregulated contaminant monitoring, accuracy is defined as the percent recovery of the contaminant in the spiked matrix sample analyzed in the same analytical batch as the sample result being reported and calculated using; % recovery = [(amt. found in spiked sample—amt. found in sample) / amt. spiked] × 100
16. Spiking Concentration	The concentration of method analytes added to a sample to be analyzed for calculating analytical precision and accuracy where the value reported use the same unit of measure reported for Analytical Results
17. Presence/Absence	*Chemicals:* Presence—a response was produced by the analysis (i.e., greater than or equal to the MDL but less than the MRL)/Absence—no response was produced by the analysis (i.e., less than the MDL). *Microbiologicals:* Presence—indicates a response was produced by the analysis /Absence—indicates no response was produced by the analysis.

(e) *How must I report this information?* You must report this information in the electronic or other format specified by EPA.

(f) *Can the laboratory to which I send samples report the results for me?* Yes, as long as the laboratory sends you a copy for review and recordkeeping. However, you are responsible for the reporting of this information and ensuring that the laboratory reports these results to EPA, with a copy to the State, on time.

(g) *Can I report previously collected data to meet the testing and reporting requirements for the contaminants listed in § 141.40(a)(3)?* Yes, as long as the data meet the specific requirements of § 141.40(a)(3), (4), (5), and Appendix A of § 141.40 and you report the data with the information specified in paragraph (d) of this section.

3. Section 141.40 is revised to read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) *Requirements for owners and operators of public water systems.* (1) *Do I have to monitor for unregulated contaminants?*

(i) *Transient systems.* If you own or operate a transient non-community water system, you do not have to monitor for unregulated contaminants.

(ii) *Large systems not purchasing their entire water supply from another system.* If you own or operate a wholesale or retail public water system (other than a transient system) that serves more than 10,000 persons, as determined by the State, and do not purchase your entire water supply from another public water system, you must monitor as follows:

(A) You must monitor for the unregulated contaminants on List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section.

(B) You must monitor for the unregulated contaminants on List 2 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the Screening Surveys.

(C) You must monitor for the unregulated contaminants on List 3 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the Pre-Screen Testing.

(iii) *Large systems purchasing their entire water supply from another system.* If you own or operate a public water system (other than a transient system) that serves more than 10,000 persons and purchase your entire water supply from a wholesale public water system, you must monitor as follows:

(A) You must monitor for the unregulated contaminants on List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system''.

(B) You must monitor for the unregulated contaminants on List 2 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system'' if notified by your State or EPA that you are part of the Screening Surveys.

(C) You must monitor for the unregulated contaminants on List 3 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system'' if notified by your State or EPA that you are part of the Pre-Screen Testing.

(iv) *Small systems not purchasing their entire water supply from another system.* If you own or operate a public water system (other than a transient system) that serves 10,000 or fewer persons and do not purchase your entire water supply from another public water system, you must monitor as follows:

(A) You must monitor for the unregulated contaminants on List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring Plan for small systems.

(B) You must monitor for the unregulated contaminants on List 2 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the Screening Surveys.

(C) You must monitor for the unregulated contaminants on List 3 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the Pre-Screen Testing.

(v) *Small systems purchasing their entire water supply from another*

system. If you own or operate a public water system (other than a transient system) that serves 10,000 or fewer persons and purchase your entire water supply from a wholesale public water system, you must monitor as follows:

(A) You must monitor for the unregulated contaminants on List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system'' if you are notified by your State or EPA that you are part of the State Monitoring Plan for small systems.

(B) You must monitor for the unregulated contaminants on List 2 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system'' if you are notified by your State or EPA that you are part of the Screening Surveys.

(C) You must monitor for the unregulated contaminants on List 3 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, that have a ''sampling location'' indicated as ''distribution system'' if you are notified by your State or EPA that you are part of the Pre-Screen Testing.

(2) *How would I be selected for the monitoring under the State Monitoring Plan, the Screening Surveys, or the Pre-Screen Testing?* (i) State Monitoring Plan. Only a representative sample of small systems must monitor for unregulated contaminants. EPA will select a national representative sample of small public water systems in each State through the use of a random number generator. Selection will be weighted by population served within each system water source type (surface or ground water) and system size category (systems serving 25–500, 501–3,300, and 3,301–10,000 persons). EPA may allocate additional systems to water source types or system size categories to increase the statistical inferential ability for those categories. EPA will also select a small group of systems to be ''Index systems.'' Systems selected as Index systems are required to provide information about their site and operation that will serve to allow extrapolation of their results to other systems of similar size, rather than collecting detailed information at every small system. Each State will have the opportunity to make some modifications to the list of small systems that EPA selects. You will be notified by the State or EPA if your system is part of the final State Monitoring Plan.

(ii) *Screening Surveys.* The purpose of the Screening Surveys is to determine the occurrence of contaminants in drinking water or sources of drinking water for which analytical methods have recently been developed for unregulated contaminant monitoring. EPA will select up to 300 systems to participate in each survey by using a random number generator. You will be notified by the State or EPA if your system is selected for monitoring under the Screening Surveys.

(iii) *Pre-screen Testing.* The purpose of Pre-Screen Testing is to determine the occurrence of contaminants for which EPA needs to evaluate new analytical methods in locations where the contaminants are most likely to be found. EPA will select up to 200 systems to participate in this testing after considering the characteristics of the contaminants, precipitation, system operation, and environmental conditions. You will be notified by the State or EPA that your system has been selected for monitoring under the Pre-Screen Testing program.

(3) *For which contaminants must I monitor?* Lists 1, 2 and 3 of unregulated contaminants are listed in the following table:

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST

List 1—Assessment Monitoring Chemical Contaminants

1-Contaminant	2-CAS registry number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
2,4-dinitrotoluene	121–14–2	EPA 525.2[a]	2 µg/L[e]	EPTDS[f]	2001–2003
2,6-dinitrotoluene	606–20–2	EPA 525.2[a]	2 µg/L[e]	EPTDS[f]	2001–2003
Acetochlor	34256–82–1	Reserved[m]	Reserved[m]	EPTDS[f]	2001–2003
DCPA mono-acid degradate.	887–54–7	EPA 515.1[a] EPA 515.2[a] D5317–93[b] AOAC 992.32[c]	1 µg/L[e]	EPTDS[f]	2001–2003
DCPA di-acid degradate.	2136–79–0	EPA 515.1[a] EPA 515.2[a] D5317–93[b] AOAC 992.32[c]	1 µg/L[e]	EPTDS[f]	2001–2003
4,4'-DDE	72–55–9	EPA 508[a] EPA 508.1[a] EPA 525.2[a] D5812–96[b] AOAC 990.06[c]	0.8 µg/L[e]	EPTDS[f]	2001–2003
EPTC	759–94–4	EPA 507[a] EPA 525.2[a] D5475–93[b] AOAC 991.07[c]	1 µg/L[e]	EPTDS[f]	2001–2003
Molinate	2212–67–1	EPA 507[a] EPA 525.2[a] D5475–93[b] AOAC 991.07[c]	0.9 µg/L[e]	EPTDS[f]	2001–2003
MTBE	1634–04–4	EPA 524.2[a] D5790–95[b] SM 6210D[d] SM 6200B[d]	5 µg/L[g]	EPTDS[f]	2001–2003

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REGULATION (1999) LIST—Continued

List 1—Assessment Monitoring Chemical Contaminants

1-Contaminant	2-CAS registry number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
Nitrobenzene	98–95–3	EPA 524.2 [a] D5790–95 [b] SM6210D [d] SM6200B [d]	10 µg/L [g]	EPTDS [f]	2001–2003
Perchlorate	14797–73–0	Reserved [m]	Reserved [m]	EPTDS [f]	2001–2003
Terbacil	5902–51–2	EPA 507 [a] EPA 525.2 [a] D5475–93 [b] AOAC 991.07 [c]	2 µg/L [e]	EPTDS [f]	2001–2003

List 2—Screening Survey Chemical Contaminants
To Be Sampled After Notice of Analytical Methods Availability

1-Contaminant	2-CAS registry number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
1,2-diphenylhydrazine	122–66–7	EPA 525.2 [i]	Reserved [h]	EPTDS [f]	Reserved [h]
2-methyl-phenol	95–48–7	SPE/GC/MS [l]	Reserved [h]	EPTDS [f]	Reserved [h]
2,4-dichlorophenol	120–83–2	SPE/GC/MS [l]	Reserved [h]	EPTDS [f]	Reserved [h]
2,4-dinitrophenol	51–28–5	SPE/GC/MS [l]	Reserved [h]	EPTDS [f]	Reserved [h]
2,4,6-trichlorophenol	88–06–2	SPE/GC/MS [l]	Reserved [h]	EPTDS [f–]	Reserved [h]
Alachlor ESA	TBD [h]	TBD [h]	Reserved [h]	EPTDS [f]	Reserved [h]
Diazinon	333–41–5	EPA 525.2 [k]	Reserved [h]	EPTDS [f]	Reserved [h]
Disulfoton	298–04–4	EPA 525.2 [k]	Reserved [h]	EPTDS [f]	Reserved [h]
Diuron	330–54–1	SPE/HPLC/ UV [j]	Reserved [h]	EPTDS [f]	Reserved [h]
Fonofos	944–22–9	EPA 525.2 [i]	Reserved [h]	EPTDS [f]	Reserved [h]
Linuron	330–55–2	SPE/HPLC/UV [j]	Reserved [h]	EPTDS [f]	Reserved [h]
Polonium-210	13981–52–7	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Prometon	1610–18–0	EPA 525.2 [k]	Reserved [h]	EPTDS [f]	Reserved [h]
Terbufos	13071–79–9	EPA 525.2 [k]	Reserved [h]	EPTDS [f]	Reserved [h]
RDX	121–82–4	Reserved [h]	Reserved [h]	EPTDS [f]	Reserved

List 2—Screening Survey Microbiological Contaminants
To Be Sampled After Notice of Analytical Methods Availability

1-Contaminant	2-Identification number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
Aeromonas	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved

List 3—Pre-Screen Testing Radionuclides
To Be Sampled After Notice of Analytical Methods Availability

1-Contaminant	2-CAS registry number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
Lead-210	14255–04–0	Reserved [h]	Reserved [h]	Reserved [h]	Reserved

List 3—Pre-Screen Testing Microorganisms
To Be Sampled After Notice of Analytical Methods Availability

1-Contaminant	2-Identification number	3-Analytical methods	4-Minimum reporting level	5-Sampling location	6-Period during which monitoring to be completed
Cyanobacteria (blue-green algae, other freshwater algae and their toxins).	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Echoviruses	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Coxsackieviruses	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Helicobacter pylori	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Microsporidia	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Calciviruses	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]
Adenoviruses	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]	Reserved [h]

Column headings are:
1-Chemical or microbiological contaminant: the name of the contaminants to be analyzed.
2–CAS (Chemical Abstract Service Number) Registry No. or Identification Number: a unique number identifying the chemical contaminants.
3-Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.
4-Minimum Reporting Level: the value and unit of measure at or above which the concentration or density of the contaminant must be measured using the Approved Analytical Methods.
5-Sampling Location: the locations within a PWS at which samples must be collected.
6-Years During Which Monitoring to Be Completed: The years during which the sampling and testing are to occur for the indicated contaminant.
The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes b-d was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.
[a] The version of the EPA methods which you must follow for this Rule are listed at 40 CFR 141.24 (e).
[b] *Annual Book of ASTM Standards,* 1996 and 1998, Vol. 11.02, American Society for Testing and Materials. Method D5812–96 is located in the *Annual Book of ASTM Standards,* 1998, Vol. 11.02. Methods D5790–95, D5475–93, and D5317–93 are located in the *Annual Book of ASTM Standards,* 1996 and 1998, Vol 11.02. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.
[b] Official Methods of Analysis of AOAC (Association of Official Analytical Chemist) International, Sixteenth Edition, 4th Revision, 1998, Volume I, AOAC International, First Union National Bank Lockbox, PO Box 75198, Baltimore, MD 21275–5198. 1–800–379–2622.
[d] SM 6210 D is only found in the 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,* 1992 and 1995, American Public Health Association; either edition may be used. SM 6200 B is only found in the 20th edition of *Standard Methods for the Examination of Water and Wastewater,* 1998. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.
[e] Minimum Reporting Level determined by multiplying by 10 the least sensitive method's minimum detection limit (MDL=standard deviation times the Student's T value for 99% confidence level with n-1 degrees of freedom), or when available, multiplying by 5 the least sensitive method's estimated detection limit (where the EDL equals the concentration of compound yielding approximately a 5 to 1 signal to noise ratio or the calculated MDL, whichever is greater).
[f] Entry Points to the Distribution System (EPTDS), After Treatment, representing each non-emergency water source in routine use over the twelve-month period of monitoring; sampling must occur at the EPTDS, unless the State has specified other sampling points that are used for compliance monitoring 40 CFR 141.24 (f)(1), (2), and (3). See 40 CFR 141.40(a)(5)(ii)(C) for a complete explanation of requirements, including the use of source (raw) water sampling points.
[g] Minimum Reporting Levels (MRL) for Volatile Organic Compounds (VOC) determined by multiplying either the published Method Detection Limit (MDL) or 0.5 µg/L times 10, whichever is greater. The MDL of 0.5 µg/L (0.0005 mg/L) was selected to conform to VOC MDL requirements of 40 CFR 141.24(f)(17)(i)(E).
[h] To be Determined at a later time
[i] Compound currently not listed as a contaminant in this method.
[j] Methods development currently in progress to develop a solid phase extraction/high performance liquid chromatography/ultraviolet method for the determination of this compound.
[k] Compound listed as being a contaminant using EPA Method 525.2; however, adequate sample preservation is not available. Preservation studies currently being conducted to develop adequate sample preservation.
[l] Methods development currently in progress to develop a solid phase extraction/gas chromatography/mass spectrometry method for the determination of this compound.
[m] If not determined by regulation by December 31, 2000, this contaminant will become part of List 2.

(4) *What general requirements must I follow for monitoring List 1 contaminants?* (i) All systems. You must:

(A) Collect samples of the listed contaminants in accordance with paragraph (a)(5) of this section and Appendix A of this section and any other specific instructions provided to you by the State or EPA,

(B) Analyze the additional parameters specified below in Table 2. ''Water Quality Parameters to be Monitored with UCMR Contaminants'' for each relevant contaminant type. You must analyze the parameters for each sampling event of each sampling point, using the method indicated, and report using the data elements 1 through 10 in Table 1, § 141.35(d), Unregulated Contaminant Monitoring Reporting Requirements;

(C) Review the laboratory testing results to ensure reliability; and

(D) Report the results as specified in § 141.35.

TABLE 2.—WATER QUALITY PARAMETERS TO BE MONITORED WITH UCMR CONTAMINANTS

Parameter	Contaminant type	Methodology		
		EPA method	Standard methods [1]	Other
pH	Chemical;	[2] 150.1	4500-H^+ B	ASTM D1293–84 [3]
	Microbiological	[2] 150.2		ASTM D1293–95 [3]
Turbidity	Microbiological	[4,5] 180.1	2130 B [4]	GLI Method 2 [4,6]
Temperature	Microbiological		2550	
Free Disinfectant Residual	Microbiological		4500-Cl D	ASTM D 1253–86 [3]
			4500-Cl F	
			4500-Cl G	
			4500-Cl H	
			4500-ClO_2 D	
			4500-ClO_2 E	
			4500-O_3 B	
Total Disinfectant Residual	Microbiological		4500-Cl D	ASTM D 1253–86 [3]
			4500-Cl E [4]	
			4500-Cl F	
			4500-Cl G [4]	
			4500-Cl I	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] The 18th and 19th Editions of *Standard Methods for the Examination of Water and Wastewater*, 1992 and 1995. Methods 2130 B; 2550; 4500-Cl D, E, F, G, H, I; 4500-ClO2 D, E; 4500-H^+ B; and 4500-O_3 B in the 20th edition *Standard Methods for the Examination of Water and Wastewater*, 1998, American Public Health Association, 1015 Fifteenth St. NW, Washington D.C., 20005.

[2] Methods 150.1 and 150.2 are available from US EPA, NERL, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268. The identical methods are also in ''Methods for Chemical Analysis of Water and Wastes,'' EPA–600/4–79–020, March 1983, available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, Virginia 22161, PB84–128677. (Note: NTIS toll-free number is 800–553–6847.)

[3] *Annual Book of ASTM Standards*, Editions 1994 and 1996,Volumes 11.01, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Version D1293–84 is located in the *Annual Book of ASTM Standards*, 1994, Volumes 11.01. Version D1293–95 is located in the *Annual Book of ASTM Standards*, 1996, Volumes 11.01.

[4] ''Technical Notes on Drinking Water,'' EPA–600/R–94–173, October 1994, Available at NTIS, PB95–104766.

[5] ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811

[6] GLI Method 2, ''Turbidity,'' November 2, 1992, Great Lakes Instruments Inc., 8855 North 55th St., Milwaukee, Wisconsin 53223.

(ii) *Large systems.* In addition to paragraph (a)(4)(i) of this section, you must arrange for testing of the samples according to the methods specified for each contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, and in Appendix A of this section.

(iii) *Small systems.* Unless directed otherwise by the State or EPA, in addition to paragraph (a)(4)(i) of this section , you must:

(A) Properly receive, store, maintain and use the sampling equipment sent to you from the laboratory designated by EPA;

(B) Sample at the times specified by the State or the EPA;

(C) Collect and pack samples in accordance with the instructions sent to you by the laboratory designated by EPA; and

(D) Send the samples to the laboratory designated by EPA.

(5) What specific sampling and quality control requirements must I follow for monitoring of List 1 contaminants? *(i) All systems.* Unless the State or EPA informs you of other sampling arrangements, you must comply with the following requirements:

(A) *Sample collection and shipping time.* If you must ship the samples for testing, you must collect the samples early enough in the day to allow adequate time to send the samples for overnight delivery to the laboratory since some samples must be processed at the laboratory within 30 hours of collection. You must not collect samples on Friday, Saturday or Sunday because sampling on these days would not allow samples to be shipped and received at the laboratory within 30 hours.

(B) *No compositing of samples.* You must not composite (that is, combine, mix or blend) the samples. You must collect, preserve and test each sample separately.

(C) *Review and reporting of results.* After you have received the laboratory results, you must review and confirm the system information and data regarding sample collection and test results. You must report the results as provided in § 141.35.

(ii) *Large systems.* In addition to paragraph (a)(5)(i) of this section, you must comply with the following:

(A) *Timeframe.* You must collect the samples in one twelve-month period during the years indicated in column 6 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List.

(B) *Frequency.* You must collect the samples within the timeframe and according to the following frequency specified by contaminant type and water source type:

TABLE 3.—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Timeframe	Frequency
Chemical	Surface water	Twelve (12) months	Four quarterly samples taken as follows: Select either the first, second, or third month of a quarter and sample in that same month of each of four (4) consecutive quarters[a] to ensure that one of those sampling events occurs during the vulnerable time.[b]
	Ground water	Twelve (12) months	Two (2) times in a year taken as follows: Sample during one (1) month of the vulnerable time[b] and during one (1) month five (5) to seven (7) months earlier or later.[c]
Microbiological	Surface and ground water	Twelve (12) months	Two (2) times in a year taken as follows: Sample during one (1) month of the vulnerable time[b] and during one (1) month five (5) to seven (7) months earlier or later.[c]

[a] "Select either the first, second, or third month of a quarter and sample in that same month of each of four (4) consecutive quarters" means that you must monitor during each of the four (4) months of either: January, April, July, October; or February, May, August, November; or March, June, September, December.

[b] "Vulnerable time" means May 1 through July 31, unless the State or EPA informs you that it has selected a different time period for sampling as your system's vulnerable time.

[c] "Sample during one (1) month of the vulnerable time and during one (1) month five (5) to seven (7) months earlier or later" means, for example, that if you select May as your "vulnerable time" month to sample, then one (1) month five (5) to seven (7) months earlier would be either October, November or December of the preceding year, and one (1) month five (5) to seven (7) months later would be either, October, November, or December of the same year.

(C) *Location.* You must collect samples at the location specified for each listed contaminant in column 5 of the Table 1, UCMR (1999) List, in paragraph (a)(3) of this section. The sampling location for chemical contaminants must be the entry point to the distribution system or the compliance monitoring point specified by the State or EPA under 40 CFR 141.24(f)(1), (2), and (3). If the compliance monitoring point as specified by the State is for source (raw) water and any of the contaminants in paragraph (a)(3) of this section are detected, then you must also sample at the entry point to the distribution system at the frequency indicated in paragraph (a)(5)(ii)(B) of this section with the following exception: If the State or EPA determines that sampling at the entry point to the distribution system is unnecessary because no treatment was instituted between the source water and the distribution system that would affect measurement of the contaminants listed in paragraph (a)(3) of this section, then you do not have to sample at the entry point to the distribution system.

(D) *Sampling instructions.* You must follow the sampling procedure for the method specified in column 3 of List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, for each contaminant.

(E) *Testing and analytical methods.* For each listed contaminant, you must use the analytical method specified in column 3 of List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, the minimum reporting levels in column 4 of List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, and the quality control procedures specified in Appendix A of this section.

(F) *Sampling deviations.* If you do not collect a sample according to the procedures specified for a listed contaminant, you must resample within 14 days of observing the occurrence of the error (which may include notification from the laboratory that you must resample) following the procedures specified for the method. (This resampling is not for confirmation sampling but to correct the sampling error.)

(G) *Testing.* You must arrange for the testing of the contaminants by a laboratory certified under § 141.28 for compliance analysis using the EPA analytical methods listed in column 3 for each contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, whether you use the EPA analytical methods or non-EPA methods listed in Table 1.

(iii) *Small systems that are part of the State Monitoring Plan.* Unless directed otherwise by the State or EPA, in addition to paragraph (a)(5)(i) of this section, you must comply with the following:

(A) *Timeframe and frequency.* You must collect samples at the times specified for you by the State or EPA, within the timeframe specified in paragraph (a)(5)(ii)(A) of this section and according to the frequency specified in paragraph (a)(5)(ii)(B) of this section for the contaminant type and water source type.

(B) *Location.* You must collect samples at the locations specified for you by the State or EPA.

(C) *Sampling deviations.* If you do not collect a sample according to the instructions provided to you for a listed contaminant, then you must report the deviation on the sample reporting form that you send to the laboratory with the samples. You must resample following instructions that you will be sent from EPA's designated laboratory or the State.

(D) *Sample kits.* You must store and maintain the sample collection kits sent to you by EPA's designated laboratory in a secure place until used for sampling. You should read the instructions for each kit when you receive it. If indicated in the kit's instructions, you must freeze the cold packs. The sample kit will include all necessary containers, packing materials and cold packs, instructions for collecting the sample and sample treatment (such as dechlorination or preservation), report forms for each sample, contact name and telephone number for the laboratory, and a prepaid return shipping docket and return address label. If any of the materials listed in the kit's instructions are not included or arrive damaged, you must notify EPA's designated laboratory which sent you the sample collection kits.

(E) *Sampling instructions.* You must comply with the instructions sent to you by the State or EPA concerning the use of containers, collection (how to fill the sample bottle), dechlorination and/or preservation, and sealing and preparing the sample and shipping containers for

shipment. You must also comply with the instructions sent to you by EPA's designated laboratory concerning the handling of sample containers for specific contaminants.

(F) *Duplicate samples.* EPA will select systems in the State Monitoring Plan that must collect duplicate samples for quality control. If your system is selected, you will receive two sample kits that you must use. You must use the same sampling protocols for both sets of samples, following the instructions in the duplicate sample kit.

(G) *Sampling forms.* You must completely fill out the sampling forms sent to you by the laboratory, including the data elements 1 through 6 listed in § 141.35(d) for each sample. You must sign and date the sampling forms.

(H) *Sample submission.* Once you have collected the samples and completely filled in the sampling forms, you must send the samples and the sampling forms to the laboratory designated in your instructions.

(6) *What additional requirements must I follow if my system is selected as an Index system?* If your system is selected as an Index system in the State Monitoring Plan, you must assist the State or EPA in identifying appropriate sampling locations and provide information on which wells and intakes are in use at the time of sampling, well casing and screen depths (if known) for those wells, and the pumping rate of each well or intake at the time of sampling.

(7) *What must I do if my system is selected for the Screening Surveys or Pre-Screen Testing?* (i) *Large systems.* If your system serves over 10,000 persons, you must collect and arrange for testing of the contaminants in List 2 and List 3 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, in accordance with the requirements set out in paragraphs (a)(4) and (5) of this section. You must send the samples to one of the laboratories designated by EPA in your notification. You must report the test results to EPA, and provide a copy to the State, as specified in 40 CFR 141.35.

(ii) *Small systems.* If your system serves 10,000 or fewer persons, you must collect samples in accordance with the instructions sent to you by the State or EPA, or, if informed by the State or EPA that the State or EPA will collect the sample, you must assist the State or EPA in identifying the appropriate sampling locations and in taking the samples. EPA will report the test results to you and the State.

(8) *What is a violation of this Rule?* (i) Any failure to monitor in accordance with § 141.40(a)(3) through (7) and Appendix A is a monitoring violation. (ii) Any failure to report in accordance with § 141.35 is a reporting violation.

(b) *Requirements for State and Tribal Participation.* (1) How can I, as the director of a State or Tribal drinking water program, participate in unregulated contaminant monitoring, including Assessment Monitoring (which includes the State Monitoring Plan for small systems), the Screening Surveys, and Pre-Screen Testing of all systems? You can enter into a Memorandum of Agreement (MOA) with the EPA that describes your State's or Tribe's activities to:

(i) *Accept or modify the initial plan.* EPA will first specify the systems serving 10,000 or fewer persons by water source and size in an initial State Monitoring Plan for each State using a random number generator. EPA will also generate a replacement list of systems for systems that may not have been correctly specified on the initial plan. This initial State Monitoring Plan will also indicate the year and day, plus or minus two (2) weeks from the day, that each system must monitor for the contaminants in List 1 of Table 1 of this section, Unregulated Contaminant Monitoring Regulation (1999) List. EPA will provide you with the initial monitoring plan for your State or Tribe, including systems to be Index systems and those systems to be part of the Screening Surveys. Within sixty (60) days of receiving your State's initial plan, you may notify EPA that you either accept it as your State Monitoring Plan or request to modify the initial plan by removing systems that have closed, merged or are purchasing water from another system and replacing them with other systems. Any purchased water system associated with a non-purchased water system must be added to the State Monitoring Plan if the State determines that its distribution line is the location of the maximum residence time or lowest disinfectant residual of the combined distribution system. In this case, the purchased water system must monitor for the contaminants for which the ''distribution system'' is identified as the point of ''maximum residence time'' or ''lowest disinfectant residual,'' depending on the contaminant, and not the community water system selling water to it. You must replace any systems you removed from the initial plan with systems from the replacement list in the order they are listed. Your request to modify the initial plan must include the modified plan and the reasons for the removal and replacement of systems. If you believe that there are reasons other than those previously listed for removing and replacing one or more other systems from the initial plan, you may include those systems and their replacement systems in your request to modify the initial plan. EPA will review your request to modify your State's initial plan. Please note that information about the actual or potential occurrence or non-occurrence of contaminants at a system or a system's vulnerability to contamination is not a basis for removal from or addition to the plan.

(ii) *Determine an alternate vulnerable time.* Within 60 days of receiving the initial State Monitoring Plan, you may also determine that the most vulnerable time of the year for any or all of the systems in the plan, and for any of the large systems that must monitor, is some period other than May 1 through July 31. If you make this determination, you must modify the initial plan to indicate the alternate vulnerable time and to which systems the alternate vulnerable time applies. EPA will review these determinations when you submit your request to modify your State's initial monitoring plan to the EPA. You must notify the small system(s) in your final State Monitoring Plan and the large system(s) of the most vulnerable time(s) of the year that you have specified for them to sample for one of their sampling events. You must notify them at least 90 days before their first unregulated contaminant sampling is to occur. You may need to consider the timing of monitoring in paragraph (b)(1)(iii) of this section.

(iii) *Modify the timing of monitoring.* Within sixty (60) days of receiving the initial plan, you may also modify the plan by selecting an alternative year and day, plus or minus two (2) weeks, within the years specified in column 6, List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, for monitoring for each system in the initial plan as long as approximately one-third of the systems in the State Plan monitor in each of the three (3) years listed. This monitoring may be coordinated with regulated contaminant compliance monitoring at your discretion. You must send the modified plan to EPA.

(iv) *Identify alternate sampling points for small systems in the State Monitoring Plan.* All systems are required to monitor for the contaminants at the sampling locations specified in column 5, List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, unless the State specifies an alternate compliance sampling point as the sampling location.

If the compliance sampling points for the small systems in the State Monitoring Plan are different than those specified in paragraph (a)(3) of this section, then you must indicate these sampling points in the plan. These alternative sampling points must allow proper sampling and testing for the unregulated contaminants.

(v) *Notify small and large systems of their monitoring responsibilities.* You must provide notification to systems in the plan and, where appropriate, the large systems, at least ninety (90) days before sampling must occur.

(vi) *Provide instructions to systems that are part of the final State Monitoring Plan.* You must send a monitoring schedule to each system listed in the State Monitoring Plan and instructions on location, frequency, timing of sampling, use of sampling equipment, and handling and shipment of samples based on these regulations. EPA will provide you with guidance for these instructions. If you perform the sampling or make alternative arrangements for the sampling at the systems in the plan, you must inform EPA at least six (6) months before the first monitoring is to occur and address the alternative monitoring arrangements in the MOA.

(vii) *Participate in monitoring for the Screening Surveys for small and large systems.* Within 120 days prior to sampling, EPA will notify you which systems have been selected to participate in the Screening Surveys, the sampling dates, the designated laboratory for testing, and instructions for sampling. You must review the small systems that EPA selected for the State Monitoring Plan to ensure that the systems are not closed, merged or purchasing water from another system (unless the system is to conduct microbiological contaminant monitoring), and then make any replacements in the plan, as described in paragraph (b)(1)(i) of this section. You must notify the selected systems in your State of these Screening Surveys requirements. You must provide the necessary Screening Surveys information to the selected systems at least ninety (90) days prior to the sampling date.

(viii) *Participate in monitoring for Pre-Screen Testing for small and large systems.* You can participate in Pre-Screen Testing in two ways.

(A) First, within ninety (90) days of EPA's letter to you concerning initiation of Pre-Screen Testing for specific contaminants, you can identify from five (5) up to twenty-five (25) systems in your State that you determine to be representative of the most vulnerable systems to these contaminants, modify your State Monitoring Plan to include these most vulnerable systems if any serve 10,000 or fewer persons, and notify EPA of the addition of these systems to the State Plan. These systems must be selected from all community and non-transient noncommunity water systems. EPA will use the State-identified vulnerable systems to select up to 200 systems nationally to be monitored considering the characteristics of the contaminants, precipitation, system operation, and environmental conditions.

(B) Second, within 120 days prior to sampling, EPA will notify you which systems have been selected, sampling dates, the designated laboratory for testing of samples for systems serving 10,000 or fewer persons and approved laboratories for systems serving more than 10,000 persons, and instructions for sampling. You must notify the owners or operators of the selected systems in your State of these Pre-Screen Testing requirements. At least ninety (90) days prior to the sampling date, you must provide the necessary Pre-Screen Testing information to the owners or operators of the selected systems and then inform EPA that you took this action to allow sufficient time for EPA to ensure laboratory readiness.

(ix) *Revise system's treatment plant location(s) to include latitude and longitude.* For reporting to the Safe Drinking Water Information System, EPA already requires reporting of either the latitude and longitude or the street address for the treatment plant location. If the State enters into an MOA, the State must report each system's treatment plant location(s) as latitude and longitude (in addition to street address, if previously reported) by the time of the system's reporting of Assessment Monitoring results to the National Drinking Water Contaminant Occurrence Database.

(2) What if I decide not to participate in an MOA? If you decide not to enter into an MOA with EPA to develop the State Monitoring Plan for small systems, the initial monitoring plan that EPA sent you will become the final State Monitoring Plan for your State or Tribe. In that case, you may still notify each public water system of its selection for the plan and instructions for monitoring as long as you notify EPA that you will be undertaking this responsibility at least six (6) months prior to the first unregulated contaminant monitoring.

(3) Can I add contaminants to the Unregulated Contaminant Monitoring List? Yes, the SDWA allows Governors of seven (7) or more States to petition the EPA Administrator to add one or more contaminants to the Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section. The petition must clearly identify the reason(s) for adding the contaminant(s) to the monitoring list in paragraph (a)(3) of this section, including the potential risk to public health, particularly any information that might be available regarding disproportional risks to the health and safety of children, the expected occurrence documented by any available data, any analytical methods known or proposed to be used to test for the contaminant(s), and any other information that could assist the Administrator in determining which contaminants present the greatest public health concern and should, therefore, be included on the Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section.

(4) Can I waive monitoring requirements? Only with EPA approval and under very limited conditions. Conditions and procedures for obtaining the only type of waiver available under these regulations are as follows:

(i) Application. You may apply to EPA for a State-wide waiver from the unregulated contaminant monitoring requirements for public water systems serving more than 10,000 persons. To apply for such a waiver, you must submit an application to EPA that includes the following information:

(A) the list of contaminants on the Unregulated Contaminant Monitoring List for which you request a waiver, and

(B) documentation for each contaminant in your request demonstrating that the contaminants have not been used, applied, stored, disposed of, released, naturally present or detected in the source waters or distribution systems in your State during the past 15 years, and that it does not occur naturally in your State.

(ii) Approval. EPA will notify you if EPA agrees to waive monitoring requirements.

Appendix A to § 141.40—Quality Control Requirements for Testing All Samples Collected

Your system must ensure that the quality control requirements listed below for testing of samples collected and submitted under § 141.40 are followed:

(1) Sample Collection/Preservation. Follow the sample collection and preservation requirements for the specified method for each of the contaminants in Table 1, UCMR (1999) List, in paragraph (a)(3) of this section. These requirements specify sample containers, collection, dechlorination, preservation, storage, sample holding time, and extract storage and/or holding time that the laboratory must follow.

(2) Method Detection Limit. Calculate the laboratory method detection limit (MDLs) for each contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, of paragraph (a)(3) of this section using the appropriate specified method according to procedures in 40 CFR Part 136, Appendix B with the exception that the contaminant concentration used to fortify reagent water must be less than or equal to the minimum reporting level (MRL) for the contaminants as specified in column 4, Table 1, UCMR (1999) List, in paragraph (a)(3) of this section. The calculated MDL is equal to the standard deviation times the Student's T value for 99% confidence level with n-1 degrees of freedom. (The MDL must be less than or equal to one-half of the MRL.)

(3) Calibration. Follow the initial calibration requirements as specified in the method utilized. Calibration must be verified initially with a low-level standard at a concentration at or below the MRL for each contaminant. Perform a continuing calibration verification following every 10th sample. The calibration verification must be performed by alternating low-level and mid-level calibration standards. The low-level standard is defined as a concentration at or below the MRL with an acceptance range of ±40%. The mid-level standard is in the middle of the calibration range with an acceptance range of ±20%.

(4) Reagent Blank Analysis. Analyze one laboratory reagent (method) blank per sample set/batch that is treated exactly as a sample. The maximum allowable background concentration is one-half of the MRL for all contaminants. A field reagent blank is required only for EPA Method 524.2 (or equivalent listed methods, D5790.95, SM6210D, and SM6200B).

(5) Quality Control Sample. Obtain a quality control sample from an external source to check laboratory performance at least once each quarter.

(6) Matrix Spike and Duplicate. Prepare and analyze the sample matrix spike (SMS) for accuracy and matrix spike duplicate (MSD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section. SMS/MSD samples must be prepared and analyzed at a frequency of 5% (or one SMS/MSD set per every 20 samples) or with each sample batch whichever is more frequent. In addition, the SMS/MSD spike concentrations must be alternated between a low-level spike and mid-level spike approximately 50% of the time. (For example: a set of 40 samples will require preparation and analysis of two SMS/MSD sets. The first set must be spiked at either the low-level or mid level, and the second set must be spiked with the other standard, either the low-level or mid-level, whichever was not used for the initial SMS/MSD set). The low-level SMS/MSD spike concentration must be within ±20% of the MRL for each contaminant. The mid-level SMS/MSD spike concentration must be within ±20% of the mid-level calibration standard for each contaminant, and should represent, where possible, an approximate average concentration observed in previous analyses of that analyte. The spiking concentrations must be reported in the same units of measure as the analytical results.

(7) Internal Standard Calibration. As appropriate to a method's requirements to be used, test and obtain an internal standard for the methods for each chemical contaminant in Table 1, Unregulated Contaminant Monitoring Regulation (1999) List, in paragraph (a)(3) of this section, a pure contaminant of known concentration, for calibration and quantitation purposes. The methods specify the percent recovery or response that you must obtain for acceptance.

(8) Method Performance Test. As appropriate to a method's requirements, test for surrogate compounds, a pure contaminant unlikely to be found in any sample, to be used to monitor method performance. The methods specify the percent recovery that you must obtain for acceptance.

(9) Detection Confirmation. Confirm any chemical contaminant detected above the MRL by gas chromatographic/mass spectrometric (GC/MS) methods. If testing resulted in first analyzing the sample extracts via specified gas chromatographic methods, an initial confirmation by a second column dissimilar to the primary column may be performed. If the contaminant detection is confirmed by the secondary column, then the contaminant must be reconfirmed by GC/MS using three (3) specified ion peaks for contaminant identification. Use one of the following confirming techniques: perform single point calibration of the GC/MS system for confirmation purposes only as long as the calibration standard is at a concentration within ± 50% of the concentration determined by the initial analysis; or perform a three (3) point calibration with single point daily calibration verification of the GC/MS system regardless of whether that verification standard concentration is within ± 50% of sample response. If GC/MS analysis confirms the initial contaminant detection, report results determined from the initial analysis.

(10) Reporting. Report the analytical results and other data, with the required data listed in 40 CFR 141.35, Table 1. Report this data electronically to EPA, unless EPA specifies otherwise, and provide a copy to the State. Systems must coordinate with their laboratories for electronic reporting to EPA to ensure proper formatting and timely data submission.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 142.15 [Amended]

2. Section 142.15 is amended by removing and reserving paragraph (c)(3).

3. Section 142.16 is amended by revising paragraphs (e) introductory text, (e)(1) introductory text, and (e)(1)(i)(C) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.61 and 141.62 must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23 and 141.24, the State shall describe the procedures and criteria which it will use to review waiver applications and issue waiver determinations.

(i) * * *

(C) The State decision criteria, including the factors that will be considered in deciding to grant or deny waivers. The decision criteria must include the factors specified in §§ 141.24(f)(8) and 141.24(h)(6).

* * * * *

[FR Doc. 99–23030 Filed 9–3–99; 12:35 pm]

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Friday
September 17, 1999

Part III

Federal Communications Commission

47 CFR Parts 21, 73, 74, and 76

Review of the Commission's Regulations Governing Attribution Ownership Rule; Final Rule

Broadcast Television National Ownership Rules; Final Rule

Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules; Final Rule

Comment Sought on Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules; Notice

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 73, 74 and 76

[MM Docket No. 94–150, 92–51, 87–154; FCC 99–207]

Review of the Commission's Regulations Governing Attribution Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's broadcast, broadcast cable cross-ownership and cable/Multipoint Distribution Service Cross-ownership (''MDS'') attribution rules. The intended effect of this action is to improve the clarity and precision of our current rules while avoiding disruptions in funding to licensees.

DATES: Effective November 16, 1999, except for § 73.3526(e)(14) and (e)(16) and § 73.3613(d) and (e) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective dates for those sections.

FOR FURTHER INFORMATION CONTACT: Mania K. Baghdadi, Jane Gross or Berry Wilson at (202) 418–2120, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 99–207, adopted August 5, 1999; released August 6, 1999. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report & Order

Introduction

1. The mass media attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions. In this *R&O,* we amend our broadcast and our cable/Multipoint Distribution Service (''MDS'') attribution rules to improve the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees and markets, and facilitate application processing—our goals in initiating this proceeding. In taking these steps, we have sought to avoid undue impact on our goal of promoting the rapid conversion of broadcast television licensees to a digital mode. We initiated this long-pending proceeding in 1995, sought further comment after the passage of the Telecommunications Act of 1996, and have had the benefit of numerous comments on the variety of issues resolved herein. The new attribution rules we adopt today are integrally related to the rules adopted in our companion local television ownership and national television ownership proceedings. A reasonable and precise definition of what interests should be counted in applying the multiple ownership rules is a critical element in assuring that those rules operate to promote the goals they were designed to achieve.

Background

2. The attribution rules that are the subject of this proceeding define what constitutes a ''cognizable interest'' in applying the broadcast multiple ownership rules, the broadcast/cable cross-ownership rule, and the cable/MDS cross-ownership rule. We issued the *Attribution Notice,* 60 FR 6483, February 2, 1995, to review the attribution rules based on several considerations, including: (1) Changes in the broadcasting industry and in the multiple ownership rules since our last revision of the attribution rules over ten years ago and our consequent desire to ensure that the attribution rules remain effective in identifying interests that should be counted for purposes of applying the multiple ownership rules; (2) concerns raised that certain nonattributable investments, while permissible under current rules, might permit a degree of influence that warrants their attribution; (3) concerns that individually permissible cooperative arrangements between broadcasters are being used in combination so as to result in significant influence in multiple stations that is intended to be prohibited by the multiple ownership rules; and (4) the need to address attribution treatment of Limited Liability Companies (''LLCs'').

3. We solicited comment in the *Attribution Notice* on several issues, including: (1) Whether to increase the voting stock benchmark from 5 percent to 10 percent and the passive investor benchmark from 10 percent to 20 percent; (2) whether to expand the category of passive investors; (3) whether and, if so, under what circumstances to attribute nonvoting shares; (4) whether to retain our single majority shareholder exemption from attribution; (5) whether to revise our insulation criteria for limited partners, and whether to adopt an equity benchmark for noninsulated limited partners; (6) how to treat interests in LLCs and other new business forms under our attribution rules; (7) whether to eliminate the remaining aspects of our cross-interest policy; and (8) how to treat financial relationships and multiple business interrelationships which, although not individually attributable, should perhaps be treated as attributable interests when held in combination.

4. Congress subsequently enacted the Telecommunications Act of 1996 (''1996 Act''), Public Law 104–104, 110 Stat. 56 (1996), which substantially relaxed several of our ownership rules. We issued the *Attribution Further Notice,* 61 FR 67275, December 20, 1996, to seek comment as to how these ownership rule revisions should affect our review of the attribution rules. We also sought comment on new proposals, including a proposal to attribute the otherwise nonattributable interests of holders of equity and/or debt in a licensee where the interest holder is a program supplier to a licensee or a same-market media entity and where the equity and/or debt holding exceeds a specified threshold. Additionally, we sought comment on: (1) Proposals to attribute television Local Marketing Agreements (''LMAs'') and to modify the scope of the radio LMA attribution rules; (2) whether we should revise our approach to joint sales agreements (''JSAs'') in specified circumstances; (3) a study conducted by Commission staff, appended to the *Further Notice,* on attributable interests in television broadcast licensees and on the implications of this study for our attribution rules, particularly on the voting stock benchmarks; (4) whether we should amend the cable/MDS cross-ownership attribution rule; and (5) transition issues.

5. We believe the rule revisions we adopt today promote these goals. In this *R&O,* we: (1) Adopt an equity/debt plus attribution rule that would narrow, but not eliminate, the current exemptions from attribution for nonvoting stock and debt, as well as the single majority shareholder exemption; (2) attribute certain television LMAs and modify the radio LMA rules; (3) retain the 5 percent voting stock attribution benchmark, but raise the passive investor voting stock benchmark to 20 percent; (4) retain the current definition of passive investor; (5) eliminate the cross-interest policy;

(6) decline to adopt attribution rules for JSAs; (7) adopt as an attribution rule our interim processing policy under which we apply limited partnership insulation criteria to LLCs; (8) retain the current insulation criteria for attribution of limited partnerships; (9) revise the cable/MDS cross-ownership attribution rule to conform it to the broadcast attribution rules, as revised in this *R&O*; and (10) establish transition measures with respect to interests made attributable as a result of rules adopted in this *R&O* that would result in violations of the multiple ownership rules. So that our broadcast attribution rules remain consistent, we also modify the attribution rules that apply to the broadcast/cable cross-ownership rule, § 76.501(a) to incorporate the attribution rule changes adopted today.

Issue Analysis

A. Stockholding Benchmarks

6. *Background.* The *Attribution Notice* sought comment on whether we should increase the voting stock benchmarks from five to ten percent for non-passive investors and from ten to twenty percent for passive investors. This issue was originally raised in the *Notice of Proposed Rule Making and Notice of Inquiry,* 57 FR 14684, April 22, 1992) in MM Docket No. 92–51, (*''Capital Formation Notice''*), which cited concerns about the availability of capital to broadcasters. Insufficient evidence was submitted in comments to the *Capital Formation Notice* to warrant raising the benchmarks, and, therefore, the *Attribution Notice* again raised the issue of whether to increase the voting stock benchmarks. In the *Attribution Further Notice,* the Commission noted that commenters responding to the *Attribution Notice* had again not submitted specific empirical data sufficient to conclude that the benchmarks should be raised. The *Attribution Further Notice* thus asked for additional information to justify raising the benchmarks, including information on changes in the economic climate and competitive marketplace, and the link between additional capital investment and raising the voting stock benchmarks.

7. *Comments.* Few commenters responded to our requests in the *Attribution Further Notice* for additional comments supporting the increase in the active investor benchmark to 10 percent.

8. *Decision.* We have decided to retain the current active voting stock benchmark at 5 percent. First and most importantly, in reviewing the evidence related to the issue of non-passive voting equity benchmarks, we remain convinced that shareholders with ownership interests of 5 percent or greater may well be able to exert significant influence on the management and operations of the firms in which they invest. In this regard, we have not been presented with empirical evidence to rebut our conclusion in the *Attribution Order* that a ''5% benchmark is likely to identify nearly all shareholders possessed of a realistic potential for influencing or controlling the licensee, with a minimum of surplus attribution.''

9. In this regard, a growing body of academic evidence indicates that an interest holder with 5 percent or greater ownership of voting equity can exert considerable influence on a company's management and operational decisions. This is particularly true with widely-held corporations where a 5 percent stockholder is likely to be among the largest shareholders in the firm. One recent study demonstrated that block trades involving 5 to 10 percent of the firm's voting stock resulted in a 27 percent turnover rate of the CEO of the traded firm, that a 20 to 35 percent block trade resulted in a 40 percent turnover rate of the CEO of the traded firm, and that block trades over 35 percent of the voting equity resulted in a 56 percent turnover rate, L.E. Ribstein, *Business Associations* 987 (1990). The turnover of the CEO was tracked over a one year period following the date of the trade. These results, spanning an increasing level of ownership starting at 5 percent, demonstrate a consistent relationship between ownership trades and the rate of replacement of top management. The results imply that investors who acquire and hold such large blocks of voting stock can influence the choice of management of the firms in which they invest.

10. Another study presents evidence that 5 percent or greater stockholders vote more actively than less-than-five percent shareholders, and they tend to vote more often against the recommendations of management in votes over corporate anti-takeover amendments (J.A. Brickley, R.C. Lease and C.W. Smith, *Ownership Structure and Voting on Antitakeover Amendments,* 20 Journal of Financial Economics 267–291 (1988)). This study suggests that larger owners, starting at a 5 percent level of ownership, tend to be more active in influencing management than smaller owners. The two studies considered together provide evidence that ownership percentages starting at 5 percent can influence management policies and have an impact on firm value.

11. In addition, notwithstanding our requests for empirical evidence, in the *Attribution Notice* and again in the *Attribution Further Notice,* commenters have not provided the kind of specific data to justify raising the non-passive investor benchmark even though they generally supported raising the benchmark. And, while commenters have not provided sufficient empirical evidence to justify raising the active voting stock benchmark, the *Attribution Further Notice* did incorporate and invite comment on a Commission staff study that categorized and quantified attributable interests in commercial broadcast television licensees, as reported in the Ownership Reports that licensees are required to file. Several facts emerge from that study that are relevant to our decision concerning the voting stock benchmarks. First, the study found and reported that increasing the attribution benchmark for non-passive investors from 5 percent to 10 percent would decrease by approximately one third the number of currently-attributable owners. This increase in the non-passive investor benchmark would also increase from 81 to 134 the number of stations (out of 389 commercial for-profit television stations studied that are incorporated and are not single majority shareholder stations), for which no stockholders and only officers and directors would be held attributable. These large potential changes in the number of attributable owners heighten our concern about the impact of raising the 5 percent benchmark. In light of the lack of sufficient evidence that such an increase is necessary or appropriate, we are reluctant to institute a change that would have such a major impact.

12. Further, we note that our concerns over capital availability that originally prompted the proposal to increase the active voting stock benchmark have eased somewhat, particularly in light of the increasing strength shown by the communications sector and financial markets in general over the past several years. For example, communications transactions increased by 38 percent during 1996, with the total value of mergers, acquisitions, share offerings and other deals totalling $113 billion. Within the communications sector, TV transfers of ownership in 1996 increased by 121.26 percent in dollar terms over 1995 figures, and FM and AM transfers increased by 283.27 percent and 99.34 percent, respectively. In total, dollars spent on radio and television transactions increased from $8.32 billion in 1995 to $25.362 billion in 1996, with the number of transactions

increasing from 849 to 1115 over the same period. Station trading remained strong in 1997, with a total of 1067 radio and television transactions worth $23.44 billion. In 1998, the total number of radio and television transactions fell slightly, as a result of the slower pace of radio consolidation, to 950 transactions, with the value of these transactions remaining fairly stable at $22.8 billion. This overall increase in capital spending from 1995 to 1998 occurred while our current attribution rules were in effect, and therefore provides us with strong evidence that those rules do not impede the availability of capital in the communications industry. And, to the extent that there are still concerns about not impeding capital flow to broadcasting, we believe that they will be adequately addressed by our increase in the passive investor benchmark. In sum, in reviewing the overall body of evidence on this issue, we believe that our original decision to set a 5 percent benchmark to capture influential interests remains valid and will not unduly restrict capital availability.

13. Finally, retention of the 5 percent benchmark remains consistent with the SEC's analogous 5 percent benchmark. Pursuant to § 13(d)(1) of the Exchange Act, 15 U.S.C. 78m(d)(1), any person who becomes a direct or indirect owner of more than 5 percent of any class of stock of a company through a stock acquisition must file a statement with the Securities and Exchange Commission (SEC). The purpose of this reporting requirement is generally to ensure that investors are alerted to potential changes in control. The broadcast attribution rules have a similar objective as they are intended to identify ownership interests that confer on their holders the potential to influence or control a licensee's day-to-day operations.

Passive Investor Benchmarks

14. *Comments.* Most commenters that responded to this issue favored raising the passive investor benchmark.

15. *Decision.* We will increase the voting stock benchmark from 10 percent to 20 percent for passive investors. We believe that increasing the passive investor benchmark to 20 percent will give broadcasters increased access to investment capital, while preserving the Commission's ability to enforce its ownership rules effectively. This decision takes into account the special nature of the passive investor category, in terms of the legal and fiduciary requirements that constrain passive investors' involvement in the management and operational affairs of the firms in which they invest.

16. We believe that we can increase the passive investor benchmark without incurring substantial risk that investors who should be counted for purposes of applying the multiple ownership rules will avoid attribution. Clearly, passive investors continue to face multiple constraints on their ability to become directly involved with the management and operations of the firms in which they invest, including statutory and regulatory restrictions as well as fiduciary obligations.

17. In setting the limit at 10 percent, we noted that an increase above 10 percent was not advisable at that time based on our concern about the impact on corporate management that could result, even unintentionally, from the trading and voting of large blocks of stock by purportedly passive investors. We have not been presented with any evidence to indicate that our ten percent benchmark has resulted in any such block trading problems. Moreover, any inadvertent effect of a passive investor's decision to sell its stock, for example, because it is dissatisfied with the return on its investment, simply reflects the marketplace at work, and a responsive action by management to make the entity more profitable in response to a sale is simply an appropriate reaction to market demands.

18. While we note that our concerns about capital availability have eased somewhat, to the extent that these concerns remain, particularly based on funding needs related to the conversion to digital television, we believe that increasing the passive investor benchmark is a relatively safe way to facilitate such further investment in broadcasting, without compromising the ability of our attribution rules to capture influential interests. Raising that benchmark will reduce barriers to investment in broadcasting and result in greater efficiencies in the use of capital.

Definition of Passive Investors

19. *Background.* In response to the *Capital Formation Notice*, several commenters raised the issue as to whether the Commission should expand its definition of ''passive investors'' to include such institutional investors as pension funds, commercial and investment banks, and certain investment advisors. These commenters argued that these largely institutional investors invest primarily for reasons of financial returns, rather than to exert significant influence or control, and therefore their interests should be treated as passive investments. In the *Attribution Notice*, the Commission stated that it did not intend to revisit its 1984 decision, which defined the passive-investor category to include only bank trust departments, insurance companies and mutual funds, and we tentatively concluded that we would not expand the passive investor category to include Small Business Investment Companies (''SBICs'') and Special Small Business Investment Companies (''SSBICs''), as we had not been able to conclude that these entities met our definition of ''passive.'' Nonetheless, we invited further comment on these tentative conclusions.

20. *Comments.* Several commenters urged the Commission to expand its passive investor category.

21. *Decision.* We reaffirm our earlier decision to retain the current definition of ''passive investors,'' which is limited to bank trust departments, insurance companies and mutual funds. We noted that we earlier stated that we ''do not intend to revisit our decision of 1984 in order to broaden the category of passive investors. . . .'' We are not convinced that other types of investors lack the interest and/or the ability to actively participate in the affairs of the firms in which they invest. This is particularly true of public pension funds, many of which have apparently become increasingly active in proxy fights and other devices to put pressure on management perceived to be underperforming. Furthermore, commercial and investment bank activities do not fall under the same fiduciary restrictions, discussed above, that apply to bank trust departments. And, we have not been presented with sufficient evidence thus far to revise our earlier tentative conclusion not to include SBICs and SSBICs in the definition of passive investors.

B. Equity/Debt Plus and Attribution Exemptions

Background

22. In the *Attribution Notice*, we invited comment as to whether multiple cross-interests or currently nonattributable interests, when held in combination, raise diversity and competition concerns warranting regulatory oversight. We anticipated that any regulation of such inter-relationships would require case-by-case review of applications, but we did not otherwise delineate specific proposals to address these concerns. We also invited comment as to whether to restrict or eliminate the current nonvoting stock and single-majority shareholder attribution exemptions, expressing concerns that some interest holders that are eligible for these

exemptions might nonetheless exert significant influence such that the interest should be attributed.

23. In the *Attribution Further Notice*, we proposed to adopt a targeted equity/debt plus (''EDP'') attribution approach to deal with the foregoing concerns. We noted that our proposed new EDP rule would operate in addition to other attribution standards and would attempt to increase the precision of the attribution rules, address our concerns about multiple nonattributable relationships, and respond to concerns about whether the single majority shareholder and nonvoting stock attribution exemptions were too broad. This approach would not eliminate the nonvoting and single majority shareholder exemptions from attribution, but would limit their availability in certain circumstances. Under this approach, we proposed to attribute the otherwise nonattributable debt or equity interests in a licensee where: (1) the interest holder was also a program supplier to the licensee or a same-market broadcaster or other media outlet subject to the broadcast cross-ownership rules, including newspapers and cable operators; and (2) the equity and/or debt holding exceeds 33 percent. Under our EDP proposal, a finding that an interest is attributable would result in that interest being counted for all applicable multiple ownership rules, local and national.

Comments

24. *Single Majority Shareholder and Nonvoting Stock Attribution Exemptions.* As discussed in the *Attribution Further Notice*, most commenters in response to the *Attribution Notice* urged us to retain the single majority shareholder and nonvoting stock attribution exemptions, but network affiliates have expressed concerns that the exemptions have allowed networks to extend their nationwide reach by structuring nonattributable deals in which the networks effectively exert significant influence if not control over licensees.

Decision

25. *Overview.* As we noted in the *Attribution Further Notice*, the relaxation of the multiple ownership rules resulting from the 1996 Act requires neither relaxation nor tightening of our attribution rules but does underscore the importance of maximizing the precision of the attribution rules. We should take care in enforcing the multiple ownership limits, which have been deliberately set at certain levels, to ensure that the attribution rules neither unduly loosen nor restrict those limits, but rather apply them with the greatest precision to entities that have the power to influence a licensee's operations. We have been mindful of this goal in the decisions that follow.

26. We will not eliminate the single majority shareholder or nonvoting stock exemptions, but, rather, to address the concerns that we raised in the *Attribution Notice* and *Attribution Further Notice*, we will adopt our equity/debt plus attribution proposal, modified as discussed herein, as a new rule that would function in addition to the other attribution rules. Under this new EDP rule, where the investor is either (1) a ''major program supplier,'' as defined herein to include all programming entities (including networks and inter-market time brokers) that supply over 15 percent of a station's total weekly broadcast programming hours, or (2) a same-market media entity subject to the broadcast multiple ownership rules (including broadcasters, cable operators, and newspapers), its interest in a licensee or other media entity in that market will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total asset value (equity plus debt) of the licensee or media entity. As a shorthand, we will use the term, ''total assets,'' herein to refer to the total asset value of the licensee. In the case of a major program supplier, the EDP rule will apply and the interest will be attributable only if the investment is in a licensee to which the requisite triggering amount of programming is provided. A finding that an interest is attributable under EDP would result in attribution for purposes of applying all relevant multiple ownership rules, local and national, except that, as discussed in the *TV National Ownership Order*, we will not double-count same-market TV stations towards application of the national TV ownership rules.

27. We will define equity to include all stock, whether common or preferred and whether voting or nonvoting. We will also include equity held by insulated limited partners in limited partnerships. Debt includes all liabilities, whether short-term or long-term. Total assets, by definition, is equal to the sum of all debt plus all equity. Finally, an interest that is attributable pursuant to the EDP rule will count in determining compliance with all applicable ownership rules, national as well as local.

28. The equity/debt plus approach is intended to resolve our concerns, expressed in the *Attribution Notice*, that multiple nonattributable business interests could be combined to exert influence over licensees. As we stated in the *Attribution Notice*, we are concerned that our nonvoting stock, single majority shareholder, and debt attribution exemptions can permit nonattributable investments that could carry the potential for influence such that they implicate diversity and competition concerns and should be attributed.

29. The EDP rule addresses the most serious concerns we raised in the *Attribution Notice* and *Attribution Further Notice* concerning the underinclusiveness of the attribution rules, particularly those that were supported in the record. Based on the record, we have targeted our remedy and focused those concerns in shaping the EDP rule. For example, except in cases involving a same-market media entity or major program supplier, as defined herein, the single majority shareholder exemption and exemptions for nonvoting stock, preferred stock, corporate debt and other corporate liabilities will continue to apply as they do now. Moreover, the EDP rule will not apply to a program supplier's investment in a licensee or station unless the program supplier provides over 15 percent of that station's total weekly broadcast hours. Thus, a program supplier may invest without limit in the nonvoting stock, preferred stock or debt of a licensee to which it does not provide the requisite level of programming without having its interest attributed.

30. Furthermore, same-market or other relationships not within the defined EDP triggering relationships described herein will continue to be non-attributable. For example, an investor that is not a major program supplier and that is not a same-market media entity (*i.e.*, it does not have an attributable interest in a station, newspaper, or cable system in a given market) can continue to hold more than 33 percent of the total nonvoting assets of two stations or more in that same market without either interest being attributable.

31. The targeted approach embodied in the EDP rule reflects our current judgment as to the appropriate balance between our goal of maximizing the precision of the attribution rules by attributing all interests that are of concern, and only those interests, and our equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions. In this regard, some commenters have urged us to retain our

current approach or implement a new case-by-case approach, considering the combined impact of multiple business and financial relationships in a particular transaction.

32. However, we believe that the bright-line EDP test is superior to a case-by-case approach. The EDP rule will provide more regulatory certainty than a case-by-case approach that requires review of contract language. Thus, the EDP rule will permit planning of financial transactions, would also ease application processing, and would minimize regulatory costs. While an *ad hoc* approach might be more tailored than the EDP rule, it also might lead to complicated interpretation and processing difficulties and would likely add uncertainty to resolution of attribution cases. Of course, we retain discretion to review individual cases that present unusual issues on a case-by-case basis where it would serve the public interest to conduct such a review. Such cases might occur, for example, when there is substantial evidence that the combined interests held are so extensive that they raise an issue of significant influence such that the Commission's multiple ownership rules should be implicated, notwithstanding the fact that these combined interests do not come within the parameters of the EDP rule. We do not intend by this reservation of discretion to resurrect the cross-interest policy, elsewhere eliminated in this *R&O*. Rather, we merely emphasize our obligation under the Communications Act to apply the public interest standard and, as necessary, to scrutinize extraordinary or unanticipated circumstances that may arise.

33. In the *Attribution Further Notice*, we invited comment on the impact of a 33 percent EDP threshold on small business entities, particularly on whether there would be a disproportionate impact on small or minority entities. While some parties have argued that adoption of an equity/debt plus proposal would deter capital flow to broadcasting generally and might curb investment in smaller, minority, or UHF stations, in particular, or in digital television, others have argued strongly that this is not the case. We have no reason to believe that the EDP rule would unduly deter investment. The equity/debt plus proposal does not preclude investment by any entity; rather, it limits nonattributable investment levels for entities that have the potential to influence licensees. Moreover, the limit does not apply to all entities that might invest or help fund the transition to digital television or otherwise invest in licensees. In addition, we will consider individual rule waivers in particular cases where substantial evidence is presented that the conversion to digital television would otherwise be unduly impeded or that a waiver would significantly expedite DTV implementation in that particular case.

34. While we have invited comment on those issues, it is nonetheless our view that promoting our goal of ensuring adequate funding for the transition to digital television is better accomplished through our ownership rather than our attribution rules. The attribution rules are designed to attribute entities that wield significant influence on core operations of the licensee. It is the ownership rules that limit investment based on our core policies of diversity and competition. Arguments with respect to whether additional investment should be permitted have been made in the context of our companion multiple ownership proceedings. We believe that the attribution rules should function as precisely as possible to identify influential interests and that relaxation of ownership limits, if warranted, should be accomplished directly through revision of the multiple ownership rules, not indirectly through manipulation of what is considered ''ownership.''

35. *Triggering Relationships.* As we proposed in the *Attribution Further Notice*, the EDP approach will focus directly on those relationships that may trigger situations in which there is significant incentive and ability for the otherwise nonattributable interest holder to exert influence over the core operations of the licensee. The approach of focusing on specified triggering relationships would extend the Commission's current recognition that the category or nature of the interest holder is important to whether an interest should be attributed. For example, under the current broadcast attribution rules, passive investors are subject to a higher voting stock attribution benchmark, since these parties are subject to fiduciary and other restraints on their exercise of influence over licensees and are, by their nature, principally concerned with investment returns rather than direct influence over the licensee. The two relationships that will trigger the rule, major program supplier and same-market media entity, are relationships that afford the interest holder the incentive and means to exert influence over the licensee.

36. In adopting the EDP rule, we affirm our tentative conclusion in the *Attribution Further Notice* that there is the potential for certain substantial investors or creditors to exert significant influence over key licensee decisions, even though they do not hold a direct voting interest or may only have a minority voting interest in a corporation with a single majority shareholder, which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable.

37. *Same-Market Media Entities.* As we noted in the *Attribution Further Notice*, same-market broadcasters and certain other same-market media entities may raise particular concerns because of our goal of protecting local diversity and competition. Firms with existing local media interests may have an incentive and means to use financing or contractual arrangements to obtain a degree of horizontal integration within a particular local market that should be subject to local multiple ownership limitations. Indeed, the Commission's cross-interest policy reflected its concern for competition and diversity where an entity has an attributable interest in one media outlet and a ''meaningful relationship'' with another media outlet serving substantially the same area. Accordingly, we will include same-market media entities as one of the relationships that will trigger application of the EDP rule.

38. To trigger application of the EDP rule to same-market media entities, the interest held in the non-EDP media entity in the same market must be attributable without reference to the EDP rule; the holding of a non-attributable interest in one station or entity in a market does not trigger application of the EDP rule where an EDP level, but otherwise non-attributable, interest is acquired. Thus, under this prong of the EDP rule, a nonvoting interest in 34 percent of the total assets of two stations in the same market will not result in attribution of either station. This is because the EDP rule is only triggered when the entity acquiring the second interest also holds an interest in a same-market media entity that is attributable under the current attribution rules other than the EDP rule. We follow case law in the cross-interest policy context in this regard. As discussed below, that policy is implicated in situations where a party holds an attributable interest in one media outlet and has a ''meaningful relationship'' with another media outlet serving ''substantially the same area. As we proposed, we will include same-

market radio and television broadcasters as well as cable operators and newspapers in the category of same-market media entities subject to the equity/debt plus attribution standard. Cable operators and newspapers are subject to cross-ownership rules and have also been subject to the cross-interest policy. There is, accordingly, good reason to include them in the EDP rule.

39. For purposes of applying this prong of the EDP rule to radio stations, newspapers, and cable operators, as proposed in the *Attribution Further Notice*, we will define the ''same market'' by reference to the definition of the market used in the underlying multiple ownership rule that is implicated. As noted by Knight-Ridder, such an approach will help avoid confusion among the regulated entities in applying the EDP rule. With respect to television stations, as we also noted in the *Attribution Further Notice*, the definition of what is the same market for purposes of applying the EDP attribution standard is resolved in the companion television local ownership proceeding.

40. *Program suppliers.* In the *Attribution Further Notice*, we invited comment on whether we should include program suppliers under the ''equity/debt plus'' attribution test to address our concern and that of some commenters that program suppliers such as networks could use nonattributable interests to exert influence over critical station decisions, including programming and affiliation choices. We cited recent transactions involving program suppliers where it appeared that nonattributable investors could be granted rights over licensee decisions that might afford them significant influence over the licensee. We invited comment as to whether we should encompass radio and television time brokerage agreements or LMAs under the proposed ''equity/debt plus'' attribution approach, if we specify program suppliers as a triggering category.

41. We will include major program suppliers in the EDP rule. We will define the ''major program suppliers'' that are subject to this new attribution standard to include entities that provide more than 15 percent of a station's total weekly broadcast programming hours. We believe that the 15 percent standard should apply to all providers of programming to stations, including those that provide programming pursuant to inter-market LMAs. As noted above, the EDP rule would apply only to the major program supplier's investments in a station to which it supplies the requisite amount of programming. In addition, where a person or entity has an attributable interest in a major program supplier, that person or entity will be deemed to be a major program supplier for purposes of applying the EDP rule.

42. We have decided to define a major program supplier subject to the EDP rule as all programming entities that supply over 15 percent of a station's weekly programming for the following reasons. We agree with those commenters that argue that not every program provider can exert sufficient influence such that its otherwise non-attributable financial interests in a licensee should potentially be subject to attribution. We note the views of commenters that the major networks should be subject to the EDP rule and those that argue for including providers of substantial amounts of programming to a station. Those entities that provide substantial quantities of programming to a licensee are, we believe, in a strong position to exert significant influence over that licensee, particularly when the programming connection is coupled with the requisite financial investment, such that the EDP rule should be triggered. We believe that the 15 percent standard accomplishes these goals, as it would encompass those entities providing substantial quantities of programming that also have the requisite investment in the station and would exclude those entities that provide only small amounts of programming and that therefore do not have potential to exert significant influence over licensees. Moreover, it is a standard that we have experience in applying, as it is the standard currently used in determining whether an intra-market radio LMA is *per se* attributable, and it is the standard that will be used in determining whether an intra-market TV LMA is *per se* attributable. Under our new rule, an intra-market LMA is *per se* attributable if it involves more than 15 percent of a station's programming. In contrast, an inter-market LMA is attributable, under the EDP rule, only if it involves more than 15 percent of a station's programming and if the LMA is accompanied by a financial investment that is above the 33 percent investment threshold. It would sweep too broadly to attribute inter-market LMAs that are unaccompanied by the requisite financial investment. The substantial investment provides additional incentive and ability for influence or control. Finally, it is a clear and administratively simple standard to apply, promoting our goal of making the EDP rule a bright-line test.

43. A clear rationale exists for not attributing network affiliation agreements not accompanied by the requisite investment or debt agreements not involving program suppliers or same-market broadcasters. We do not attribute all network affiliation agreements because, absent a substantial equity or other investment that may create accompanying obligations, the affiliate is free to negotiate with the network for particular terms. With respect to lenders, such as banks, our experience indicates that their motivation is return on their investment, and that they do not have the same incentive as the networks to influence the programming or other core operational choices of the licensee.

44. While some commenters strongly argued that applying the EDP rule to program suppliers would curb investment in broadcast stations and possibly hurt weaker UHF stations and might deter investment that would facilitate the conversion to DTV, they do not provide empirical evidence to support this argument. We also note that the rule does not preclude investment, but merely provides that investments over a certain level will be deemed presumptively attributable. Networks are therefore free to invest in their affiliates, subject of course to the applicable multiple ownership rules. Moreover, the EDP rule does not attribute investments, even those by networks in their affiliates, which fall below the 33 percent threshold. Thus, a major program supplier may have an investment that is equivalent to 32 percent of the total assets of a station to which it supplies programming in excess of the 15 percent standard. This would comply with all EDP limits and the interests would not be attributable. In addition, the EDP rule does not affect investments by entities other than major program suppliers or same-market media entities. Accordingly, we believe that the EDP rule will not curb investment, deter new entry, or curb the conversion to DTV.

45. We have decided not to sweep so broadly as to include all entities from which a licensee obtains programming but only to include those entities that provide more than 15 percent of a station's weekly total programming. We have not been presented evidence that smaller program suppliers and syndicators that do not provide substantial quantities of programming to stations have the potential to wield significant influence such that their investment should be attributed. Under these circumstances, there appears to be no real need to impose constraints on investments by these syndicators and by new networks that do not provide the triggering amount of programming. If it

appears that problems arise in these areas, we can later broaden the EDP rule.

46. *Investment Thresholds.* Under the EDP rule, where the creditor or equity interest holder is a same-market broadcaster or major program supplier, as defined herein, in addition to applying the existing attribution criteria, we would attribute any financial interest or investment in a station or other media outlet where it exceeds 33 percent of the total assets (debt plus voting, non-voting and preferred stock) of the licensee. We intend to aggregate the equity and debt interests of such an investor (including both non-voting stock in whatever form it is held and voting stock) in a licensee or other media outlet for purposes of applying the investment threshold. Thus, when the investor's total investment in the licensee or other media outlet, aggregating all debt and equity interests, exceeds a specified threshold percentage of all investment in the licensee (the sum of all equity plus debt), that investment would be attributable. In aggregating the different classes of investment, equity and debt, we intend to use total assets (debt plus voting, non-voting, and preferred stock) as a base. We will not apply the percentage threshold separately to debt and to equity interests because this could lead to distortions in applying the EDP rule, depending on the percentage of total assets that each class of interests comprises. For example, were we to apply the percentage thresholds separately, a company with only 10 percent of its capital from debt would be attributable to a creditor providing only 3.4 percent of the company's total assets, while any equity holder providing 32 percent of the total capital would be nonattributable.

47. The FCC has recognized that holding voting stock in sufficient quantities confers the ability to exert influence or control over the licensee. Our decision to expand our focus beyond voting stock to nonvoting stock and debt is buttressed by academic literature. Nonvoting stock and debt may now be used to control or influence a licensee in a significant manner, especially when coupled with another meaningful relationship or when held by someone that has the incentive to influence the station or media entity. There is an incentive for licensees and other entities that face regulatory constraints on their acquisition of voting stock and other currently attributable interests (*e.g.,* networks that face the 35 percent national reach cap) to seek to combine currently non-attributable investments with contractual rights in such a manner so as to gain significant influence, and we believe that the current attribution exemptions have afforded such entities the ability to do so. Accordingly, the EDP rule examines not only the investment in voting stock but also nonvoting equity and debt in order to limit the ability of such entities to circumvent the attribution rules.

48. We have decided to set the threshold at 33%, as proposed in the *Attribution Further Notice.* We believe that a 50 percent threshold would be inappropriately high. Our goal is not merely to attribute interests with the potential to control but also those with a realistic potential to exert significant influence. On the other hand, the suggested thresholds of 25 percent or 10 percent seem too low. In setting the threshold for attribution of these newly attributable interests, we want to be cautious not to set the limit so low as to unduly disrupt capital flow to broadcasting. In addition, we believe that the threshold for attribution of nonvoting interests should be substantially higher than the attribution level for voting interests, which give the holder a ready means to influence the company. The proposed 33% threshold seems to be an appropriate and reasonable attribution threshold. We note that we have discretion to exercise our judgment in setting a percentage threshold in this regard and to draw an appropriate line, a challenging yet inevitable task for government agencies. We have employed a 33 percent benchmark applied in the context of the cross-interest policy, and that particular benchmark does not appear to have had a disruptive effect. In *Cleveland Television,* the Commission held that a one-third non-voting preferred stock interest by a broadcaster in another station in the same market conferred ''insufficient incidents of contingent control'' to violate the multiple ownership rules or the cross-interest policy, and that the holders, by virtue of ownership of the non-voting preferred stock interest would not retain the means to directly or indirectly control the station. More recently, we have applied *Cleveland Television's* 33 percent threshold in *Roy M. Speer,* where we limited the non-attributable equity holdings of a same-market television licensee in another local television station to 33 percent. We will use this threshold in applying the EDP rule but note that we could adjust the threshold later, if warranted.

49. We recognize that the attributable status of a certain investment could change, based, for example, on a change in the firm's assets, resulting in the investor's interests dropping below the 33 percent threshold, or vice versa. We will require parties to maintain compliance with the attribution criteria as any such changes occur. Where sudden, unforeseeable changes take place, however, we will afford parties a reasonable time, generally one year, to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status. Finally, we note that we have conditioned a number of recent cases that have raised similar concerns on the outcome of this proceeding. We intend to issue separate orders, as necessary, to apply the EDP rule to any cases that have been conditioned on the outcome of this proceeding.

C. Time Brokerage Agreements or LMAs

Background

50. An LMA or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Currently, we do not attribute television LMAs, and, accordingly, these relationships are not subject to our multiple ownership rules. In the radio context, however, time brokerage of another radio station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours results in attribution of the brokered station to the brokering licensee for purposes of applying our multiple ownership rules.

51. In the *Attribution Further Notice,* we incorporated the tentative proposal, initially set forth in the *Local Ownership Further Notice,* 60 FR 6490, December 19, 1996, to attribute television LMAs based on the same principles that currently apply to radio LMAs. Thus, time brokerage of another television station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours would be attributable and would count toward the brokering licensee's national and local ownership limits. We specifically proposed to count attributed television LMAs in applying our other ownership rules, including, for example, the broadcast-newspaper cross-ownership rule, the broadcast-cable cross-ownership rule, and the one-to-a-market rule (or radio-television cross-ownership rule).

Comments

52. Most commenters addressing this issue supported our proposal to attribute television LMAs based on the

same principles that currently apply to radio LMAs.

53. Many parties agreed with our tentative conclusion that television LMAs should be attributable because they confer significant influence over the programming of the brokered party's station.

54. Commenters opposed to attributing LMAs generally did not disagree that LMAs confer significant influence over the programming of the brokering party's station, but either denied that LMAs can have negative competitive or diversity effects or argued that their public interest benefits outweigh these other considerations.

55. We issued a Public Notice requesting all parties to all existing television LMAs, or time brokerage agreements, to provide certain factual information regarding the terms and characteristics of these agreements. The responses received to the questionnaire also provide information supporting our view that LMAs accord the broker significant influence that warrants attribution. First, the LMA, or time brokerage agreement, typically brokered most, if not all, of the brokered station's broadcast time. The percent of time brokered with both same-market and out-of-market LMA stations averaged 90 percent or greater. Second, LMA contracts tended to have extended maturities, which are renewable in the majority of cases. Same-market LMA contracts averaged seven years in duration, and ranged from one to 21 years, while out-of-market LMA contracts averaged somewhat less at five years, with a range from two to ten years. In addition, a significant number of LMA agreements contained options to purchase the station.

56. *Decision.* We will adopt a new rule to *per se* attribute television LMAs, or time brokerage of another television station in the same market, for more than fifteen percent of the brokered station's broadcast hours per week and to count such LMAs toward the brokering licensee's local ownership limits. We have determined in the *TV National Ownership Order* that we will not count same-market LMAs towards the brokering licensee's national ownership limits, as that would constitute double-counting these LMAs. We will count inter-market time brokerage agreements where they come under the EDP rule for purposes of the national ownership limits. We believe that the rationale for attributing LMAs set forth in the *Radio Ownership Order,* 57 FR 18089, April 29,1992—*i.e.,* to prevent the use of time brokerage agreements to circumvent our ownership limits—applies equally to same-market television LMAs. We will determine whether an LMA involves a ''same market'' station based upon the revised duopoly rule's standards. Thus, if the brokered station is in the same DMA as the brokering station, the LMA is ''same market'' for purposes of determining compliance with the ownership rules. If the LMA is found to be a same-market LMA, we will then apply the other multiple ownership rules to see if they are implicated.

57. We note that in the *Radio Ownership Order,* the Commission voiced its concern that substantial time brokerage arrangements among stations serving the same market, combined with the increased common ownership permitted by the revised local rules, could undermine broadcast competition and diversity. The Commission therefore decided to preclude that possibility by attributing local time brokerage arrangements, at least until it had some experience with the effect of that new regulatory approach in broadcast markets. We are convinced that the radio LMA attribution rule adopted in that Order has operated successfully to ensure that the goals set forth in the radio ownership rules are not undermined by the existence of unattributed influence over radio stations in the same market. We believe that a similar approach is warranted concerning television LMAs.

58. In the *Attribution Further Notice,* we reiterated our belief that the attribution rules must function effectively and accurately to identify all interests that are relevant to the underlying purposes of the multiple ownership rules and that should therefore be counted in applying those rules. Now, based on our experience with attribution of radio LMAs and the record in this proceeding, we conclude that a stand-alone, or *per se,* rule that attributes a same-market television LMA, or time brokerage of a television station in the same market, for more than 15 percent of the brokered station's weekly broadcast hours is necessary to accomplish this goal.

59. We will count attributed television LMAs toward all applicable broadcast ownership rules, which include the duopoly rule and the one-to-a-market, or radio-television cross-ownership rule. We have determined in the *TV National Ownership Order* that we will not count same-market LMAs towards the brokering licensee's national ownership limits, as that would constitute double-counting these LMAs. We will count inter-market time brokerage agreements attributable under EDP because they are accompanied by the requisite financial investment for purposes of the national ownership limits. Attribution is based on influence or control that should be considered cognizable and defines what we mean by ownership. Indeed, with the exception of radio LMAs, an exception which we eliminate today, our other current attribution rules apply across the board to all the relevant ownership limits. There is no reasonable basis for treating television LMAs any differently.

60. The record in this proceeding supports our decisions to attribute television LMAs and to count attributed radio LMAs toward all applicable radio ownership limits. Our analysis, above, of the information submitted by parties to television LMAs in response to our *Public Notice* indicates that television LMAs, or time brokerage agreements, may give the brokering station influence over the programming of the brokered station such as should be recognized as an attributable relationship. Moreover, we agree with most commenters, representing a variety of interests ranging from ABC to the public interest group MAP, that television LMAs, like radio LMAs, permit a degree of influence and control that warrants ownership attribution. We find it particularly noteworthy that commenters that opposed attributing television LMAs did not disagree that such LMAs confer substantial influence over brokered stations. Instead, these commenters argued that LMAs are beneficial and provide diversity benefits, an issue relevant to the question of how much common ownership should be permitted, consistent with our competition and diversity goals, rather than the cognizability of the interest. This issue is being considered in the TV Local Ownership and TV National Ownership proceedings.

61. We also note that, under the EDP rule, above, we will attribute an inter-market time brokerage agreement or LMA (or any other program supply arrangement) that brokers more than 15 percent of a station's programming (*i.e.,* a program supplier, as defined above) when held in combination with more than 33 percent of the total assets (debt plus voting, non-voting and preferred stock) of a station. Prior to the EDP rule, an inter-market LMA would not have been attributed regardless of the level of non-voting equity and debt interests held by the brokering station. With the exception of the EDP rule, we will not attribute television time brokerage agreements between stations in different markets. We disagree with Pappas, which asserted that our proposal to treat television LMAs as cognizable interests must also apply to television network

affiliation agreements and argued that, for attribution purposes, there is little substantive difference between an LMA and a network affiliation agreement, in that both involve the provision of television programming and the sale of television advertising time.

62. *In the Radio Rules Order,* the Commission stated that time brokerage agreements involving radio stations licensed to different markets ''raise little public interest concern; indeed they can be difficult to distinguish from network affiliation agreements, of which the Commission has long approved.'' Both LMAs and network affiliation agreements clearly confer some level of influence over the programming and commercial time of a licensee. Neither, however, taken alone, constitutes an attributable interest. It is the combination of ownership of a *local* competing media interest *and* programming and direct operational influence via a substantial same-market LMA that raises our concern and drives our decision to attribute such LMAs under our multiple ownership rules. This concern does not arise where there is no such combination of interests, as for example, network affiliation contracts or out-of-market LMAs unaccompanied by substantial investment in the programmed station. It is only when an out-of-market LMA provides more than 15 percent of a station's programming, in addition to holding an investment of more than 33 percent of total assets of the station, that we deem the level of influence sufficient to warrant attribution. Under those circumstances, where substantial investment in the licensee is combined with provision of substantial quantities of programming, we believe that the level of influence is sufficient to warrant attribution regardless of the fact that the programming provider is not a media entity in the same market. And, as we have noted, where the program supply agreement takes the form of a network affiliation agreement, the network, like the out-of-market LMA broker, will have its interest in its affiliate attributed if it invests in the affiliate above the EDP threshold.

63. *Modify radio rules.* In our *Attribution Further Notice,* we stated that if we adopt our proposal for attributing television LMAs, we would also consider similarly modifying the radio LMA rules (47 CFR 73.3555(a)(3)), because radio LMAs are currently considered only for purposes of applying the radio duopoly rule (47 CFR 73.3555(a)(1)), and invited comment on how the radio LMA attribution rules should be modified in this regard. Paxson, the only commenter to address this issue, generally argued against attributing radio or television LMAs for purposes of ownership restrictions other than the duopoly rules. We have decided to adopt our proposal to attribute same-market radio LMAs for purposes of applying our other multiple ownership rules that are applicable to radio stations, including, for example, the daily newspaper cross-ownership rule, and the one-to-a-market (or radio-television cross-ownership) rule. The other attribution rules apply across the board, and there is no reason not to apply attribution of radio LMAs consistently to all applicable radio ownership rules. Accordingly, we will modify our radio LMA attribution rules to reflect this change.

64. *Requirement to File TV LMAs.* In our *Attribution Further Notice,* we incorporated from the *TV Local Ownership Further Notice* the tentative proposal that attributable television LMAs be filed with the Commission in addition to being kept at the stations involved in an LMA. In the *Radio Ownership Order,* the Commission required that all radio time brokerage contracts be placed in the public inspection files of the stations involved, and that local time brokerage agreements be filed with the Commission within 30 days of execution. The Commission noted that these requirements would impose only a minimal burden on licensees but would permit it and others to monitor time brokerage agreements to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws. We believe that these same reasons are valid today with respect to television time brokerage agreements.

65. We will require stations involved in television time brokerage agreements (inter-market as well as intra-market agreements) to keep copies of those agreements in their local public inspection files, with confidential or proprietary information redacted where appropriate, and require the licensee that is the brokering station to file with the Commission, within 30 days of execution of such agreement, a redacted copy of any time brokerage agreements that would result in the arrangement being attributed in determining the brokering licensee's compliance with the multiple ownership rules. We will amend our rules accordingly. We note that these provisions impose an affirmative obligation on licensees to determine, in the first instance, whether a particular LMA is attributable (either under the per se rule or the EDP rule), and to file the agreement with the Commission if it is.

66. *Programming responsibility safeguards.* In our *Attribution Further Notice,* we emphasized, as we did in our radio ownership proceeding, ''that the licensee is ultimately responsible for all programming aired on its station, regardless of its source,'' and invited comment on what, if any, specific safeguards we should adopt with respect to television LMAs to ensure a brokered station's ability to exercise its programming responsibility. We believe that attribution of same-market television LMAs, along with our new filing requirements, will subject LMAs arrangements to sufficient scrutiny by competitors, the public and the Commission, that brokering stations will have strong incentives to avoid unauthorized acquisition of control of the brokered station. We remind all parties to LMAs that, as we noted in the *Radio Ownership Order,* ''our rules require the licensee to maintain control over station management and ultimate programming decisions, regardless of any time brokerage agreements that may exist.''

67. *Simulcasting.* In our *Attribution Further Notice,* we stated that we would resolve the issue, raised in the *Local Ownership Further Notice,* as to whether the program duplication or simulcasting limits that apply to commonly owned or time brokered radio stations should apply to television LMAs. No commenters addressed this particular question, although some argue generally that LMAs result in duplicative programming. Other commenters disagree, pointing out that, from the perspective of a time broker, time brokerage agreements pay off through the ability to attract additional, new audiences to the brokered station. A duplication of programming would not attract additional audiences, but would merely divide the audience currently enjoyed by the time broker's owned station with the audience of the brokered station.

68. With respect to radio broadcasting, ''simulcasting,'' or program duplication, refers to the simultaneous broadcasting of a particular program over co-owned stations serving the same market, or the broadcasting of a particular program by one station within 24 hours before or after the identical program is broadcast over the other station. In the *Radio Ownership Order,* the Commission limited simulcasting on commonly owned stations in the same service serving substantially the same area to 25 percent of the broadcast schedule, stating that it saw no benefit to the

public from permitting commonly owned same-service stations in the same market to substantially duplicate programming. The Commission reasoned that the limited amount of available radio spectrum could be used more efficiently by other parties to serve competition and diversity goals, and that substantial same-service simulcasting would not aid economically disadvantaged stations because the audience for the programming in question would be shared by two or more stations.

69. At this time, we will not apply simulcasting limits to television LMAs. We are not aware that broadcasters involved in television LMAs are simulcasting their programming to any significant extent. Moreover, we believe such simulcasting is unlikely to occur because it would most likely work to the disadvantage of the stations engaged in the LMA. We note that television coverage differs from radio, in that there are fewer television stations per market, and those stations cover a larger market area than do radio stations. We assume that if television stations commonly operated under an LMA in the same market simulcast programming, they would split the audience for that programming between themselves, losing the audience for alternative programming to other television stations in that market. Because stations' advertising revenues are generally based on audience share, revenue and basic profits would be negatively affected by such practices. There consequently appears to be a significant market disincentive against simulcasting in the context of same-market television LMAs. To the extent that simulcasting occurs, it may reflect the owner's (or broker') attempt to maximize the audience reach within the DMA. As indicated above, we received no comments specifically addressing this question, nor have we seen any evidence that the concerns with respect to simulcasting by commonly owned or time brokered radio stations apply to television stations operating under LMAs. Should we find evidence to the contrary at a future date, we may, of course, revisit this decision.

70. *Grandfather Existing LMAs.* In our *Attribution Further Notice,* we stated that if we decided to attribute television LMAs as we proposed in this proceeding, we intended to resolve the issues of grandfathering, renewability and transferability of existing TV LMAs in the separate TV Local Ownership proceeding so that we could evaluate the extent to which grandfathering might be needed based on the nature of the local ownership rules we adopt. These issues are outside the scope of this proceeding, and, as we noted in the *Attribution Further Notice,* will be resolved in the *TV Local Ownership Order.*

D. Cross-Interest Policy

Background

71. *Overview.* The cross-interest policy has been applied to preclude individuals or entities from holding an attributable interest in one media property (broadcast station, newspaper, cable system) and having a ''meaningful'' albeit nonattributable interest in another media entity serving ''substantially the same area.'' This policy originally developed as a supplement to the multiple ownership ''duopoly'' rule which prohibited the common ownership, operation, or control of two stations in the same broadcast service serving substantially the same area. Ownership, operation or control as contemplated by this rule was originally defined as actual control or ownership of 50 percent or more of the stock of a licensee. Since this definition did not encompass minority stock ownership, positional interests (such as officers and directors), and limited partnership interests, the cross-interest policy was developed to address the competitiveness and diversity concerns created when a single entity held these types of otherwise permissible interests in two (or more) competing outlets in the same market. In essence, the cross-interest policy filled gaps in our attribution criteria that had become apparent through our case-by-case application of the ownership rules.

72. Through case-by-case adjudication, the following relationships came to be viewed as constituting ''meaningful'' interests subject to the cross-interest policy: key employees, joint ventures, nonattributable equity interests, consulting positions, time brokerage arrangements, and advertising agency representative relationships. The cross-interest policy did not prohibit these interests outright, but required an *ad hoc* determination regarding whether the nonattributable interests at issue in each case would be permitted.

73. In 1989, after a comprehensive review to assess the continuing need for the cross-interest policy, the Commission issued a *Policy Statement* limiting the scope of the cross-interest policy so that it would no longer apply to consulting positions, time brokerage arrangements and advertising agency representative relationships. The Commission decided that it no longer needed to apply the cross interest policy to those relationships because: (1) the need for the policy had decreased based on new attribution provisions that had superseded it; (2) the costs to the public and the Commission of administering the policy were difficult to justify given the reduced need for continued oversight of these relationships; (3) growth of media outlets had undercut the notion that any single individual or entity could skew competition through the cross-interests at issue; and (4) alternative safeguards, such as antitrust laws, fiduciary duties and private contract rights were available to curb anti-competitive conduct.

Comments

74. *Current Aspects of the Cross-Interest Policy.* After the *Policy Statement,* three aspects of the cross-interest policy remain in effect:

(1) *Key employee relationships.* The cross-interest policy has generally prohibited an individual who serves as a key employee, such as general manager, program director, or sales manager, of one station from having an attributable ownership interest in or serving as a key employee of another station in the same community or market. The application of the cross-interest policy in these situations is premised on the potential impairment to competition and diversity and the apparent conflict of interest arising from the ability of key employees to implement policies to protect their substantial equity interest in the other station.

(2) *Nonattributable equity interests.* The cross-interest policy has also typically proscribed an individual who has an attributable interest in one media outlet from holding a substantial nonattributable equity interest in another media outlet in the same market. The Commission's concern with these relationships has been that the individual could use the attributable interest in one media outlet to protect the financial stake in the other media outlet, thus impairing arm's length competition. (Two or more separate non-attributable interests in a market are not proscribed by this policy, as neither gives rise to the potential to influence station operations that would concern us.)

(3) *Joint venture arrangements.* The cross-interest policy has prevented two local broadcast licensees from entering into joint associations to buy or build a new broadcast station, cable television system, or daily newspaper, in the same market. These joint ventures have triggered cross-interest scrutiny because the successful operation of the joint venture was thought to require a

cooperative relationship between otherwise competing stations, and this would impair competition in the local market.

75. *Prior Notices.* In the *Cross-Interest Notice,* we asked for comments as to whether we should retain our cross-interest policy in these three areas—key employees, non-attributable equity interests, and joint ventures. We also invited comment as to whether we should amend the attribution rules to incorporate the key employee portion of the cross-interest policy. We sought further comment on whether retention of the remaining named components of the cross-interest policy was necessary to prevent anticompetitive practices, whether alternative deterrent mechanisms exist to assure competition and diversity, and whether continued regulation of relationships not specifically addressed by the Commission's attribution rules is necessary. We also questioned whether regulatory oversight of one or more of these interests should be limited to geographic markets with relatively few media outlets. Five comments and reply comments were filed in response to the *Cross-Interest Notice.* The majority of commenters urged the Commission to eliminate the cross-interest policy as it applies to all of these relationships. One commenter, CFA/TRAC, urged the Commission to retain the policy. In the *Attribution Notice,* we sought to update the record with respect to retention of the cross-interest policy in light of changes in the multiple ownership rules and additional changes we were proposing to the attribution rules. In the *Attribution Further Notice,* we sought additional comment as to the effect on our cross-interest policy of our proposed equity/debt plus approach, which would apply to cases raising concerns of competition and diversity normally reflected in the cross-interest policy. We also sought comment on whether the equity/debt plus approach would be preferable to a case-by-case approach, which is used to administer the cross-interest policy. We specifically noted that the bright line approach could provide certainty and minimize regulatory costs.

76. Most commenting parties expressly discussing this issue favored eliminating at least portions, if not all of the cross-interest policy.

77. A few commenters either opposed elimination of the cross-interest policy, or urged the Commission not to change the rules.

Decision

78. We will eliminate the above noted remaining components of the cross interest policy. Our goals in initiating this proceeding include maximizing the clarity of the attribution rules, providing reasonable certainty and predictability to parties to allow transactions to be planned, and easing application processing. As discussed above, commenters have argued that the vagueness and uncertainty imposed by the *ad hoc* application of the cross-interest policy have chilled investment. As CalPERS argues, this uncertainty impedes the ability of broadcasters to enter into transactions because the policy can be invoked to prohibit a seemingly permissible transaction.

79. Today, we have revised the attribution rules to adopt the EDP rule, a bright line test, which we believe will increase regulatory certainty and reduce regulatory costs. In adopting that rule, we will reach those situations involving formerly nonattributable interests that raised the most concern with respect to issues of competition and diversity, some of which were previously addressed in administering the cross-interest policy. We agree with commenters who argue that adoption of the EDP rule, as well as the existence of the other attribution rules, provides additional grounds for elimination of the cross-interest policy.

80. We note that the EDP rule directly covers concerns treated under the non-attributable interests prong of the cross-interest policy, as it would attribute a substantial nonattributable interest by a media entity in a second media outlet in the same market. We recognize, however, that the EDP rule does not cover all the areas encompassed by the cross-interest policy. It would not cover key employees, for example. We nonetheless believe, as commenters have pointed out, that internal conflict of interest policies, common law fiduciary duty, and contract remedies provide adequate substitutes for our administration of the policy with respect to key employees. In addition, many key employees are also officers and directors and are thus already covered by the attribution rules. In any event, we believe that the very small risk of harm to competition by a key employee in an instance not covered by any of these other regulations and remedies is greatly outweighed by the benefits of minimizing our case-by-case approach to transactions and applying bright line tests, such as the EDP test and our other attribution rules.

81. With respect to joint ventures, we believe that application of a cross-interest policy is unwarranted. The ownership and attribution rules define the level of combined ownership that is permissible in the local market. Many joint ventures are already covered by the attribution/ownership rules, and they may also be covered to some extent by the EDP rule. Accordingly, a joint venture between two licensees in a market to acquire additional broadcast entities in the same market may be subject to the radio-television cross-ownership rule or the relevant duopoly rule. As CBS contended, to continue to regulate these interests under a separate policy when many are covered by the attribution rules is redundant. In addition, according to CBS, the *ad hoc* application of the cross-interest policy has ''clouded the future of potential joint ventures with uncertainty'' regarding their eventual approval by the Commission. We agree that the cross-interest policy as applied to joint ventures is largely subsumed by the application of the current multiple ownership rules. To the extent that the cross-interest policy is not so subsumed, we believe that it should be eliminated. We have made a judgment to limit combined local ownership to certain degrees, as delineated in our local ownership rules. Accordingly, it makes no sense to have a routine additional layer of case-by-case review for those joint ventures that fully comply with those rules. In these cases, the burdens of case-by-case review are not justified for transactions that already comply with the multiple ownership rules. Furthermore, as other commenters noted, the application of the antitrust laws should prevent or remedy any abuses of joint venture relationships not already subject to the multiple ownership rules.

82. In sum, we believe that the regulatory costs and the chilling effects of the cross-interest policy and the benefits of applying a clear and discernable standard outweigh any risks of potential abuses in eliminating the policy. Moreover, many remaining aspects of the cross-interest policy are subsumed under our attribution rules, as revised herein.

E. Joint Sales Agreements (JSAs)

83. *Background.* In the *Attribution Notice,* we requested comment on whether, through multiple cooperative arrangements or contractual agreements, broadcasters could so merge their operations as to implicate our diversity and competition concerns. We noted, however, that we did not intend to reopen our earlier decisions permitting joint sales practices in radio and television. These decisions had allowed joint sales agreements (''JSAs'') (i.e., agreements for the joint sales of broadcast commercial time), subject to compliance with the antitrust laws.

84. After issuing the *Attribution Notice*, the staff was presented with cases involving joint sales agreements that raised diversity and competition concerns. These cases raised questions as to whether non-ownership mechanisms such as JSAs that might convey influence or control over advertising shares should be considered attributable under certain circumstances. Accordingly, in the *Attribution Further Notice* we invited additional comments on the potential effects of JSAs among same-market broadcasters on diversity and competition. We also sought comment on whether we should attribute JSAs among licensees in the same market, including both radio and television licensees, irrespective of whether they are accompanied by the holding of debt or equity. In addition, we sought general information concerning the typical contractual terms of JSAs.

85. *Decision*. We will not attribute JSAs. Based on the record in this proceeding, we do not believe that agreements which meet our definition of JSAs convey a degree of influence or control over station programming or core operations such that they should be attributed. We define JSAs as contracts that affect primarily the sales of advertising time, as distinguished from LMAs, which may affect programming, personnel, advertising, physical facilities, and other core operations of stations. We note that in our *DTV 5R&O*, we stated that we would look with favor upon joint business arrangements among broadcasters that would help them make the most productive and efficient uses of their channels to help facilitate the transition to digital technology. JSAs may be one such joint business arrangement. We recognize the significant competitive concerns about same-market radio JSAs raised by DOJ, but we also note that the factors considered by DOJ and the Commission in analyzing business arrangements may differ in some respects. Although both DOJ and the Commission are concerned about the competitive consequences of business agreements such as JSAs, our concerns are not identical. DOJ's comments explicitly recognize that in addition to competition issues, the Commission is also concerned with issues of diversity and reducing unnecessary administrative burdens. Some JSAs may actually help promote diversity by enabling smaller stations to stay on the air. Furthermore, to reduce administrative burdens, we will not require the routine filing of JSAs with the Commission.

86. Accordingly, after weighing competition, diversity, and administrative concerns, we decline to impose new rules attributing JSAs as long as they deal primarily with the sale of advertising time and do not contain terms that affect programming or other core operations of the stations such that they are, in fact, substantively equivalent to LMAs. We will retain our current policies concerning JSAs. Furthermore, in the absence of specific evidence of widespread abuse of JSAs by broadcasters, we also decline to adopt the general disclosure and reporting requirement for radio JSAs recommended by DOJ in its comments. We will, however, require broadcasters who have entered into JSAs to place such agreements in their public inspection files, with confidential or proprietary information redacted where appropriate. This requirement will facilitate monitoring of JSAs by the public, competitors and regulatory agencies. We do, however, retain discretion, in any event, to review cases involving radio or television JSAs on a case by case basis in the public interest, where it appears that such JSAs do pose competition or other concerns. Finally, we emphasize that all JSAs are of course still subject to antitrust laws and independent antitrust review by the Department of Justice.

F. Partnership Interests

87. *Background*. Under the Commission's current attribution rules governing partnership interests, general partners and non-insulated limited partnership interests are attributable, regardless of the amount or percentage of equity held. An exception from attribution applies only to those limited partners who meet the Commission's insulation criteria and certify that they are not materially involved in the management or operations of the partnership's media interests.

88. The *Attribution Notice* asked for comment on whether the insulation criteria remain effective and specifically whether the insulation criteria needed to be tightened or relaxed to meet the needs of certain new types of business entities. For example, widely-held limited partnerships, and in particular business development companies, may be required by federal and state statutes to grant voting rights to limited partners in such matters as the selection and removal of general partners. However, the insulation criteria require that such voting rights be restricted, except under certain circumstances, in order to support a presumption of partner non-involvement in the management of the partnership. The Attribution Notice inquired whether the insulation criterion should be relaxed to remove this potential conflict with state law, or whether equity benchmarks combined with a more limited relaxation of the insulation criteria should be applied to these widely-held limited partnerships. We noted that commenters in response to the *Capital Formation Notice* had argued that allowing specific voting rights would not compromise our attribution rules since: (1) the remaining insulation criteria are sufficient to prevent material involvement of a partnership member in media operations; and (2) the dispersed interests in a widely-held limited partnership would preclude member involvement in management and operations.

89. In addition, the *Attribution Notice* asked whether an equity benchmark, such as 5 percent, should be used to establish attribution with respect to all ''widely-held'' limited partnerships, and if so, how should the Commission define widely-held limited partnerships, and what factors could be used to guarantee that these entities remain widely-held. More generally, the *Attribution Notice* asked whether an equity benchmark, under which investments below the threshold would be exempted from the insulation criteria and would be held non-attributable, should be applied to all partnership forms, widely-held or not. In this latter case, the *Attribution Notice* asked whether we should set the equity benchmarks for partnership interests along lines similar to those used for voting corporate equity interests. We stated, however, that, based on the record thus far, we were not inclined to apply an equity benchmark to limited partnerships but would instead retain the insulation criteria, and that parties that disagreed must provide us with more data and analysis to demonstrate that our earlier decision to apply the insulation criteria is no longer justified. We also asked for information on the financial and legal structures of limited partnerships to enable us to determine whether there is a uniform equity level below which we need not be concerned with the application of the insulation criteria.

90. *Comments.* No commenters favored adding to the current list of insulation criteria.

91. *Decision*. We see no reason to revise our previous decision to treat limited partnership interests as distinct from corporate voting equity interests, and therefore elect not to adopt equity benchmarks for limited partnership interests. As we stated in the *Attribution Further Reconsideration*, ''[t]he partners in a limited partnership, through contractual arrangements, largely have

the power themselves to determine the rights of the limited partners.'' Therefore, the insulation criteria adopted by the Commission serve to identify those situations within which it is safe to assume that a limited partner cannot be ''materially involved'' in the media management and operations of the partnership. As we also stated therein, the powers of a limited liability holder to exert influence or control are not necessarily proportional to their equity investment in the limited partnership, since the extent of these powers can be modified by the contractual arrangements of the limited partnership. In the *Attribution Notice*, we stated our disinclination to change our approach of applying insulation criteria in favor of an equity benchmark, and we have not been provided sufficient evidence to revise that view and to indicate that these original reasons for declining to adopt an equity benchmark for limited partnerships are no longer valid.

92. We also see no need at this time to add to, relax, or otherwise revise our limited partnership insulation criteria. Some commenters suggested that the insulation criteria should be modified to eliminate conflicts with state law, or that RULPA or other relevant standards should be used in their place. However, in our Attribution Reconsideration, the Commission decided for several reasons to abandon the use of RULPA, combined with a no material involvement standard, as a standard for judging whether limited partners were exempt from attribution. First, we judged the joint use of these two disparate standards for determining limited partner exemptions from attribution to be unnecessarily complicated. Second, we noted that there was a lack of uniform interpretation of the RULPA provisions, and that the scope of permissible limited partner activities was not statutorily set by RULPA, but rather was determined by the limited partnership agreement itself. Third, we determined that reliance on the RULPA provisions did not provide sufficient assurance that limited partners would not significantly influence or control partnership affairs. We are convinced that these conclusions remain valid today, and therefore we see no reason to revise our insulation criterion in favor of a RULPA standard. We also feel that similar considerations apply to state laws that regulate limited partnership activities, since these statutes may vary significantly from state to state, and may fail to provide sufficient assurance that the limited partner will lack the ability to significantly influence or control the partnership's media activities.

93. We will not create exceptions for widely-held limited partnerships, such as Business Development Companies, from the current insulation criteria applicable to limited partnerships or otherwise revise those insulation criteria. The essential character of these new business forms for determining attributable interests is the contractual flexibility they allow in setting up and managing the association. Therefore, we believe that the insulation criteria are needed for these business forms to insure ''lack of material involvement'' on the part of investors. This would imply that in some limited number of cases, interests may not be insulated because of state laws that require investor rights that conflict with the insulation criterion. However, commenters have not provided sufficient evidence concerning the number or importance of such instances that would compel the Commission to create special exemptions for these specialized business forms. Since these entities are allowed greater contractual flexibility under state law than are limited partnerships, we believe that greater caution is warranted in dealing with these novel forms. Further, we have not been presented with evidence to demonstrate that the current insulation criteria are no longer valid or effective in achieving their goals.

94. A number of commenters have asked us to clarify certain issues with respect to the scope or other aspects of the insulation criteria. We do not believe that this is the proper forum for declaratory rulings as to the scope of the insulation criteria. Indeed, the questions raised by commenters as to the application of the criteria to specific activities are best resolved by the Commission on a case-by-case basis based on the facts of the case. In addition, some of the proposed clarifications would, in effect, amount to a relaxation of the criteria. For example, Capital Cities/ABC asked the Commission to confirm that an insulated limited partner's interest in a licensee does not preclude the interest holder from also holding an affiliation agreement with the licensee. However, a contractual arrangement to provide programming would be inconsistent with the insulation criterion that ''the limited partner may not perform any services for the partnership materially relating to its media activities,'' and therefore would not allow insulation of the limited partner's interest. As discussed, we decline to relax the insulation criteria. Moreover, we believe that the insulation criteria have worked effectively in the past, and that there is no need for further clarification on a general basis in this Report and Order. Any issues that may arise as to the application of the criteria to particular transactions will be resolved on a case-by-case basis.

G. LLCs and Other Hybrid Business Forms

95. *Background.* In the *Attribution Notice*, we sought comment as to how we should treat, for attribution purposes, the equity interest of a member in a limited liability company or LLC, a then relatively new form of business association regulated by state law, or in other new business forms, such as Registered Limited Liability Partnerships (''RLLPs''). LLCs are, in general, unincorporated associations that possess attributes of both corporations and partnerships. The specific attributes of LLCs may vary, since their form is regulated by state statutes. LLCs are, however, generally intended to afford limited liability to members, similar to that afforded by the corporate structure, while also affording the management flexibility and flow-through tax advantages of a partnership, without many of the organizational restrictions placed on corporations or limited partnerships. Depending on the requirements of the applicable state statute, LLCs afford their members broad flexibility in organizing the management structure and permit members to actively participate in the management of the entity without losing limited liability. Thus, with some variation depending on the applicable statute, LLCs may be organized with centralized management authority residing in one or a few managers (who may or may not be members) or decentralized management by members.

96. In the *Attribution Notice*, we tentatively proposed to treat LLCs and RLLPs like limited partnerships and adopted that proposal as an interim processing policy. Thus, membership in an LLC or RLLP would be attributed unless the applicant certifies that the member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the LLC or RLLP. We proposed that such certification should be based on our limited partnership insulation criteria and invited comment on whether those insulation criteria developed with respect to limited partnerships are sufficient to insulate members of LLCs and RLLPs or whether other criteria would be more effective. We also tentatively concluded that we were not prepared to adopt an equity benchmark

for non-insulated LLC interests, but we invited comment on that conclusion. In addition, we invited comment on whether, if we adopt the certification approach, we should, either routinely or on a case-by-case basis, require parties to file copies of the organizational filings and/or operating agreements with the Commission when an application is filed. Finally, we asked whether we should differentiate our treatment of LLCs based on whether their management form is centralized or decentralized.

97. *Decision*. We adopt our tentative conclusion in the *Attribution Notice* to treat LLCs and other new business forms including RLLPs under the same attribution rules that currently apply to limited partnerships. The insulation criteria that currently apply to limited partnerships would apply without modification to these new business forms. Therefore, LLC or RLLP owners would be treated as attributable unless the owner can certify their lack of direct or indirect involvement in the management and operations of the media-related activities of the LLC or RLLP based on existing insulation criteria. We will not distinguish among LLCs based on whether they adopt a more centralized or decentralized form.

98. We believe that this decision is justified for the reasons discussed in the *Attribution Notice*, which are supported by the record. State laws grant more liberal organizational powers to LLCs and RLLPs than to limited partnership forms. Thus, equity holders can retain their limited liability even though they participate in the management of the entity. Under these circumstances, we believe that it is important to apply the insulation criteria to assure that those equity holders that purport to be insulated from management are in fact so insulated. In addition, even when an LLC adopts a ''corporate form'' of organization, there is still sufficient discretion afforded by state law so that the owners of the enterprise may retain some level of operational control on their own part. The organizational restrictions applicable to corporations do not necessarily apply. The Commission could also apply a control test to determine attribution, or require these companies to incorporate insulation criteria directly into their governing documents. However, these case-by-case solutions would reduce regulatory certainty and delay processing of applications. We also believe that using equity benchmarks would be inappropriate for reasons similar to those discussed above in terms of limited partnerships. In addition, we have been applying the interim processing policy, it has worked well and effectively, and we see no reason to change it.

99. We agree with those commenters who argued that business associations, such as LLCs, are similar to partnership forms in terms of organizational flexibility, and we will treat them comparably for attribution purposes. Indeed, the greater flexibility in governance granted such entities under state law, to elect either a ''corporate form'' or a ''partnership form'' of governance, underscores the need for caution in our approach to the attribution of new business forms. The current insulation criteria serve to directly address our concerns over the influence of an interest holder. Creating specialized attribution standards for new business forms as they arise will serve only to complicate the attribution rules, without better addressing our core concerns over the potential influence exerted by the owners of a particular entity, however organized.

100. To reduce paperwork burdens, we will not routinely require the filing of organizational documents for LLCs. However, to remain consistent with our treatment of limited partnerships and insulation criteria, we will require the same ''non-involvement'' statement for LLC members who are attempting to insulate themselves from attribution that we require for limited partners who are attempting to insulate themselves. We will also require LLC members who submit the foregoing statement to submit a statement that the relevant state statute authorizing LLCs permits an LLC member to insulate itself/himself in the manner required by our criteria, since our experience shows that state laws vary considerably with respect to the obligations and responsibilities of LLC members. This policy will help us to avoid any potential confidentiality concerns, referred to in the *Attribution Notice*, that may arise if we require filing of organizational documents.

H. Cable/MDS Cross-Ownership Attribution

101. *Background*. The *Attribution Further Notice* considered changes to the cable/Multipoint Distribution Service (''MDS'') cross-ownership attribution rule, For purposes of this item (MDS also includes single channel Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'')). Section 21.912 of the rules, which implements § 613(a) of the Communications Act, generally prohibits a cable operator from obtaining an MDS authorization if any portion of the MDS protected service area overlaps with the franchise area actually served by the cable operator's cable system. In addition, § 21.912(b) prevents a cable operator from leasing MDS capacity if its franchise area being served overlaps with the MDS protected service area. For purposes of this rule, the attribution standard used to determine what entities constitute a ''cable operator'' or an MDS licensee, is generally defined by the Notes to § 76.501. In sum, we presently consider a cable operator to have an attributable interest in an MDS licensee if the cable operator holds five percent or more of the stock in that licensee, regardless of whether such stock is voting or non-voting. We also attribute all officer and director positions and general partnership interests. However, unlike the broadcast attribution standard, our current cable/MDS standard contains no single majority shareholder exception, and attributes limited partnership interests of five percent or greater, notwithstanding insulation.

102. As we recognized in the *Attribution Further Notice*, the strictness of the existing attribution standard severely limits investment opportunities that would advance our goals of strengthening wireless cable and providing meaningful competition to cable operators. We also saw no reason to have different attribution criteria for broadcasting and MDS, and reiterated our previous observation that the broadcast attribution criteria could be used for the purpose of determining attribution in the context of cable/MDS cross-ownership. Thus, in the *Attribution Further Notice*, we invited comment on whether we should apply broadcast attribution criteria, as modified by this proceeding, in determining cognizable interests in MDS licensees and cable systems. In addition, we sought comment as to whether we should add an equity/debt plus attribution rule where the competing entity's holding exceeds 33 percent or some other benchmark. We further stated our belief that these proposed modifications of our attribution rules would increase the potential for investment and further diversity, while preventing cable from warehousing its potential competition.

103. *Decision*. After reviewing all of the comments submitted on our proposals to relax the cable/MDS attribution rules, we are persuaded that the broadcast attribution criteria, as modified by this proceeding, should be applied in determining what interests in MDS licensees and cable systems are cognizable. We continue to see no reason, and none has been suggested by

any of the commenters, that would warrant different attribution criteria for broadcasting and MDS. As we have discussed here and in the *Attribution Further Notice*, 60 FR 6483, February 2, 1995, investment opportunities critical to the development of MDS as a competitive service to cable have been severely limited by the current attribution standard.[1] Therefore, continued application of the current cable/MDS attribution standard would frustrate our goals of strengthening wireless cable, providing meaningful competition to cable operators and benefitting the public interest by offering consumers more choice in their selection of video programming providers. In view of these considerations and the record before us, we conclude that the public interest would be better served if the modified broadcast attribution criteria were employed for the purpose of determining attribution in the context of cable/MDS cross-ownership. Such modification of our existing attribution standard will increase investment possibilities without adversely affecting competition. Thus, we believe this attribution standard will identify ownership interests with the potential to exert significant influence on a licensee's management and operations, and the cross-ownership provision by its very nature will address the concern that common ownership of different multichannel video programming distributors may reduce competition and limit diversity. We are persuaded, moreover, that relaxing our current attribution standard will have genuine meaning for institutional investors who, though not involved in the day-to-day activities of either cable or MDS companies, have been precluded from making investments in MDS due to pre-existing or anticipated investments in cable.

104. The Wireless Association also fails to persuade us that it would be unfair to impose a debt limitation on cable/MDS cross-ownership when no such limitation has been placed on cable/LMDS cross-ownership. We consider it significant that, unlike our recently adopted cable/LMDS cross-ownership rules, the cable/MDS cross-ownership rule implements a statutory prohibition, Section 613(a) of the Act. Therefore, in revisiting our cable/MDS attribution standard, we must consider both the rule and the statutory implications. As we tentatively concluded in the *Attribution Further Notice*, the potential exists:

> For certain substantial investors or creditors to have the ability to exert significant influence over key licensee decisions through their contract rights, even though they are not granted a direct voting interest or may only have a minority voting interest in a corporation with a single majority shareholder, which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to communicate freely with the licensee, exert as much or more influence or control over some corporate decisions as voting equity holders whose interests are attributable.

That tentative conclusion has been affirmed here, and we believe applies with equal force to our competitive concerns underlying cable/MDS cross-ownership. We have also determined that our broadcast attribution rules will be triggered when the aggregated debt and equity interests in a licensee exceed a 33 percent benchmark. Our EDP broadcast attribution provision is intended to address our concerns that multiple nonattributable interests could be combined to exert influence over licensees such that they should be attributable. Based on the same reasons, we likewise regard the 33 percent EDP provision as an appropriate addition to the modified cable/MDS attribution standard. Furthermore, by adopting the 33 percent EDP provision for cable/MDS attribution, we believe that we are acting in a manner consistent with the statutory directive by furthering congressional intent to promote competition among video providers.

105. Accordingly, we will adopt the broadcast attribution criteria, as modified in this proceeding, for determining cognizable interests in MDS licensees and cable systems. The modified attribution criteria will also apply to the cable/MDS and cable/ITFS cross-leasing rules. A supplemental note will follow those cross-leasing rules and state that the attribution standard applicable to cable/MDS cross-ownership also applies to them. In addition, given the considerations discussed above, and for the same reasons we are adopting the 33 percent EDP provision for the broadcast attribution standard, we will adopt the 33 percent EDP provision as part of the cable/MDS attribution standard. A description of the resulting changes to our existing cable/MDS attribution standard follows.

106. In assessing cable/MDS attribution, we will distinguish passive investors from non-passive investors, applying the voting stock attribution benchmark applicable to each. As a preliminary matter, the definition of ''passive investors'' will be identical to that used in the context of broadcast attribution, and thus limited to bank trust departments, insurance companies and mutual funds. Passive investors will be subject to the same 20 percent voting stock benchmark as we adopt today for broadcast passive investors. With regard to a non-passive voting equity benchmark, we have already determined that shareholders with a five percent or greater ownership interest still have the ability to wield significant influence on the management and operations of the firms in which they invest. Therefore, we will continue to apply our five percent benchmark to determine the attributable interests of non-passive investors. We believe that employing a more liberal voting stock benchmark for passive investors than that used for non-passive investors will provide the MDS industry with increased access to much needed investment capital, while maintaining the Commission's ability to apply its ownership rules to influential interests.

107. Though positions such as officers and directors will remain attributable interests, we will further relax the current cable/MDS standard by exempting from attribution minority stockholdings in corporations with a single majority shareholder and non-voting stock, to the extent permitted by the other rule changes made in this proceeding. However, here as in broadcasting, we will carefully scrutinize cases to ensure that nonattributable minority or non-voting shareholders are not able to exert greater influence than what their attribution status should allow.

108. We further note that adoption of the EDP attribution rule for cable/MDS will limit, under certain circumstances, the availability of the single majority shareholder and non-voting stock exemptions from attribution. Under the EDP rule as adopted for cable/MDS attribution, where a cable franchise area and an MDS protected service area overlap, we will consider an investor (including a cable operator or MDS licensee) that has already invested in either the cable operator or MDS licensee, to have an attributable interest in the other entity if that interest exceeds 33 percent of the total assets of that entity. Thus, when the investor's total investment in the other entity, aggregating all debt and equity interests, exceeds 33 percent of all investment in that entity (the sum of all equity plus debt), attribution will be triggered. We

[1] We have recently taken additional steps to expand investment opportunities to further strengthen MDS. Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998), recon., FCC 99–178, released July 29, 1999.

will use total assets as a base in aggregating the different classes of investment, equity and debt, and will presume that nonvoting stock should be treated as equity. We will set the threshold at 33 percent for the cable/MDS EDP rule because we see no reason to have a different benchmark than that which will be used for the broadcast EDP rule.

109. We will also modify the existing cable/MDS attribution standard with respect to partnership interests and new business forms, such as LLCs and RLLPs, consistent with our treatment of such entities in the broadcast context. First, we will continue to hold all partnership interests attributable, regardless of the extent of their equity interests, unless they satisfy the insulation requirements. However, we will not attribute sufficiently insulated limited partnership interests when the limited partner certifies that it is not materially involved, directly or indirectly, in the management or operation of the partnership's cable or wireless cable activities. Nor will we adopt voting equity benchmarks for limited partnership interests. A limited partnership interest will not be attributable if the limited partner meets the Commission's insulation criteria and makes the requisite certification. Second, consistent with our earlier findings, we will subject widely-held limited partnerships, such as Business Development Companies, to the same set of attribution rules as limited partnerships. We will also treat LLCs and other new business forms, including RLLPs, under the same attribution rules that currently apply to limited partnerships. We believe that these changes, which generally relax our existing cable/MDS attribution standard and make them consistent with the broadcast attribution rules, will afford increased opportunities for investment in the wireless cable and cable industries.

I. Broadcast-Cable Cross-Ownership Attribution Rules

110. In the *Attribution Further Notice*, we stated that we would address, in this proceeding, the attribution criteria applicable to the broadcast-cable cross-ownership rule, § 76.501(a) of the Commission's rules. While we recognized that the attribution standards used in a number of other cable rules were implicitly or explicitly based on § 76.501 of the Commission's rules, we stated that we were considering establishing a separate proceeding to modify the attribution criteria for the other cable multiple ownership rules.

111. Accordingly, we will modify the attribution criteria applicable to the cable/broadcast cross-ownership rule to conform to the new broadcast attribution criteria adopted in this *R&O*. In this manner, all the broadcast attribution criteria will remain consistent. When we revised the cross-ownership attribution rules in 1984, we stated that there did not seem to be a justification for separate benchmarks as applicable to cable systems. We did not receive comments in this proceeding to justify treating the cable/broadcast cross-ownership attribution rules differently from the other broadcast attribution rules at issue in this proceeding. We reiterate that the attribution revisions made herein apply only to the cable/broadcast and the cable/MDS cross-ownership rules (and cable/ITFS cross-leasing rules) and that revisions to the other cable attribution rules will be addressed CS Docket No. 98–82. We also note that because these cross-ownership rules apply where the entities at issue are in the same market, these entities will always be subject to the EDP rule assuming that the requisite financial interest is held.

J. Transition Issues

112. *Background*. In the *Attribution Notice*, we stated our concern that any action taken in this proceeding not disrupt existing financial arrangements, and accordingly invited comment as to whether we should grandfather existing situations or allow a transition period for licensees to come into compliance with the multiple ownership rules if we adopted more restrictive attribution rules. As we stated in the *Attribution Further Notice*, commenters who addressed this issue in response to the *Attribution Notice* overwhelmingly urged the Commission to grandfather existing interests indefinitely if it adopted more restrictive attribution rules because of the disruptive effect and the unfairness to the parties of mandatory divestiture.

113. *Decision*. We conclude that any interests acquired on or after November 5, 1996, the date of adoption of the *Attribution Further Notice* in this proceeding, should be subject to the rules adopted in this *R&O*. We believe this cutoff date is reasonable and appropriate. We proposed the new EDP rule in the *Attribution Further Notice*, and it was therefore then that parties were on notice of the proposed new rule and that any interests acquired on or after that date could be subject to any rule changes. Thus, we believe that the November 5, 1996 grandfathering date is more reasonable than the earlier grandfathering date we proposed. While we tentatively concluded in the *Attribution Notice* that any interests acquired on or after December 15, 1994 should be subject to the final rules adopted in the *R&O* in this proceeding, we have decided to use the date of adoption of the *Attribution Further Notice* as the grandfathering date. Accordingly, any interests (other than radio LMAs) newly attributable pursuant to this *R&O* that would result in violations of the ownership rules, will be grandfathered if the triggering interest was acquired before November 5, 1996. Except in the case of TV and radio LMAs, such grandfathering will be permanent until such time as the grandfathered interest is assigned or transferred.

114. In this *R&O*, we have decided to count attributable radio LMAs for purposes of applying all applicable multiple ownership rules, including the one-to-a-market rule and the radio-newspaper cross-ownership rule, not just the radio duopoly rules. As discussed, we will treat grandfathering of radio LMAs on case-by-case basis. The issue of grandfathering television LMAs is resolved in the television local ownership proceeding.

115. We will apply the November 5, 1996 grandfathering date to interests, newly attributable under our EDP rule, that would result in new violations of the multiple ownership rules. Such grandfathering will be permanent so long as the interest is not transferred or renewed. Thus, if an inter-market LMA triggers the EDP rule, grandfathering will be for the term of the LMA, since the LMA cannot be renewed. Grandfathering will apply only to the current holder of the attributable interest. If the grandfathered interest is later assigned or transferred, the grandfathering will not transfer to the assignee or transferee. New owners cannot demonstrate the same equitable considerations that prompt us to grandfather existing owners whose current interests are now unavoidably placed in violation of the multiple ownership rules based on adoption of the EDP rule. Such new owners will be given a year to come into compliance with the multiple ownership rules.

116. For non-grandfathered interests that are now attributable, *i.e.*, those acquired on or after November 5, 1996, and which must be divested to comply with our multiple ownership rules, we believe that a twelve-month period should be sufficient for parties to identify buyers. Accordingly, parties holding such non-grandfathered interests must come into compliance, filing an appropriate application if necessary, within 12 months of the date

of adoption of this *R&O*. We recognize that we have specified a different divestiture period in some of the cases that have been conditioned on the outcome of this proceeding. In all of these cases, we will apply the one-year divestiture period. Thus, in a case conditioned on the outcome of this proceeding, where, for example, a six-month divestiture period is specified, the twelve-month period specified herein would nonetheless be operative.

117. We note that grandfathering treatment of television LMAs that result in violations of the multiple ownership rules varies depending on whether they are intra-market LMAs that are attributable under the *per se* LMA attribution rule or inter-market LMAs that are attributable under the EDP rule because they are accompanied by a financial investment that exceeds the 33 percent threshold. For intra-market LMAs, the grandfathering period is as discussed in the *TV Local Ownership R&O*. Grandfathering for interests newly attributable under the EDP rule is permanent, and, accordingly, for inter-market LMAs attributable under EDP, grandfathering will last for the length of the LMA term since no renewal or transfer is permitted.

K. Ownership Report, Form 323

118. We intend to modify the Ownership Report form, Form 323, to reflect the addition of the EDP rule, as well as the other attribution changes adopted in this *R&O*. We direct the Mass Media Bureau to make the necessary modifications to the form to reflect these changes. Further, the Mass Media Bureau is delegated authority to revise the Ownership Report rule, § 73.3615, to reflect the addition of the EDP rule, as well as the other attribution changes adopted in this *R&O*. Thereafter, we will issue a public notice with the revised Ownership Report Form and Ownership Report rule to reflect and incorporate these changes.

IV. Administrative Matters

119. *Paperwork Reduction Act of 1995 Analysis.* This *R&O* contains either new or modified information collections. Therefore, the Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the information collections contained in this *R&O* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due November 16, 1999. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C1804, 445 12th Street S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, N.W., Washington, DC 20503, or via the Internet to fain__al.eop.gov.

120. For additional information concerning the information collections contained in this *R&O* contact Judy Boley at 202–418–0217.

121. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, the Commission's Final Regulatory Flexibility Analysis included in this *R&O*.

Final Regulatory Flexibility Analysis

122. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPR* in MM Docket Nos. 94–150, 92–51, & 87–154, 11 FCC Rcd 19895 (1996) (''*Attribution Further Notice*''). The Commission sought written public comment on the proposals in the *Attribution Further Notice*, including comment on the IRFA. The comments received are discussed. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Need For, and Objectives of the Report and Order

123. The attribution rules seek to identify those interests in or relationships to licensees or media entities that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. Our goals in this proceeding are to maximize the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees, ease application processing, and provide for the reporting of all the information we need in order to make our public interest finding with respect to broadcast applications. While our focus is on the issues of influence or control, at the same time, we must tailor the attribution rules to permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry. The rules adopted meet these goals.

II. Summary of Significant Issues Raised by the Public in Response to the IRFA

124. One comment, filed specifically in response to the IRFA contained in the *Second Further Notice of Proposed Rulemaking* in MM Dockets 91–221 and 87–8, 61 FR 66978, December 19, 1996, addressed an issue relevant to all the Commission's proceedings dealing with the mass media multiple ownership rules.

125. Other commenters did not specifically respond to the IRFA, but did address small business issues.

III. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

1. Definition of a ''Small Business''

126. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. Similarly, entities engaged in radio broadcasting, SIC Code 4832—Radio Broadcasting Stations, have a maximum of $5 million in annual receipts to qualify as a small business concern. 13 CFR 121.101 *et seq.* This standard also applies in determining whether an entity is a small business for purposes of the RFA.

127. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after

opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television and radio stations, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small radio and television stations that may be impacted by the rules adopted in this *R&O*.

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

128. As discussed, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

129. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television or radio station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television or radio station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

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

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

3. Estimates Based on Census Data

132. The rules amended by this *R&O* will apply to full service television and radio licensees and permittees, potential licensees and permittees, cable services or systems, MDS and ITFS, and newspapers.

Radio and Television Stations

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

134. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,594 operating television broadcasting stations in the nation as of June 1999. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

135. The rule changes will also affect radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 1999, official Commission records indicate that 12,560 radio stations are currently operating.

136. Thus, the rule changes will affect approximately 1,594 television stations, approximately 1,227 of which are considered small businesses. Additionally, the rule changes will affect 12,560 radio stations, approximately 12,057 of which are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies.

Cable Services or Systems

137. SBA has developed a definition of small entities for cable and other pay television services (SIC 4841), which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services, and 1,423 had less than $11 million in revenue.

138. The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules proposed in this *R&O*. The Commission's rules also define a ''small system,'' for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

139. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' Section 76.1403(b) of the Commissions' rules defines a small cable system operator as one which serves in the aggregate fewer than 617,000 subscribers, and whose total annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

MDS and ITFS

140. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS), multipoint distribution systems (MDS), satellite master antenna systems (SMATV), and subscription television services.

141. The Commission refined the definition of ''small entity'' for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of the Commission's *R&O* concerning MDS auctions that has been approved by the SBA.

142. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is an especially competitive service, with approximately 1573 previously authorized and proposed MDS facilities as of 1996. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MDS providers as defined by the SBA and the Commission's auction rules.

Newspapers

143. Some of the rule changes may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the rules. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers. The SBA defines a newspaper that has 500 or fewer employees as a small business. Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition. However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a ''small business concern'' under the Small Business Act. We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the rule changes would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the rule changes in this *R&O*.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

144. The *R&O* imposes compliance with the amended attribution rules set forth in the *R&O*. Compliance will require licensees to file with the Commission amended Ownership Report Forms (FCC Form 323) to reflect interests attributable under the amended attribution rules. Compliance will also require licensees that have entered into Joint Sales Agreements (JSAs) to place such agreements in their public inspection files with confidential or proprietary information redacted where appropriate. In addition, pursuant to the new rules, certain television time brokerage agreements will be required to be filed with the Commission where they are intra-market agreements or are inter-market agreements that come under the equity/debt plus attribution standard adopted by the *R&O*. Finally, compliance may require some licensees whose ownership interests under the amended attribution rules violate the multiple ownership rules, to divest the prohibited interests within the time periods specified in the *R&O*.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

145. The *R&O* retains the current 5 percent active voting stock attribution benchmark. We believe that our original decision to set a 5 percent benchmark to capture influential interests remains valid and will not unduly restrict capital availability. Further, we note that our concerns over capital availability that originally prompted the proposal to increase the active voting stock benchmark have eased somewhat, particularly in light of the increasing strength shown by the communications sector and financial markets in general over the past several years. This increase in capital spending occurred within the context of our current attribution rules, and therefore provides us with strong evidence of the continued availability of capital in the

communications industry. And, to the extent that there are still concerns about not impeding capital flow to broadcasting, we believe that they will be adequately addressed since the increases the passive investor benchmark.

146. The *R&O* increases the voting stock benchmark from 10 to 20 percent for passive investors. We believe that increasing the passive investor benchmark to 20 percent will give broadcasters increased access to investment capital, while preserving the Commission's ability to effectively enforce its ownership rules. This decision takes into account the special nature of the passive investor category, in terms of the legal and fiduciary requirements that constrain passive investors' involvement in the management and operational affairs of the firms in which they invest. In addition, passive investors have become an increasingly important source of investment capital to the corporate sector. Finally, the Commission recognizes that the pace of technological change within broadcasting, particularly the transition to DTV, might require access to such new sources of investment capital.

147. Further, we note that the record strongly supports an increase in the passive investor benchmark and supports our belief that such an increase will help assure that the attribution changes adopted herein will reinforce the trends in broadcast investment and growth in passive investment levels noted above, particularly at a time when television broadcasters are undertaking the conversion to digital television. We believe that increasing the passive investor benchmark is a relatively safe way to increase capital flows into broadcasting, without compromising the ability of our attribution rules to capture influential interests. The *R&O* retains the current definition of ''passive investors,'' which is limited to bank trust departments, insurance companies and mutual funds.

148. The *R&O* does not eliminate the single majority shareholder or nonvoting stock exemptions, but, rather, to address the concerns that we raised in the *Attribution Notice* and *Attribution Further Notice,* we will adopt our equity and/or debt plus (''EDP'') attribution proposal, as a new rule that would function in addition to the other attribution rules. Under this new EDP rule, where the investor is either (1) a ''major program supplier,'' as defined herein to include all programming entities (including networks and time brokers) that supply over 15 percent of a station's total weekly broadcast programming hours, or (2) a same-market media entity subject to the broadcast multiple ownership rules (including broadcasters, cable operators, and newspapers), its interest in a licensee will be attributed if that interest exceeds 33 percent of the total asset value (equity plus debt) of the licensee. The *R&O* refers to total asset value as ''total assets.'' In the case of a major program supplier, the investment will be attributable only if the investment is in a licensee to which the requisite triggering amount of programming is provided.

149. The targeted approach embodied in the EDP rule reflects our current judgment as to the appropriate balance between our goal of maximizing the precision of the attribution rules by attributing all interests that are of concern, and only those interests, and our equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions. The bright-line EDP test will provide more regulatory certainty than a case-by-case approach that requires review of contract language. Thus, the EDP rule will permit planning of financial transactions, would also ease application processing, and would minimize regulatory costs.

150. In the *Attribution Further Notice,* we invited comment on the impact of a 33 percent EDP threshold on small business entities, particularly on whether there would be a disproportionate impact on small or minority entities. While some parties have argued that adoption of an equity/debt plus proposal would deter capital flow to broadcasting generally and, in particular, for digital television, others have argued strongly that this is not the case. We have no basis to conclude or reason to believe that the EDP rule would unduly deter investment. The equity/debt plus proposal does not preclude investment by any entity; rather, it caps nonattributable investment levels for entities that have the potential to influence licensees. The limit does not apply to all entities that might invest or help fund the transition to digital television or otherwise invest in licensees. Additionally, to help assure that our actions today do not unduly impede capital flow to broadcasting, we have raised the passive investor benchmark. As discussed above, we believe that because of the nature of passive investors, we may raise that benchmark consistent with our goal of maximizing the precision of the attribution rules. In addition, we will consider individual rule waivers in particular cases where compelling evidence is presented that the conversion to digital television would otherwise be unduly impeded or that a waiver would significantly expedite DTV implementation in that particular case.

151. While some commenters strongly argued that applying the EDP rule to program suppliers would curb investment in broadcast stations and possibly hurt weaker UHF stations and might deter investment that would facilitate the conversion to DTV, they do not provide empirical evidence to support this argument. We also note that the rule does not preclude investment, but merely provides that investments over a certain level will be deemed presumptively attributable. Networks are therefore free to invest in their affiliates, subject of course to the applicable multiple ownership rules. Moreover, the EDP rule does not attribute investments, even those by networks in their affiliates, which fall below the 33 percent threshold. Thus, a major program supplier may hold 32 percent of the total assets of a station to which it supplies programming in excess of the 15 percent standard. This would comply with all EDP limits and the interests would not be attributable. In addition, the EDP rule does not affect investments by entities other than major program suppliers or same-market media entities. Under these circumstances, we believe that the EDP rule will not curb investment, deter new entry, or curb the conversion to DTV.

152. The *R&O* also adopts a new rule to attribute television LMAs, or time brokerage of another television station in the same market, for more than fifteen percent of the brokered station's broadcast hours per week and to count such LMAs toward the brokering licensee's local ownership limits. We believe that the rationale for attributing LMAs set forth in the *Radio Ownership Order,—i.e.,* to prevent the use of time brokerage agreements to circumvent our ownership limits—applies equally to same-market television LMAs.

153. The record in this proceeding supports our decisions to attribute television LMAs and to count attributed radio LMAs toward all applicable radio ownership limits. We agree with most commenters, representing a variety of interests ranging from ABC to the public interest group MAP, that television LMAs, like radio LMAs, represent a degree of influence and control that warrants ownership attribution and that, to decide otherwise, based on the precedent of the attribution of radio LMAs, would be inconsistent.

154. We will require stations involved in television time brokerage agreements (inter-market as well as intra-market agreements) to keep copies of those agreements in their local public inspection files, with confidential or proprietary information redacted where appropriate, and to file, with the Commission, within 30 days of execution, a copy of any local time brokerage agreements that would result in the arrangement being counted in determining the brokering licensee's compliance with the multiple ownership rules. We note that these provisions impose an affirmative obligation on licensees to determine, in the first instance, whether a particular LMA is attributable (either under the *per se* rule or the EDP rule), and to file the agreement with the Commission if it is.

155. This also eliminates the cross interest policy. Our goals in initiating this proceeding include maximizing the clarity of the attribution rules, providing reasonable certainty and predictability to parties to allow transactions to be planned, and easing application processing. Commenters have argued that the vagueness and uncertainty imposed by the *ad hoc* application of the cross-interest policy have chilled investment. As CalPERS argues, this uncertainty impedes the ability of broadcasters to enter into transactions because the policy can be invoked to prohibit a seemingly permissible transaction.

156. We note that the EDP rule directly covers concerns treated under the non-attributable interests prong of the cross-interest policy. In adopting that rule, we will reach those situations involving formerly nonattributable interests that raised the most concern with respect to issues of competition and diversity, some of which were previously addressed in administering the cross-interest policy. We recognize, however, that the EDP rule does not cover all the areas encompassed by the cross-interest policy. It would not cover key employees, for example. We nonetheless believe, as commenters have pointed out, that internal conflict of interest policies and common law fiduciary duty and contract remedies provide adequate substitutes for our administration of the policy with respect to key employees. In addition, many key employees are also officers and directors and thus already covered by the attribution rules. In any event, we believe that the very small risk of harm to competition by a key employee in an instance not covered by any of these other regulations and remedies is greatly outweighed by the benefits of minimizing our case-by-case approach to transactions and applying bright line tests, such as the EDP test and our other attribution rules.

157. With respect to joint ventures, we believe that application of a cross-interest policy is unwarranted. The ownership and attribution rules define the level of combined ownership that is permissible in the local market. We recognize that the cross-interest policy as applied to joint ventures is mostly, if not completely, subsumed by the application of the current multiple ownership rules. To the extent that it is not so subsumed, we believe that it should be eliminated. We agree that the burdens of case-by-case review are not justified for transactions that already comply with the multiple ownership rules. Furthermore, as other commenters noted, the application of the antitrust laws should prevent or remedy any abuses of joint venture relationships not already subject to the multiple ownership rules.

158. The *R&O* declines to attribute JSAs. Based on the record in this proceeding, we do not believe that agreements which meet our definition of JSAs convey a degree of influence or control over station programming or core operations such that they should be fully attributed. We define JSAs as contracts that affect primarily the sales of advertising time, as distinguished from LMAs, which may affect programming, personnel, physical facilities, and core operations of stations. We note that in our *DTV 5R&O,* we stated that we would look with favor upon joint business arrangements among broadcasters that would help them make the most productive and efficient uses of their channels to help facilitate the transition to digital technology. JSAs may be one such joint business arrangement. Although both DOJ and the Commission are concerned about the competitive consequences of business agreements such as JSAs, our concerns are not necessarily identical. DOJ's comments explicitly recognize that in addition to competition issues, the Commission is also concerned with issues of diversity and reducing unnecessary administrative burdens.

159. Accordingly, upon considering and weighing competition, diversity, and administrative concerns, we decline to impose new rules attributing JSAs as long as they are truly JSAs that deal with the sale of advertising time and do not contain terms that affect programming or other core operations of the stations such that they are, in fact, substantively equivalent to LMAs. We will retain our current policies concerning JSAs. Furthermore, in the absence of specific evidence of widespread abuse of JSAs by broadcasters, we also decline to adopt the general disclosure and reporting requirement for radio JSAs recommended by DOJ in its comments. We will, however, require broadcasters who have entered into JSAs to place such agreements in their public inspection files, pursuant to 47 CFR 73.3526 and 73.3613(e) of the Commission's Rules, with confidential or proprietary information redacted where appropriate. This requirement will facilitate monitoring of JSAs by the public, competitors and regulatory agencies. We do, however, retain discretion, in all events, to review cases involving radio or television JSAs on a case-by-case basis in the public interest, where it appears that such JSAs do pose competition, diversity, or administrative concerns. Finally, we emphasize that all JSAs are of course still subject to antitrust laws and independent antitrust review by the Department of Justice.

160. We see no reason to revise our previous decision to treat limited partnership interests as distinct from corporate voting equity interests, and therefore elect not to adopt equity benchmarks for limited partnership interests. As we stated in the *Attribution Further Reconsideration,* ''[t]he partners in a limited partnership, through contractual arrangements, largely have the power themselves to determine the rights of the limited partners.'' Therefore, the insulation criteria adopted by the Commission serve to identify those situations within which it is safe to assume that a limited partner cannot be ''materially involved'' in the media management and operations of the partnership. As we also stated therein, the powers of a limited liability holder to exert influence or control are not proportional to their equity investment in the limited partnership, since the extent of these powers can be modified by the contractual arrangements of the limited partnership. In the *Attribution Notice,* we stated our disinclination to change our approach of applying insulation criteria in favor of an equity benchmark, and we have not been provided sufficient evidence to revise that view and to indicate that these original reasons for declining to adopt an equity benchmark for limited partnerships are no longer valid.

161. We also see no need at this time to add to, relax, or otherwise revise our limited partnership insulation criteria. Some commenters suggested that the insulation criteria should be modified to eliminate conflicts with state law, or that RULPA or other relevant standards should be used in their place. However,

in our *Attribution Reconsideration*, the Commission decided for several reasons to abandon the use of RULPA, combined with a no material involvement standard, as a standard for judging whether limited partners were exempt from attribution. First, we judged the joint use of these two disparate standards for determining limited partner exemptions from attribution to be unnecessarily complicated. Second, we noted that there was a lack of uniform interpretation of the RULPA provisions, and that the scope of permissible limited partner activities was not statutorily set by RULPA, but rather was determined by the limited partnership agreement itself. Third, we determined that reliance on the RULPA provisions did not provide sufficient assurance that limited partners would not significantly influence or control partnership affairs. We are convinced that these conclusions remain valid today, and therefore we see no reason to revise our insulation criterion in the direction of a RULPA standard. We also feel that similar considerations apply to state laws that regulate limited partnership activities, since these statutes may vary significantly from state to state, and may fail to provide sufficient assurance that the limited partner will lack the ability to significantly influence or control the partnership's media activities.

162. We will not create exceptions for widely-held limited partnerships, such as Business Development Companies, from the current insulation criteria applicable to limited partnerships or otherwise revise those insulation criteria. The essential character of these new business forms for determining attributable interests is the contractual flexibility they allow in setting up and managing the association. Therefore, we believe that the insulation criteria are needed for these business forms to insure the ''lack of material involvement'' on the part of investors. This would imply that in some limited number of cases, interests may not be insulated because of state laws that require investor rights that conflict with the insulation criterion. However, commenters have not provided sufficient evidence concerning the number or importance of such instances that would compel the Commission to create specialized exemptions for these specialized business forms. Since these entities are allowed greater contractual flexibility under state law than are limited partnerships, we believe that greater caution is warranted in dealing with these novel forms. Further, we have not been presented with evidence to demonstrate that the current insulation criteria are no longer valid or effective in achieving their goals.

163. We adopt our tentative conclusion in the *Attribution Notice* to treat LLCs and other new business forms including RLLPs under the same attribution rules that currently apply to limited partnerships. The insulation criteria that currently apply to limited partnerships would apply without modification to these new business forms. Therefore, LLC or RLLP owners would be treated as attributable unless the owner can certify their lack of direct or indirect involvement in the management and operations of the media-related activities of the LLC or RLLP. We will not distinguish among LLCs based on whether they adopt a more centralized or decentralized form.

164. We believe that this decision is justified for the reasons discussed in the *Attribution Notice*, which were also supported in the record and fully discussed in the *R&O*. In addition, we have been applying the interim processing policy, and it has worked well and effectively, and we see no reason to change it.

165. We will not routinely require the filing of organizational documents for LLCs. However, to remain consistent with our treatment of limited partnerships and insulation criteria, we will require the same ''non-involvement'' statement for LLC members who are attempting to insulate themselves. We will also require LLC members who submit the foregoing statement to submit a statement that the relevant state enabling statute authorizing LLCs permits an LLC member to insulate itself/himself in the manner required by our criteria, since our experience shows that state laws vary considerably with respect to the obligations and responsibilities of LLC members. This policy will help us to avoid any potential confidentiality concerns, referred to in the *Attribution Notice*, that may arise if we require filing of organizational documents.

166. After reviewing all of the comments submitted on our proposals to relax the cable/MDS attribution rules, we are persuaded that the broadcast attribution criteria, as modified by this proceeding, should be applied in determining cognizable interests in MDS licensees and cable systems. We continue to see no reason, and none has been suggested by any of the commenters, to warrant different attribution criteria for broadcasting and MDS. As we have discussed here and in the *Attribution Further Notice*, investment opportunities critical to the development of MDS as a competitive service to cable have been severely limited by the current attribution standard. Therefore, continued application of the current cable/MDS attribution standard would frustrate our goals of strengthening wireless cable, providing meaningful competition to cable operators and benefitting the public interest by offering consumers more choice in their selection of video programming providers. In view of these considerations and the record before us, we conclude that the public interest would be better served if the modified broadcast attribution criteria were employed for the purpose of determining attribution in the context of cable/MDS cross-ownership. Such modification of our existing attribution standard will increase investment possibilities and further diversity, while preventing cable from warehousing its potential competition. We are persuaded, moreover, that relaxation of our current attribution standard will have genuine meaning for institutional investors who, though not involved in the day-to-day activities of either cable or MDS companies, have been precluded from making investments in MDS due to pre-existing or desired investments in cable.

167. The *R&O* also adopts a 33 percent equity or debt provision as an appropriate addition to the modified cable/MDS attribution standard. Furthermore, by adopting the 33 percent ''equity or debt plus'' provision for cable/MDS attribution, we believe that we are acting in a manner consistent with the statutory directive, as well as furthering congressional intent to promote competition and prevent warehousing by cable operators. Accordingly, we will adopt the broadcast attribution criteria, as modified in this proceeding, for determining cognizable interests in MDS licensees and cable systems. The modified attribution criteria will also apply to the cable/MDS and cable/ITFS cross-leasing rules.

168. The *R&O* adopts grandfathering and transition measures for interests that become newly attributable pursuant to the new rules adopted. Grandfathering and transition measures for TV LMAs are discussed in the *TV Local Ownership Order*.

169. We intend to modify the Ownership Report form, Form 323, to reflect the addition of the EDP rule, as well as the other attribution changes adopted in this *R&O*.

VI. Report to Congress

170. The Commission shall send a copy of the *R&O* in MM Docket Nos. 94–150, 92–51, and 87–154, including this

FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of the *R&O* in MM Docket Nos. 94–150, 92–51, and 87–154, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* in MM Docket Nos. 94–150, 92–51, and 87–154 and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

171. Accordingly, *it is ordered* that, pursuant to sections 4(i) & (j), 303(r), 307, 308 and 309 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), (j) 303(r), 307, 308, and 309, part 73 of the Commission's rules is amended as set forth.

172. *It is further ordered* that, pursuant to the Contract with America Advancement Act of 1996.

173. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *R&O* in MM Docket Nos. 94–150, 92–51, and 87–154, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

174. *It is further ordered* that the new or modified paperwork requirements contained in this R&O.

175. *It is further ordered* that this proceeding is hereby terminated.

List of Subjects

47 CFR Parts 21, 73 and 74

Television broadcasting; radio broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 21, 73, 74 and 76 as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.912 is amended by revising the section heading and Note 1 to § 21.912 to read as follows:

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

* * * * *

Note 1: In applying the provisions of this section, ownership and other interests in MDS licensees or cable television systems will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate MDS licensee or cable television system will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate MDS licensee or cable television system in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate MDS licensee or cable television system, or if any of the officers or directors of the MDS licensee or cable television system are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant MDS licensee or cable television system are subject to said trust.

(f) Subject to paragraph (j) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (j) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system that is a limited partnership to make the certification set forth in paragraph (g)(1) of this **Note**, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership. In order for a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (g)(2) of this **Note**, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83–46, 50 FR 27438, July 3, 1985, as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83–46, 52 FR 1630, January 15, 1987. Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the MDS or cable television businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking installation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(h) Officers and directors of an MDS licensee or cable television system are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of MDS or cable television service, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of an MDS licensee or cable television system, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the MDS licensee or cable television system subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the Licensee Qualification Report.] The officers and directors of a sister corporation of an MDS licensee or cable television system shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this **Note** plus the sum of the interests computed under paragraph (i)(2) of this **Note** is equal to or exceeds 20 percent.

(j) Notwithstanding paragraphs (b), (f), and (g) of this **Note**, the holder of an equity or debt interest or interests in an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule (''interest holder'') shall have that interest attributed if:

(1) the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (all equity plus all debt) of that MDS licensee or cable television system; and

(2) the interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this **Note** other than this paragraph (j) and which operates in any portion of the franchise area served by that cable operator's cable system.

(k) The term ''area served by a cable system'' means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(l) As used in this section ''cable operator'' shall have the same definition as in § 76.5 of this chapter.

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PART 73—BROADCAST RADIO SERVICES

3. The authority citation for Part 73 continues to read as follows:

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

4. Section 73.3526 is amended by revising paragraph (e)(14) and adding (e)(16) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(14) *Radio and television time brokerage agreements.* For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These records shall be retained as long as the contract or agreement is in force.

* * * * *

(16) *Radio and television joint sales agreements.* For commercial radio and commercial television stations, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate.

5. Section 73.3555 is amended by removing paragraphs (a)(3) and (a)(4)(iii), redesignating paragraph (a)(4) as paragraph (a)(3), by revising Notes 2(b), 2(c), 2(f), 2(g), and 2(i) and by adding Notes 2(j) and 2(k) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2:

* * * * *

(b) Subject to paragraph (j) of this Note, no minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee, cable television system or daily newspaper in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned.

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(f) Subject to paragraph (j) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (j) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company (''LLC'') or Registered Limited Liability Partnership (''RLLP'') shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system that is a limited partnership to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. In order for a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (g)(1) of this section, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 85–252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83–46, FCC 86–410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media-related businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

* * * * *

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through ''passive investors'' is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 20 percent.

(j) Notwithstanding paragraphs (b), (f), and (g) of this Note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules (''interest holder'') shall have that interest attributed if:

(1) The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and

(2)(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this Note other than this paragraph (j); or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, ''market,'' will be defined as it is defined under the specific multiple or cross-ownership rule that is being applied, except that for television stations, the term ''market,'' will be defined by reference to the definition contained in the television duopoly rule contained in paragraph (b) of this section.

(k) ''Time brokerage'' is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it.

(1) Where the principal community contours (predicted or measured 5 mV/m groundwave contour for AM stations computed in accordance with § 73.183 or § 73.186 and predicted 3.16 mV/m contour for FM stations computed in accordance with § 73.313) of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a), (c), and (d) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(2) Where two television stations are both licensed to the same market, as defined in the television duopoly rule contained in paragraph (b) of this section, and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(3) Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (b) through (d) of this section if the brokering station is a television station or with paragraphs (a), (c), and (d) if the brokering station is a radio station.

6. Section 73.3613 is amended by revising paragraphs (d) and (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) *Time brokerage agreements:* Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour overlap (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) overlap with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving television stations where licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the television duopoly rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 Note 2(j). Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the joint sale of broadcast advertising time that do not constitute time brokerage agreements pursuant to § 73.3555 Note 2(k); subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

6. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

7. Section 74.931 is amended by adding Note 1 to § 74.931(i) to read as follows:

§ 74.931 [Amended]

Note 1: In applying the provisions of paragraphs (h) and (i) of this section, an attributable ownership interest shall be defined by reference to the Notes contained in § 21.912.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

8. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

9. Section 76.501 is amended by adding Note 6 to read as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 6: In applying the provisions of paragraph (a) of this section, Notes 1 through 4 shall apply, provided however that:

(a) The attribution benchmark for passive investors in paragraph (c) of Note 2 shall be 20 percent and the benchmarks in paragraph (i)(1) and (i)(3) of Note 2 shall be 20 percent;

(b) An interest holder in a Limited Liability Company or Registered Limited Liability Partnership shall be subject to the provisions of paragraph (g) of Note 2 in determining whether its interest is attributable; and

(c) Notwithstanding paragraphs (b), (f), and (g) of Note 2, the holder of an equity or debt interest or interests in a broadcast licensee or cable television system (''interest holder'') shall have that interest attributed if:

(1) The equity (including all stockholdings, whether voting or nonvoting, common or

preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that media outlet; and

(2)(i) The interest holder also holds an interest in another broadcast licensee or cable television system which operates in the same market and is attributable without reference to this paragraph (c); or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

[FR Doc. 99–23694 Filed 9–16–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 96–222, 91–221, 87–8; FCC 99–208]

Broadcast Television National Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules regarding how to calculate a group station owners national audience reach for purposes of determining compliance with the broadcast television national ownership rule. This action is necessary to respond to changes in the underlying rule mandated by the Telecommunications Act of 1996, as well as to changes in the Commission's satellite rules and changes in the broadcast television market.

DATES: Effective November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, (202) 418–2120, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 99–208, adopted August 5, 1999; released August 6, 1999. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th St. S.W., Washington, D.C. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report and Order

1. On November 7, 1996, the Commission released a *Notice of Proposed Rule Making* (''*Notice*''), 61 FR 66987, December 19, 1996, in this proceeding, seeking comment on how to calculate a broadcast television station group owner's aggregate national audience reach for the purposes of determining compliance with the national broadcast television multiple ownership rule, which limits that reach to 35%. Based on the record before us, we conclude that the public interest would be served by counting a market only once when calculating an entity's national ownership reach, even if that entity has an attributable interest in more than one television station in that market. As specific applications of this policy, we are: (1) narrowing the application of the ''satellite exemption,'' under which we disregard satellite station ownership in measuring aggregate national ownership; (2) not incorporating same-market local marketing agreements (''LMAs'') into the calculation of the brokering station's national audience reach; and (3) replacing our use of Arbitron's Areas of Dominant Influence (''ADIs'') to define geographic television markets with the use of Nielsen's Designated Market Areas (''DMAs'').

Background

2. Pursuant to section 202(c)(1) of the Telecommunications Act of 1996 (the ''1996 Act''), the Commission amended its national broadcast television ownership rule. Before passage of the 1996 Act, the Commission generally prohibited entities from having an attributable interest in more than 12 broadcast television stations. Further, the Commission generally prohibited an entity from having an attributable interest in a station if it would result in that entity's having an attributable interest in television stations with an aggregate national audience reach exceeding 25%. However, pursuant to section 202(c)(1) of the 1996 Act, the Commission eliminated the 12-station cap and raised the 25% aggregate national audience reach limit to 35%.

3. Pursuant to § 73.3555(e)(2)(i) of the Commission's Rules, a station's audience reach is defined as consisting of the total number of television households within the television market for that station. The television market, in turn, is currently defined as the Area of Dominant Influence (ADI) used by Arbitron, a commercial audience-rating service, to analyze broadcast television station competition. For purposes of calculating this aggregate audience reach under the rules, UHF stations are attributed with only 50% of the audience within their ADI (the UHF discount), a policy that is under careful review in the biennial ownership review. In addition, satellite stations generally are not counted at all in the national audience reach calculation (the satellite exemption). Neither the 1996 Act nor our Order implementing its national television ownership provisions addressed how to measure a licensee's national audience reach, thus leaving undisturbed the process prescribed earlier in connection with the 25% limit. In light of the modified national ownership rule and the new competitive and regulatory structure of the video marketplace brought about by the 1996 Act, we initiated this proceeding to update the record on measuring national television audience reach for purposes of the new national ownership limit.

Discussion

The Satellite Exemption

4. *Background.* A television satellite is a full-power terrestrial broadcast station authorized under part 73 of the Commission's Rules to retransmit all or part of the programming of another station (most commonly the parent station). Satellite stations are operated by the same party that operates the parent station. The Commission does not authorize satellite operation unless it is demonstrated that the frequency would likely go unused otherwise. As a result, satellite stations typically operate in areas that are likely to provide television broadcasters relatively little opportunity for growth and profit when compared with larger markets. Pursuant to 47 CFR 73.3555, Note 5, the Commission's multiple ownership rules do not apply to satellite stations. The Commission exempted TV satellites from the national multiple ownership rules when it adopted the 12-station cap and the 25% audience reach limitation. The Commission believed that this would encourage the provision of television service to smaller communities. It also noted that satellite stations and stations operating primarily as satellites were already exempt from the Commission's duopoly rule because they generally did not originate programming. In 1991, we abolished the 5% ''limit'' on the amount of local programming that a satellite could originate, which we had used as a benchmark for determining whether a station was still a satellite.

Same-Market Satellites

5. *Background.* The national multiple ownership rule, as amended by the 1996 Act, is concerned with a station's potential audience rather than with its actual viewership. Also, we are not concerned with the specific number of television stations owned by a group owner, since the 1996 Act eliminated

the numerical limitations on station ownership formerly in the rule; rather, the national television ownership rule now focuses solely on national audience reach. In the *Notice of Proposed Rule Making* in this proceeding, we tentatively concluded that if a licensee acquires a satellite television station in a market within which it already operates a station, it has not extended its audience reach in that television market for purposes of the national audience reach limit; the television households in that market are already counted, given the existence of the licensee's parent station. Accordingly, we proposed to retain the exemption for satellites operating in the same market as their parents.

6. *Discussion.* We shall retain the satellite exemption for same-market satellites. We are not concerned with the specific number of television stations owned by a group owner, since the 1996 Act eliminated the numerical limitations on station ownership formerly in the rule. In addition, the national ownership rule is concerned with competition and diversity on a national scale, and dual station ownership in one market neither adds to national reach nor affects competition and diversity on a national basis. Also, even if a licensee increases the total number of its viewers by acquiring a second station in the market, the relevant measurement is of audience reach, not of actual viewership.

7. Accordingly, we are amending § 73.3555(e)(2)(ii) of our rules to clarify that we shall not double-count individual markets. In practice, this means that we are retaining the satellite exemption for those satellites that operate in the same television market as their parent stations. Counting the audience twice in such a situation would serve only to distort our calculation of how many potential viewers a group owner is able to reach nationwide.

Separate-Market Satellites

8. In the *Notice of Proposed Rule Making,* we proposed to repeal the satellite exemption for satellites operating in separate markets from their parent stations. As discussed below, we are adopting the proposal.

9. We conclude that the satellite exemption is no longer warranted for satellite stations operating in separate markets from their parent stations. Satellite stations are no longer limited as to the amount of local programming they may originate. Therefore, when a parent station operates a satellite in another market, the licensee's over-the-air audience reach is expanded into another market by the audience reach of the satellite station. Consequently, we shall treat separate-market satellites as we do other television stations, and we shall include them when calculating a group station owner's national aggregate audience reach.

10. We believe that the benefits of inclusion of these stations, including a more accurate reflection of actual audience reach, outweigh any potential costs. The 1996 Act's elimination of the restriction on the absolute number of television stations that may be commonly owned has substantially reduced the disincentive to satellite operation. Also, because a satellite generally serves a sparsely populated area that is underserved, the population of the entire market in which the satellite is located should add relatively little to a group owner's aggregate national audience reach. The record does not indicate that the operation of a satellite station would generally put licensees over or so close to the 35% national aggregate audience reach limit as to dissuade them from operating the station at all.

Local Marketing Agreements

11. *Background.* An LMA generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such agreements may enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements. In the *Notice of Proposed Rule Making,* we proposed not to count same-market LMAs towards the brokering station's national aggregate audience reach calculation.

12. *Discussion.* In our companion *Attribution* R&O, FCC 99–207, we determine that same-market LMAs are attributable to the brokering station for the purposes of administering the local ownership rules when the brokering station programs more than 15% of the brokered station's weekly broadcast hours. However, as we concluded above in the context of same-market satellite stations, the national ownership rule limits audience reach on a national scale, and dual station influence or control in one market does not add to national audience reach. That is merely a specific application of our new general rule of not double-counting markets. The record indicates no additional factors warranting a different analysis in this case. For these reasons, we find that same-market LMAs shall not be included in the brokering station's national aggregate audience reach calculation.

13. We note that when the brokering station is located in a different market than the brokered or programmed station, the issue of double-counting does not arise. As discussed in the *Attribution R&O,* under our new equity/debt plus rule, we will attribute the interest of a program supplier in a station where it: (1) provides more than 15% of the station's weekly programming; and (2) it holds more than 33% of the licensee's total assets. Such an attributable interest will count towards the 35% national reach limit since the brokered and brokering stations are in different markets.

Market Definition

14. We use the number of television households in each market in which an entity's stations are located to calculate that entity's national audience reach. The definition of the market for this purpose has remained unchanged since 1985, when the Commission first adopted a national audience cap:

> [n]ational audience reach means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. . . . Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

15. However, because Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI, they are static and have become less reliable over time as market conditions change. Accordingly, as we proposed in the *Notice,* we shall now use Designated Market Areas (DMAs) as compiled by A.C. Nielsen Media Research—another commercial ratings service—where we previously relied on ADIs. We use DMAs to define markets in the context of cable must-carry and retransmission consent. Nielsen uses the term DMA to define a unique geographic area based on the TV viewing habits of its residents. In designating DMAs, Nielsen Media Research collects viewing data from diaries placed in television households four times a year. Nielsen assigns counties to DMAs annually on the basis of television audience viewership as

recorded in those diaries. Counties are assigned to a DMA if the majority or, in the absence of a majority, the preponderance, of viewing in the county is recorded for the programming of the television stations located in that DMA.

16. In some instances the use of DMAs instead of ADIs might lead to small variations in the audience reach calculation of some stations, because in some instances Arbitron and Nielsen define markets somewhat differently. However, these variations would have only a minor effect on the calculation of licensees' national ownership reach.

Conclusion

17. This document reforms how we calculate audience reach for purposes of the national television ownership rule in response to changes in the broadcast television marketplace and changes in the underlying rule itself required by the 1996 Act. The changes that we make are relatively minor. We see no need to adopt any transition policy to implement these relatively minor changes, which should not result in any existing group television station owner's exceeding the 35% national aggregate audience reach cap set forth in the national television ownership rule.

Administrative Matters

Final Paperwork Reduction Act of 1995 Analysis

18. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These rules will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Analysis

19. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 et seq., the Commission's Final Regulatory Flexibility Analysis in this *R&O* is below.

Ordering Clauses

20. Accordingly, *it is ordered* that, pursuant to §§ 4(i) and 303(r) of the Commission's rules, 47 U.S.C.154(i) and 303(r), 47 CFR part 73 is amended as set forth as below.

21. *It is further ordered* that, pursuant to the Contract with America Advancement Act of 1996, the amendment set forth set forth below *shall be effective* November 16, 1999.

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

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

Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making*, 61 FR 66987, December 19, 1996, in this proceeding. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, 5 U.S.C. 604.

I. Need For and Objectives of the National TV Ownership R&O

25. The *R&O* modifies the method by which the Commission determines a group television station owner's national aggregate audience reach for compliance with the national television ownership rule. The modifications are necessary to reflect changes in the underlying national ownership limit adopted pursuant to the Telecommunications Act of 1996.

II. Summary of Significant Issues Raised by the Public in Response to the Initial Analysis

26. No comments were received specifically in response to the IRFA contained in the *Notice of Proposed Rule Making*. However, some comments addressed issues relating to small businesses and businesses controlled by minorities and women, some of which may be small entities. Several commenters made general assertions that broadcast station ownership has consolidated since passage of the 1996 Act, and that the Commission should take businesses controlled by minorities and women into account in all of our pending broadcast ownership proceedings. CBS argued that the ownership rules were not designed to foster minority ownership in the broadcast industry, and that this goal should be pursued by other means.

27. Turning to the specific rules that are the subject of this rule making proceeding, BET argued that if both a parent and a same-market satellite are allocated a second 6 MHz for DTV purposes, then the satellite station audience should be counted towards the 35% national ownership cap because the licensee of such a station will have increased its broadcasting power at least fourfold. It claims that incumbent broadcasters' market power will increase sufficiently to create insurmountable entry barriers against competing stations. However, the *R&O* concludes that such concerns involve competition and diversity on a local, not a national, scale and are not the focus of the national ownership rule.

28. BET asserted that retention of the satellite exemption for separate-market satellites would ''squeeze out'' entrepreneurs and new entrants by enabling large group owners to transfer costs among stations and eliminate competition from small operators. However, the *R&O* adopts a rule whereby such separate-market satellite stations shall be attributed for the purposes of the national ownership rule.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

29. The amended rules will affect entities that have attributable interests in numerous full power commercial television stations reaching a substantial portion of the national viewing public. These multiple station owners are not likely to be small businesses.

1. Definition of a ''Small Business''

30. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

31. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is

not suitable for purposes of determining the impact of the new rules on small television and radio stations, and auxiliary services, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this *R&O*.

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

32. As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

33. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television or radio station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television or radio station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

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

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

3. Estimates Based on Census Data

36. The rules amended by this *R&O* will apply to full power commercial broadcast television licensees, permittees, and potential licensees.

37. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,594 operating television broadcasting stations in the nation as of June, 1999. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

38. Thus, the rule changes will affect approximately 1,594 television stations, approximately 77% (or 1,227) of which are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

39. We recognize that the rule changes may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial television stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial television stations in the United States.

IV. Projected Compliance Requirements of the Rule

40. No new recording, recordkeeping or other compliance requirements are adopted.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

41. The modified rules would apply to full power broadcast television licensees, permittees, and potential licensees. No entity that is near the 35% national aggregate audience reach limit can be classified as a ''small entity.'' As a result, the counting methodology adopted in this *R&O* will not have a direct effect on any small entity.

42. We have decided not to double-count LMAs or commonly owned stations in the same market for the purpose of calculating a licensee's national audience reach. We also eliminate the satellite exemption for licensees that operate a satellite station in a separate market from the parent station. In addition, we have decided to use A.C. Nielsen's Designated Market Areas (DMAs) rather than Arbitron's Areas of Dominant Influence to calculate national audience reach. A.C. Nielsen, like Arbitron, is another commercial ratings service. They are analytically similar. In each of these cases, we have determined that to do otherwise would not be consistent with the objective of the national television ownership rule as modified by the 1996 Act: to promote competition and diversity on a national level by limiting an entity's national audience reach. We expect that such additional competition and diversity will benefit commercial television entities, including small entities.

Report to Congress

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preample, the Federal Communication Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. § 73.3555 is amended by revising paragraphs (e)(2)(i), (e)(2)(ii) and the first sentence of Note 5 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(e) * * *

(2) * * *

(i) *National audience reach* means the total number of television households in the Nielsen Designated Market Area (DMA) markets in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.

(ii) No market shall be counted more than once in making this calculation.

* * * * *

Note 5: Paragraphs (a) through (d) of this section will not be applied to cases involving television stations that are ''satellite'' operations. * * *

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[FR Doc. 99–23695 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–221, 87–8; FCC 99–209]

Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's local TV multiple ownership rule and its radio/TV cross-ownership rule. This document also adopts a grandfathering policy for certain TV local marketing agreements and certain conditional waivers of the radio/TV cross-ownership rule. The purpose of this action is to balance the Commission's competition and diversity goals with the efficiencies and public interest benefits that can be associated with common ownership of same-market broadcast stations.

DATES: Effective November 16, 1999, except for the requirements that: (1) radio/TV cross-ownership conditional waiver grantees file with the Commission showings sufficient to convert their compliance or non-compliance with the Commission's revised radio/TV cross-ownership rule; and (2) holders of local marketing agreements (LMAs) that have become attributable under the Commission's revised rules file a copy of their LMA with the Commission. These requirements contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective dates for those sections.

FOR FURTHER INFORMATION CONTACT: Eric Bash, (202) 418–2120, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 99–209, adopted August 5, 1999, and released August 6, 1999. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report and Order

I. Introduction

1. In this *R&O*, we revise our local TV multiple ownership rule and the radio/TV cross-ownership rule to respond to ongoing changes in the broadcast television industry. The new rules we adopt today reflect a recognition of the growth in the number and variety of media outlets in local markets, as well as the significant efficiencies and public service benefits that can be obtained from joint ownership. At the same time, our decision reflects our continuing goals of ensuring diversity and localism and guarding against undue concentration of economic power. The rules we adopt today and in our related national television ownership and broadcast attribution proceedings, being adopted simultaneously with this *R&O*, balance these competing concerns and are intended to facilitate further development of competition in the video marketplace and to strengthen the potential of broadcasters to serve the public interest.

II. Background

2. The local TV multiple ownership rule currently prohibits an entity from having cognizable interests in two television stations whose Grade B signal contours overlap. The Commission rarely grants permanent waivers of the duopoly rule, reserving such relief for cases with unique or highly unusual circumstances. Under current policy, the time brokerage by one television station of another television station, even one in the same market, pursuant to a time brokerage or ''local marketing'' agreement (''LMA''), is not attributable, and accordingly these relationships are not subject to our multiple ownership rules. The radio-television cross-ownership rule generally forbids joint ownership of a radio and a television station in the same local market. We have presumed it is in the public interest to waive this rule in the top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remain, or if the merger involves a failed station. Such waivers are available to permit ownership of up to one television, one AM, and one FM station per market. We have evaluated other waiver requests case by case, based on an analysis of five criteria (the ''five factors'' test).

3. This proceeding began in 1991 with the issuance of a *Notice of Inquiry* (''*NOI*''), 56 FR 40847, August 16, 1991, soliciting comment on whether existing television ownership rules and related policies should be revised in light of ongoing changes in the competitive market conditions facing broadcast licensees. After reviewing the comments received in response to the *NOI*, the Commission issued a *Notice of Proposed Rule Making* (''*NPRM*''), 57 FR 28163, June 24, 1992, containing a number of alternative proposals involving the national and local television ownership rules, and seeking comment on the extent and impact of LMAs in the broadcast television industry.

4. In 1994, in a *Further Notice of Proposed Rule Making* (''*FNPRM*''), 60 FR 06490, February 2, 1995, in this docket, the Commission set forth a competition and diversity analysis for examining our ownership rules. Based

on this analysis, the Commission proposed changes to the national television ownership rule, the local television ownership rule (otherwise known as the ''duopoly'' rule), and the radio-television cross-ownership rule. In addition, the Commission solicited comment on whether broadcast television local marketing agreements (''LMAs'') should be considered attributable for purposes of applying the ownership rules in a manner similar to radio LMAs.

5. On February 8, 1996, the Telecommunications Act of 1996 became law. Section 202 of the Act directed the Commission to make a number of significant revisions to its broadcast ownership rules. Section 202 also requires us to review aspects of our local ownership rules that were the subject of the *FNPRM*. Specifically, section 202 requires the Commission to: (1) conduct a rulemaking proceeding concerning the retention, modification, or elimination of the duopoly rule; and (2) to extend the top 25 market/30 independent voices one-to-a-market waiver policy to the top 50 markets, ''consistent with the public interest, convenience, and necessity.'' In addition, both the Act and its legislative history contain language regarding the appropriate treatment of existing television LMAs under our ownership rules. Finally, section 202 directs the Commission to conduct a biennial review of all of its broadcast ownership rules and to repeal or modify any regulation it determines is no longer in the public interest.

6. In view of the 1996 Act's directives regarding broadcast multiple ownership, the Commission in 1996 adopted a *Second Further Notice of Proposed Rule Making* (''*2FNPRM*''), 61 FR 66978, December 19, 1996, in this proceeding inviting comment on several issues in light of the 1996 Act. The Commission solicited further comment in light of its review of comments previously filed in this proceeding, and invited comments on a number of specific issues pertaining to the duopoly rule, the radio-television cross-ownership rule, and the treatment of existing television LMAs in the event they are deemed attributable under any rules adopted in our attribution proceeding.

7. Our ownership rules, particularly the local ownership rules at issue in this proceeding, serve a vital public interest by promoting competition and diversity in the mass media. These are bedrock goals—reaffirmed by Congress and the Supreme Court on numerous occasions—in carrying out our statutory mandate of ensuring that broadcast licensees serve the ''public interest, convenience, and necessity.'' With these goals in mind, and after carefully reviewing the record in this proceeding, we believe we should relax to some extent our local television ownership restrictions where the public interest benefits resulting from same-market common ownership outweigh the threat to diversity and localism. The record reflects that there has been an increase in the number and types of media outlets available to local communities.

8. Specifically, we have decided to modify our local television ownership rule as follows. First, we are relaxing our television duopoly rule by narrowing the geographic scope of the rule from the current Grade B contour approach to a ''DMA'' test. Thus, common ownership of two television stations will be permitted without regard to contour overlap if the stations are in separate Nielsen Designated Market Areas (''DMAs''). In addition, we will allow common ownership of two stations in the same DMA if their Grade B contours do not overlap (a continuation of our current rule), or if eight independently owned, full-power and operational television stations (commercial and noncommercial) will remain post-merger, and one of the stations is not among the top four-ranked stations in the market, based on audience share, as measured by Nielsen or by any comparable professional and accepted rating service, at the time the application is filed. We will also adopt three waiver criteria as follows. First, we will presume a waiver of the rule is in the public interest to permit common ownership of two television stations in the same market where one station is a ''failed station,'' as supported by a showing that the station either has been off the air for at least four months immediately preceding the application for waiver, or is currently involved in involuntary bankruptcy or insolvency proceedings. Second, we will presume a waiver of the rule is in the public interest where one of the merging stations is a ''failing'' station, as supported by a showing that the station has had a low audience share and has been financially struggling during the previous several years, and that the merger will result in demonstrable public interest benefits. Third, we will presume a waiver is in the public interest where applicants can show that the combination will result in the construction and operation of an authorized but as yet ''unbuilt'' station, supported by a showing that the permittee has made reasonable efforts to construct. For all of these waivers, we will also require a showing that the in-market applicant is the only buyer ready, willing, and able to operate the station, and that sale to an out-of-market applicant would result in an artificially depressed price.

9. With respect to the radio-television cross-ownership rule, we are adopting a new, three-part rule that permits some degree of same-market radio and television joint ownership. We will permit a party to own a television station (or two television stations if permitted under our modified TV duopoly rule or television LMA grandfathering policy) and any of the following radio station combinations in the same market:

- Up to six radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 20 independent voices would remain post-merger;
- Up to four radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 10 independent voices would remain post-merger; and
- One radio station (AM or FM) notwithstanding the number of independent voices in the market.

In addition, in those markets where our revised rule will allow parties to own eight outlets in the form of two TV stations and six radio stations, we will permit them to own one TV station and seven radio stations instead.

10. For purposes of the new radio-television cross-ownership rule, we will count as voices all independently owned, full-power, operational, commercial and noncommercial television stations licensed to a community in the DMA in which the TV station in question is located, and all independently owned and operational commercial and noncommercial radio stations licensed to, or with a reportable share in, the radio metro market where the TV station involved is located. In addition, we will count independently owned daily newspapers that are published in the DMA and have a circulation exceeding 5 percent in the DMA. Finally, we will count, as a single voice, wired cable service, provided cable service is generally available in the DMA. As with our revised duopoly rule, we will permit waiver of our new radio/TV cross-ownership rule where one station is a failed station. We will not, however, adopt a presumptive waiver based on a showing that one station is a failing station or that the combination will result in the construction and operation of an authorized but as yet unbuilt station.

We will consider further relaxation of this rule and waiver policies as part of future biennial reviews.

11. We have granted a number of radio-television cross-ownership rule waivers conditioned on the outcome of this proceeding. The majority of these waivers involve radio-television combinations that will now be permissible under the revised rule we adopt today. For those that are not covered by the revised rule, as well as for those for which an application was filed on or before July 29, 1999 (the date of the ''sunshine'' notice for this *R&O*) if such application is ultimately granted by the Commission, we will allow these combinations to continue, conditioned on the outcome of the Commission's 2004 biennial review. Parties who wish the Commission to conduct this review prior to 2004 may apply for such relief, using criteria set forth below, beginning one year after the date this *R&O* is published in the **Federal Register**. Any transfer of a grandfathered combination after the adoption date of this *R&O* (whether during the initial grandfathering period of after a permanent grandfathering decision has been made) must meet the radio/TV cross-ownership rule.

12. Finally, with respect to existing television LMAs, we have decided in our related attribution proceeding to attribute time brokerage of another television station for purposes of our multiple ownership rules where the brokered and brokering station are in the same market and the amount of time brokered is more than 15 percent of the brokered station's weekly broadcast hours. Once attributed, however, the majority of currently existing same-market television LMAs will not violate our new TV duopoly rule going forward, because they either will be in separate DMAs, or will constitute an otherwise permissible arrangement under the new rule or related waiver policies. We will permit those LMAs that do not comply with our new duopoly rule and waiver policies to continue in full force and effect, if entered into before November 5, 1996, the grandfathering cut-off date proposed in the *2FNPRM*. LMAs entered into on that date or thereafter must come into compliance with our new duopoly rule and/or waiver policies or terminate within two years of the adoption date of this *R&O*. Television LMAs entered into before November 5, 1996 will be grandfathered, conditioned on the outcome of the Commission's 2004 biennial review, at which time the Commission will reconsider their status. Parties who wish the Commission to review the status of their LMAs prior to the 2004 biennial review may apply for such relief, using the criteria specified below, beginning one year after the date this *R&O* is published in the **Federal Register**. During the initial grandfathering period, the parties to the LMA may renew and/or transfer the term of LMA that remains in the five-year period.

III. The Local Television Ownership Rule

A. Geographic Scope of the Rule

13. *Background.* Our local television ownership rule presently prohibits common ownership of two television stations whose Grade B signal contours overlap. In the FNPRM, we sought comment on whether the geographic scope of the rule should be changed to Grade A signal contours or to Designated Market Areas (''DMAs''). Based on the comments we received, we tentatively concluded in the *2FNPRM* that the geographic scope of the local television ownership rule should be based on a combination of DMAs and Grade A contours. We sought comment on that tentative conclusion in the *2FNPRM*, as well as comment about possible exceptions to and waivers of the rule to permit television duopolies in certain circumstances where they would serve the public interest.

14. *Discussion.* We have decided to narrow the geographic scope of the television duopoly rule so as to permit common ownership of two television stations provided they are in different DMAs without regard to contour overlap. We will also continue to allow common ownership of stations within the same DMA as long as their Grade B contours do not overlap. We have chosen this DMA test based on our belief that, compared to the current Grade B signal contour standard, DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products. Changing the geographic scope of the duopoly rule will consequently more accurately define a local television market and permit mergers of stations in different markets without harming local competition and diversity. Moreover, we believe that the mergers that will be allowed under our new rule can lead to improved television service and viewer choice.

15. There are several benefits to defining the geographic dimensions of the local television market by reference to DMAs. Most importantly, unlike a rule relying on predicted field strength contours, DMAs reflect actual television viewing patterns and are widely used by the broadcasting and advertising industries. DMAs reflect the fact that a station's audience reach, and hence its ''local market,'' is not necessarily coextensive with the area of its broadcast signal coverage. For example, a station's over-the-air reach can be extended by carriage on cable systems and other multichannel delivery systems, as well as through such means as satellite and translator stations. In designating DMAs and compiling DMA-based ratings of television programs, Nielsen Media Research, a TV audience measuring service, collects viewing data from diaries placed in television households four times a year. Nielsen assigns counties to DMAs annually on the basis of television audience viewership as recorded in those diaries. Counties are assigned to a DMA if the majority or, in the absence of a majority, the preponderance, of viewing in the county is recorded for the programming of the television stations located in that DMA. Nielsen uses its DMA viewing data to compile DMA-based audience ratings for television programs. These data are used by television stations in deciding which programming should be aired, and by advertisers and stations in negotiating advertising rates.

16. We recognize that we proposed in the *2FNPRM* to supplement the DMA test with a Grade A contour standard to prohibit common ownership of stations with Grade A signal contour overlap even when they are in separate DMAs. However, after considering the comments in response to this proposal, we believe a ''DMA-only'' test is more appropriate. Although a station may attract some viewers who live outside its designated DMA, the preponderance of its audience will reside within its DMA. Local advertisers use DMA-based ratings to make their purchases of advertising time on local television stations, television networks generally have only one affiliate in each DMA, and stations target their programming to viewers inside the DMA because these are the viewers that advertisers pay to reach. The record also indicates that there are a fair number of stations that lie in different DMAs and serve wholly different markets even though they may have slightly overlapping Grade A contours. In addition, a DMA-only standard is more straightforward and easy to apply in terms of administering the rule. We consequently will not adopt a Grade A component in our new definition of the geographic scope of the duopoly rule.

17. This new definition will generally be less restrictive than the current Grade B signal contour test. There may be

some situations, however, in which this is not the case, particularly in some geographically large DMAs west of the Mississippi River. In these situations, the DMA may be large enough that two stations situated in the DMA do not have overlapping Grade B contours. Common ownership of the two stations would be permitted under the existing rule but not under a strict application of the new DMA standard.

18. In the *2FNPRM,* we noted our belief that there are currently few stations within the same DMA that could be commonly owned under the existing Grade B signal contour standard that are not already jointly owned. We sought comment on whether we should, if we adopted a DMA/Grade A rule, grandfather existing joint ownership combinations that conform to our current Grade B test. We also sought comment on an alternative approach of adopting a two-tiered rule under which we would permit common ownership both under the new test using DMAs and in situations where there is no Grade B overlap.

19. It is our intention in this proceeding to relax the duopoly rule consistent with our competition and diversity objectives. It is not our intention to restrict combinations that would be permitted under our present Grade B signal contour test. To avoid this result, we will continue to permit common ownership of television stations in the same DMA where there is no Grade B overlap between those stations. Although such stations may compete to some extent for viewers and advertisers, we believe any harm to diversity and competition from permitting such combinations will be minimal and we wish to avoid instances in which application of our new rule would be more restrictive than our current duopoly rule. In addition, this approach avoids disrupting current ownership arrangements involving stations in the same DMA with no Grade B overlap.

B. Permitting Television Duopolies in the Same Local Market

20. *Background.* In both the *FNPRM* and the *2FNPRM,* we invited comment on whether, in certain situations, we should allow entities to acquire more than one television station in the same geographic market. We sought comment both on exceptions to our ''one-station'' local ownership rule, including the exception currently provided in our rules for television satellite stations, as well as on a number of possible waiver criteria.

21. *Costs and Benefits of Broadcast TV Station Duopolies.* We believe that the demonstrated benefits of same-market television station combinations support allowing the formation of such combinations in certain cases where competition and diversity will not be unduly diminished. The record in this proceeding shows that there are significant efficiencies inherent in joint ownership and operation of television stations in the same market, including efficiencies related to the co-location and sharing of studio and office facilities, the sharing of administrative and technical staff, and efficiencies in advertising and news gathering. These efficiencies can contribute to programming and other benefits such as increased news and public affairs programming and improved entertainment programming, and, in some cases, can ensure the continued survival of a struggling station. In markets with many separate television licensees, the public interest benefits of common ownership can outweigh any cost to diversity and competition of permitting combinations.

22. While we conclude that the public interest would be served by permitting television duopolies in certain circumstances, we are not eliminating or relaxing the rule to the extent a number of commenters advocate given the important diversity and competition issues at stake. Television broadcasting plays a very special role in our society. It is the primary source of news and information, as well as video entertainment to most Americans, and we must continue to ensure that the broadcast television industry has a diverse and competitive ownership structure. Moreover, as discussed above, because the communications industry is undergoing rapid change and increasing consolidation, significant yet measured relaxation of the television duopoly rule is appropriate to allow us to monitor the results of these sweeping changes.

23. In light of these considerations, we have decided to adopt a modification to our duopoly rule, and three waiver tests, that are targeted to promote the public interest without appreciable harm to our competition and diversity goals. In particular, as described below, we will modify the TV duopoly rule to allow common ownership of two stations in the same DMA, if eight independently owned and operating commercial and noncommercial television stations will remain in the DMA post-merger, and at least one of the stations is not among the top four-ranked stations in the market, based on audience share, as measured by Nielsen or by any comparable professional and accepted rating service, at the time the application is filed. In addition, we will presume that a waiver of the rule is in the public interest if the applicant satisfies a ''failed'' or ''failing'' station test, or involves the construction of an ''unbuilt'' station.

1. Modification of the Rule: Eight Voice/Top Four-Ranked Station Standard

24. *Background.* In the *2FNPRM,* the Commission sought comment on whether we should entertain joint ownership of stations that (1) have very small audience or advertising market shares and (2) are located in a very large market where (3) a specified minimum number of independently owned voices remain post-merger. We stated that the purpose of such a standard would be to enhance competition and diversity in the local market by allowing small stations to share costs and thereby compete more effectively. We further stated that such joint ownership could potentially serve the public interest if such stations were to use their economic savings to produce new and better-quality programming or related enhancements. Such advantages may be particularly helpful to small and independent UHF stations. We invited comment on the circumstances under which joint ownership should be permitted, and on the size of the market share we might adopt, the number and kinds of voices we should count in any minimum voice criterion, and whether we should include a market rank test.

25. *Discussion.* After considering the record, and our competition and diversity goals, we have decided to modify the duopoly rule to permit any two television stations in the same market to merge if:

- At least eight independently owned and operating full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located, and
- The two merging stations are not both among the top four-ranked stations in the market, as measured by audience share.

If any entity acquires a duopoly under this standard, it will not later be required to divest if the number of operating television voices within the market falls below eight or if the two merged stations subsequently are both ranked among the top four stations in the market; however, a duopoly may not automatically be transferred to a new owner if the market does not satisfy the eight voice/top four-ranked standard. In such a case, the transaction must either meet one of the waiver standards enunciated below, or involve a sale to separate parties. We will not include a market rank component in our new rule

because we believe such a test is unnecessary given the station rank and minimum number of stations criteria we are adopting. We adopt this ''eight voice/top four-ranked station'' standard as a modification of the rule as opposed to the adoption of a waiver criterion in order to fashion a bright-line test, bring certainty to the permissibility of these transactions, and expedite their consummation, given that we do not believe as a general matter that they unduly compromise our competition and diversity goals. We delegate to the Mass Media Bureau the authority to grant any application that satisfies the eight station/top four ranked station standard, and presents no new or novel issues.

26. This standard provides measured relaxation of the television duopoly rule, particularly in the larger television markets. It will allow weaker television stations in the market to combine, either with each other or with a larger station, thereby preserving and strengthening these stations and improving their ability to compete. These station combinations will allow licensees to take advantage of efficiencies and cost savings that can benefit the public, such as in allowing the stations to provide more local programming. At the same time, the station rank and voice criteria are designed to protect both our core competition and diversity concerns.

27. The ''top four ranked station'' component of this standard is designed to ensure that the largest stations in the market do not combine and create potential competition concerns. These stations generally have a large share of the audience and advertising market in their area, and requiring them to operate independently will promote competition. In addition, our analysis has indicated that the top four-ranked stations in each market generally have a local newscast, whereas lower-ranked stations often do not have significant local news programming, given the costs involved. Permitting mergers among these two categories of stations, but not among the top four-ranked stations, will consequently pose less concern over diversity of viewpoints in local news presentation, which is at the heart of our diversity goal.

28. The ''eight independent voice'' component of the rule provides a clear benchmark for ensuring a minimum amount of diversity in a market. Taking into account current marketplace conditions, the eight voice standard we adopt today strikes what we believe to be an appropriate balance between permitting stations to take advantage of the efficiencies of television duopolies while at the same time ensuring a robust level of diversity. Thus, under our new rule, at least eight independently owned and operating full-power commercial and noncommercial broadcast television stations must remain in the DMA post-merger. We will not include in our count of independently owned television stations those that are brokered pursuant to an attributable same-market LMA because a substantial portion of the programming of brokered stations is furnished by the brokering station. This gives the brokering station a significant degree of influence over the brokered station's operations and programming such that it should not be counted as an independent source of viewpoint diversity; indeed, it is for this reason we have decided to attribute such TV LMAs in our attribution proceeding.

29. We believe that an ''eight station'' test that focuses only on the number of full-power broadcast television outlets in the market is necessary for two reasons. First, we believe that broadcast television, more so than any other media, continues to have a special, pervasive impact in our society given its role as the preeminent source of news and entertainment for most Americans. As the Supreme Court recently stated, ''[b]roadcast television is an important source of information to many Americans. Though it is but one of many means for communication, by tradition and use for decades now it has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression.''

30. Second, we are unable to reach a definitive conclusion at this time as to the extent to which other media serve as readily available substitutes for broadcast television. In the *FNPRM* and *2FNPRM,* we sought information about the extent to which other media serve as substitutes for television in the advertising and delivered video programming markets, and for purposes of diversity. For example, in the *FNPRM,* we stated that for the purpose of competition analysis, we would tentatively consider local advertising markets to include broadcast and cable television advertising, radio advertising, and newspaper advertising. For delivered video programming, we tentatively included commercial and noncommercial television stations and cable television. While we expressed our inclination to tentatively include MMDS, DBS, and television delivered by telephone companies, we expressed concern about the extent to which the latter three alternatives were actually available to most Americans and sought quantitative, behavioral studies estimating the extent to which broadcast television actually faced substitutes from any and all sources in the marketplace. Although we have received voluminous materials debating such substitutability, we have not received the quantitative, empirical studies that we sought in order to assess this issue in a complete and accurate fashion. Nor does there seem to be a consensus on the extent to which various media are substitutes for purposes of diversity. Thus, while we agree with those commenters who argued that different types of media, such as radio, cable television, VCRs, MMDS, and newspapers, may to some extent be substitutes for broadcast television, in the absence of the factual data we requested we have decided to exercise due caution by employing a minimum station count that includes only broadcast television stations.

31. Our ''eight voice/top four ranked station'' standard provides significant relaxation of the television duopoly rule while at the same time ensures that markets remain sufficiently diverse and competitive at the local level so that common ownership of two television stations in these markets does not threaten our core diversity concerns. We recognize that stations in markets with less than nine independent voices will not be able to take advantage of this standard. But we believe this is appropriate given that these markets start with fewer broadcast television outlets, and thus a lower potential for providing robust diversity to viewers in such markets. While we recognize, as several commenters argued, that smaller markets also benefit from the efficiency gains and cost savings associated with joint station ownership, it is in these small markets that consolidation of broadcast television ownership could most undermine our competition and diversity goals. Moreover, the three waiver standards we adopt today—the failed and failing station criteria, and the unbuilt station test—will, consistent with our competition and diversity goals, provide relief in a more tailored fashion for stations in smaller markets that are unable to compete effectively.

2. Waiver Criteria

a. Failed Stations

32. *Background.* We invited comment in the *2FNPRM* on whether, if an applicant can show that it is the only viable suitor for a failed station, the Commission should grant the application regardless of contour overlap or DMA designations. We noted that for purposes of our one-to-a-market rule waiver standard, a ''failed'' station

is a station that has not been operated for a substantial period of time, e.g., four months, or that is involved in bankruptcy proceedings. We asked whether this standard should be used in evaluating a request to waive the television duopoly rule.

33. *Discussion.* We are persuaded that the public interest would be served by adopting a failed station waiver standard for our revised television duopoly rule. A station that is off the air or in involuntary bankruptcy or insolvency proceedings can contribute little, if anything, to any type of diversity in a local market. Nor does such a station constitute a viable alternative in the local advertising market. As we concluded in adopting our current failed station waiver standard for the one-to-a-market rule, the benefits to the public of joint ownership under these circumstances outweigh the costs to diversity. In fact, dark or bankrupt stations actually disserve our goal of efficient use of the spectrum because those stations are holding valuable frequencies without providing service to the public. Permitting another local station to acquire a failed station will result in additional programming, perhaps an increase in diversity in the market, and more advertising time available for sale in larger quantities.

34. We have decided to define a ''failed station'' for purposes of our television duopoly rule as one that has been dark for at least four months or is involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings. In addition, we will require that the waiver applicant demonstrate that the ''in-market'' buyer is the only reasonably available entity willing and able to operate the failed station, and that selling the station to an out-of-market buyer would result in an artificially depressed price for the station.

35. This standard is stricter than the failed station standard used in the context of our current one-to-a-market rule. First, we are limiting our TV duopoly failed station waiver to stations in court-supervised involuntary bankruptcy and insolvency proceedings. By excluding voluntary bankruptcy and insolvency proceedings, we hope to avoid the issue of whether an owner has filed for bankruptcy or insolvency simply in order to qualify for a waiver. We will extend our failed station waiver here to apply to both insolvency and bankruptcy proceedings, as the former are a state-regulated mechanism similar to bankruptcy. Second, we are requiring applicants to make a serious attempt to sell the troubled station to an entity that would not require a waiver of our revised duopoly rule. Waiver applicants must demonstrate that the ''in-market'' buyer is the only reasonably available entity willing and able to operate the station, and that selling to another buyer would lead to an artificially depressed price for the station. One way to make this showing will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received. We believe that a strict failed station waiver standard is warranted in view of the other steps we are taking today to relax the television duopoly rule. While there are now other limited criteria pursuant to which same-market television stations may combine, we hope to limit the special relief awarded to failed stations to those situations where this relief is clearly needed. As with our current one-to-a-market failed station waiver standard, we will be predisposed to grant applications that meet the waiver standard, but will entertain petitions to deny seeking to rebut the waiver request.

36. To qualify for a waiver under the failed station standard, we will require the waiver applicant to provide relevant documentation, *i.e.*, proof of the length of time that the station has been off the air, or proof that the station is involved in bankruptcy or insolvency proceedings. We will also require, in the case of a silent station, a statement that the failed station went dark due to financial distress, not because of other, non-financial reasons. This documentation will ensure that the waiver standard is applied only to stations facing financial difficulties. We will not require the waiver applicant to demonstrate that the market will contain post-merger a minimum number of voices. As noted above, we have concluded that the benefits to the public of preventing a station from going dark or bringing a dark station back on the air cannot harm and may help diversity and competition, regardless of the number of broadcast and other voices in the local market. Any combination formed as a result of a failed station waiver may be transferred together only if the combination meets our new duopoly rule or one of our three waiver standards at the time of transfer.

b. ''Failing'' Stations

37. *Background.* The *2FNPRM* also invited comment on whether we should adopt a failing station waiver criteria, and, if so, the appropriate definition of a failing station.

38. *Discussion.* We will adopt a ''failing'' station waiver standard. It will permit two stations to merge where at least one of the stations has been struggling for an extended period of time both in terms of its audience share and in its financial performance. Permitting such stations to merge should pose minimal harm to our diversity and competition goals, since their financial situation typically hampers their ability to be a viable ''voice'' in the market. These stations rarely have the resources to provide local news programming, and often struggle to provide significant local programming at all. Allowing a ''failing'' station to join with a stronger station in the market can greatly improve its ability to improve its facilities and programming operations, thus benefitting the public interest. This waiver standard may be of particular assistance to struggling stations in smaller markets that are not covered by the eight voice/top four ranked station test.

39. We agree with the commenters that argued that it makes little sense to force a station to go dark or declare bankruptcy before considering whether it should receive a waiver of the duopoly rule to permit it to merge with another station in the market. Of course, determining when a station is ''failed'' is a more straightforward task, since there are clear, objective criteria for identifying such a status, i.e., a station is dark or in bankruptcy. A ''failing'' station standard, by contrast, will involve more of an individualized, case-by-case assessment to determine when a station is struggling to such an extent that permitting it to merge with another station will not undermine our competition and diversity goals and may in fact promote them.

40. With these considerations in mind, and based on the record before us, we establish the following criteria for granting waivers under a ''failing'' station waiver standard. We will presume such a waiver is in the public interest if the applicant satisfies *each* of these criteria:

(1) One of the merging stations has had low all-day audience share (*i.e.*, 4% or lower).

(2) The financial condition of one of the merging stations is poor. A waiver is more likely to be granted where one or both of the stations has had a negative cash flow for the previous three years. The applicant will need to submit data, such as detailed income statements and balance sheets, to demonstrate this. Commission staff will assess the reasonableness of the applicant's showing by comparing data

regarding the station's expenses to industry averages.

(3) The merger will produce public interest benefits. A waiver will be granted where the applicant demonstrates that the tangible and verifiable public interest benefits of the merger outweigh any harm to competition and diversity. At the end of the stations' license terms, the owner of the merged stations must certify to the Commission that the public interest benefits of the merger are being fulfilled, including a specific, factual showing of the program-related benefits that have accrued to the public. Cost savings or other efficiencies, standing alone, will not constitute a sufficient showing.

(4) The in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; selling the station to an out-of-market buyer would result in an artificially depressed price. As with the showing required of failed station waiver applicants, one way to satisfy this fourth criterion will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received.

Any combination formed as a result of a failing station waiver may be transferred together only if the combination meets our new duopoly rule or one of our three waiver standards at the time of transfer.

c. Unbuilt Stations

41. *Background.* In the *2FNPRM,* we invited comment on whether we should entertain requests to waive the local television ownership rule to permit a local broadcast television licensee to apply for a television channel allotment that has remained vacant or unused for an extended period of time. We stated there that it may not be in the public interest to allow allotted broadcast channels to lie fallow—particularly in markets where it might be possible to allow additional NTSC stations to come on the air without adversely affecting the DTV allotment table and the transition to digital television. Similarly, we asked whether, if it is possible to create new channel allotments in a market without interfering with nearby channels and without adversely affecting the DTV allotment table, the Commission should entertain applications by an incumbent television licensee to establish a new channel in its market.

42. *Discussion.* Since we adopted the *2FNPRM,* the rationale for a vacant allotment waiver policy has become less relevant. In the *DTV Sixth Report and Order,* 62 FR 26684, May 14, 1997, we eliminated vacant NTSC allotments in order to better achieve our DTV objectives of full accommodation, service replication and spectrum recovery. We further stated that new television stations should be operated as DTV stations, and that there would be no need to maintain vacant NTSC allotments that were not the subject of a pending application or rule making proceeding. Thus, with the licensing of new NTSC service coming to an end, we believe that the proposed rationale for a vacant allotment waiver policy has been largely vitiated because there would be few, if any, situations where that basis for a waiver would apply. As the development of DTV continues, it is possible that new channels may again become available for licensing. If so, we may reconsider this issue at that time or in the context of our biennial review of our multiple ownership rules.

43. Although we no longer find it appropriate to adopt a vacant allotment waiver standard, we have concluded that the public interest would be served at this time by adopting a duopoly waiver standard for ''unbuilt'' television stations. The unbuilt station waiver we adopt is premised on essentially the same logic as supports our failed and failing station waiver standards. A station that has gone unbuilt, like a built station that has gone dark, cannot contribute to diversity or competition. On the other hand, activation of a construction permit and construction of a station, even by the owner of another television station in the market if that is the only viable means to obtain service, increases program choice for viewers, may increase outlet diversity, and increases the amount of advertising time available for sale in the market. We believe that the benefits to the public of construction and operation of such a station, even if through joint ownership, rather than allowing the channel to remain unused, outweigh any costs to diversity and competition.

44. To qualify for a duopoly waiver under this standard, we will require that applicants satisfy each of these criteria:

(1) The combination will result in the construction of an authorized but as yet unbuilt station.

(2) The permittee has made reasonable efforts to construct, and has been unable to do so.

(3) The in-market buyer is the only reasonably available candidate willing and able to acquire the construction permit and build the station and selling the construction permit to an out-of-market buyer would result in an artificially depressed price. As with the showing required of failed and failing station waiver applicants, one way to satisfy this criterion will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received.

Any combination formed as a result of an unbuilt station waiver may be transferred together only if the combination meets our new duopoly rule or one of our three waiver standards at the time of transfer.

d. UHF Combinations

45. *Background.* In the *2FNPRM,* we invited comment on the extent to which the Commission should distinguish between UHF and VHF stations in applying our TV duopoly rule.

46. *Discussion.* After careful consideration of the comments, we have decided not to create a UHF exception or UHF waiver policy for several reasons. First, a UHF exemption or waiver policy is an overbroad means of promoting the public interest. As we noted in our *R&O* eliminating the prime time access rule for television networks, many UHF stations are financially successful, are network affiliates, and are part of large station groups. Thus, a blanket exception or waiver for all UHF stations would unfairly benefit more powerful affiliates as well as struggling stations. Second, cable carriage compensates for many of the technical disadvantages faced by UHF stations vis-a-vis their VHF counterparts. Cable penetration is near 70 percent nationwide. Moreover, the Supreme Court's decision upholding the statutory must-carry rights of television stations removes a major source of uncertainty among UHF stations about their ability to obtain cable carriage. Third, deployment of DTV should eliminate, over the next several years, many of the remaining disadvantages of UHF stations. The Commission's power limitations for DTV licensees will likely reduce the technical discrepancy of UHF and VHF stations, and the multichannel capabilities of digital transmission should enhance the ability of UHF stations to compete in the video marketplace. Fourth, licensees may continue to take advantage of the satellite station exception to the TV duopoly rule, which is designed to assist financially struggling stations that cannot operate as stand-alone full-service stations. Finally, we believe that the financial problems faced by particular UHF stations can more appropriately be addressed, at least to some extent, by the other duopoly waiver criteria we are adopting today.

As discussed above, these criteria are targeted to assist stations facing financial hardships. We therefore will not create a waiver policy or exception to the TV duopoly rule based on whether a station is in the UHF or VHF band.

3. Satellite Stations

47. *Background.* Generally, television satellite stations retransmit all or a substantial part of the programming of a commonly-owned parent station. Satellite stations are generally exempt from our broadcast ownership restrictions. In the *2NPRM,* we noted that the Commission first authorized TV satellite operations in small or sparsely populated areas with insufficient economic bases to support full-service operations. Later we authorized satellite stations in smaller markets already served by full-service operations but not reached by major networks. More recently, we have authorized satellite stations in larger markets where the applicant has demonstrated that the proposed satellite could not operate as a stand-alone full-service station. We stated in the *2FNPRM* that we saw no reason to alter our policy of exempting satellite stations from our local ownership rules, but invited comment on this conclusion. All the commenters that addressed this issue supported continuing the exception of satellite stations from the duopoly rule.

48. *Discussion.* We believe that continued exception of satellite stations from the duopoly rule is appropriate. As we stated in the *2FNPRM,* our satellite station policy rests in part on the questionable financial viability of the satellite as a stand-alone facility. As such, our policy has furthered the underlying goals of our ownership restrictions by adding additional stations to local television markets where these stations otherwise would not have been established. In addition, the other criteria we use to evaluate satellite operations, including service to underserved areas, ensure that satellite operations are consistent with our goals of promoting diversity and competition.

IV. Radio-Television Cross-Ownership Rule

49. *Background.* The radio-television cross-ownership rule, or the ''one-to-a-market'' rule, forbids joint ownership of a radio and a television station serving substantial areas in common. In 1989, the Commission amended the rule to permit, on the basis of a presumptive waiver, radio-television mergers involving one television and one AM and one FM station, in the top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remain in the relevant market, or if the merger involves a failed station. Our current policy also permits waivers on a case-by-case basis if the merger satisfies a group of five separate criteria.

50. In the *FNPRM,* we proposed to eliminate the cross-ownership restriction in its entirety or replace it with an approach under which cross-ownership would be permitted where a minimum number of post-acquisition, independently owned broadcast voices remained in the relevant market. We tentatively concluded there were two alternative approaches toward modifying the rule. If radio and television stations do not compete in the same local advertising, program delivery, or diversity markets, we proposed to eliminate the rule entirely and rely on our radio and television local ownership rules to ensure competition and diversity at the local level. Under the local radio ownership rules in effect at that time, this would have permitted entities to own one AM, one FM, and one television station in even the smallest markets, and up to 2 AM, 2 FM, and one television station in larger markets. In contrast, if we concluded that radio and television did compete in some or all of the local markets, we proposed to modify the one-to-a-market rule to permit radio-television combinations in markets where there are a sufficient number of remaining independent voices to ensure sufficient diversity and competition.

51. After adoption of the *FNPRM,* Congress passed the 1996 Act, which affects the radio-television cross-ownership rule in at least two ways. First, section 202(d) of the Act directs the Commission to extend the radio-television cross-ownership presumptive waiver policy to the top 50, rather than top 25, television markets ''consistent with the public interest, convenience and necessity.'' Second, section 202(b)(1) of the Act liberalized the local radio ownership rules.

52. In our *2FNPRM,* based on the statutory changes to the local radio ownership rules, we requested further comment on our radio-television cross-ownership rule proposals. First, we sought further comment on whether the rule should be eliminated based on a finding that radio and television stations do not compete in the same market. Second, even if we consider television and radio stations to be competitors, we asked if the radio-television cross-ownership rule could be eliminated because the respective radio and television ownership rules alone can be relied upon to ensure sufficient diversity and competition in the local market. We also sought to update the record on a number of specific options for modifying, but not eliminating, the rule. In this regard, and consistent with section 202(d) of the 1996 Act, we proposed, at a minimum, to extend the top 25 market/30 voice waiver policy to the top 50 markets. However, we also invited comment on a number of options to change the rule beyond what was contemplated by section 202(d) of the 1996 Act. For example, we asked whether the presumptive waiver policy should be extended further to any television market where the minimum number of independent voices would remain after the merger. We also invited comment on whether the presumptive waiver policy should be extended to entities that seek to own more than one FM and/or AM radio station, and whether the Commission should reduce the number of required independently owned voices that must remain after a merger. Finally, we asked whether our ''five factors'' test should be changed or refined to be more effective in protecting competition and diversity.

A. Modification of the Rule

53. *Discussion.* We have determined that the public interest would be best served at this time by relaxing the radio-television cross-ownership rule to permit same-market joint ownership of radio and television facilities up to a level that permits broadcasters and the public to realize the benefits of common ownership while not undermining our competition and diversity concerns. Our new rule consists of three parts. First, we will permit a party to own up to two television stations (provided this is permitted under our modified TV duopoly rule or TV LMA grandfathering policy) and up to six radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 20 independently owned media voices remain in the market after the combination is effected. In those markets where our revised rule will allow parties to own a total of eight outlets in the form of two TV stations and six radio stations, we will also permit them instead to own eight outlets in the form of one TV station and seven radio stations. Second, we will permit common ownership of up to two television stations and up to four radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 10 independently owned media voices remain after the combination is effected. And, third, we will permit common ownership of up to two television stations and one radio

station notwithstanding the number of independent voices in the market. In determining which stations are subject to the new rule, we will use the same contour overlap standards used in our present rule. We delegate to the Mass Media Bureau the authority to grant any application that satisfies the new radio/TV cross-ownership rule, and presents no new or novel issues. If a voice test is required to acquire a given combination (*i.e.*, any combination that includes more than one radio/TV combination), that combination will not later be required to be undone if the number of independent voices in the market later falls below the applicable voice test. However, a radio/TV combination may not be transferred to a new owner if the market does not satisfy the applicable voice standard at the time of sale.

54. As described below, we will eliminate our five factor case-by-case waiver standard. Waivers of our new three-part rule will be granted only in situations involving a failed station and in extraordinary circumstances in which the proponent of the waiver will face a high hurdle. We will define a failed station for purposes of our new radio/TV cross-ownership rule in the same manner as that term is defined for purposes of the failed station waiver we adopt today in connection with our television duopoly rule. Any combination formed as a result of a failed station waiver may be transferred together only if the combination meets our new radio/TV cross-ownership rule or our failed station waiver standard at the time of transfer.

55. *Rationale for Modified Rule.* We relax our radio/TV cross-ownership rule to balance our traditional diversity and competition concerns with our desire to permit broadcasters and the public to realize the benefits of radio/TV common ownership. We believe that the revised rule reflects the changes in the local broadcast media marketplace. The relaxed rule recognizes the growth in the number and types of media outlets, the clustering of cable systems in major population centers, the efficiencies inherent in joint ownership and operation of both television and radio stations in the same market, as well as the public service benefits that can be obtained from joint operation. At the same time, the voice test components of the revised rule also ensure that the local market remains sufficiently diverse and competitive.

56. The new three-part rule also ensures the application of a clear, reasoned standard. One of our primary goals in this proceeding is to provide concrete guidance to applicants and the public about the permissibility of proposed transactions. This minimizes the burdens involved in complying with and enforcing our rules. It also promotes greater consistency in our decision-making. Since development of the Commission's waiver policy in 1989, the Commission has granted a significant number of waivers in order to provide broadcasters relief from the one-to-a-market rule, which prohibited any common ownership of television and radio stations in the same market. Indeed, some commenters argue that this waiver process has come to govern regulation of same-market radio-television cross-ownership, rather than the rule itself. Today, we redirect our approach by amending the rule to provide a greater degree of common ownership of radio and television stations while at the same time limiting waivers of this new rule to only extraordinary circumstances. In addition, the new rule will ease administrative burdens and will provide predictability to broadcasters in structuring their business transactions.

57. A number of commenters argued that we should eliminate our radio-television cross-ownership rule entirely. We do not believe that course is appropriate at this time. We stated in the *FNPRM* that elimination of the rule might be warranted if we concluded that radio and television stations do not compete in the same local advertising, program delivery, or diversity markets. Although radio and television stations may or may not compete in different advertising markets, we believe a radio-television cross-ownership rule continues to be necessary to promote a diversity of viewpoints in the broadcast media. The public continues to rely on both radio and television for news and information, suggesting the two media both contribute to the ''marketplace of ideas'' and compete in the same diversity market. As these two media do serve as substitutes at least to some degree for diversity purposes, we will retain a relaxed one-to-market rule to ensure that viewpoint diversity is adequately protected.

58. Although we decline to eliminate our radio-television cross-ownership rule, the demonstrated benefits of same-market broadcast combinations support relaxing the rule and allowing such combinations in circumstances where we find that diversity and competition remain adequately protected. The record in this proceeding demonstrates that there are significant efficiencies inherent in joint ownership and operation of broadcast stations in the same market, even when the stations are in separate services (*i.e.*, radio-TV combinations). Among other benefits, these efficiencies often lead to improved programming and can help stations in financial difficulty remain on the air. The revised radio/TV cross-ownership rule we adopt today will establish clear guidelines that will permit common ownership of radio and television stations in markets where diversity and competition are preserved.

59. Turning to the specifics of the first two prongs of the new rule, we will use a ''voice count'' approach rather than also applying a market rank restriction as with our current top 25 market, 30 voice presumptive waiver policy. In particular, the first prong of our new rule, which permits a party to own up to two television stations (provided this is permitted under our modified TV duopoly rule or TV LMA grandfathering policy) and up to six radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market with at least twenty independently owned media voices, focuses on the number of independent voices remaining in the market post-merger, rather than market rank (*e.g.*, the top 100 markets). A rule based on the number of independent voices more accurately reflects the actual level of diversity and competition in the market. As a number of commenters in this proceeding noted, a market-size restriction is unnecessary for purposes of competition and diversity as long as there are a minimum number of independent sources of news and information available to listeners, and a minimum number of alternative outlets available to advertisers. In addition, unlike a rule based on market rank, our revised rule will account for changes in the number of voices in a market resulting from consolidation, the addition of new voices, or the loss of any outlets. Mergers will be permitted only when the voice count is satisfied, thereby ensuring the preservation of a minimum level of diversity and competition in the market.

60. The second prong of our new rule permits a party to own up to two television stations (provided this is permitted under our modified TV duopoly rule or TV LMA grandfathering policy) and up to four radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market with at least ten independently owned media voices. This standard also focuses on the number of independent voices remaining in the market post-merger rather than market rank, and extends the benefits of common ownership to smaller markets. In this regard, our

revised rule permits broadcasters and the public in these markets to realize the same benefits of common ownership we have concluded are worthwhile for the largest markets.

61. The third prong of our new rule will allow common ownership of up to two television stations (provided that is permissible under our rules or TV LMA grandfathering policy) and one radio station notwithstanding the number of independent voices in the market. Based on the record before us, we find that the service benefits and efficiencies achieved from the joint ownership and operation of a television/radio combination in local markets further the public interest and outweigh the cost to diversity in these instances.

62. *Applying the Voice Count Tests.* We will apply the voice test under both prongs of our new radio/TV cross-ownership rule that include such a test as follows:

(1) We will count all independently owned and operating full-power commercial and noncommercial broadcast television stations licensed to a community in the DMA in which the community of license of the television station in question is located.

(2) We will also count all independently owned and operating commercial and noncommercial broadcast radio stations licensed to a community within the radio metro market in which the community of license of the television station in question is located. In addition, we will count broadcast radio stations outside the radio metro market that Arbitron or another nationally-recognized audience rating service lists as having a reportable share in the metro market. In areas in which there is no radio metro market, the party seeking the waiver may count the radio stations present in an area that would be the functional equivalent of a radio market.

(3) We will count all independently owned daily newspapers that are published in the DMA at issue and that have a circulation exceeding 5% of the households in the DMA.

(4) We will count cable systems provided cable service is generally available to television households in the DMA. For DMAs in which cable service is generally available, cable will count as a single voice for purposes of our voice analysis, regardless of the number of cable systems within the DMA, their ownership, and any overlap in service area.

63. In counting broadcast television and radio stations as ''voices'' we are being consistent with the voice count analysis used in our current ''top 25 market/30 voice'' presumptive waiver standard. That standard, however, counts radio stations licensed to the relevant *television* metropolitan market. Under our new rule, we will instead use the *radio* metropolitan market, and will include both radio stations licensed within the radio metro market and stations with a reportable share in that market. We believe it is important to count radio stations with a reportable share in the relevant market because those stations clearly serve as a source of information and entertainment programming for the relevant market. We have chosen to use the radio metro market rather than the television metro market for counting the number of independent radio voices because the former more accurately reflect the competitive and core signal availability realities for radio service in the market. All independently owned radio stations in the radio market can be presumed to be available to residents of that market because of signal reach. Radio stations outside the radio metro market may also be presumed to be available to all residents of the radio market if Arbitron, or another nationally recognized audience rating service, lists them as having a reportable audience share in the radio metro. Reportable audience share information is not generally available for television metro markets. Thus, use of radio markets will ease the burden on applicants seeking approval of assignment and transfer applications, and on the Commission staff reviewing such applications.

64. We will also include in our voice count daily newspapers and cable systems because we believe that such media are an important source of news and information on issues of local concern and compete with radio and television, at least to some extent, as advertising outlets. Although we have not previously explicitly counted cable and newspapers as voices under our current top 25 market/30 voice presumptive waiver standard, we have counted these outlets in applying the case-by-case, five factor waiver standard. While we will count these media outlets in applying our amended rule, we will restrict the number of newspapers we will include and limit the weight we will ascribe to cable. Specifically, we will include all independently owned daily newspapers that are published in the DMA that have a circulation exceeding 5 percent of the households in the DMA. Our intent in this regard is to include those newspapers that are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable percentage of the population. Although we recognize that other publications also provide a source of diversity and competition, many of these are only targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market. We will also include wired cable television in the DMA as one voice, since cable service is generally available to households throughout the U.S. We believe it is appropriate to include at least one voice for cable, where cable passes most of the homes in the market, because there are PEG and other channels on cable systems that present local informational and public affairs programming to the public. At this time we count cable as no more than one voice since most cable subscribers have only one cable system to choose from. In addition, despite a multiplicity of channels provided by each cable system, most programming is either originated or selected by the cable system operator, who thereby ultimately controls the content of such programming. As most cable programming available to a household is controlled by a single entity, we believe cable should be counted as a single voice in applying our voice test.

B. Waiver Criteria

1. Failed Stations

65. We will continue to grant waivers of our radio-television cross-ownership rule, on a presumptive basis, in situations involving a failed station. However, we will adopt the definition of a failed station used in the context of our television duopoly failed station waiver standard. In order to qualify as ''failed'' a station must be dark for at least four months or involved in court-supervised involuntary bankruptcy or involuntary insolvency proceedings. In addition, we will require that the waiver applicant demonstrate that the ''in market'' buyer is the only reasonably available entity willing and able to operate the failed station and that selling the station to an out-of-market buyer would result in an artificially depressed price for the station. As in the past, we will require the applicant seeking the waiver to provide relevant documentation, *i.e.*, proof of the length of time that the station has been off the air, or proof that the station is involved in bankruptcy proceedings. In addition, in the case of a silent station, we will require a statement that the failed station went dark due to financial distress, not because of other, non-financial reasons. Any combination formed as a result of a failed station waiver may be transferred together only

if the combination meets our radio/TV cross-ownership rule, or failed station waiver, at the time of transfer.

66. Our new waiver standard is significantly stricter than the failed station standard used in the context of our current one-to-a-market rule. As we stated in adopting our television duopoly failed station waiver, we are limiting the waiver to involuntary bankruptcy and insolvency proceedings to avoid the risk that an owner has filed for bankruptcy or insolvency simply to qualify for a waiver. We will extend the waiver to include stations in insolvency as well as bankruptcy proceedings, as the former is a state-regulated mechanism similar to bankruptcy. Finally, we are requiring that applicants make a serious effort to sell the troubled station to an out-of-market buyer in order to limit the relief afforded by the waiver to those situations in which it is clearly needed. In view of the other steps we are taking today to relax our radio/TV cross-ownership rule, we believe that it is appropriate to ensure that the relief offered by our failed station waiver is directed to stations that are clearly facing financial difficulty and that cannot be sold absent a waiver of our rule.

67. Our rationale for this waiver standard is the same as that of the failed station waiver standard we are adopting today for the television duopoly rule. We believe that the benefits to the public of joint ownership, namely preserving a bankrupt station or allowing a dark station to return to the air, do not pose costs from a diversity perspective. Once a station has been off the air for a substantial period or has become involved in involuntary bankruptcy proceedings (so that it is likely to go off the air), competition and diversity in a local market cannot be improved by forbidding joint ownership of that station with another station in the market. It is our view that two operating, commonly-owned stations serve the public better than one operational station and one nonoperational station that provides no service to the public at all. We note that Congress reached the same conclusion in the 1996 Act when it authorized an exception to the local radio ownership limits to permit an entity to exceed those limits if so doing would result in an increase in the number of stations in operation. Increasing the number of stations in a market provides additional voices to address community needs and issues and increases listeners' programming choices.

68. This waiver will not be extended to failing or unbuilt stations. Thus, evidence that a station is losing money (*i.e.*, a negative cash flow) is not adequate to qualify for the waiver. We do not believe that it is necessary at this time to permit such additional waivers in view of the measured liberalization of our radio/TV cross-ownership rule and the 1996 Act's liberalization of the local radio ownership limits.

2. ''Five Factors'' Waiver Standard

69. *Background.* We invited comment in the *2FNPRM* on whether our ''five factors'' case-by-case waiver standard should be changed or refined to be more effective in protecting our competition and diversity concerns. Under this standard, we make a public interest determination on a case-by-case basis currently using the following five criteria: (1) the potential public service benefits of common ownership of the facilities, such as economies of scale, cost savings, and programming benefits; (2) the types of facilities involved; (3) the number of media outlets already owned by the applicant in the relevant market; (4) any financial difficulties involving the station(s); and (5) issues pertaining to the level of diversity.

70. *Discussion.* In light of the modifications we are making today in the radio-television cross-ownership rule and our goals of protecting competition and diversity, we will eliminate the case-by-case, ''five factors'' waiver test we have previously employed. Our amended rule goes beyond the criteria pursuant to which we have delegated authority to the Commission staff to act on one-to-a-market waiver requests, most of which have been approved under the five factors standard. We have revised the rule based on our recognition that the benefits of joint ownership in many circumstances outweigh the harm to diversity, and have based that conclusion in large part on an assessment of the same general criteria identified in our current five factor waiver standard. In the event that extraordinary evidence exists that a waiver of our revised rule is warranted, the Commission will consider that evidence pursuant to our general waiver authority. Given the significant relaxation of our radio-TV cross-ownership rule, applicants seeking combinations that exceed the new rule will bear a substantially heavier burden than in the past in justifying joint ownership.

71. We are eliminating the five-factor waiver standard because it has been difficult to apply. After a number of years of experience in applying this test, we have come to conclude that the standard does not sufficiently protect our competition and diversity goals. We believe that our new, three-part rule, along with our failed station waiver, will be easier to administer, better protect the Commission's competition and diversity goals, and therefore further the public interest.

3. Existing Conditional Waivers

72. In a number of rulings since passage of the 1996 Act, the Commission has granted, conditioned on the outcome of this proceeding, applications for waiver of the radio-television cross ownership rule where the number of radio stations exceeded the radio limits in existence prior to the Act. The conditional waiver grantees are directed to file with the Commission within sixty days of publication of this *R&O* in the **Federal Register** a showing sufficient to demonstrate their compliance or non-compliance with our new rule. In situations where the revised rule is met, we delegate to the Mass Media Bureau the authority to replace the conditional waiver with permanent approval of the relevant assignment or transfer of license.

73. A number of the conditional waivers that have been granted will not comply with our newly revised radio/TV cross-ownership rule. Although parties that received these waivers were placed on notice that their proposed station transactions were subject to the outcome of this rulemaking proceeding, we nonetheless will extend these conditional waivers, until the conclusion of our biennial review in 2004, during which we will review the radio/TV cross-ownership rule itself. We will also extend this grandfathering relief to any pending application for conditional waiver, if filed on or before July 29, 1999 (the date of this ''sunshine'' notice for this *R&O*), and ultimately granted by the Commission. In 2004, the Commission will review these waivers, on a case-by-case basis, as part of its biennial review and determine the appropriate treatment of them beyond that point in time. In order to qualify for permanent grandfathering relief after 2004, conditional waiver grantees will be required to demonstrate that such relief is in the public interest, based upon, to the extent applicable to radio/TV combinations, the same criteria that we will use to review the LMAs that we have concluded to grandfather for a similar period of time. As is the case with the grandfathered LMAs, if conditional waiver grantees wish to establish greater certainty about the status of their waiver prior to the 2004 biennial review, they may make a showing using the 2004 biennial review criteria, beginning one year after the date that this *R&O* is published in the

Federal Register. Any transfer of a grandfathered combination after the adoption date of this *R&O* (whether during the initial grandfathering period or after a permanent grandfathering decision has been made) must meet the radio/TV cross-ownership rule or waiver policy in effect at the time of transfer.

V. Television Local Marketing Agreements

74. *Background.* A television local marketing agreement (''LMA'') or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Our current data indicate that there are at least 70 existing LMAs where the brokering and brokered station are in the same DMA. Most of these LMAs are in the top 50 television markets.

75. In our companion *Attribution R&O,* we have decided to attribute time brokerage of another television station in the same market for more than fifteen percent of the brokered station's broadcast hours per week and to count LMAs that fall in this category toward the brokering licensee's ownership limits. In the *2FNPRM,* we stated that we would decide in this proceeding how to treat existing television LMAs under any new attribution rules that we might adopt in the *Attribution* proceeding. In this *R&O,* we adopt policies to afford ''grandfather'' rights to existing television LMAs according to the provisions discussed below.

76. In the *2FNPRM,* we stated that, in the event that we found television LMAs attributable, we were inclined to extend some grandfathering relief to all television LMAs entered into before the November 5, 1996 adoption date of the *2FNPRM* for purposes of compliance with our ownership rules. We sought comment on an approach whereby such LMAs would not be disturbed during the pendency of the original term of the LMA in the event the cognizability of the LMA would result in violation of an ownership rule. We also tentatively concluded that television LMAs entered into on or after the adoption date of the *2FNPRM,* if they resulted in violation of any ownership rule, would not be grandfathered and would be accorded only a brief period within which to terminate. We also reserved the right to invalidate an otherwise grandfathered LMA in circumstances raising particular competition and diversity concerns, such as might occur in very small markets.

77. After reviewing the comments received in response to the *2FNPRM* in this proceeding and the *FNPRM* in our related attribution proceeding, the Commission concluded that the commenters had not provided sufficient information on a range of important factual issues related to television LMAs. To provide a more complete record, the Commission released a *Public Notice* on June 17, 1997 (62 FR 33792, June 23, 1997), requesting parties to any existing television LMA to provide certain information regarding the terms and characteristics of these agreements to help us determine, *inter alia,* the number of existing television LMAs, the date of origination and duration of these arrangements, and the efficiencies or public interest benefits that may have resulted from the LMA.

78. *Discussion.* We adopt our proposal in the *2FNPRM* to grandfather television LMAs entered into prior to November 5, 1996, the adoption date of that document, for purposes of compliance with our ownership rules. Television LMAs entered into on or after that date will have two years from the adoption date of this *R&O* to come into compliance with our rules or terminate. LMAs entered into before November 5, 1996 will be grandfathered until the conclusion of our 2004 biennial review, a period of approximately five years. As part of that review, the Commission will conduct a general review of the TV duopoly rule and a case-by-case review of grandfathered LMAs, and assess the appropriateness of extending the initial grandfathering period. Parties who wish the Commission to conduct this review prior to 2004 may apply for such relief, using the biennial review criteria, beginning one year after the date the *R&O* is published in the **Federal Register**. We now turn to a more detailed explanation of our decision on this issue.

79. *Section 202(g) of the 1996 Act.* Some commenters argue that the 1996 Act directs us to grandfather television LMAs permanently. Section 202(g) of the 1996 Act addresses the construction of section 202 with respect to LMAs. Section 202(g) states that ''[n]othing in this section shall be construed to *prohibit* the origination, continuation, or renewal of any television local marketing agreement that is *in compliance with the regulations of the Commission*.'' (Emphasis added.) As we stated in the *2FNPRM,* the plain language of this provision states that section 202 shall not be construed to prohibit any television LMA that is in compliance with the Commission's rules.

80. We do not regard section 202(g) as limiting our ability to promulgate attribution rules under Title I and Title III of the Communications Act affecting the status of television LMAs. As a result, we do not see section 202(g) of the 1996 Act as posing a legal restraint in resolving questions raised in the *FNPRM* as to (1) whether television LMAs in which a broker obtains the ability to program 15% or more of a broadcast television station's weekly broadcast output should be deemed an attributable interest (which has been decided in our companion *Attribution R&O*); and (2) whether grandfathering existing television LMAs from any applicable ownership rules that would follow from that attribution decision is appropriate.

81. We consequently believe that the 1996 Act left the Commission with the discretion to adopt a grandfathering policy with respect to television LMAs that appropriately addresses the equity, competition, and diversity issues these arrangements raise. Having said that, we fully recognize the need to avoid undue disruption of television LMAs that were entered into in good faith reliance on our previous rules at the time, and that these arrangements may in fact have resulted in significant public interest benefits. We now turn to striking the appropriate balance regarding these factors.

82. *Grandfathering Cut-Off Date.* We will adopt our proposal in the *2FNPRM* to grandfather television LMAs entered into before the adoption date of that document, *i.e.,* November 5, 1996. It was on this date that the Commission gave clear notice that it intended to attribute television LMAs in certain circumstances, and that LMAs entered into on or after that date that violated our local television ownership rule would not be grandfathered and would be accorded only a fixed period in which to terminate.

83. *Treatment of LMAs Entered Into on or After November 5, 1996.* LMAs that are not eligible for grandfathering relief—*i.e.,* those LMAs entered into on or after November 5, 1996, that are attributable under the new attribution criteria and that would violate the TV duopoly rule—will be given two years from the adoption date of this *R&O* to terminate. Even though the holders of such LMAs entered into after our grandfathering date could not have a legitimate expectation of being eligible for the grandfathering rights we adopt today, we believe that such a transition is appropriate to avoid undue disruption of existing arrangements and will allow the holders of LMAs to order their affairs. For example, the licensee

of a brokered station may need time to arrange for programming to replace that provided under the LMA; a two-year transition to do this will allow the licensee to avoid disruption of its service to the public. In addition, stations with non-grandfathered LMAs could, of course, apply for a TV duopoly under our new rule or waiver criteria, just as any other station owner in the market could. Applications based on a waiver may be based on circumstances as they existed at the time just prior to the parties entering into the LMA.

84. *Scope of Grandfathering Relief.* We believe television LMAs entered into prior to the November 5, 1996 adoption date of the *2FNPRM* should receive significant grandfathering relief. The parties to these LMAs entered into these arrangements when there was no Commission rule or policy prohibiting them. There consequently are strong equities against requiring them to divest their interests in these LMAs and upset the settled expectations established by these plans and investments. Doing so could impose an unfair hardship on these parties.

85. In addition to these equities, the record shows that a number of television LMAs resulted in public interest benefits. ALTV submitted a study showing that LMAs helped some struggling stations complete construction of their facilities or upgrade them, allowed others to add a local newscast or other local programming to their schedule, and more generally permitted stations to take advantage of operating efficiencies to serve their viewers better. We do not wish to disrupt these public interest benefits.

86. We consequently will grandfather television LMAs entered into prior to November 5, 1996, conditioned on the Commission's 2004 biennial review. During this initial grandfathering period and during the pendency of the 2004 review, these LMAs may continue in full force and effect, and may also be transferred and renewed by the parties, though the renewing parties and/or transferees take the LMAs subject to the review of the status of the LMA as part of the 2004 biennial review. At that time, the Commission will reevaluate these grandfathered television LMAs, on a case-by-case basis, to examine the competition, diversity, equities, and public interest factors they raise and to determine whether these LMAs should continue to be grandfathered. In order to qualify for permanent grandfathering relief after 2004, parties to LMAs entered into before November 5, 1996 will be required to demonstrate that such relief is in the public interest based upon the biennial review factors described below.

87. We believe that reevaluation of the LMAs is reasonable as the record shows that many parties entered into television LMAs, and made substantial investments in these arrangements, with the belief that they could be renewed or transferred. If any party to an LMA wishes the Commission to determine the status of its agreement prior to the 2004 biennial review, it may request the Commission to do so at any time beginning one year after this *R&O* is published in the **Federal Register**, using the biennial review factors noted below, to demonstrate that continuation of the LMA is in the public interest. (In addition, at any time the parties to an LMA may seek, just as any other applicant, to form a duopoly or justify an LMA indefinitely under our new rule and waiver policies. A showing based on voice counts must meet our new rule at the time the showing is filed; a showing based on a waiver may be based on the circumstances existing just prior to the parties entering into the LMA.) Whether LMA holders obtain a duopoly outright or permanent grandfathering relief for arrangements that do not comply with our new TV duopoly rule and waiver policies, such relief will not be extended to any transfers subsequent to 2004; any transfer of permanently grandfathered arrangements after that time must meet our duopoly rule or waiver policies in effect at the time of transfer.

88. As part of the 2004 biennial review, the Commission will examine the following factors to assist in its review of grandfathered television LMAs:

- Public Interest Factors—The FCC will assess the extent to which parties, by virtue of their joint operation, have achieved certain efficiencies allowing them, in turn, to produce specific and demonstrable benefits to the public. For example, the Commission may consider, among other things, the following: the extent to which broadcasters involved have fostered the regulatory goal of promoting localism, including locally-originated programming, such as news and public affairs programming; the extent to which the joint operations have made possible capital investments and technical improvements that have improved service; the extent to which the joint operations have increased the amount and investment in children's educational programming; and the extent to which the joint operations have otherwise produced specific and demonstrable benefits to the viewing public;
- DTV Conversion—The FCC will evaluate the extent to which the same-market joint operations are on or ahead of schedule to convert to DTV and digital service. We will examine the extent to which one station has enabled the other to convert to digital operations, and whether joint operation has expedited that conversion, as well as has produced more over-the-air programming using digital transmission.
- Marketplace Conditions—The FCC will evaluate the status of competition and diversity in the marketplace.
- Equities—In considering the appropriateness of grandfathering beyond the initial five year period, the FCC will take into account the capital investments the broadcasters involved have already made to improve the quality of the technical facilities of the stations involved, and weigh these equities against the competition and diversity issues involved.

89. *Filing Existing LMAs.* Those parties with existing LMAs that are attributable under our new attribution rules are directed to file a copy of the LMA with the Commission within thirty days of the publication of this *R&O* in the **Federal Register**.

VI. New Applications

90. Applications filed pursuant to this *R&O* will not be accepted by the Commission until the effective date of this *R&O.* We realize that the rules adopted in this *R&O* could result in two or more applications being filed on the same day relating to stations in the same market and that due to the voice count all applications might not be able to be granted. We will address how to resolve such conflicts in a subsequent action.

VII. Conclusion

91. For the reasons discussed, we adopt this *R&O* revising our local television ownership rules. We intend by these revisions to improve the ability of television broadcasters to realize the efficiencies and cost savings of common station ownership, and to strengthen their potential to serve the public interest. We believe that our decision strikes the appropriate balance between common ownership and our fundamental competition and diversity concerns, and ensures that our television ownership restrictions appropriately reflect ongoing changes in the broadcast television industry.

VIII. Administrative Matters

92. *Paperwork Reduction Act of 1995 Analysis.* This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new reporting requirements on

the public. Implementation of these new reporting requirements will be subject to approval by the Office of Management and Budget as prescribed in the Act. The new reporting requirements contained in this *R&O* have been submitted to OMB for emergency clearance.

93. *Regulatory Flexibility Analysis.* Pursuant to the Regulative Flexibility Act of 1980, as amended, 5 U.S.C. 601 *et seq.*, the Commission's Final Regulatory Flexibility Analysis in this document.

94. *Ordering Clauses.* Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i) & (j), 303(r), 308, 310 and 403 of the Communications Act of 1934, 47 U.S.C. 154(i) & (j), 303(r), 308, 310 and 403, as amended, 47 CFR Part 73 *is amended* as set forth in the Rule Changes.

95. *It is further ordered* that, pursuant to the Contract with America Advancement Act of 1996, the amendment set forth in the Rule Changes *shall be effective* November 16, 1999.

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

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

98. *Additional Information.* For addition information concerning this proceeding, please contact Eric Bash, Mass Media Bureau, (202) 418–2130.

Final Regulatory Flexibility Act Analysis

99. As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *2FNPRM* in this proceeding. The Commission sought written public comment on the proposals in this document, including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

I. Need For, and Objectives of, Report and Order

100. In February, 1996, the Telecommunications Act of 1996 (''1996 Act'') was signed into law. Section 202 of the 1996 Act directed the Commission to make a number of significant revisions to its broadcast media ownership rules. Section 202 also requires us to review aspects of our local ownership rules which were the subject of the *TV Ownership FNPRM* in this docket. Specifically, section 202 requires the Commission to: (1) conduct a rulemaking proceeding concerning the retention, modification, or elimination of the duopoly rule; and (2) extend the Top 25 market/30 independent voices one-to-a-market waiver policy to the Top 50 markets, ''consistent with the public interest, convenience, and necessity.'' In view of the 1996 Act's directives regarding broadcast multiple ownership, the Commission in 1996 adopted a *2FNPRM* in this proceeding inviting comment on several issues prompted by the 1996 Act. We seek to foster both competition and diversity in the changing video marketplace, and this *R&O* modifies the local ownership rules consistent with these goals.

II. Significant Issues Raised by the Public in Response to the Initial Analysis

101. Media Access Project, *et al.* (''MAP *et al.*'') submitted the only set of comments that was filed directly in response to the IRFA contained in the *2FNPRM*.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

102. The amended rules will affect commercial television and radio broadcast licensees, permittees, and potential licensees. MAP asserts that the estimate contained in the IRFA of the number of broadcast radio and television licensees that qualify as ''small entities'' is flawed.

1. Definition of a ''Small Business''

103. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3) defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

104. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business, (13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996). Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

105. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce ratio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.

106. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

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

107. As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

108. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply

may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

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

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

3. Estimates Based on Census Data

111. The rules adopted in this *R&O* will apply to full service television and radio stations.

112. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,594 operating television broadcasting stations in the nation as of June 1999. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the new rules will affect approximately 1,594 television stations; approximately 77%, or 1,227 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

113. The new rule will also affect radio stations. The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of June 1999, official Commission records indicate that 12,560 radio stations are currently operating.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

114. The *R&O* imposes compliance requirements. Pursuant to the *R&O,* applicants will be required to file with the Commission upon the effective date of the rules showings to convert conditional waivers to permanent license grants under the new rules or waiver standards. In addition, licensees with existing local marketing agreements (LMAs) that are attributable under the revised rules will be required to file a copy of the LMA with the Commission within thirty days of publication of the *R&O* in the **Federal Register**.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

115. We believe that our revised TV duopoly rule, radio/TV cross-ownership rule, and related waiver policies strike the appropriate balance between allowing broadcast stations to realize the efficiencies of combined operations, and furthering our policy goals of competition and diversity. Both of our revised rules and their associated waiver policies allow small stations to reduce expenses through shared operations, but at the same time protect them from acquisition that could eliminate their voice, and from the exercise of undue market power.

116. In addition to having amended the geographic scope of our TV duopoly rule, we have also modified the rule to permit common ownership of two stations in the same DMA if at least eight independently owned and operated full power TV stations (commercial and noncommercial) will remain post-merger, and both of the stations are not in the top four-ranked stations in the DMA. The new rule ensures that small stations may combine operations, reduce expenses, and perhaps diversify programming. At the same time, both the market rank and the voice count components of the rule further our competition goal and protect small stations from their competitors. The market rank test ensures that the two largest stations cannot combine to dominate and exercise market power in the advertising and programming markets in which TV stations compete; the voice count test ensures that more than eight competitors must exist in the market before any two of them may combine to increase their market share. Both components of the new rule also further our diversity goal and preserve small stations in markets with less than eight voices.

117. We have revised our radio/TV cross-ownership rule to permit common ownership of one or two TV stations and up to six radio stations if twenty independent voices will remain post-merger; one or two TV stations and up to four radio stations if at least ten voices will remain post-merger; and one or two TV stations and one radio station regardless of the number of voices that will remain post-merger. As with our amended TV duopoly rule, the modified radio/TV cross-ownership rule will allow stations, including small stations, to realize economies of scale, but at the same time ensure that no market will become concentrated to such an extent that any one or series of combinations will dominate the markets in which broadcasters compete, or monopolize the media and sources of information for their audiences.

118. Our TV duopoly waiver policies, based on a showing of a ''failed'' station, a ''failing'' station, and the construction of an authorized but as yet unbuilt station, and our radio/TV cross-ownership waiver policies, based on a showing of a ''failed'' station, likewise accommodate small stations, while protecting our competition and diversity goals. Each of these waiver policies was designed to ensure that only truly financially distressed, which are typically smaller, stations, can benefit from them. The waiver policies also ensure that more financially successful in-market stations, which are typically larger and likely would value same-market broadcast assets more highly than out-of-market stations, cannot foreclose out-of-market buyers. The in-market buyer must demonstrate that it is the only purchaser ready, willing, and able to operate the station, and that sale to an out-of-market buyer would result in an artificially depressed price.

119. We also believe that our grandfathering policies for conditional

radio/TV cross-ownership waivers, and TV LMAs, may help small stations. For example, the record suggested that TV LMAs may have helped smaller, struggling stations to remain on or return to the air, and to diversity and expand their programming. The *R&O* grandfathers all LMAs entered into prior to November 5, 1996, and therefore permits them to remain in full force and effect, subject to further review in the Commission's biennial review in 2004.

120. For the above reasons, we believe that the Commission has taken steps not only to reduce the economic impact on small entities, but also to assist them realize the benefits of common operations, and to protect them from undue market power.

VI. Report to Congress

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reason discussed in the preamble, the Federal Communication Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.3555 is amended by revising paragraphs (b) and (c) and Note 7 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(b) *Local television multiple ownership rule.* An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) only under one or more of the following conditions:

(1) The Grade B contours of the stations (as determined by § 73.684 of this part) do not overlap; or

(2)(i) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9:00 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market.

(c) *Radio-television cross ownership rule.* (1) This rule is triggered when:

(i) The predicted or measured 1 mV/m contour of an existing or proposed FM station (computed in accordance with § 73.313 of this part) encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompasses the entire community of license of the FM station; or

(ii) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station (computed in accordance with § 73.183 or § 73.386), encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompass(es) the entire community of license of the AM station.

(2) An entity may directly or indirectly own, operate, or control up to two commercial TV stations (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described above in paragraph (1) of this section. An entity may not exceed these numbers, except as follows:

(i) If at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to:

(A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or

(B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(ii) If at least 10 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(3) To determine how many media voices would remain in the market, count the following:

(i) *TV stations:* independently owned full power operating broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license;

(ii) *Radio stations:*

(A) (1) Independently owned operating primary broadcast radio stations that are in the radio metro market (as defined by Arbitron or another nationally recognized audience rating service) of:

(i) The TV station's (or stations') community (or communities) of license; or

(ii) The radio station's (or stations') community (or communities) of license; and

(2) Independently owned out-of-market broadcast radio stations with a minimum share as reported by Arbitron or another nationally recognized audience rating service.

(B) When a proposed combination involves stations in different radio markets, the voice requirement must be met in each market; the radio stations of different radio metro markets may not be counted together.

(C) In areas where there is no radio metro market, count the radio stations present in an area that would be the functional equivalent of a radio market.

(iii) *Newspapers:* English-language newspapers that are published at least four days a week within the TV station's DMA and that have a circulation exceeding 5% of the households in the DMA; and

(iv) *One cable system:* if cable television is generally available to households in the DMA. Cable television counts as only one voice in the DMA, regardless of how many individual cable systems operate in the DMA.

* * * * *

Note 7: The Commission will entertain applications to waive the restrictions in paragraph (b) and (c) of this section (the TV duopoly and TV-radio cross-ownership rules) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received. We will entertain waiver requests as follows:

(1) If one of the broadcast stations involved is a ''failed'' station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

(2) For paragraph (b) of this section only, if one of the television stations involved is a ''failing'' station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.

(3) For paragraph (b) of this section only, if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

* * * * *

[FR Doc. 99–23696 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 91–221 & 87–8; FCC 99–240]

Comment Sought on Processing Order for Applications Filed Pursuant to the Commission's New Local Broadcast Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on how to resolve conflicts resulting from two or more applications being filed on the same day relating to stations in the same market pursuant to new rules adopted August 5, 1999, in the local broadcast ownership proceeding.[1]

COMMENTS: Comments must be filed on or before October 4, 1999. Reply comments must be filed on or before October 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A306, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Vicky Phillips, Chief, Legal Branch, Policy and Rules Division, Mass Media Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Alternatively, comments may also be filed by using the Commission's Electronic Comment Filing System (ECFS), via the Internet to http://www.fcc.gov.e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Vicky Phillips, Policy and Rules Division, Mass Media Bureau (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, FCC 99–240, adopted September 8, 1999 and released September 9, 1999. The full text of this Commission *Public Notice* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12 St. S.W., Washington, D.C. The complete text of this *Notice* may also be purchased from the Commission's copy contractor, International Transcription Services 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800. It is also available on the Commission's web page at www.fcc.gov/Bureaus/Mass__Media/Public__Notices/fcc99240.txt.

Synopsis of the Public Notice

1. By this *Public Notice*, the Commission requests supplemental comment in MM Docket Numbers 91–221 and 87–8 on procedures for processing applications filed pursuant to the Local Ownership Order adopted in the local broadcast ownership proceeding on August 5, 1999.[2] In that order, we stated that ''[a]pplications filed pursuant to this Report and Order will not be accepted by the Commission until the effective date'' of the order, which will be sixty days after publication in the **Federal Register**.[3] We also said: ''We realize that the rules adopted in this Report and Order could result in two or more applications being filed on the same day relating to stations in the same market and that due to the voice count all applications might not be able to be granted. We will address how to resolve such conflicts in a subsequent action.'' [4] This Notice seeks comment on how to resolve such conflicts.

2. Ordinarily, we would process these applications in the order in which they are filed. Generally, however, we treat broadcast applications filed on the same day as being filed simultaneously, regardless of the time of filing. Under the Commission's new local ownership rules, as we noted in the Local Ownership Order, we anticipate that applications for transfer or assignment might be filed on the same day relating to stations in the same market that will not all be able to be granted due to the voice counts that apply to the local ownership rules. The order in which the applications are processed would thus be determinative in these situations. Similar issues could arise in the radio-television cross ownership rule context, in situations in which grant of one application will bring the voice count down to ten or twenty, such that certain other applications relying on the minimum voice count for compliance with the rule could not be granted.

3. We believe that the most prudent, easy to administer, and fair method for determining the order in which applications filed on the same day will be processed is by random selection. Under this procedure, each potentially conflicting applicant in a market would be assigned a random number which would be determined by use of one or more forced-air blowers each containing numbered ping-pong balls. The applications would then be processed in ascending order based upon their randomly assigned numbers.

4. We thus seek comment on the use of random selection to determine processing order, as well as on any alternatives, such as auctions or first-come, first-served, that are both fair and easy to administer. We also seek comment on when the lotteries, if they are implemented, should be held relative to the filing of applications.

5. Because of timing concerns, we also anticipate that the rules adopted will be made effective upon publication in the **Federal Register**.[5] We seek comment on these issues.

6. *Filing of Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 4, 1999. Reply comments must be filed on or before October 12, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Mass Media Bureau contacts for this proceeding is Vicky Phillips at (202) 418–2120.

9. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, S.W., Washington, D.C. 20554.

[1] Report and Order in MM Docket Nos. 91–221 & 87–8, FCC 99–209 (''Local Ownership Order''), published elsewhere in this separate part.

[2] *Id.*

[3] *Id.* at ¶¶ 150, 155.

[4] *Id.* at] 150.

[5] See 5 U.S.C. 553(d)(3) (exception to 30-day effective date period for good cause).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24117 Filed 9–16–99; 8:45 am]

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Federal Register

Friday
September 17, 1999

Part IV

Environmental Protection Agency

40 CFR Parts 152 and 156

Registration Requirements for Antimicrobial Pesticide Products and Other Pesticide Regulatory Changes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 156

[OPP–300890; FRL–5770–6]

RIN 2070–AD14

Registration Requirements for Antimicrobial Pesticide Products and Other Pesticide Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish procedures for the registration of antimicrobial products, as well as implement other provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act. This proposal is required by FIFRA.

In addition to registration procedures for antimicrobial products, EPA also proposes to establish labeling standards for antimicrobial public health products, which will ensure that these products are appropriately labeled for the level of antimicrobial activity they demonstrate; to modify its notification process for antimicrobial products to conform to the statutorily prescribed process; and to exempt certain antimicrobial products from FIFRA regulation.

EPA believes that the new procedures and provisions will streamline and improve the registration process, increase consistency and certainty for antimicrobial producers, reduce the timeframes for EPA decisions on antimicrobial registrations, increase public health protection by ensuring the continued efficacy of antimicrobial public health pesticides, and promote international harmonization efforts.

EPA is also proposing to implement a number of general provisions of FIFRA that are not specific to antimicrobial pesticides. EPA proposes to interpret the applicability of the new FIFRA definition of ''pesticide'' that excludes liquid chemical sterilants from FIFRA regulation and includes nitrogen stabilizers, and to describe requirements pertaining to use dilution labeling. These proposals are intended to implement new provisions of FIFRA, and to update current regulations and procedures.

Finally, EPA is proposing technical, conforming and organizational changes to portions of its regulations on pesticide registration and labeling for clarity and understanding.

DATES: Comments, identified by the docket control number OPP–300890, must be received on or before November 16, 1999.

ADDRESSES: Comments may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I of the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: Jean M. Frane, Field and External Affairs Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–5944; e-mail address: frane.jean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to You?

You may be potentially affected by this notice if you are a producer or registrant of antimicrobial or other pesticide products. Regulated categories and entities may include, but are not limited to:

Category	Examples	NAICS Code
Producers	Pesticide products	32532
	Antifoulant paints	32551
	Antimicrobial pesticides	32561
	Nitrogen stabilizer products	32531
	Wood preservatives	32519
Wholesalers	Pesticide products	42291
	Antimicrobial products	42269

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Home page at the Federal Register Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300890. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments by mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300890 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The Docket Control Office telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov* ,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form

must be identified by docket control number OPP–300890. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Information That I Believe Is Confidential?

You may claim information that you submit in response to this document as 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 will be included in the public docket by EPA without prior notice.

E. We Invite Your Comments

EPA invites you to provide your views on this proposal, approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this proposed rule.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the proposed rule, along with the name, date, and **Federal Register** citation.

II. Organization of Preamble

This preamble is organized according to the outline in this unit.

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III. Authority

A. The Federal Insecticide, Fungicide, and Rodenticide Act

This proposal is issued under the authority of FIFRA sections 3 and 25, 7 U.S.C. 136a and 136w. Under FIFRA, a pesticide product may not be distributed or sold in the United States unless it is registered with the EPA. Registration is a licensing process in which EPA evaluates each proposed product, its uses, and its labeling to determine whether it meets the standard for registration in FIFRA section 3(c)(5). That standard states that, for a registration to be approved, EPA must determine that the pesticide product, when used in accordance with its intended uses and with widespread and commonly recognized practice, will not cause unreasonable adverse effects on the environment. The registration standard is a risk/benefit standard, which must take into account the economic, social and environmental costs and benefits of use.

B. The Food Quality Protection Act

On August 3, 1996, Congress enacted the Food Quality Protection Act (FQPA), modifying FIFRA and the Federal Food, Drug and Cosmetic Act (FFDCA). Most of its provisions were effective immediately, although some require implementing regulations. Units IV. and V. discuss the statutory provisions of FIFRA as amended by FQPA that this proposal would implement.

C. The Antimicrobial Regulation Technical Corrections Act

On October 30, 1998, Congress enacted the Antimicrobial Regulation Technical Corrections Act (ARTCA), which modified the Federal Food, Drug, and Cosmetic Act (FFDCA) to effectively transfer authority over a number of pesticide residues to FDA. Regulatory authority over these residues had originally been transferred to EPA by FQPA. Unit XI. discusses the

consequences of this statute and how EPA and FDA jurisdiction over antimicrobial pesticide residues in food has been allocated by ARTCA.

IV. Antimicrobial Provisions Addressed in this Proposal

A. Overview

The FQPA amendments to FIFRA focus attention on antimicrobial pesticides specifically, and the procedural framework under which the Agency reviews and approves applications for registration and amendment of antimicrobial pesticides. This unit discusses the new statutory provisions for antimicrobial products and how this proposal satisfies each statutory requirement.

1. Under FIFRA section 3(h)(1), EPA must evaluate its registration process to identify improvements and reforms that would reduce historical review times for antimicrobial applications.

2. FIFRA section 3(h)(2) defines the goals for review that process improvements should be designed to achieve, expressed as review period reduction goals for various types of applications.

3. Under FIFRA section 3(h)(3)(A), EPA must propose regulations that address a number of application process elements, with the goal of implementing specified process management improvements and meeting section 3(h)(2) goals. EPA is today proposing these regulations. Unit VIII. discusses each of following statutorily mandated elements, and briefly describes how today's proposal addresses those requirements:

a. Defining the classes of antimicrobial use patterns.

b. Defining types of application review.

c. Conforming reviews to risks and benefits.

d. Ensuring efficacy.

e. Meeting review time goals.

4. Under FIFRA section 3(h)(3)(B), EPA must in its final rule consider specified types of application and process improvements that would contribute to meeting the review time goals or otherwise simplify the application process, including:

a. Certification mechanisms for applications.

b. Certification of laboratories.

c. Expanded use of notification and non-notification procedures.

d. Clarification of completeness criteria for applications.

e. Revised procedures for application review.

f. Allocation of resources.

In order to consider these topics for inclusion in the final rule, EPA must offer proposals or options for notice and comment today that could be incorporated into a final rule. EPA is today proposing regulations addressing expanded use of notification procedures (see Unit XVI.) and completeness criteria (See Unit VIII.F.). EPA has considered certification mechanisms for applicants, and, as discussed in Unit IV.G., may establish such a mechanism administratively. EPA has also considered the possibility of laboratory certification programs, but is not making a specific proposal at this time.

Under FIFRA section 3(h)(3)(B), a final regulation must be promulgated no later than 240 days after the end of the comment period for those portions of this proposal required by FIFRA section 3(h).

B. Defining Classes of Antimicrobial Use Patterns

FIFRA section 3(h)(3)(A)(ii)(I) requires that EPA ''define the various classes of antimicrobial use patterns.'' EPA has developed a comprehensive list of antimicrobial use patterns in conjunction with its upcoming part 158 proposal on antimicrobial data requirements. That proposal would establish a set of data requirements that apply solely to antimicrobial pesticides. EPA has developed an appendix of all current antimicrobial use patterns, divided into 12 use categories having common exposures or other similarities. The proposal meshes with the statutory mandate to identify classes of antimicrobial use patterns by defining, for each use category, the data requirements that apply. Unit VIII.D. includes a list of the use categories. A copy of the full draft Use Appendix is in the docket for this proposal. EPA intends its proposal of part 158 data requirements to satisfy the statutory requirement to define classes of antimicrobial use patterns.

C. Defining Types of Application Reviews

FIFRA section 3(h)(3)(A)(ii)(II) requires that EPA ''differentiate the types of review undertaken for antimicrobial pesticides.'' Since the primary purpose of differentiating types of review is to ensure that review time goals are met, EPA views the statutory requirement as equivalent to defining the types of applications associated with the review periods in section 3(h)(2). Proposed § 152.445 addresses the various application types, and describes the general criteria EPA uses to characterize an application. EPA intends that this section will satisfy the statutory requirement to differentiate types of reviews, and also in part will satisfy the requirement for setting out differing levels of data requirements for various classes of products under FIFRA section 3(h)(3)(A)(ii)(I).

D. Conforming Degree of Review to Risks and Benefits

FIFRA section 3(h)(3)(A)(ii)(III) requires that EPA ''conform the degree and type of review to the risks and benefits presented by antimicrobial pesticides and the function of review under this Act, considering the use patterns of the product, toxicity, expected exposure and product type.''

The function of review under FIFRA for any pesticide product, not just an antimicrobial pesticide, is grounded in the registration standards of FIFRA section 3(c)(5). As such, EPA review must:

1. Assess the risks and benefits of the pesticide and its use, relevant to the determination of unreasonable adverse effects. In the case of a public health antimicrobial pesticide, a determination that the product is efficacious when used as directed is central to a benefits assessment.

2. Determine the adequacy of the pesticide labeling in directing the pesticide user as to intended and safe use of the pesticide, thereby minimizing potential adverse effects to the user and the environment.

EPA believes that its proposed part 158 regulation defining use categories and data requirements clearly acknowledges that different use patterns have different exposure patterns and risks. The data requirements for each use category are commensurate with the potential exposures and risks associated with that use pattern, and in some cases are tiered so that higher exposures or higher risks require a second level of data. The amount and types of data required in and of themselves dictate a review process that is more detailed, requiring a more complex assessment for these potentially higher exposures or higher toxicity. Therefore, in issuing part 158, EPA intends that the mandate to conform the degree and type of review to risks and benefits of use will be satisfied.

E. Ensuring Efficacy

FIFRA section 3(c)(5) has required since 1972 that the composition of a pesticide be such as to warrant the claims made for it, i.e., that a product work as claimed. Moreover, the registrant must ensure that the pesticide product continues to meet that efficacy standard as long as the product is registered. What has changed over time is the manner in which EPA is assured of product efficacy. Until 1980, EPA

reviewed efficacy data for every pesticide product prior to registration, and thus could assure that, at least at the time of registration, each product would perform as intended. In 1980, EPA determined that, for pesticides of economic or aesthetic significance, the marketplace can be relied upon to weed out inefficacious products. EPA reasoned that because users can determine for themselves whether a product works, and are motivated by economic reasons to ensure that they are using the most efficacious products, less efficacious products would not survive in a highly competitive marketplace. Accordingly, EPA no longer routinely reviews efficacy data prior to registration for most insecticides, fungicides, herbicides, and non-public health antimicrobial pesticides. Registrants must maintain data demonstrating efficacy in their files, and submit it to the Agency upon request.

EPA recognized, however, that it could not reduce its efficacy oversight of public health products and still be assured of product efficacy. The failure of public health products to work as intended could have consequences far beyond those of mere economic or aesthetic significance. Consumers and public health officials must have assurance that a product will work against pests that pose public health threats. Many public health products are antimicrobial pesticides registered to control bacteria, viruses, protozoa, and other microorganisms pathogenic to man (others are insecticides and rodenticides controlling pests that are vectors of disease in man). Unlike insects or weeds, microbial pests cannot be seen, and users cannot determine by observation whether the product actually performs as claimed. Therefore, EPA cannot rely upon the users or marketplace forces to ensure product efficacy. Accordingly, EPA has continued to review efficacy data for public health products prior to registration.

Subdivision G of the Pesticide Assessment Guidelines describes the efficacy tests required, and the Labeling Guidelines for Pesticide Use Directions - Antimicrobial Products (Subdivision H) contain the performance standards that EPA uses to ensure that antimicrobial products achieve an acceptable level of efficacy for the claims made. The Pesticide Assessment Guidelines are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

FIFRA section 3(h)(3)(A)(ii)(IV) requires EPA to ''ensure that the registration process is sufficient to maintain antimicrobial pesticide efficacy and that antimicrobial pesticide products continue to meet product performance standards and effectiveness levels for each type of label claim made.'' At first glance, this language may appear merely to reinforce the existing efficacy standard of FIFRA section 3(c)(5) that, to be registered, a product must be efficacious. On closer reading, however, it is clear that the language carries a broader mandate making explicit the role of the registration process in ensuring continued efficacy after registration.

EPA has relied on post-registration mechanisms, including enforcement monitoring, good laboratory practice monitoring and data audits, testing by EPA and States as co-regulators, registrant reporting under FIFRA section 6(a)(2), and user complaints to target inefficacious products in the marketplace. In recent years, enforcement actions have found a number of incidents of product failure which have called into question the ability or willingness of producers to ensure and maintain the efficacy of their products after registration. As a result, EPA has since 1990 undertaken a systematic testing program for antimicrobial pesticides. In cooperation with FDA, EPA has tested sterilant products and has brought a number of enforcement and regulatory actions against products found to be inefficacious. EPA is now testing tuberculocides and hospital disinfectants.

After a product has been identified as failing in efficacy, EPA may use enforcement measures (such as Stop Sale, Use and Removal Orders) to correct problems. EPA may also use remedies such as cancellation of registration under FIFRA section 6 to remove inefficacious products from the marketplace. EPA has found that post-registration reporting, monitoring, testing and cancellation processes can be cumbersome and time-consuming. In some cases, products that EPA has found to be inefficacious have taken years for resolution through the hearing and appeals processes available to registrants.

EPA agrees wholeheartedly that measures to strengthen the Agency's oversight of antimicrobial efficacy as part of registration are desirable. Today's proposal contains two specific provisions to improve and strengthen EPA's regulatory oversight of the efficacy of public health antimicrobial pesticides:

1. EPA proposes to incorporate into its regulations, as subpart W of part 156, the efficacy performance standards for public health products that are now contained only in its Labeling Guidelines. Unit XII. further discusses efficacy performance standards for public health antimicrobial pesticides.

2. EPA proposes to limit the duration of registrations bearing public health claims to 5 years. In order to extend the registration for an additional 5 years, each registrant would have to confirm by analysis that the product composition was the same as that in Agency files previously demonstrated to be efficacious, and that the product continued to meet efficacy standards specified in subpart W for each public health claim. Unit IX. discusses the 5–year duration provision in greater detail.

EPA believes that these two regulatory provisions will fulfill the statutory requirement that EPA ensure continued product efficacy through the registration process.

F. Implementing Deadlines for Process Management

FIFRA section 3(h)(3)(A)(ii)(V) requires that EPA ''implement effective and reliable deadlines for process management.'' EPA believes that the ''deadlines'' referred to are those contained in FIFRA section 3(h)(1), which requires EPA to identify and evaluate reforms to the antimicrobial registration process; FIFRA section 3(h)(2), which establishes goals for reduction of review periods for antimicrobial applications for registration; and FIFRA section 3(h)(3)(D), which establishes default review periods that apply if EPA fails to issue its final antimicrobial rule by the statutorily required deadline. As discussed more fully in Unit VIII.H., EPA is today proposing in § 152.457 to adopt the ''goal'' review periods rather than the ''default'' review periods.

G. Certification Process for Regulatory Actions

FIFRA section 3(h)(3)(B)(iii)(I) requires that, in issuing final regulations, EPA must ''consider the establishment of a certification process for regulatory actions involving risks that can be responsibly managed, consistent with the degree of risk, in the most cost-efficient manner.''

Certification statements are currently permitted by § 152.44(b)(2) for various types of amendments to registration when directed by EPA. Typically, EPA uses certification to accomplish specific changes to registration (frequently labeling changes). EPA has included in this proposal a broader provision that would allow the Agency to implement self-certification programs as needed in

the future administratively. Unit VIII.A. discusses further this provision.

With respect to data certification, EPA has considered two self-certification programs in the recent past, and has implemented one of these. PR Notice 98-1, Self-Certification of Product Chemistry Data, was issued on January 12, 1998. In that notice, EPA describes the types of product chemistry information (product characteristics) that can be supplied to the Agency together with a self-certification that the data were conducted according to EPA Guidelines. Under this program, EPA would generally review only the summarized results of testing at the time of application, but could review full study reports if EPA determines that a complete evaluation of the study is warranted. Review of the summary results of testing rather than of the complete study report would decrease the time needed for all applications for registration of new products and reregistration of existing products.

EPA also considered a similar self-certification procedure for acute toxicity data, and intends in the future to implement such a program for antimicrobial products only. EPA originally considered an acute toxicity data self-certification program because a backlog of applications requiring acute toxicity data review extended review periods while applications waited in queue. The certification mechanism considered would have been available only with respect to a study indicating that the product should be assigned to Toxicity Category III or IV. The certification procedure was viewed as a means of reducing the resources needed for review, and thus making more decisions with the same level of resources. At the same time, EPA recognized that the certification procedure could also reduce to some extent the Agency's confidence in hazard and precautionary statements on labeling. Since EPA issued its notice for comment, however, the Agency has achieved a significant reduction in the backlog and consequently in the review times for applications in the queue. The Agency decided therefore not to pursue a certification approach for acute toxicity studies at this time.

Although EPA has decided not to adopt such an approach for pesticides in general, the Agency has decided to consider a pilot program that allows applicants for registration of antimicrobial product to certify the results of an acute toxicity study when the test data would indicate the product is in Toxicity Category I (the highest toxicity category). Because such a product would be subject to the most stringent labeling requiements, applicants would have no incentive to certify that a product of lower toxicity was in Toxicity Category I. Moreover, EPA's review of such data would add little value and would use limited resources. EPA invites comment on this proposed approach to certification of acute toxicity data, which would be implemented by a notice to registrants if EPA decides to adopt it.

H. Certification of Laboratories

FIFRA section 3(h)(3)(B)(iii)(II) requires EPA to ''consider the establishment of a certification process by approved laboratories as an adjunct to the review process.'' EPA currently has underway a broad program across the Agency evaluating the feasibility of laboratory accreditation mechanisms for a variety of program and regulatory needs. The Office of Pesticide Programs has also been actively working with outside groups, such as the Chemical Specialties Manufacturers' Association to further their efforts to develop laboratory accreditation programs for antimicrobial products. EPA has considered whether a program could be instituted at this time for antimicrobial products, and believes that these efforts need further evaluation and development before being integrated into the Agency's regulatory programs. EPA intends to continue its cooperative work, and to fold its efforts into the larger Agency process. Thus, EPA is not today proposing a specific laboratory accreditation process as part of this proposed rule.

I. Notification Processes

FIFRA section 3(h)(3)(B)(iii)(III)(aa) requires that, in issuing final regulations, EPA must use ''expanded use of notification and non-notification procedures.'' This requirement dovetails neatly with the statutorily expanded scope of notifications under FIFRA section 3(c)(9). EPA is today proposing to include in new § 152.446 the new procedures to expand the use of notification as a mechanism for the label modification as directed by section 3(c)(9).

J. Revised Procedures for Application Review

FIFRA section 3(h)(3)(B)(iii)(III)(bb) requires that, in issuing final regulations, EPA must use ''revised procedures for application review.'' As outlined in Unit VII, EPA's current regulations for registration of pesticide products, including antimicrobial pesticides, are generally limited to describing the applicant's and Agency's responsibilities and interactions. The summary description given in that unit is similar for all pesticides. EPA intends to issue or revise its current non-regulatory guidance documents that address the application process in greater detail. To the extent that EPA develops different procedures for antimicrobial products than for other products, EPA will make those procedures available via direct notice to affected registrants, and will make them widely available by all feasible means, including electronic accessibility.

The Agency has already implemented a number of administrative reforms to improve the process, including revised procedures for review. Since FQPA was enacted, the Agency has established a separate Division solely responsible for antimicrobial products. The new Antimicrobials Division is charged with all aspects of antimicrobial regulation, and includes a full complement of scientific personnel in biology, microbiology, chemistry, toxicology, and other scientific disciplines, as well as an ombudsman to deal directly with registrant issues and concerns.

The new Division has focussed initially on meeting the review period goals established by the statute for all new applications. To assist this effort, a dedicated Expedited Review Team has been formed for the purpose of processing notifications and screening and processing applications that are ''fast-track'' or with review periods of 90 days or less. By identifying and handling the less complex actions, this team allows the Division to channel its scientific and management resources into review of applications that are of higher priority or that require in-depth review. The Division has added more Product Managers, so that each Product Manager has a smaller and more focussed product universe.

The Division has also targeted increased outreach, communication and information exchange as a high priority. Training materials, information sheets, operating procedures and science reviews have been developed or reevaluated for streamlining opportunities.

Additional administrative accomplishments and plans are detailed in the Agency's first progress report to Congress, *Streamlining Registration of Antimicrobial Pesticides*, July 1997. EPA will issue this report annually as required by section 3(h)(4). Each report will identify further progress in management and administrative reforms.

K. Allocation of Resources

FIFRA section 3(h)(3)(B)(iii)(III)(cc) requires that, in issuing final

regulations, EPA must address ''allocation of appropriate resources to ensure streamlined management of antimicrobial pesticide registrations.'' The allocation of resources is not a reform that can be accomplished by Agency regulations, and EPA is not proposing any regulations for doing so. Budget and resource allocations are guided by Executive branch and Congressional priorities and are determined year by year based on overall needs of the Agency and the pesticide program.

L. Completeness of Applications

FIFRA section 3(h)(3)(B)(iii)(IV) requires that, in issuing final regulations, EPA must ''clarify criteria for determination of the completeness of an application.'' EPA is today proposing in § 152.3 a definition of a ''complete application'' for all registration applications. In addition, specific to antimicrobial products, and directly responsive to the requirement of FIFRA section 3(h)(3)(B), EPA is proposing in § 152.450 to describe in detail the contents of an application, and the criteria that will be used to judge the completeness of the application as a whole, and of its individual components. EPA's proposals are discussed further in Unit VIII.F.

V. Other Statutory Provisions Addressed in this Proposal

A. Changes to the Definition of ''Pesticide''

FQPA modified FIFRA section 2(u) to exclude certain liquid chemical sterilant products from the definition of ''pesticide,'' and to include certain nitrogen stabilizer products. This provision was effective on August 3, 1996. In recognition of this provision, EPA is proposing to add a new § 152.6 entitled ''Substances excluded from regulation by FIFRA.'' EPA has issued a notice to registrants, entitled ''Liquid Chemical Sterilant Products'' (PR Notice 98-2; January 15, 1998), explaining how it will treat liquid chemical sterilants affected by section 2(u). Units XIV. and XV. discuss chemical sterilants and nitrogen stabilizers.

B. Notification Procedures

FIFRA section 3(c)(9)(C) now authorizes registrants of antimicrobial products to make certain defined labeling modifications by notification to the Agency instead of amendment, and establishes a procedure for notifications and Agency decisions. This provision was effective on August 3, 1996, and the new procedures are exclusive to antimicrobial products. Today's proposal codifies these new notification procedures. The substance of the expanded notifications permitted by FIFRA section 3(c)(9) is issued in notices to registrants (PR Notices), and not in today's proposal. Unit XVI. discusses antimicrobial notifications.

C. Use Dilution Labeling

FIFRA section 3(c)(9)(D) authorizes registrants to include on their labeling precautionary statements about the product as diluted for use (use dilution labeling). This provision was effective on August 3, 1996. EPA proposes to reformat its human hazard labeling requirements in § 156.10(h) and to incorporate use dilution requirements in appropriate sections. Unit XIII.A. discusses use dilution labeling.

VI. What is an Antimicrobial Pesticide?

EPA proposes in § 152.3 a definition and interpretation of antimicrobial pesticide. The proposed definition is paraphrased from that in section 2(mm) of FIFRA, and interprets the undefined elements. Because FIFRA section 3(h) directs EPA to develop and implement special procedures in its regulatory program for antimicrobial pesticides, it is important that there be a well-defined and commonly understood universe of products to which the statutory provisions apply. The practical consequences of being included or excluded as an ''antimicrobial pesticide'' are significant for both pesticide producers and the Agency. FIFRA section 2(mm) defines the term ''antimicrobial pesticide,'' carefully delineating its boundaries to mesh with the practical implementation of section 3(h) requirements. This unit discusses the definition in detail.

A. General Definition

Under FIFRA section 2(mm)(1)(A), an antimicrobial pesticide is defined as

> (A) [A pesticide that] is intended to:
> (i) disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or
> (ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime;

With respect to the scope of pests covered by the definition, paragraph (i) focusses on the intended pesticidal function (disinfect, sanitize, etc.) against non-specific ''microbiological organisms,'' while paragraph (ii) focusses on non-specific ''protection'' provided by the pesticide against specified microorganisms (bacteria, viruses, etc). As a practical matter, EPA believes that the term ''microbiological organisms'' in paragraph (i) should be considered to include each of the specific types of microorganisms in paragraph (ii)—bacteria, viruses, fungi, protozoa, and algae. Therefore, EPA will consider any product intended for use against the microorganisms specified in paragraph (ii) to be an antimicrobial pesticide (subject to the exclusions discussed in Unit VI.B. and C.)

Having identified the universe of substances that, based upon the intended pesticidal purpose, are antimicrobial pesticides, the definition goes on in paragraphs (1)(B) and (2) to exclude certain pesticides from the definition of antimicrobial pesticide. These exclusions may be characterized as use-based, that is, a pesticide is excluded because of how or where it is used, and not because of the pests or purpose of use.

B. Food Use Exclusion

FIFRA section 2(mm)(1)(B) excludes from ''antimicrobial pesticide'' those pesticides whose intended antimicrobial use is such that residues in food requiring regulation under section 408 or 409 of the FFDCA might result.

> (B) [A pesticide that] in the intended use is exempt from, or otherwise not subject to, a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) or a food additive regulation under section 409 of such Act.

In creating this exclusion, Congress recognized that applications for registration of food uses that require clearance under FFDCA require extensive data and relatively complex risk assessments that take longer to review. Moreover, obtaining an FFDCA clearance is a formal regulatory procedure. As discussed in Unit VIII.H., FIFRA section 3(h) establishes goals for completion of Agency review of an application for registration. In EPA's view, Congress recognized the difficulty of requiring the review timeframes for registration to encompass the complexities of FFDCA clearance as well. Accordingly, EPA believes that Congress intended the statutory definition to allow exclusion of any antimicrobial pesticide that would require the extensive clearance process of the FFDCA.

The statutory language uses the phrases ''exempt from'' and ''not subject to'' a clearance under FFDCA. The phrase ''exempt from'' is clear and has meaning under FFDCA: an exemption from the requirement of a tolerance is a formal regulatory determination made by EPA. Exemptions from the requirement of a tolerance are found in 40 CFR part 180.

The phrase ''not subject to'' is not a formal determination under FFDCA. Any product that bears a food use is ''subject to'' a tolerance, that is, a tolerance or other clearance is required, whether that tolerance has been established or not. EPA believes the statutory language may be unintentionally broad in not differentiating between food uses subject to an ''existing'' tolerance and those subject to a ''new'' tolerance. Products and uses subject to an existing tolerance do not require extensive review; only products subject to a new tolerance require such review. As written, the definition excludes both types of antimicrobial pesticides, although the apparent intent is to exclude only those requiring the lengthy and complicated tolerance-setting review associated with a new clearance.

In its discretion, EPA proposes to narrow the food use exclusion to conform to what it believes is the probable intent of Congress. EPA proposes to exclude from the definition of ''antimicrobial pesticide'' only products bearing one or more uses for which a new clearance is needed, or an amendment of an existing clearance. EPA proposes to include in the definition of ''antimicrobial pesticide'' (to exclude from the exclusion) product/uses ''subject to'' an existing tolerance. EPA believes that this narrower policy choice, while not required, more closely reflects the intent to include in the definition of ''antimicrobial pesticide'' products requiring little or no review and to exclude only products needing the extensive and time-consuming evaluation associated with the establishment of a new or amended clearance.

An antimicrobial pesticide, then, is a product bearing only non-food uses, only food uses covered by an existing clearance under FFDCA, or some combination of these two.

Given the food use exclusion, it is clear that the status of an antimicrobial product as an ''antimicrobial pesticide'' within the meaning of FIFRA section 3(h) is not necessarily a permanent designation, but may shift according to its intended use. A product could be included or excluded from the definition if the intended use changes. The status of a pesticide as an ''antimicrobial pesticide'' becomes pertinent and can only be determined at the time of submission of an application for Agency decision. At that time, EPA must determine whether the pesticide application is for an antimicrobial pesticide within the meaning of the statutory definition.

The prime example of this use-dependent phenomenon is an application seeking the first food use of an antimicrobial pesticide. A product that heretofore has been an ''antimicrobial pesticide'' because it bears only non-food uses or tolerance-covered food uses is no longer an ''antimicrobial pesticide'' for purposes of EPA review and decision on that first food use action. Provisions of FIFRA applying only to ''antimicrobial pesticides,'' notably the review periods, would not be triggered for that action. Once the food use issue is resolved or a tolerance issued, such that the food use is covered by an existing tolerance, the product may revert to ''antimicrobial pesticide'' status for a subsequent action.

C. Other Specific Exclusions

FIFRA section 2(mm)(2) contains further specific exclusions to the definition. These are intended to clarify that certain types of products that might be considered ''antimicrobial pesticides'' because they have a pesticidal effect on the defined types of microorganisms are nonetheless not to be regulated as antimicrobial pesticides for purposes of FIFRA section 3(h). It should be noted that certain types of antimicrobial products are already excluded from regulation under FIFRA, and therefore from any coverage under this proposed rule. Products used against microorganisms in or on man or other living animals are not pesticides because such microorganisms are not ''pests'' under FIFRA section 2(t). Products intended for use against microorganisms in or on man and animals are regulated solely by FDA. This is not a change from longstanding FIFRA provisions.

1. *Certain wood preservatives and antifouling paints.* Any product that is a wood preservative or antifoulant paint, and that also bears any claim for a pesticidal activity other than or in addition to those specified in section 2(mm)(1) is not an antimicrobial pesticide. The pesticidal activities that generally define an ''antimicrobial pesticide'' include activity against any microbiological organisms, and ''protection'' against the destructive effects of bacteria, viruses, fungi, protozoa, algae, and slime.

Both wood preservatives and antifoulant paints (which are used to protect surfaces in contact with water such as boats) may function to protect against bacteria, fungi, etc., and thus, without a specific exclusion, would be deemed to be antimicrobial pesticides. However, since most wood preservatives also protect against insect damage, and most antifouling paints also protect against barnacles, the majority of these products are not likely to be ''antimicrobial pesticides.'' As discussed in Unit VIII.H., however, some wood preservative products may be eligible for the review deadlines that apply to antimicrobial pesticides.

2. *Agricultural fungicides.* The definition of antimicrobial pesticide in FIFRA section 2(mm) excludes ''agricultural fungicides.'' Traditionally, the term ''fungus'' in an agricultural context has been used to mean microorganisms that are pathogenic to plants. Fungi (and other microorganisms) that are pathogenic to man and animals have historically been treated separately because of their public health implications. However, FIFRA section 2(k) defines ''fungus'' broadly to include a variety of other microorganisms, including rust, smut, mildew, mold, yeast, and bacteria, without specific reference to whether the microorganisms are pathogenic to plants or to man and animals.

EPA intends the term ''agricultural fungicide'' to apply to all products applied in or on growing crops or to soil (i.e., pre-harvest application), regardless of the type of pest fungus. Although this would exclude as ''antimicrobial pesticides'' products applied pre-harvest against microorganisms that might be pathogenic to man and animals, EPA is not aware that any pesticides are currently registered against human and animal pathogens on growing crops. EPA would regulate such products if the need arose, but they would not be covered by subpart W.

Under this interpretation, a product intended for post-harvest application against fungi (including bacteria) would not be an ''agricultural fungicide.'' Significantly, however, such a product would not necessarily be an ''antimicrobial pesticide'' either, since the food use exclusion also comes into play. Post-harvest application of fungicides or antimicrobial products to food or feed crops would run afoul of the food use exclusion if a new or amended tolerance were needed to cover pesticide residues. All post-harvest use antimicrobial products would be subject to subpart W generally; however, not all would be ''antimicrobial pesticides'' eligible for the review periods in § 152.457.

3. *Aquatic herbicides.* Further, the definition of antimicrobial pesticide excludes aquatic herbicide products. EPA interprets the term aquatic herbicide to mean pesticides used in or near environmental bodies of water, such as lakes, streams, or ponds, for the control of algae or weeds. In contrast, a

product intended for control of algae in industrial systems or processes or swimming pools would be considered an antimicrobial product.

D. Products Included

Finally, section 2(mm)(3) lists a number of products that are deemed to be antimicrobial pesticides, to ensure that they are not inadvertently excluded by application of the various exclusions elsewhere. These include chemical sterilants other than those excluded under FIFRA section 2(u), other disinfectant products, industrial microbiocides, and preservatives other than wood preservatives.

VII. Current Registration Procedures for Pesticides

Under FIFRA prior to FQPA, antimicrobial pesticides were not singled out as a class of pesticide products requiring special procedural attention. Antimicrobial pesticides were registered using the same procedures and policies as other pesticide products. Antifoulants, wood preservatives, and traditional antimicrobial pesticides were in separate organizational units within EPA.

A. Overview of Procedures

A brief discussion of the registration procedures which have applied to all products follows. Even though products that are ''antimicrobial pesticides'' will now be subject to a more carefully drawn and rigorously applied regulatory program, the basic procedures for registration will continue to apply.

1. A person seeking to register any pesticide product must submit an application for registration. That application contains information on the pesticide, copies of the proposed labeling of the product, and data of various types supporting the registration (such as chemistry, toxicology, environmental fate, ecological effects). If a food use is involved, data supporting a clearance for residues in food are also required, and if the product is of public health significance, efficacy data must be submitted. Current regulations governing submission of applications are found in 40 CFR part 152. Data requirements are described in 40 CFR part 158, and labeling requirements in 40 CFR part 156. The tolerance-setting process is contained in 40 CFR part 180.

2. At EPA, the application is processed in several stages, each of which evaluates different elements of the application.

a. A ''front end'' process assigns administrative numbers, checks that basic elements are contained in the application, does a data check for formatting purposes, and packages the application for review.

b. The application package is directed to the appropriate review Division and thence to a Product Management (PM) team. Until recently, two Divisions, the Registration Division and the Biopesticides and Pollution Prevention Division, were the regulatory Divisions which reviewed all applications. Antimicrobial pesticide applications were processed within one branch, and antifoulants and wood preservatives were located in a different branch, both in the Registration Division. EPA has established a separate Antimicrobials Division (AD) to help focus its regulatory management of these products, and antifoulants and most wood preservatives are also now assigned to this Division.

c. The PM team enters the application into a tracking system, reviews product labeling and data compensation elements, and determines whether a scientific review is needed. Every application for new registration contains some data; the amount and type of data vary depending on the type of product, its composition and uses. Even applications without new data often require scientific consultation to determine the relevance and adequacy of existing data to support the application.

d. If a scientific review is needed, the PM team sends the application and data to various scientific reviewers. These reviews are generally conducted in parallel, although certain assessments must await the results of other reviews (for example, ecological effects risk assessment may depend upon the environmental fate profile of the chemical).

3. Upon completion of all reviews, the PM team consolidates review recommendations and decisions and determines whether the product can be registered. If it can, EPA issues a registration, approves the labeling (often with required modifications), and notifies the applicant. If the application cannot be approved, the PM notifies the applicant of deficiencies (data, labeling, administrative) that must be corrected before proceeding.

Once issued, a registration may be amended by submission of an application for amendment, which undergoes a similar review process as outlined above. The significant difference is that many amendments are administrative, or require no scientific review, and thus entail a less intensive and time-consuming process. Often amendments can be handled entirely within a PM team. Some minor modifications to registration can be accomplished by notification; these are modifications EPA has determined have no potential for adverse effects. Notifications require the most minimal review, primarily to ensure compliance with pre-existing Agency policies or guidance.

B. Volume of Work

Typically, applications for new registration comprise about one-third of the applications processed by the Agency, but require more time and resources per application because of the scientific review involved. Applications for registration of new chemicals and major new uses require the most resources, but are relatively few in number. For sheer numbers, the bulk of registration actions are (and likely will continue to be) amendments to existing registrations that require no scientific review (so-called ''fast track'' amendments). In FY 1997, ending September 1997, EPA received a total of 635 actions related to new applications for registration of pesticides assigned to AD, including 11 high-resource new chemicals. In addition, there were 1,189 actions related to amendments to existing registrations, including 61 high-resource new uses. The number of ''actions'' includes both the initial submission of applications for new and amended registration and resubmissions of information after EPA has notified the applicant that the application is deficient.

Finally, there were 506 notifications for antimicrobial products, which under FIFRA section 3(c)(9) must be reviewed and a decision issued within 30 days of receipt. While these require minimal review, the large volume coupled with the short review time requires dedicated resources.

C. Review Times

As with any complex process, the speed at which an application can be reviewed and a decision made depends upon many things, some within the control of the Agency, others dependent upon the applicant. FIFRA prescribes in section 3(c)(3) that an application decision be reached ''as expeditiously as possible.'' Until modified by FQPA, FIFRA contained only a single statutory decision deadline of 90 days, for so-called ''fast-track'' applications—those which require no review of scientific data. This review time is predicated upon receipt of a ''complete'' application. EPA is not required to review and reach a decision on a fast-track application until it is deemed to be complete (however, EPA must determine whether such an application

is complete within 45 days after receipt).

''Fast-track'' deadlines continue to apply to all products, including antimicrobial pesticides. For antimicrobial pesticides, however, FIFRA as modified by FQPA imposes additional statutory review periods.

D. Non-Regulatory Guidance Documents

EPA uses detailed guidance documents to amplify, clarify, and interpret its regulations in areas such as data and labeling development and review, process changes, and applicant responsibilities. EPA has developed a number of documents, which are available to applicants and registrants, to elaborate on the general regulations. In particular:

1. A guidance document called simply the ''Blue Book'' provides specific details about the application process.

2. The Labeling Manual contains guidance for developing labeling which complies with FIFRA and EPA regulations.

3. The Pesticide Assessment Guidelines describe test methods, standards, and data reporting requirements used to satisfy data requirements.

4. Standard Evaluation Procedures describe how EPA will review and evaluate each type of study submitted in support of registration.

5. EPA uses direct notice to registrants (PR Notices) to inform them of procedural changes, to clarify and interpret its regulations in specific circumstances, and for general information purposes.

All of these will continue to apply to antimicrobial pesticides. Given the special attention FIFRA now focusses on antimicrobial products, EPA may develop specific guidance documents for antimicrobial pesticides that would augment or replace existing guidance.

VIII. Proposed Antimicrobial Procedures

This unit discusses in detail the proposed procedural regulations applicable to antimicrobial products. Proposed changes that apply to all pesticides are discussed in later units of this preamble.

A. Organization of Proposed Subpart W and Relationship to Current Regulations

40 CFR part 152 currently contains regulations pertaining to the registration of pesticide products, including antimicrobial pesticides. Part 152 contains appropriate definitions and criteria for determining whether a product is a pesticide that must be registered (subpart A); exemptions from FIFRA requirements (subpart B); procedures for applying for registration (subpart C); data compensation procedures (subpart E); the Agency's review of an application (subpart F); fees for applications (subpart U) (currently suspended), and criteria and procedures for classifying a pesticide for restricted use (subpart I). Most of these provisions are unaffected by changes in FIFRA that target antimicrobial program reform measures, and will continue to apply to antimicrobial products as well as other pesticides.

However, FIFRA section 3(h)(3)(A) requires that EPA propose procedural regulations focussing on antimicrobial pesticides. Because the statutory reform measures are designed to implement specific goals directed at antimicrobial products only, EPA proposes to create an entirely separate subpart devoted to antimicrobial registration procedures. Proposed new subpart W, entitled ''Registration of Antimicrobial Products,'' would be a freestanding subpart describing the application and Agency review procedures mandated by FIFRA section 3(h).

1. *Relationship of subpart W to other subparts in part 152.* Subpart W would supersede subpart C of current part 152 for antimicrobial products only; subpart C would continue to apply to all other products.

In addition, subpart W—for antimicrobial products only—would supersede certain individual sections of subpart F--Agency Review of Applications; subpart F would continue to apply to all other products. Specifically, the following sections would be superseded:

a. § 152.104, Completeness of applications. Completeness of applications covered by subpart W is contained in § 152.450, Contents of application.

b. § 152.110, Time for Agency review. Review periods for applications covered by subpart W are contained in § 152.457, Review period for applications.

c. § 152.115, Conditions of registration. Conditions of registration for products covered by subpart W are contained in § 152.459, Terms and conditions of registration.

d. § 152.117, Notification to applicant. Notification of Agency decision on an application is contained in § 152.455, Action on applications.

e. § 152.118, Denial of application. Denial of an application covered by subpart W is also included in § 152.455, Action on applications, although the procedures for denial in § 152.118 are cross-referenced in § 152.455.

As described in § 152.440, all other subparts of part 152 would continue to apply to products covered by subpart W and other pesticides. Some minor modifications are proposed to current § 152.1 to properly refer to the antimicrobial subpart. If subpart W and subpart F conflict for an antimicrobial product or application, § 152.440 states that subpart W would take precedence.

2. *Requirements duplicated in subpart C and subpart W.* To be comprehensive, avoid confusion for users, and avoid cross-referencing unnecessarily, EPA has repeated in subpart W certain elements of its current registration regulations from subpart C. In so doing, EPA has made minor editorial changes not requiring proposal for clarity and organization. EPA has captured the content of the following sections in subpart W, and is not requesting comment at this time:

a. § 152.40, Who may apply, which also appears as new § 152.443.

b. § 152.42, Application for new registration, which has been incorporated into new § 152.443.

c. § 152.43, Alternate formulations, which also appears as § 152.444, unchanged.

d. § 152.44, Application for amended registration, which is also incorporated into new § 152.443.

EPA has incorporated into proposed § 152.443(e) a general provision for certification programs at the Agency's discretion and direction. Current regulations in § 152.44(b)(2) allow a certification submission, in the Agency's discretion, which EPA has typically used only for Agency-directed actions. EPA has not to date expanded the certification option to a class of actions submitted on the applicant's initiative. EPA believes that it may implement certification programs administratively without regulations. Nonetheless, in light of the statutory provision requiring consideration of a certification process, EPA proposes a broader, but still discretionary, use of certification programs. Under today's proposal, EPA could identify elements of an application that the Agency believes are amenable to a certification mechanism. EPA would issue a guidance document (typically a notice to registrants) that would detail how a certification program would be used.

B. Applicability of Subpart W

The applicability of subpart W is governed by the statutory mandate of FIFRA section 3(h) in the first instance. However, because of differences in scope between the statutory mandate and the Agency's administration of the antimicrobial program, EPA proposes a

broader applicability than is provided for by the statute. This unit explains why certain products would be covered by subpart W and others would not be.

1. *Antimicrobial pesticides and food/feed use antimicrobial products are covered by subpart W.* Although this proposal reflects the mandate of FIFRA to address ''antimicrobial pesticides,'' EPA has chosen to cover a broader range of antimicrobial products than mandated. It makes sense for these procedural regulations to mesh as closely as possible with the Agency's organization and administration of the antimicrobial program, so as not to cause confusion either within the regulated community or within EPA itself. EPA has created an Antimicrobial Division within the Office of Pesticide Programs, whose responsibilities extend to all antimicrobial products, not just those defined as ''antimicrobial pesticides.''

Accordingly, EPA proposes that subpart W would apply to both ''antimicrobial pesticides,'' as defined by FIFRA section 2(mm) and antimicrobial products that are food/feed use pesticides, but are not defined as ''antimicrobial pesticides'' by FIFRA section 2(mm). Virtually all products in these two categories are processed within the Antimicrobial Division. The procedures and requirements of subpart W would be applied equally to these two categories of products (with the exception of review periods).

2. *Wood preservatives and antifouling products are not covered by subpart W.* This subpart would not apply to any product that is neither an ''antimicrobial pesticide'' as defined by FIFRA nor a food/feed use antimicrobial product. Inclusion in this subpart would complicate the registration process for products not processed in the Antimicrobials Division, which are subject to the registration procedures of subpart C.

The status of wood preservatives and antifoulant paints is complicated under FIFRA. FIFRA is very specific in defining certain types of products as antimicrobial pesticides and excluding other, similar products, depending upon the type of claims made for the product. A wood preservative or antifoulant paint that makes only an antimicrobial pesticidal claim is an ''antimicrobial pesticide'' and would be covered by subpart W as an antimicrobial pesticide. By contrast, any multi-claim wood preservative or antifoulant paint is not an ''antimicrobial pesticide'' and would not be covered by subpart W. As a practical matter, because most antifoulant paints assert non-antimicrobial barnacle claims, they would not be covered by subpart W. Likewise, many wood preservatives make insecticidal or fungicidal claims and would not be covered by subpart W.

Under FIFRA section 3(h)(3)(E), certain wood preservative products that would not be covered by subpart W may nonetheless be eligible for the same review periods as antimicrobial pesticides that are covered by subpart W (see Unit VIII.H. for a full discussion of this provision). EPA's responsibility for wood preservative products that qualify under section 3(h)(3)(E) is fulfilled by ensuring that the statutory review period is met. EPA need not, and does not propose to, make subpart W apply to these products merely to implement the statutory review periods.

Because the status of wood preservatives and antifoulant paints is complex, EPA is providing in Table 1 below a summary of the status of these products. The table breaks down wood preservatives and antifoulant paints by type of claim (or combination of claims). Column 1 of the table lists the claim or combination of claims possible; Columns 2, 3, and 4 answer the questions posed at the top of each column.

Table 1.—Status of Wood Preservatives and Antifoulant Paints

	Is this product an ''antimicrobial pesticide''?	Will this product be subject to this proposal?	Is this product eligible for statutorily-required review periods?
Wood Preservatives Insecticide claims only	No	No	No
Fungicide claims only	No	No	No
Antimicrobial claims only	Yes	Yes	Yes
Fungicide and insecticide claims	No	No	No
Antimicrobial and insecticide claims	No	No	Yes
Antimicrobial and fungicide claims	No	No	Yes
Antimicrobial, insecticide and fungicide claims	No	No	Yes
Antifoulant Paints Insecticide claims (barnacles) only	No	No	No
Antimicrobial claims only	Yes	Yes	Yes
Antimicrobial and insecticide claims	No	No	No

3. *Applicability is not dependent on where a product application is processed.* EPA has chosen to extend the proposal to food/feed use antimicrobials for practical organizational reasons. However, EPA emphasizes that where a product application is reviewed does not in any way determine whether subpart W applies. For example, the Antimicrobial Division currently reviews most antifoulant products, that for the most part are not covered by subpart W. The Antimicrobial Division also reviews those wood preservatives that do not make insecticidal claims, some of which are covered by subpart W. This allocation of products may change based upon workload and resource needs.

EPA may, in its discretion and for its convenience, choose to treat products that are not covered by subpart W as if

they were covered. For example, EPA currently reviews applications for non-covered products within the review periods of § 152.457, but, except for the narrow class of wood preservatives discussed above, the Agency is not required to do so, and would not be subject to any consequences if it failed to meet a review period.

C. Definitions

Section 152.442 contains definitions that apply to subpart W. Relatively few definitions are needed here, since most terms are defined elsewhere, either in FIFRA itself or in part 152. Terms pertaining to antimicrobial levels of activity (e.g., sterilant, disinfectant) are defined in subpart W of part 156, because they are used in conjunction with labeling and not with registration procedures. Comments are solicited on any additional terms that should be defined in subpart W to inform or clarify the subpart.

Proposed § 152.442 defines the following terms:

1. The term ''clearance'' is proposed to refer to all types of clearances required under a regulatory authority other than FIFRA before a product may be marketed. The term encompasses food tolerances, exemptions and food additive regulations under FFDCA section 408 and 409, and FDA clearances for medical devices under FFDCA section 510.

2. The term ''complete application'' is the general definition describing an application that may be placed into formal review. A complete application is one that contains all elements described by § 152.450, but not necessarily all information required for approving a registration or amendment.

3. The terms ''major new use,'' ''substantive amendment,'' and ''minor amendment'' are proposed as concise terms for application types defined in rather longer phrases in the statute.

D. Types of Applications

1. *What the statute requires.* FIFRA section 3(h)(2) establishes review period goals for antimicrobial applications, shown in Table 2 below, and requires in section 3(h)(3) that EPA differentiate in its regulations the types of review undertaken for antimicrobial pesticides. As discussed in Unit IV.C., EPA intends that defining these application types in this proposal, coupled with EPA's part 158 proposal, will serve to adequately differentiate the types of review undertaken by the Agency. EPA proposes in § 152.445 to define application types that correspond to the statutory review period goals prescribed in the statute. The categories EPA proposes are discussed in this unit.

Table 2.—Statutory Application Categories and Review Periods

Description of application type	Review period goal	
	Days	Months
Product containing a new active ingredient	540	18
Product that is identical or substantially similar (to another registered product)	90	3
Other new product	120	4
A new antimicrobial use of a registered active ingredient (either a new registration or an amendment)	270	9
Other amendment that does not require scientific review of data	90	3
Other amendment that requires scientific review of data	90 - 180	3 - 6

2. *Applications requiring FFDCA clearance.* The review periods for which application types must be described apply only to antimicrobial pesticides as defined in FIFRA section 2(mm). That definition excludes food/feed use products that require a clearance under FFDCA. Before assigning an application to a category having a review period, EPA must first exclude any application for a food/feed use that requires a new or revised clearance under FFDCA.

All other antimicrobial pesticide applications fall into one of the categories, described in proposed § 152.445(b) for new registrations and proposed 152.445(c) for amendments to existing products.

3. *Current application categories.* Currently, EPA does not define types of applications for registration by regulation, but has a detailed tracking system (the Pesticide Regulatory Action Tracking System or PRATS) for actions of all types flowing through the pesticide review process. The system works by assigning action codes to each type of action for purposes of PRATS tracking, reporting and process management; the action code definitions are detailed and do not correlate exactly with the six described in the statute. The PRATS system describes application types and assigns target review periods based on features that are not addressed by the general descriptions in the statute, including:

a. The applicant's method of support for the application (eligibility for the formulator's exemption, for example).

b. The amounts and types of data that require scientific review (product chemistry or confirmatory efficacy data, for example, require minimal review, while toxicology studies require considerable review time).

c. In the case of amendments, what aspect of the registration is being amended (composition, labeling).

d. Whether the application is an initial submission or a resubmission following a rejection of an initial application.

Moreover, combinations of registration actions (for example, a change in composition and labeling simultaneously, each with supporting data requirements) complicate EPA's task of describing a categorization scheme in simple terms.

It would be costly and inefficient for EPA to develop and manage separate tracking systems for antimicrobial decisions and other registration decisions. Nor does it make sense to do so. If EPA is to successfully manage the review process and track review periods for antimicrobial applications, it must use its existing tracking system. Accordingly, EPA's approach to defining types of antimicrobial applications was to crosswalk the types of applications defined by the statute with the descriptors used in PRATS.

EPA first sorted the categories of actions in PRATS and identified those that should be included in one of the six statutory categories. EPA then fleshed out the statutory descriptions using the greater detail of PRATS action code descriptions for purposes of this proposal. The results of this approach are presented in proposed § 152.445.

4. *Terms defined for this proposal.* EPA proposes to define more concise terms than the statutory ones for the purposes of this proposed rule. EPA proposes the following terms: (1) The term ''major new use'' for the statutory term ''new antimicrobial use of a registered active ingredient''; (2) the term ''substantive amendment'' for the statutory term ''amendment to an antimicrobial registration that requires sceintific review of data''; and (3) the term ''minor amendment'' for the statutory term ''amendment to an antimicrobial product that does not require scientific review of data.''

5. *Single category*. Because each antimicrobial pesticide application type will have a prescribed review period under FIFRA, and EPA's failure to issue a decision within that review period will be judicially reviewable, each application must be assigned to a single application category. Ideally, the applicant and EPA would have a common understanding of the designation of an application to avoid disputes over the review period. In all situations, the application categories in proposed § 152.445 are discrete, that is, there is only one possible application type that logically should apply. An application either is for a new registration or is an amendment to an existing registration. Beyond that broad division, the categories may be less well understood and subject to disagreement. Under proposed § 152.445(a), EPA would determine the appropriate category.

There is one situation in which the statutorily designated review period cuts across the application types as defined in the proposal. The Act sets a review period of 270 days for a ''new antimicrobial use of a registered active ingredient'' or ''major new use.'' Proposed § 152.445 defines application types in the first instance according to whether they are submitted to EPA as applications for new registration or amended registration. In the construct of the proposal, therefore, an application for a ''major new use'' may be either an application for new registration that includes a major new use, or an application for amended registration to add a major new use. Accordingly, both § 152.445(b) and (c) include a separate category for ''major new use. In both cases, the review period would be 270 days.

6. *Applications for new registration*—a. *A product containing a new active ingredient.* Products containing new active ingredients are a well-understood category. An application that proposes the registration of an active ingredient that has never before been registered falls into this category. A product containing a new active ingredient typically requires review of considerably more data than one containing already registered active ingredients.

b. *A product bearing a major new use.* This category consists of an application for new registration of a product bearing a major new use. A major new use is any use that is not registered for one or more of the active ingredients in a product. Typically a major new use would involve a significantly different pattern of use that changes or increases the exposures to the active ingredient, such that substantial amounts of new data are required to evaluate the different or incremental risks presented. This definition is comparable to that in § 152.3 for ''new use'' for non-antimicrobial products.

EPA intends in its part 158 proposal to categorize all antimicrobial uses into one of the following 12 use categories. All currently registered antimicrobial use patterns are included in one of these larger use classifications for data requirement purposes, but EPA has not to date classified the existing use patterns in this organized fashion.

- Agricultural premises and equipment.
- Food handling/storage establishments premises and equipment.
- Commercial, institutional, and industrial premises and equipment.
- Residential and public access premises.
- Medical premises and equipment.
- Human drinking water systems.
- Materials preservatives.
- Industrial processes and water systems.
- Antifouling coatings.
- Wood preservatives.
- Swimming pools.
- Aquatic areas.

Some categories would be further divided into subcategories. Subcategories would generally be defined on the basis of similar exposures and data requirements. Examples of significant use/exposure differentials among use categories and subcategories are food/non-food use and indoor/outdoor use or exposure.

Using these categories and subcategories of antimicrobial use patterns, EPA would regard as a major new use of an antimicrobial active ingredient any use in a different use category or subcategory from currently registered uses for that active ingredient. As an example, an active ingredient is registered with uses in the category of ''Materials Preservatives'' and subcategory ''Indoor non-food uses.'' If a registrant proposed a new use either in that same category for an ''Indoor food use'' (a different subcategory), or in the different category of ''Residential and Public Access Premises,'' that application would be a major new use of that active ingredient.

c. A product that is identical to an existing product. For clarity, this proposal separates ''identical'' and ''substantially similar'' products into two categories, even though they have the same review period. Applications for end use products of these types are generally indistinguishable from the so-called ''fast-track'' applications of FIFRA section 3(c)(3).

Identical products are those that have an identical composition to another registered product and bear identical use patterns. Both active and inert ingredients must be identical and in exactly the same proportion as the existing product. In the universe of antimicrobial products, ''identical'' products include products that are formulated by one company and simply repackaged by another company. These so-called ''repacks'' must be separately registered by the repackager. Identical products also include those that are actually formulated by a second producer based upon specifications provided by another registrant. The significant difference between these two types of identical products is that ''repacks'' require virtually no data for registration, while those that are produced separately require certain minimal ''bridging'' data to ensure that they are actually identical in composition and efficacy.

Identical use patterns mean that the label does not deviate in terms of organisms controlled, use sites, or directions for use. An applicant's product may have fewer (but identical) claims than another registered product and still be an ''identical'' product, but may not have different or expanded claims.

d. *A product that is substantially similar to an existing product.* Substantially similar products are those that are permitted to have minor differences in three areas—composition, use pattern, or method of data support—from another registered product. When evaluated against another identified registered product, a ''substantially

similar'' product must have the same active ingredients as the claimed similar product, in substantially the same proportion. The inert ingredients must also be substantially similar in chemical composition and functionality to the claimed similar product. For example, emulsifiers, fillers, solvents, propellants, etc., in the applicant's product must have similar counterparts in the cited registered product so EPA can reasonably conclude that both formulated products will have essentially the same chemical and physical characteristics and toxicity profile. Because substantial similarity may depend on the characteristics of the individual products or the active and inert ingredients, decisions on similarity would be made on a case-by-case basis.

Substantially similar use means that the product bears a use pattern similar to the claimed product. Again, fewer use patterns do not make the product dissimilar, but adding or changing use patterns would exclude the applicant's product from treatment as a substantially similar product. A use pattern is a claim for control of a specified organism on a specified site under specified conditions of use. With respect to public health products, for which efficacy considerations are paramount, use sites must be carefully considered in relation to the pest organism, and small formulation changes or variations in use directions can mean the difference between an efficacious product and a non-efficacious product. For this reason, ''substantially similar'' use patterns for public health products would be limited to identical organisms on both products. For non-public health products, substantially similar use patterns could involve organisms that are similar but not identical.

A similar method of data support means that the applicant is using methods of data support that do not require EPA to evaluate data (other than product chemistry data) to review the application. As a practical matter, this means that the applicant is either citing all required studies or requesting a waiver of required studies. Many antimicrobial products must be supported by efficacy data of some sort. Such products are not substantially similar even if they are similar in composition and use pattern to another product, because the submitted efficacy data must be reviewed by EPA. Such products would be considered ''other'' products.

e. *''Other'' products.* All applications for new registration other than new chemicals, identical or substantially similar products, or those bearing a major new use, would be assigned to the ''other'' category. These are products which have significant differences in composition, uses, method of data support or labeling. Proposed § 152.445(b)(5) provides examples of applications that would be categorized as ''other'' new applications, but is not comprehensive or explicit, since it is essentially a default category of application. If a new application cannot readily be categorized either as a ''new active ingredient'' or as an ''identical'' or ''substantially similar'' application, it would routinely be placed in this category.

7. *Applications for amendment.* Applications for amendment to an existing registration are categorized in much the same fashion as new applications, that is, by defining the ends of the review spectrum, and placing all amendments not clearly delineated into a middle category. EPA therefore defines in this proposal three categories of amendments.

a. *Amendment to add a major new use.* As noted earlier, a major new use may be presented to EPA in the form of a new registration or an amendment. This category is for amendments to add a major new use to an existing registration (as opposed to a new registration that bears a major new use). ''Major new use'' would be the same as described earlier.

b. *Minor amendment.* At the other end of the amendment spectrum, EPA proposes an application category termed ''minor amendment.'' This category is intended to parallel the ''identical or substantially similar'' category for new applications, and is also identical to the statutorily-defined ''fast-track'' provision of FIFRA section 3(c)(3). In no case would a minor amendment require the review of any data. The examples in proposed § 152.445(c)(3) list minor amendments not in terms of the actual registration changes that might be proposed, but in terms of the nature of the evaluation that EPA must do. EPA does not believe that this proposal can, or needs to, describe all the possible types of ''minor amendments.''

The following are some characteristics of a minor amendment:

- The evaluation can be conducted entirely within a Product Manager team, without any scientific consultation.
- The decision relies only on non-technical, non-scientific information readily at hand.
- The decision requires only regulatory or administrative judgments, not scientific ones.
- The decision applies existing policy, evaluates adherence to existing policy, or ensures consistency among decisions.

The evaluation consists of simple comparisons among products.

- The evaluation requires no separate documentation (such as a scientific review) beyond the decision itself.

c. *Substantive amendment.* EPA proposes a category termed ''substantive'' amendments. This type of application would parallel the ''other'' category of new registrations, and would encompass all amendments that are neither ''major new uses'' nor ''minor'' amendments. This category consists of amendments that require the review of any scientific data.

Most changes in label precautionary statements or use directions are included in this category, as well as many changes in product composition. Inclusion of such a wide variety of amendments in this category simply reflects the fact that these changes require the review of some data. The data may consist solely of bridging or confirmatory chemistry, toxicity, or efficacy data to demonstrate that the product and its uses, as modified, would not significantly increase risks, or that the product as modified remains efficacious. Moreover, the review may be a cursory evaluation of existing data to determine that the amendment is adequately supported. Nonetheless, the defining characteristic of a substantive amendment is the need to review some data, either submitted by the applicant or cited from Agency files.

This category is the only one in the statute that carries a range of review periods (90 to 180 days), a provision that recognizes the variety of amendments that can conceivably be proposed to a registration. Arguably, the inclusion of a range of review periods suggests that there are gradations of application types within this range—applications that are relatively less complex that could fall at the short end of the review period (90 to 120 days) and others that require the full 180 days. Under this interpretation, EPA could be expected to establish by regulation subcategories of application to which a specific review period within the 90– to 180–day range would apply. Equally consistent with the statute would be an interpretation holding that the range was included simply to allow EPA the flexibility to deal on a case-by case basis with the wide variety of amendments covered by this category, and that no further differentiation or other regulatory treatment is required.

EPA adheres to the latter view. EPA does not believe that it is statutorily obligated to establish subcategories of 90– to 180–day substantive

amendments. EPA has not discerned any great benefit to the Agency in doing so, especially by regulation, while noting a number of disadvantages. A proliferation of categories in itself creates administrative burdens for EPA in tracking applications. The more categories that are created—each having its own description against which applications must be judged and a distinct review period—the more time it takes EPA generally to administer a tracking system and ensure that review periods are met. Likewise, the more EPA is bound by regulatory categories and review periods, the less flexibility the Agency has to respond to changing review needs or critical priorities without running afoul of its regulations. EPA is not precluded from adopting administrative subcategories if it does not choose to adopt regulatory ones. Moreover, it is not clear that there would be significant benefits to applicants in gaining a decision 30 to 60 days earlier that would justify the additional administrative burden for EPA. Accordingly, EPA is not proposing any specific subcategories. Under today's proposal, all substantive amendments would be afforded the same review period, that is, a maximum of 180 days.

In its stakeholder meetings over the past year, however, industry representatives requested that EPA solicit comment on whether subcategories should be established. Suggestions from the Chemical Specialties Manufacturers' Association (CSMA) included the following, all of which would be classified as substantive amendments:

1. Amendment with data to add a ''me-too'' use that requires full toxicology and efficacy review.
2. Amendment with data to change a formulation that requires full toxicology and efficacy review.
3. Amendment with data to modify a label requiring a toxicology or efficacy review.
4. Amendment without data to modify a label which requires a toxicology or efficacy review.

EPA solicits comments on these and other sub-categorizations and review periods. Commenters should consider the following factors important to EPA's decision:

- A suggested category must be capable of unambiguous description. EPA would likely not consider a category of uncertain description that could be subject to dispute between applicants and the Agency.
- A suggested category must be meaningful in terms of both numbers of applications likely to fall in that category and in the suggested shorter review period. A category that includes relatively few amendments would be equally unsatisfactory as one that includes too many amendments. A suggested review period with less than a 30–day decrement (180 to 160 days for example) would likely not be considered meaningful. Nor would EPA likely adopt a category with a suggested review period of 90 days, since there would then be no distinction between that subcategory of substantive amendment and a minor amendment.
- A suggested category must be comprised of amendments that can be reviewed within a review period of less than 180 days without jeopardizing EPA's ability to meet other review periods. EPA is committed to making decisions on applications as rapidly as possible, and currently is meeting the review period goal of 180 days consistently for all substantive amendments, but without consideration of subcategories.

If commenters persuade EPA that additional subcategories should be established, and that the benefits of less than 180–day decisions outweigh the added administrative burdens (bearing in mind that the Agency has limited resources and that additional administrative burdens mean fewer resources for reviewing applications), EPA may in the final rule adopt one or more subcategories of substantive amendments that would refine the review period within the 90– to 180–day range. EPA will not consider subcategories of any types of applications other than substantive amendments.

E. Consultations During the Application Process

Because EPA is required to process complete applications for registration within judicially reviewable timeframes, it is critical that applications and data be complete and conform to Agency requirements, and, as much as possible, that applicants and the Agency have a common understanding of requirements and expectations about the process and its outcomes.

EPA recognizes that the registration process can be complicated for persons who are unfamiliar with FIFRA and its requirements; even for those who deal routinely with the Agency, keeping up with new policies and procedures can be challenging.

In the past, deficiencies in applications or data have been resolved during or after the review process, either informally, for example with a telephone call for a minor problem, or formally, by rejecting an application with significant deficiencies. The current review process has tended to encourage consultation only after an application has been rejected, when EPA can explain both the results of its review and what an applicant needs to do to correct deficiencies. Pre-submission consultation has not typically been the case with antimicrobial products.

With the completeness of an application at stake for an applicant, and strict review periods in place for EPA, it makes sense for both to consult as much as is practicable and as early as possible. Misunderstandings about requirements and expectations may lead to needless determinations of incompleteness or denial for the applicant, while impeding EPA's ability to reach decisions in a timely fashion as required by the statute.

EPA encourages consultation with the Agency on any application prior to a determination of completeness. However, the majority of antimicrobial applications are for so-called ''me-too'' products and uses, those which are identical or substantially similar to others already registered. Such applications are relatively easy to submit correctly, seldom raise new or controversial issues, and should not routinely require specific consultation. Once an application has been determined to be complete, and has been placed in review, the applicant should not need or expect to consult the Agency until the end of the appropriate review period (which for ''me-too'' products is only 90 days), or until EPA notifies the applicant of a deficiency.

However, EPA has identified two areas where it believes advance consultation is essential to the submission of a complete application, and proposes in § 152.447 to require pre-submission consultation. The first is applications for new chemicals and major new uses. These consultations, which are common for agricultural chemicals but rare for antimicrobial chemicals, help the applicant and the Agency agree upon data requirements, data waivers, or issues that typically arise for new chemicals and major new uses (such as food use status).

In addition, EPA proposes to require pre-submission consultation whenever an efficacy test protocol or method must be approved by the Agency either because there is no protocol or because the applicant wishes to modify an exising protocol.

The regulation does not prescribe how consultation is to be accomplished. There is no requirement that a required consultation occur in a meeting; a conference call, letter, or other form of

communication may be sufficient, depending on the nature of the new chemical, new use, or protocol approval needs. However, proposed § 152.447 emphasizes that any regulatory determinations must be in writing. EPA expects the applicant to follow up any consultation with a summary of any decisions so that EPA may confirm them in writing. Proposed § 152.450 would require written documentation of a consultation describing the substance of the consultation to be submitted with the application to verify that the consultation took place as required.

In turn, EPA would commit to adhere to the decisions agreed upon in a pre-submission consultation unless the circumstances of the application change, its determinations were in error, or a question of adverse effects arises.

F. Contents of Applications

1. *What the statute requires*. FIFRA section 3(h) requires formal Agency review only upon submission of a ''complete'' application, and requires that EPA clarify its criteria for completeness of an application. Current regulations in 40 CFR 152.50 describe the contents of an application for registration, including applications for antimicrobial products. EPA proposes in subpart W an expanded and more detailed description of the contents of a complete application, including some new elements of an application not currently required.

2. *Definition of complete application*. First, EPA is proposing a general definition of ''complete application'' in § 152.3, a definition that would apply to all applications for registration. Other provisions of FIFRA also link Agency priority, review or action to completeness of an application, for example, the fast-track and minor use provisions of section 3(c)(3), and the expedited review provisions of section 3(c)(10). The general definition is repeated in § 152.442 to apply to antimicrobial applications.

The definition draws a distinction between the completeness of the application itself (which allows EPA to commence formal Agency review), and the completeness of the information needed for EPA to approve the application. It is relatively easy to define a core set of items—forms, labels, routine and uncomplicated data—which, if present in an application, suffice to begin review. But completeness for Agency decision purposes encompasses an element of ''adequacy'' that, for many applications, can only be determined on a case-by-case basis, and only during or after substantive review of the application. Accordingly, the decision by EPA that an application is ''complete'' (and, for ''antimicrobial pesticides,'' that begins a review period), represents only a preliminary or interim determination of overall completeness intended to allow EPA to initiate formal review.

Completeness becomes a question of adequacy as the amount of scientific data and the complexity of the risk assessment increase. Typically, applications for new chemicals or new uses, and actions involving food uses or increased non-dietary exposures require more data. FQPA significantly expanded the scope of dietary risk assessment under the FFDCA, particularly for infants and children. Correspondingly, EPA will be enhancing its non-dietary assessment of risks to infants and children, such as might occur with antimicrobial pesticides. However, ''fast-track'' or ''me-too'' applications that require little or no scientific review comprise the bulk of antimicrobial applications submitted to EPA. These actions are relatively straightforward as to application and approval criteria and EPA expects that the completeness determinations for review purposes and for approval of the application generally would be equivalent. For these types of applications, EPA would be less likely to find during its formal review that it requires data or information beyond that provided at the time of application.

3. *Contents of an antimicrobial application*. FIFRA section 3(h) requires that, in its final regulation, EPA clarify criteria for determination of the completeness of an application for antimicrobial pesticides. EPA is proposing in § 152.450 detailed requirements for applications, which, if satisfied, would allow a preliminary determination of completeness.

Current requirements in § 152.50 form the basis for the requirements in proposed § 152.450, but EPA proposes an expanded level of detail. Table 3 below sets out each element of an antimicrobial application as proposed today. Column 1 identifies the application requirement. Column 2 gives the reference in proposed § 152.450 of the requirement. Column 3 gives the cross-reference to § 152.50, or indicates that the requirement is new. New elements are discussed more fully afterwards. Column 4 provides explanatory notes, indicating that a requirement is unchanged from current requirements, or describing additions or changes for antimicrobial applications.

Table 3.—Contents of an Antimicrobial Application for Registration

Requirement	§ 152.450 reference	§ 152.50 reference	Explanatory notes/differences for antimicrobial applications
Application form	(a)	(a)	Unchanged. Detail is provided on the elements and completeness of the form.
Authorization for agent	(b)	(b)(3)	Unchanged.
Summary of application	(c)	(c)	Unchanged. This summary and that required for results of studies may be consolidated.
Statement of formula	(d)	(d), (f)(2)	Unchanged. The Statement of Formula includes both product identity and composition.
Draft labeling submission	(e)	(e)	Unchanged. Detail is provided on the presentation and completeness of the labeling submission.
Method of support documentation	(f)	(f)(1)	Unchanged. Consists of forms and information required to demonstrate compliance with data compensation requirements of FIFRA. § 152.450 summarizes the existing methods of data support.
Data	(g)	(c), (f)(2)	Unchanged.

Table 3.—Contents of an Antimicrobial Application for Registration—Continued

Requirement	§ 152.450 reference	§ 152.50 reference	Explanatory notes/differences for antimicrobial applications
Adverse effects information	(h)	(f)(3)	Unchanged. The proposal clarifies that such information is not required with an application for amendment.
Tolerances or other food clearances	(i)	(i)	Unchanged.
Consultation documentation	(j)	New	If a pre-submission consultation occurred under § 152.447, or decisions or agreements were made at an optional consultation, the applicant would be required to provide documentation of that consultation.
Data reviews conducted by other regulatory authorities	(k)	New	If reviews have been, or are being, conducted by other regulatory authorities, the applicant would be required to submit those that are available.
Other clearances	(l)	Not previously in regulatory form	Unchanged. Applicants are currently required to provide evidence that the applicant has requested clearances required by other Agencies.
Packaging	(m)	(g)	Unchanged. Clarifies that packaging itself is not to be submitted with an application unless specifically requested by EPA.
Product samples	(n)	Not previously in regulatory form	Unchanged. Clarifies that product samples are not to be submitted with an application unless requested by EPA.
Self-addressed means of EPA notification	(o)	New	Voluntary submission of a postcard or other means for EPA to notify the applicant of a preliminary determination of completeness.
Fees	(p)	Part 152, subpart U	Unchanged. Application fees are currently suspended. Included here only for completeness.
Authorization to share data and data reviews	(q)	New	Optional. The applicant is requested to authorize EPA to share either data or EPA reviews of data with State, Federal, national, or international regulatory authorities.

4. *New required elements of applications.* Only three required elements of an application are entirely new in today's proposal.

Proposed § 152.450(j) would require that applicants submit documentation of the results of pre-submission conferences, either those required by § 152.447 or optional ones, at which regulatory-related decisions were discussed or agreements reached. The documentation could be minutes of the meeting that EPA has reviewed, or could be a letter from EPA confirming the decisions reached or approving a specific test regimen or protocol.

Proposed § 152.450(k) would require the applicant to submit available reviews of the application, or of individual studies, that have been conducted by other regulatory agencies or organizations. If an application has been submitted for regulatory review elsewhere, the applicant would be required to inform EPA of that fact. Applications may have been submitted concurrently to international regulatory bodies, or to Federal Agencies or States. If EPA is able to use the results of reviews conducted elsewhere, it will save time and resources in reaching a decision on the application, which may allow earlier entry into the marketplace. An applicant would not be required to either await the results of ongoing reviews or to specifically obtain copies of the reviews to submit with his/her application. However, if reviews have been provided, the applicant would be required to submit them to EPA with his/her application.

Proposed § 152.450(l) would require that applicants provide EPA with documentation that they have received (or have applied for) any other clearances from Federal agencies that might be necessary to market or use the product. EPA currently requires such documentation before issuing a registration bearing the use in question. Submission with the application of evidence that the clearance has been requested or obtained would help assure EPA that the applicant is fully aware of its obligations under other laws. Ensuring that all regulatory clearances are underway concurrently also makes the review periods for EPA meaningful. EPA approval of an application within a review period would have little meaning if the applicant cannot market the product or users cannot use it because additional clearances are needed.

5. *Non-mandatory or clarified elements of applications.* Four further elements of the antimicrobial application are either clarified by inclusion of explanatory language, or are voluntary information.

Proposed § 152.450(m)(2) clarifies that product packaging is not to be submitted unless requested. The submission of labeling is accomplished using draft typescript copies or mock-ups that are suitable for microfilming and filing.

Proposed § 152.450(n) clarifies that applicants are not to submit actual product samples with an application unless requested. EPA typically requires samples of active ingredients or analytical standards in conjunction with

setting tolerances. EPA may also request samples of antimicrobial pesticides bearing public health claims for EPA evaluation of efficacy. In each case, EPA will separately request such samples and instruct the applicant how and where to provide them.

Proposed § 152.450(o) provides that applicants who wish to be notified whether an application is preliminarily complete (and therefore has been placed into review with a review period) furnish EPA with a means of notifying them. This could take the form of a postcard, form letter, or other means of such notification. Without an easy means of notification, EPA cannot commit to written notification. Nor will EPA use notification methods such as telephone or e-mail that cannot properly be documented by an authorized signature as EPA-originated, although advances in technology may make this feasible in the future. Finally, EPA would notify the applicant only at the time the application is determined to be complete; at that time the formal review period would have started, and EPA's next communication with the applicant would normally be a decision on the application (§ 152.455, Action on applications.) EPA would not accept multiple postcards or requests simply to advise the applicant of the status of the application review during the review period.

Proposed § 152.450(q) requests, but does not require, that the applicant provide authorization for EPA to share the data or EPA reviews of data with other regulatory agencies. The ability to share data and reviews among regulatory authorities will contribute to streamlining EPA review processes for antimicrobial products, and is an essential element in achieving harmonization of reviews.

An applicant who intends to market a product in the United States may be required to register the product with individual States; an applicant who intends to market the product abroad (such as in Canada) must meet the regulatory requirements of other countries. While the depth of regulatory scrutiny of a product varies among States and countries, many require the submission of equivalent amounts of data as the applicant has submitted to EPA. The ability to share data submitted to one regulatory authority with others can reduce the paperwork and review burden of all by reducing multiple identical submissions and allowing the sharing of the review load. EPA already is engaging in work-sharing efforts with the State of California and with Canada.

This effort can be complicated by confidentiality claims under FIFRA section 10(b) or the disclosure restrictions of section 10(g). Section 10(g) permits the Agency to disclose data in support of registration only to those who affirm that they will not further disclose the information to foreign or multinational pesticide producers. Although a mere claim of confidentiality under FIFRA section 10(b) does not conclusively prevent disclosure of information, it does require the Agency to follow certain procedures (which may include obtaining a substantiation of the claim from the registrant) to determine whether the information is entitled to confidential treatment. These procedures can interfere with free and unimpeded exchange of information and data among regulatory authorities.

On November 27, 1985, EPA issued Class Determination 3-85 (50 FR 48833). EPA declared as non-confidential (and not subject to the disclosure restrictions of FIFRA section 10(g)) reviews of data that do not contain information which would disclose: (1) Manufacturing or quality control processes; (2) the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide product; (3) the identity or percentage quantity of any deliberately added inert ingredient of a pesticide product; (4) unpublished information concerning the production, distribution, sale, or inventories of a pesticide (such information might appear in reviews which discuss the amount of a pesticide sold or used in a given time, and thus might concern the significance of data from a test or experiment); (5) any complete unpublished report submitted to EPA by a registrant or applicant; or (6) excerpts or restatements of any such report which reveal the full methodology and complete results of the study, test, or experiment, and all explanatory information necessary to understand the methodology or interpret the results.

Agency data reviews are normally drafted to avoid inclusion of information that is within the six categories described in the paragraph above, but EPA cannot guarantee that all reviews will meet these criteria. Moreover, as discussed above, the Agency may have a need to share raw data in addition to study reviews with States and other countries.

EPA believes it is in the interest of both applicants and the Agency to have free and unimpeded exchange of information and data among regulatory authorities. To that end, this proposal requests that applicants authorize such exchange at the time of application. Sharing data and reviews with other regulatory authorities would not compromise the protection against disclosure provided by section 10, because such sharing would not constitute a public disclosure of the information.

To authorize data- or review-sharing, the applicant would submit a statement authorizing EPA to share either any data submitted with the application or EPA's reviews of such data with regulatory authorities as needed. An appropriate permission statement would be similar to the following:

This letter grants permission for EPA to share all data submitted with this application, EPA reviews of data submitted with this application, with State, other U.S. Federal, or other national regulatory authorities. This authorization does not waive any restrictions on public disclosure of the data reviews.

G. EPA Action on Applications

1. *Completeness screens.* EPA currently screens all applications for completeness, not just antimicrobial applications. The Office of Pesticide Programs Front End Processing Unit (FEPU) receives all applications, processes them administratively, and conducts a simple screen to ensure that required application items are present and properly submitted. An application accompanied by data is subsequently screened for submission and format requirements of the data itself. Data submissions must include specific items prescribed by Agency regulations in 40 CFR 158.32 and 158.33, as well as meet format and presentation requirements detailed in PR Notice 86–5. Neither of these screens evaluates the substance of the application or the data. In either the FEPU or data screen, EPA may identify deficiencies that must be corrected. Depending on the nature of the deficiency, the application may be placed into review anyway, and deficiencies corrected during the review process. This informal screening and correction process has served the Agency and applicants well over the years.

Nonetheless, because FIFRA directs EPA to develop completeness criteria, and because antimicrobial pesticides are now subject to review periods, which are computed only if an application is determined to be complete, it is imperative that EPA not only establish more formal criteria for completeness, but that EPA conduct a more rigorous completeness screen before determining even preliminarily that an application is complete. Section 152.455 of today's proposal describes what actions EPA

may take on complete and incomplete applications.

2. *Preliminary determination of completeness*. In addition to the FEPU administrative screen and the data review screen, the Antimicrobial Division has instituted a more in-depth screening process to ensure that only applications that meet the standards of proposed § 152.450 enter formal Agency review. The antimicrobial screening process builds on the earlier screens in two ways: by evaluating the adequacy of certain application items that are typically not evaluated in a simple administrative screen (e.g., are clearly required studies included?), and by evaluating application requirements peculiar to antimicrobial pesticides (e.g., efficacy data requirements).

Based on this screen, EPA would make a preliminary determination whether an application is complete (proposed § 152.455(a) and (b)). If the application is incomplete, EPA would notify the applicant, describe the deficiencies and await resubmission by the applicant. If complete, and a self-addressed notification has been provided in accordance with proposed § 152.450(o), EPA would notify the applicant of the determination, compute the date under proposed § 152.457 when a decision may be expected (calculated from date of receipt of the application), and place the application into formal review. If no self-addressed notification is provided, EPA would place the application into formal review, but would not notify the applicant. Because some elements of completeness cannot be evaluated until the application is reviewed in depth, a determination of completeness sufficient to place the application into formal review must, of necessity, be a preliminary one.

EPA is likely to apply its completeness criteria very strictly, for several reasons. Strict application of completeness criteria appears to be consistent with the statutory direction to base enforceable deadlines on completeness determinations. Further, consistent treatment of applications is more likely if EPA establishes and adheres to relatively ''bright line'' criteria for completeness. Finally, the sheer number of applications that EPA receives means that it must allocate its review resources very carefully. EPA does not believe it unreasonable to use completeness determinations as a management tool for those resources. While refusing entry into review for a minor deficiency may appear inflexible, it is important to recognize that what is flexibility for one applicant may appear to be inconsistency or inequity to another. EPA believes that lack of completeness criteria and inconsistent application of such criteria have been a source of applicant dissatisfaction.

3. *Effect of incompleteness determination on review period*. Regardless of when a determination of incompleteness is made, the consequence is the same: the review period would either not be computed or would be halted and recomputed anew upon receipt of all items completing the application. EPA would notify the applicant that the application is incomplete, and specify how it can be made complete.

4. *Applicant resubmission*. Proposed § 152.455(b) specifies that EPA will deem the review period to have begun only upon receipt of the last item that completes an application. Partial information clearly does not satisfy the completeness criteria, or allow the application to be placed into review. EPA discourages applicants from correcting application deficiencies in a piecemeal fashion; nonetheless, historically this has happened (and been tolerated by the Agency) because some deficiencies are easy to correct (a form not signed, an unreadable draft label), while others may take longer (a missing required study).

An applicant may wish to resubmit rapidly what can be readily corrected, and EPA may wish to accommodate the applicant's desire to begin review of available information. As noted earlier, under the current application review system, both of these can often be accommodated. EPA frequently is requested and agrees to place an application into review while waiting for some item that has not yet been submitted, expecting that the missing item can ''catch up'' before it is needed for review. Under the tight review periods provided for antimicrobial application review, however, EPA cannot afford the time and resources that may be lost if an applicant fails to provide the needed information in a timely manner. Other applicants also suffer because their applications are not reviewed as promptly as possible. Accordingly, EPA would not place an application into review until all deficiencies are corrected, and a preliminary determination of completeness can be made.

5. *Agency review*. Once EPA has issued a preliminary determination of completeness, EPA will place the application into substantive Agency review. EPA conducts scientific reviews in parallel as much as possible, although some reviews depend upon the results of others and must be conducted sequentially. Proposed § 152.455(d) specifies that, once in review, EPA will complete all reviews for the application before issuing a decision of any sort, even a determination that the application remains incomplete. EPA intends, however, to continue, to the extent practicable, its longstanding practice of communicating informally with applicants about interim results of reviews as they are completed. Informal communications are not Agency decisions on the application itself, and are entirely at the Agency's discretion.

6. *EPA decisions after review*. Section 3(h)(3)(F)(i) provides that:

> [T]he Administrator shall notify an applicant whether an application has been granted or denied not later than the final day of the appropriate review period under this paragraph, unless the applicant and the Administrator agree to a later date.

This provision is probably the single most significant element of the overall antimicrobial reform effort mandated by FIFRA. All process improvements and efficiencies directed elsewhere in FIFRA section 3(h) are for the purpose of shortening review periods to the goals specified in FIFRA section 3(h)(2). This provision holds EPA to a decision within the review periods that would be established under this proposal. EPA's failure to meet those review periods is judicially reviewable.

EPA takes seriously its mandate for antimicrobial process reforms: meeting its review period goals is the most visible and tangible evidence of the success of its reforms. Hence, how EPA implements this provision, both in making decisions and in managing the review period process, is critical.

EPA review must culminate in one of two specified decisions—approval or denial—by the end of the review period. The ''review period'' can be either that established in proposed § 152.457, or an extended review period agreed to between an applicant and EPA. The statute does not provide for negotiated shorter review periods; those that would be established under this proposal are minimum review periods that would apply unless extended by agreement.

The statute is silent on whether EPA may take other unspecified actions prior to the expiration of the review period and what those actions might be, but clearly no action other than approval or denial is authorized at the end of the review period. EPA believes that it is within its discretion to take interim actions prior to the expiration of the review period, as long as the final decision on an application is either approval or denial. Interim actions might include communications with applicants on the application, preliminary indications of

incompleteness or other deficiencies that might lead to denial, or notice of the Agency's intent to approve the application.

Approval is of course the desired decision from the applicant's point of view. If the application is complete and relatively uncomplicated, reaching a decision within the review period is mostly a function of efficient management of the review process. The bulk of the antimicrobial applications that EPA receives are for so-called ''me-too'' products and amendments (those with review periods in the range of 90 days). These can be fairly characterized as uncomplicated, and problems with completeness are more likely to be the reason for delays in approval than the complexity of the review or decisionmaking processes. Delays due to incompleteness are not included in EPA's review period. A rigorous application of the completeness criteria of proposed § 152.450 to weed out incomplete applications should enable EPA to reach a decision within the review period for applications that are complete.

For applications of greater complexity—new chemicals, major new uses and other products and uses that are not substantially similar—the decision process is not a straightforward one-time review leading to a single decision point of approval or denial. Rather it involves a series of decisions, with stops and starts in the process as the application progresses. Typically, such an application goes through several cycles of review. Under current practice, EPA commences review of an application and often determines that it is incomplete, inadequate, or raises risk or efficacy concerns that must be addressed. The Agency notifies the applicant and places the application into pending status until the applicant responds. The ''down time'' awaiting applicant response varies considerably based on the type of problem, but if a new study is required, may be from 6 months to 2 years. For the most complex applications, those for new chemicals and major new uses, the cycle may be repeated several times. Thus, the total elapsed time from beginning of review to an approval or denial decision may be lengthy, but the length is generally not attributable solely to EPA inaction or delay. The time may be marked by interruptions when the application is awaiting applicant action and not EPA action.

In the current review process, an interim decision is not a denial, which carries the right to administrative appeals. EPA refers to such a decision as a ''rejection,'' a term used to reflect the interim incomplete status of the application and of EPA's review.

The provision in FIFRA section 3(h) that EPA must reach a decision within a specified review period is silent on whether or how the review period should accommodate the cyclical nature of the review process, in which EPA review time and applicant response time typically alternate. A strict interpretation of the provision would be that the review period includes applicant ''down time.''

Congress rightly anticipated that EPA might reasonably need a longer review period in certain circumstances, and the statute contemplates, but does not specify, a process for reaching agreement on a longer period for the formal approval or denial decision. The excepting clause, ''unless the applicant and the Administrator agree to a later date,'' while not perfect in that it does not reflect the reality of the review process, does allow EPA and the applicant, by agreement, to extend the total review period. An agreement on extension could be tailored to account appropriately for applicant ''down time,'' without penalizing EPA or subjecting the Agency to the threat of judicial review. EPA believes that this clause provides much-needed flexibility both in the types of actions that EPA may take and the process by which an appropriate review period is to be agreed upon.

Regardless of the reasons for needing an extension, EPA cannot afford to engage in case-by-case negotiation for every application that might approach the end of its review period without a decision. To reflect more closely the actual review process, EPA needs to be able to take actions before the end of the review period that have the effect of extending the overall review period by stopping it for some period of time. Without such flexibility, EPA may be compelled to use its denial authority more frequently to meet the statutory requirement to issue a decision.

EPA does not intend to violate its regulations by failing to make decisions in a timely manner. If EPA is unable for any reason to issue a decision on an application within the review period, and cannot agree with the applicant on an extension, EPA's failure permits the applicant to seek judicial review. EPA views the judicial process as the least desirable means of resolving disputes over the review period. Not only is it time-consuming and costly for both parties, but a predictable result of judicial review is that a court would order EPA to complete review within some further period of time, an outcome which has the same effect on the review schedule as if EPA and the applicant had agreed to an extension.

EPA's alternative course of action, permitted by the statute, is simply to deny the application. Denial would be governed by the provisions of FIFRA section 3(c)(6), which permits an administrative hearing process. While EPA may thereby satisfy the requirement to issue a decision and avoid the threat of judicial review, the Agency believes there is little value added by the administrative hearing process, which can be as protracted, costly, and uncertain as judicial review. Nor does EPA believe that applicants, many of whom are small companies without substantial financial or technical resources, are well served by either an administrative or judicial process in this particular context. Their objective is presumably to obtain an EPA decision in the most timely manner and without extraordinary effort or cost on their part.

Given that individual negotiation is not feasible for any large number of applications, that EPA and applicants may reasonably disagree on the need for or length of extension, and that neither judicial review nor denial of the application is an appealing means of resolving such disputes, EPA believes it prudent to establish rules for implementation of review periods that build in provisions for extension. Today's proposal would do so, while not foreclosing the opportunity for case-by-case extension agreements when warranted.

Accordingly, EPA proposes in § 152.455 a series of possible decisions arising from substantive Agency review, incorporating proposals for dealing with extensions. These are: (1) The application may be approved; (2) the application remains incomplete; (3) the applicant has failed to furnish sufficient information to determine whether the application may be approved (two circumstances with different consequences for the review period); and (4) denial for cause.

7. *Approval.* If EPA approves the application, it would follow its customary procedures to notify the applicant by issuing a Notice of Registration or letter of approval for an amendment and sending back a stamped copy of the approved labeling if called for.

8. *Opportunity for rebuttal.* EPA frequently issues a registration that is conditioned upon the applicant's making certain corrections or modifications to the registration before sale or distribution. Such terms and conditions generally only require changes which are minor in nature and

most often consist of labeling changes to be consistent with similar products, adhere to Agency policies, or clarify label statements. In EPA's experience, virtually all new registrations require some modification to the label; for this reason EPA requests and approves draft labeling as part of the application, and requires that the applicant submit final printed labeling prior to sale or distribution of the product.

EPA's approval of the registration and permission to distribute or sell the product is premised on the applicant's acceptance of EPA's terms and conditions. Proposed § 152.455(d)(1) would permit applicants who disagree with the terms or conditions of EPA's approval to submit an objection within 30 days of receipt of registration. In a process analogous to the appeals process for notifications in FIFRA section 3(c)(9), EPA would review the applicant's arguments and issue a final decision. EPA would try to review the objection and render a decision within 45 days of receipt by the Agency. It should be kept in mind that EPA's limited resources must be devoted first and foremost to its review period obligations for application decisions; EPA cannot promise that objections to decisions already made will receive equal attention.

9. *Determination that the application remains incomplete*. EPA may decide that, notwithstanding its preliminary determination of completeness, the application remains incomplete. One reason EPA might determine incompleteness is if the deficiency is the result of the applicant's failure to follow well-established and clearly stated guidance, procedures, or policies. Such ''incompleteness'' could be identified when studies are reviewed in depth and found not to have been conducted in a manner that provides EPA with adequate information on which to reach a decision on the application. This type of incompleteness would normally be discovered only during substantive review. EPA cannot however, preclude the possibility that some deficiencies could be overlooked at the earlier preliminary completeness screening.

EPA expects that it would choose to use the incompleteness determination only rarely after an application is preliminarily determined to be complete, electing instead to deny the application or seek agreement with the applicant on an extension of the review period.

Applications having relatively short review periods (≤120 days) are generally straightforward enough that EPA believes it would catch most incomplete applications at the earlier preliminary completeness screening phase. EPA believes there should be few ''me-too'' type applications that are determined to be incomplete after entering formal review. EPA would rarely seek to extend the original review period for these short-term applications since it is considerably easier in Agency tracking systems to close out a review period altogether than to track an extension. Tracking the review period is a time-consuming operation. EPA does not believe it should devote its scarce resources to tracking an original review period through a series of short-term extensions. This is especially true given the high volume of applications that fall into the ≤120–day review period.

With respect to longer review period applications (≤120 days), EPA might choose to determine that an application is incomplete if a deficiency is discovered early in the review process (e.g., in the first 90 days of a 270–day review period).

If, at later points in a lengthy review period (e.g., 200 days into a 270–day review period), EPA judges an application to be deficient for reasons attributable to incompleteness, the Agency would want to examine why this is occurring. Why are incomplete applications being submitted and not being identified earlier in the process? Over time, as process improvements continue to be put in place and EPA and applicants familiarize themselves with new procedures and requirements, EPA expects that incompleteness determinations after beginning Agency review would decrease. Nonetheless, EPA must reserve to itself the right to determine after placing an application into formal review that the application is actually incomplete.

EPA is not obligated to begin review of or compute a review period for an application that is incomplete. If EPA determines after putting the application into formal review and computing a review period that the application is incomplete, EPA would normally stop the review, notify the applicant of its incompleteness, and recompute a new review period upon receipt of submission completing the application. Proposed § 152.455(d)(2)(ii) specifies this typical result.

10. *Qualifying resubmission for incomplete applications*. However, in its discretion, EPA proposes in § 152.455(d)(2)(i) to offer applicants somewhat more flexibility in Agency review periods if the incompleteness determination occurs after putting the application into formal review and if completing the application can be accomplished on an accelerated basis. For applications having short review periods (≤120 days) and minor incompleteness deficiencies, EPA believes that it need not necessarily take the full review period that it would be entitled to when the complete application is resubmitted. Generally, if a minor deficiency can be corrected within 30 days after notice to the applicant, EPA proposes to term that resubmission a ''qualifying resubmission'' and to complete review within a shorter review period than would otherwise be computed. In general, § 152.455(d)(2)(i) proposes a subsequent review period 30 days shorter than the original base review period for that type of application, i.e., 60 days instead of 90 days for an identical or substantially similar application, and 90 instead of 120 days for an ''other new application.'' The choice to offer an abbreviated review period is entirely within EPA's discretion; EPA could instead take its entire review period.

EPA proposes to limit such ''qualifying resubmissions'' to applications having a review period of 120 days or less. EPA believes that the incompleteness deficiencies likely to arise in such applications would generally not be multiple deficiencies and are less likely to involve serious data deficiencies. By contrast, EPA review of an application for a new active ingredient or major new use would in all probability identify multiple deficiencies, including data deficiencies, not amenable to correction within 30 days.

11. *Determination that the applicant has not submitted all needed information*. If there are deficiencies other than incompleteness deficiencies, the Agency may determine that the applicant has not provided sufficient data or information to make a decision on the application. EPA proposes two procedures (termed Cases 1 and 2); which would apply to any particular application would depend upon the nature of the deficiency. In each case, EPA would stop the review period as of the date that it notifies the applicant of this decision. In neither case would the review period resume until the applicant provided the necessary information, and elapsed time with the applicant would not be counted against EPA's original review period. The difference lies in when EPA would restart the review period (the ''clock''). In Case 1, EPA would restart the clock immediately upon receipt of a complete resubmission correcting the deficiencies. In Case 2, EPA would restart the clock only after an additional

period after receipt of a complete resubmission.

Case 1 - Immediate restarting of the review clock. If the deficiency is one that can be rapidly corrected by the applicant and upon resubmission rapidly reviewed by Agency reviewers without significant Agency downtime to re-review, refamiliarize, or reconstruct the decision logic, EPA would restart the clock as of the date that the applicant resubmitted all information or data required. EPA emphasizes that EPA would restart the clock only after all deficiencies have been corrected. The resubmission must also be ''complete.'' The kinds of deficiencies EPA envisions in this category are short-term studies, upgrading an existing study, or providing an explanation of such studies.

If EPA chose this response, the Agency would specify in its notice to the applicant the deficiencies needing correction, and require that they be corrected within a relatively short timeframe—based upon the type of deficiency, probably less than 6 months. If the resubmission time is too short, the applicant could suggest a longer time for resubmission. If that resubmission time is considerably longer than EPA anticipated, such that the Agency would need additional time upon receipt to refresh its review, EPA would reserve the right to restart the clock at some later time after resubmission (Case 2).

Case 2 - Delayed restarting of the review clock. For deficiencies that take longer to correct (e.g., new studies must be generated) or where interruption of EPA review means that EPA must essentially begin some portion of its review again, EPA would restart the clock after both a period for applicant resubmission and an additional time for the Agency to bring the review and reviewer back up to date. The longer the interruption of review, the more likely it is that EPA reviewers may have changed, that policies may have changed or evolved, or that the original reviewer must refresh his/her knowledge of the product, the application or the data. In EPA's experience, a review that is interrupted for longer than 6 months has become stale.

In this case, EPA would notify the applicant, specifying the deficiencies and requiring correction by a certain date. EPA would also estimate how long after resubmission the clock would start.

12. *Negotiating extended review periods for deficient applications*. FIFRA section 3(h)(3)(F) allows the review period to be extended by agreement between EPA and applicants. As noted earlier, EPA intends that this proposal set boundary rules for extending review periods, so that case-by-case negotiated extensions would be used only infrequently. Deficient applications for which EPA would stop the clock and restart it, but where EPA cannot define the specifics of the resulting extended review period are an area where negotiations would be appropriate. Individual negotiation might be appropriate, for example, if the deficiency entailed development of new methodology or data with which EPA had no prior experience to judge its review time.

Case 1 - Negotiating resubmission dates for simple deficiencies. EPA anticipates it would provide only a limited opportunity for negotiation over the appropriate resubmission time for Case 1 resubmissions. EPA's ability to restart the clock immediately upon resubmission and thereafter to meet the review period deadline depends on the fact that the deficiency can be corrected rapidly. Simply restarting the clock is not feasible if protracted negotiations would result in significant delay in resubmission. EPA's concern is not the effect of the negotiation *per se* on the clock (since the clock will have stopped upon notification of the deficiency), but the fact that any appreciable delay in resubmission because of negotiation may mean that the application review would become stale. EPA must strictly limit the negotiating time for simple deficiencies, or such deficiencies would, because of the passage of time, have to be treated as complex deficiencies under Case 2. EPA does not intend in this proposed rule to define specific types of simple deficiencies for which Case 1 could be used. However, EPA solicits comment on how this procedure could be implemented in a realistic manner, and what would be an appropriate length of time to allow for negotiations to commence and conclude.

Case 2 - Negotiating resubmission dates for complex deficiencies. Resubmission dates would be more flexible with Case 2 complex deficiencies. Because the deficiencies are complex, the resubmission is expected to be on a longer schedule. Since time after notification of a deficiency until resubmission is on the applicant's clock and not EPA's, EPA could be flexible both in negotiating and in the resubmission dates established. Unless the deficiency raised serious risk concerns for a product already on the market (in which case EPA likely would consider denying the application), EPA believes it could generally accommodate applicant needs for resubmission.

In addition to interruption of the review period while the applicant corrects deficiencies and resubmits to the Agency, Case 2 negotiations would need to build in an additional period of time for EPA to ''refresh'' the application review before the review period clock would start. The appropriate length of this ''delay time'' is less easily determined and more likely to be an issue that requires negotiation between EPA and applicants. EPA is not proposing either specific delay times or criteria for determining appropriate delay times in this document, but is proposing to establish the ''delay time'' as a regulatory decision.

The delay time could be based on several factors. First, the delay time could be a function of the actual time needed for review of the submitted material (which may be one or more new studies). EPA could develop some general timeframes for review of particular types of studies, for example, a standard review time for a chronic toxicology study or an indoor exposure study. These would serve as a starting point for determining the delay time. If EPA develops such standard review times for studies, it would share these with registrants and others before implementing them.

Second, the delay time could also include the time needed for EPA to bring the review and reviewers back up to speed, to adjust for new reviewers, and, once completed, to integrate the new material into the application review and risk assessment. The longer the clock has been stopped and the application put aside, the longer the time needed to refresh it and the more likely that changes in personnel or policies will have occurred. These times are more variable, but may depend in part on the complexity of the application type. The definitions of application types in proposed § 152.445 roughly track the complexity of an original application review and therefore how much re-review might be needed to come up to speed later. EPA expects that the types of deficiencies that would trigger a delay time typically would be associated with new chemicals and major new uses.

Finally, the delay time must of necessity take into account variable external factors such as competing priorities and workload and resource balancing. As a practical matter, although EPA may be able to roughly estimate the delay time when it notifies an applicant of a deficiency, the actual delay time may be dictated not by circumstances at the time of notification, but by circumstances at the

time of resubmission. Depending on the nature of the deficiency, and whether new studies must be generated, resubmission could be a year or more away. In that time, substantial changes may have occurred within the Agency that cannot reliably be predicted at the time of notification.

For example, EPA could determine that applications requiring a particular set of tiered data (ecological effects, for example) routinely should require 4 months delay time for a new chemical, taking into account the actual review time and the re-review time. Two years later, when those studies are submitted to the Agency, EPA could be in a situation where its workload has doubled or key personnel are not available, leading to a likely delay time of 6 months.

EPA welcomes comment on how the ''delay time'' decision process might be structured and administered for maximum efficiency and equity. EPA is considering how and when negotiations on delay times are most appropriately conducted. EPA solicits comment on criteria, timing, and procedures that could be adopted and whether any of these should be regulatory. Realistically, EPA believes that negotiation and agreement on an Agency delay time can take place only at or close to the point of resubmission. Further, EPA believes that negotiation procedures should be informal and non-regulatory to offer the greatest flexibility, and at this time is not proposing regulatory negotiation procedures. EPA seeks comment on the following questions:

Criteria. What factors are most important in determining how long delay time should be? The type of application? The nature of the deficiency? The elapsed or remaining review period? Other priorities?

Timing. At what point would discussions between EPA and applicants be most productive and least demanding of time and resources? Soon after notification of deficiencies for planning purposes? Reasonably close to the expected date of resubmission? Only after resubmission and determination that the resubmission is complete?

Procedure. Should specific negotiation procedures be developed? Are discussions likely to be a frequent occurrence? Should negotiation procedures be developed on a case-by-case, as-needed basis? Are informal procedures sufficient or is there a need for a regulatory framework?

12. *Denial for failure to submit required information (''not for cause'').* If EPA notifies an applicant of deficiencies, and agrees with the applicant on a resubmission date for the application, and the applicant fails, without good cause, to submit by that date, or fails to submit a ''complete'' resubmission, EPA has the option of denying the application. A denial of this type (a ''not for cause'' denial) would not be for reasons of potential adverse effects (a ''for cause'' denial), but because the applicant has failed to submit the information the Agency required to reach a decision on the application.

Several readings of FIFRA section 3(h)(3)(F)(i) are possible with respect to a denial action the Agency may take as the endpoint of a review period. EPA believes some interpretations, while plausible and logical, would not likely achieve what we believe the Congress intended. EPA is instead adopting an interpretation that we believe both advances the goal of Congress that the Agency institute reforms to improve the antimicrobial decision making process, and preserves the rights of applicants under the statutory framework for denials under FIFRA section 3(c)(6).

Under one possible reading of the statute, the Agency would review the application under the review periods specified in proposed § 152.457, and within those same review periods take all the actions required under FIFRA section 3(c)(6) for denials including a 30–day notice of intent to deny prior to actual denial. This interpretation would effectively shorten the review periods established by section 3(h) by 30 days, a result that would be particularly acute in the case of short review periods such as those of 120 days or less. In establishing the review periods, Congress considered the amounts of time the Agency requires to review various types of applications. Each review period goal was intended to provide a streamlined yet presumably adequate amount of time for the Agency to review these applications. Congress realized that in some instances these times would not be adequate and allowed for the Agency and applicant to extend the applicable review period through mutual agreement. We do not believe that Congress would on the one hand acknowledge EPA's possible need to extend review periods, while at the same time effectively diminishing each review period to accommodate the correction period for FIFRA section 3(c)(6) denials.

An equally plausible interpretation is that FIFRA section 3(h)(3)(F)(i) overrides the provisions of section 3(c)(6) altogether. Under this interpretation, EPA would not have to issue a 30–day Notice of Intent, or provide opportunity for a hearing. However, there is no indication of Congressional intent to diminish the opportunity for an applicant to remedy deficiencies and/or request a hearing for denials of applications.

EPA believes a third interpretation is reasonable and more appropriate. EPA would regard the Notice of Intent to Deny (NOID) required by FIFRA section 3(c)(6) as the practical equivalent of a denial under FIFRA section 3(h). At the point a decision is reached under § 152.457 (including any extended review periods), EPA would commence the FIFRA section 3(c)(6) denial process by issuing a NOID. Under this interpretation, the Agency would have the full review period contemplated by Congress, and applicants would be afforded the protections intended for FIFRA section 3(c)(6) denials. Accordingly, proposed § 152.455 would provide that the 30–day NOID itself constitutes the denial decision required by section 3(h)(3).

Denial under FIFRA section 3(h)(3) would be the same as denial under FIFRA section 3(c)(6). Legally, EPA would find that the applicant has failed to meet the registration standard of section 3(c)(5), in that ''its labeling and other material required to be submitted'' do not ''comply with the requirements of the Act.'' EPA's determination to deny an application would set in motion a process that entails the NOID, opportunity for the applicant to correct the application deficiencies within 30 days, final denial if deficiencies are not corrected, and the opportunity for an administrative hearing process. Denial procedures are found in § 152.118.

EPA would be unlikely to allow additional time for correction beyond the 30 days provided by the NOID, for several reasons. First, EPA has already notified the applicant previously and agreed upon an appropriate time for submitting additional data (of a long-term nature). Additional discussion at this point would not seem justified in light of the previous negotiations. Second, as noted earlier, EPA's tracking system will be strained if EPA must repeatedly recompute the elapsed review period due to extensions, new resubmission dates, or additional EPA review times. EPA and applicants will not be well served if tracking system needs overwhelm the review process. At some point, EPA must reach closure on an application. Finally, there is the issue of equity among applicants. Negotiating time for any application is decreased review time for all applications, and should be allocated evenly across applications rather than consumed on a single undeserving application.

As an alternative, EPA could determine that the failure to resubmit properly and on time renders the application incomplete. In either case, the effect on the review clock is the same: it would start over whenever the applicant submitted the complete data or properly completed the application.

14. *Denial for failure to meet the registration standard (''for cause'').* Finally, as already provided by the statute, EPA can determine that an application should be denied because the pesticide or its uses pose unreasonable adverse effects on man or the environment (a ''for cause'' denial). Legally, EPA would determine that it fails to meet the registration standard of FIFRA section 3(c)(5)(C) or (D).

As in the case of a not-for-cause denial, EPA would follow the denial procedures of FIFRA section 3(c)(6) and § 152.118. Also as noted above, EPA would treat the NOID as the decision required by FIFRA section 3(h). EPA expects a denial for cause to be a rare occurrence.

H. Review Periods

1. *Statutory provisions.* Although FIFRA section 3(h) is premised upon the establishment of decision-making deadlines, it does not prescribe a specific set of review periods that EPA must adopt by regulation, However, section 3(h) does contain two sets of review periods that express Congressional intent in this area. EPA has given careful consideration to each, discussed in this unit, and is today proposing one.

First, section 3(h)(2) establishes review time period reduction ''goals,'' ranging from 90 days to 540 days, whose achievement is tied to the implementation of the process reforms required by section 3(h)(1). Under section 3(h)(1), the explicit purpose of the process reforms is to achieve the ''goal'' review periods. The statute stops short of requiring that EPA adopt by regulation a set of statutorily-mandated review periods. The statute appears to anticipate that EPA's management reforms might take some time to fully implement to achieve the goal review periods: section 3(h)(4) requires EPA to submit an annual report to appropriate Congressional committees documenting its progress toward the goals. Thus, while EPA is to work toward the goal review periods, Congress did not require EPA to adopt the ''goal'' review periods in its regulation. EPA may include other review periods in the regulation so long as it complies with other requirements triggered if the goals are not met.

Congress did, however, intend that EPA should take the goal review periods seriously, and therefore put in place two provisions that are triggered if EPA does not meet the goal review periods. The annual report mentioned above is to be submitted ''beginning on the date of enactment of this subsection and ending on the date that the goals under paragraph (2) [the goal review periods] are achieved.'' Thus, as long as EPA is not meeting any statutory ''goal'' review periods, for whatever reason, it must continue to report to Congress on its progress. The first such annual report was issued in October 1997 (EPA 739–R–97–001).

Moreover, if EPA issues a final regulation that fails to meet any of the goals, it also must comply with the requirements of section 3(h)(3)(B)(ii) by identifying in the final rule any unmet goal, explaining why the goal was not met, describing the elements of the regulations included instead, and identifying future steps to attain the goal. Again, the statute does not require that EPA propose a statutorily-identified set of regulatory review periods, though a timeframe is required to be included in the regulation.

The second statement of Congressional intent, in section 3(h)(3)(D), establishes ''default'' review periods, ranging from 90 days to 2 years, that automatically took effect on April 25, 1998, since EPA's final regulation was not effective by that date. The ''default'' review periods are equal to or longer than the ''goal'' review periods, depending upon the type of application. After promulgation of this regulation, the default review periods will be replaced by time periods specified in the final rule. In the legislative history of the antimicrobial provisions, it is stated that ''maximum time periods for review are specified in Subtitle B for various activities.'' [Subtitle B contains the amendments in FIFRA section 3(h)]. Since the default review periods are in fact the ''maximum review periods specified'' in section 3(h), this language could be read to suggest that Congress intended the default review periods to be adopted by the Agency in its regulation. However, EPA views the ''default'' review periods as a ''hammer'' provision to encourage timely promulgation of its antimicrobial final rule containing EPA-specified review periods, rather than a statement of Congressional intent as to what review periods should be adopted.

2. *EPA proposal.* EPA is today proposing the ''goal'' review periods. Since these are the benchmark of the management and process reforms contemplated by Congress, EPA believes they are more appropriate than any other review periods, which would of necessity serve only in an interim capacity until the ''goal'' review periods could be met. As an alternative, EPA could consider and would like comment on the options of: adopting no review periods by regulation and relying on administrative review periods; adopting the ''default'' review periods; or adopting some other review periods. Commenters who support this last option should be specific as to the review periods sought and why. If other than the goal review periods are ultimately adopted, EPA would strive to meet the goal review periods, as it has since FQPA was enacted.

Section 152.457 of today's proposal sets out EPA's proposed review periods. The three tables in that section address, respectively, approvals of new registrations, amended registrations, and ''qualifying resubmissions.'' As noted in Unit VIII.D., EPA proposes to review an application for a major new use within 270 days, regardless of whether that application is a new registration or an amendment to an existing registration. Accordingly the tables in § 152.457(c) and (d) both include ''major new use.'' Proposed § 152.457 also sets out the limitations of applicability of review periods.

3. *Food use antimicrobial products.* As defined by FIFRA section 2(mm), antimicrobial pesticides do not include products whose intended use would require a clearance under the FFDCA. As noted in Unit VI.B., EPA intends to apply this exception so as to exclude only applications that would require a new or revised clearance. Applications subject to an existing clearance that does not need revision would be antimicrobial pesticides.

4. *Wood preservatives.* The statutory definition also excludes aquatic herbicides and some wood preservatives and antifoulants from definition as ''antimicrobial pesticides.'' Applications for registration of such products are not covered by subpart W and are not eligible for the review periods of § 152.457.

However, under FIFRA section 3(h)(3)(E), applications for wood preservatives (and only wood preservatives) are eligible for the statutorily-required review periods that would be established by this proposal if they meet certain conditions:

- First, the application must be for a wood preservative that bears an antimicrobial claim as defined in FIFRA section 2(mm), even if other non-antimicrobial wood preservative claims (such as fungus or insect protection) are made.
- Second, the data requirements to support the wood preservative product

that is not an ''antimicrobial pesticide'' must be the same as the data requirements that support a wood preservative that is an ''antimicrobial pesticide.'' In general, the data requirements in part 158 are the same for all wood preservatives, regardless of the type of wood preservative claim made. Thus, all wood preservative products fulfill this criterion.

- Finally, the applicability of the statutorily-required review period to a wood preservative application is to be ''consistent with the degree of risk posed by the use of the wood preservative.'' EPA interprets this clause to permit the Agency, in its discretion and on a case-by-case basis, to determine that an individual wood preservative application is not subject to the statutorily-required review period based on risk concerns.

For example, EPA might exercise this discretion for an application that initially would have a review period of 180 days. During the review, however, EPA discovers that the wood preservative use poses significantly greater risks than a typical ''substantive new use'' application. This might occur if the treated wood were intended for use in a manner that greatly increased or changed the exposure potential to humans or other species. To evaluate the increased risk, EPA might need more than 180 days, even if substantial new data were not required. In this situation, EPA would notify the wood preservative applicant that the application was no longer entitled to a statutorily-required review period, and specify the risk reasons therefor.

EPA would make every effort in its notification to estimate when the application review would be completed, although the application would no longer qualify for review period coverage. EPA regards its notification to the wood preservative applicant of a risk differential basis for review as relieving EPA of its obligation to complete review within any statutorily-required review period.

5. *Fast-track applications*. Fast-track applications are described in FIFRA section 3(c)(3). Fast-track applications are not limited to antimicrobial products, and EPA is required to reach a decision on the application within 90 days. Currently, there are no regulations for fast-track applications, and none are needed because the statute sets out clear deadlines for completion of review. The review period for an antimicrobial pesticide specifically does not affect or substitute for the timeframe for a fast-track review of an antimicrobial pesticide. Generally, antimicrobial applications for identical or substantially similar new products or minor amendments are equivalent to fast-track applications, and would be decided under either provision within 90 days.

As a legal matter, however, an application must be reviewed either as a fast-track application or an antimicrobial application—a single application cannot be both. EPA interprets FIFRA section 3(h)(3)(F)(iii) to place an application that could qualify as either a ''fast-track'' or ''antimicrobial pesticide'' application squarely under the antimicrobial provisions and review periods. While there are minor procedural differences between 90–day fast-track decisions and 90–day antimicrobial review period decisions, the significant difference between the two is that a fast-track action is not judicially reviewable if EPA fails to render its decision within 90 days while an antimicrobial action is judicially reviewable.

IX. Duration of Registration for Products Bearing Public Health Claims

EPA proposes in § 152.458 to establish terms for a time-limited registration of products bearing a public health claim. The term of a registration would be limited to no more than 5 years. The registration could be continued only if the registrant conducts product analysis and efficacy testing that confirms that the product continues to meet the applicable registration standards of FIFRA section 3(c)(5). EPA believes that it is authorized to establish this provision under the authority of sections 3(h) and 25(a).

A. Statutory Requirements

FIFRA section 3(h)(3)(A)(ii)(IV) mandates two things: (1) that EPA ''. . . ensure that the registration process is sufficient to maintain antimicrobial pesticide efficacy''; and (2) that ''antimicrobial pesticide products continue to meet product performance standards and effectiveness levels for each type of label claim made.'' Section 3(h) focuses on the registration process as a means of ensuring continued product performance. More important, however, is the strong Congressional directive to ensure continued product performance and effectiveness after registration. Thus, under section 3(h), EPA must address post-registration efficacy in the antimicrobial regulation proposed today.

EPA is also authorized under FIFRA section 25(a) to issue regulations to carry out the provisions of the Act. Such regulations must specifically ''take into account the difference in concept and usage between various classes of pesticides, *including public health pesticides* and differences in environmental risk and the appropriate data for evaluating such risk between agricultural, nonagricultural, *and public health pesticides*.'' ''Public health pesticide'' is defined in FIFRA section 2(nn) to include, among other things, pesticide products intended for use against ''viruses, bacteria, or other microorganisms . . . that pose a threat to public health.'' The references in FIFRA section 25(a) singling out public health pesticides were added by FQPA, and EPA regards their addition as expressing Congressional intent that public health pesticides as a class should be distinguished from other pesticides when considering regulatory requirements, including this proposal.

Taken together, EPA believes that the clear Congressional intent expressed in section 3(h) to ensure post-registration product performance and effectiveness, coupled with the authority conferred by section 25(a), authorize EPA to establish by regulation binding requirements on registrants of antimicrobial public health products to ensure continued product efficacy. The requirements relate to initial registration and also extend into post-registration activities.

B. Alternatives Considered

As noted in Unit IV.E., EPA has relied on enforcement mechanisms to ensure post-registration efficacy; EPA will continue to use these as appropriate. But, because failure of an antimicrobial public health product to work as intended cannot normally be detected by the user and can have serious health and safety consequences or other unreasonable adverse effects, it is critical that EPA use all available regulatory and enforcement mechanisms to ensure public health protection.

One means of ensuring continued efficacy after registration would be through the statutorily required re-review of products. FIFRA contains two provisions that require EPA to reassess each registration according to the latest scientific standards, which for public health products would include an efficacy review. FIFRA section 4 requires a one-time reregistration of each product first registered before November 1984. This process is underway, but to date few antimicrobial products have been reviewed under section 4, and products registered since 1984 are not subject to reregistration. Additionally, FIFRA section 3(g) requires EPA to periodically review each registration, with a goal of re-reviewing each product every 15 years.

Although these provisions will be useful in ensuring that pesticide products continue to meet the registration standard, based upon up-to-date scientific standards, EPA believes that more product oversight is needed to meet the mandate of FIFRA section 3(h) to ensure continued efficacy of antimicrobial public health products. Neither a one-time re-review nor a periodic review only every 15 years offers adequate assurance of continued efficacy of products so critical to public health protection. EPA believes that by requiring the re-testing of products at more frequent intervals than every 15 years, complemented by EPA, State and other testing programs, it can be better assured of continued product efficacy, without incurring to itself or imposing upon registrants significant additional costs.

Alternatively, EPA could establish, or require registrants to establish, an ongoing quality control and efficacy monitoring program to evaluate product composition and efficacy on a frequent basis. EPA conducted a one-time testing of sterilant products, and is conducting similar testing of hospital disinfectant products. EPA believes that many antimicrobial registrants, fully aware of the need for continuing quality control and efficacy, already test their products on a routine basis, although EPA currently has no data on the number of producers who do so, the type of testing conducted, or how frequently it is done. A formalized testing program, whether by EPA or registrants, would obviously be one way to meet the mandate of FIFRA section 3(h), and, if conducted at frequent intervals, would offer the greatest assurance of continued product performance and public health protection. EPA itself does not have the resources to establish and sustain such a program, and so EPA proposes that registrants bear the cost of such testing. Two approaches have been considered, and one is being proposed today.

One such method would be to require that a public health applicant develop and submit for Agency approval as part of his/her application for registration or reregistration a plan for continuous quality control and efficacy testing. Such a requirement would meet the mandate of using the registration process to ensure efficacy, as well as ensuring continued post-registration needs. Upon approval of the registration or reregistration, the plan would become a term of the registration and would be binding on the registrant. The benefit of this approach is that public health applicants would be afforded the greatest flexibility to design a program that they believe satisfies the needs of the Agency. However, approval of a plan would require greater review resources for the Agency, and potentially lead to delays in approval beyond the established review periods required by § 152.458. Comments are requested as to the value, feasibility, and potential costs of such a requirement, as well as criteria for evaluating plans. EPA is not proposing this option today, but could adopt it in the final rule. If EPA does so, it would include the requirement for a public health quality control and efficacy monitoring plan in § 152.450.

EPA seeks information on current registrant- or producer-imposed quality control measures, whether producers are currently routinely conducting efficacy testing on a batch basis or at frequent intervals, and what type of testing is conducted. Finally, comments are solicited on any additional ways of ensuring continued efficacy of public health products; suggestions would be considered for future implementation, either administratively or by regulation.

C. Sunset Provision

1. *Maximum 5–year registration term.* EPA proposes to implement a periodic and regular testing program by limiting the duration of a new antimicrobial public health registration to no more than 5 years from the date of initial registration of the new product. EPA would incorporate the 5–year expiration into the approval of the application as a term of registration. Every 5 years, in order to avoid expiration, the registrant would have to conduct the testing described in § 152.458(b)(3) and certify that the product has passed the tests.

The Agency is also proposing to require testing every 5 years as a prerequisite for maintaining the registrations of existing products, i.e., products registered as of the effective date of the rule. For existing products, the 5–year period would begin on the earliest of: (1) The date of first amendment after the effective date; (2) the date of reregistration under FIFRA section 4; or (3) a date certain approximately 6 months after the effective date of the rule. EPA would in the final rule specify the date certain, which, based on current projected schedules, would be no earlier than August 1, 2000. This last date would ensure that all products registered at the time the rule becomes effective would be brought into the retesting scheme. EPA expects that this default date would govern for most existing products, since the number of amendments and reregistrations that could be expected in the 6–month period is unlikely to approach the number of public health registrations (currently estimated at approximately 3,000 products).

In the case of an amendment or reregistration, EPA approval letters would include the 5–year requirement. Because there would otherwise be no Agency notification for products that become subject on the specific default date, EPA would notify all such registrants of the effective date.

EPA is proposing this phased introduction of the testing requirement for existing products because it believes that phased testing will create less strain upon laboratory demand for testing and upon Agency resources. It would, however, complicate the tracking of expiration dates.

As an alternative, EPA could begin the 5–year retesting requirement on a single date for all existing products. While this would ensure equity for existing products and simplify calculation of expiration dates for both registrants and the Agency, it could lead to high demand for laboratory testing on a compressed schedule every 5 years. Even with a single date for existing products, new products would become subject to the retesting requirement on a phased basis as they are registered; thus, there would always be some phasing of the retesting requirement. Over time, as new products are registered and existing ones taken off the market, the phased testing scheme would become the norm rather than the exception. If EPA were to adopt a single date, it would specify the date in the final rule.

In any case, the scope of EPA's determination of continued registrability at the 5–year intervals would be limited to the composition and efficacy standards in FIFRA section 3(c)(5)(A) and (C), i.e., that the product's composition ''is such as to warrant the proposed claims for it,'' and that ''it will perform its intended function [without unreasonable adverse effects on the environment].'' EPA's evaluation would be limited to products bearing public health claims and its determination to whether the product would perform its intended function at the antimicrobial levels claimed. EPA would not expect to reevaluate the potential adverse effects of the product every 5 years, but generally would reserve such evaluation for a 15–year review cycle. Thus, in any given 15–year period, EPA typically would review each product once under the 15–year statutory review provision and 3 times for efficacy purposes. Notwithstanding these scheduled review intervals, EPA may conduct a review of a product for any purpose (including, but not limited to, efficacy

concerns) at any time and take regulatory or enforcement action based upon its findings.

EPA believes that a quality control check and efficacy evaluation at least every 5 years is needed to ensure continued efficacy. However, the Agency solicits comment as to whether a different registration term should be implemented, either more or less than 5 years.

2. *Data requirements.* To meet the product composition standard, proposed § 152.458 would require a chemical analysis demonstrating that the product conforms to the composition approved by EPA on the most recent Statement of Formula, conducted according to the analytical method that the registrant is required to provide the Agency under 40 CFR 158.180.

To meet the product efficacy standard, proposed § 152.458 would require that the registrant conduct the battery of efficacy tests that would be required to support the product if it were submitted for new registration at that time, conducted in accordance with the most current Agency testing guidelines. Testing guidelines for antimicrobial products are evolving, and testing would have to reflect the methods and standards recognized by EPA at the time of the required testing.

To ensure that the testing reflected the product as distributed and sold at the 5–year mark, the testing would have to be conducted during the final year of the 5–year registration period (or other renewal period if 5 years is not selected). Although EPA believes it is in the interest of registrants to conduct such analysis and testing more frequently as a matter of good business practice, only testing conducted within the last year could be used to support renewal of product registration.

3. *Certification procedure for compliance.* EPA believes that it can accomplish this limited renewal program and monitor compliance without routinely reviewing the actual test results. In accordance with the mandate of FIFRA section 3(h)(3)(B)(iii) to ''consider the establishment of a certification process for regulatory actions involving risks that can be responsibly managed . . . in the most cost-efficient manner,'' EPA proposes to use a certification process as the most cost-effective means of administering the program. Each registrant would certify in writing to the Agency that the testing had been conducted as required in accordance with EPA Good Laboratory Practice Standards, and that the results demonstrate that the product meets the composition and efficacy standards specified. The certification must be signed by an authorized representative of the registrant. As a condition of registration, EPA would require that test results be made available immediately to EPA upon request; EPA expects that it would selectively review the data for some products.

The required certification would have to be submitted to the Office of Pesticide Programs no later than 90 days prior to each successive expiration date of the registration, to allow sufficient time for EPA to process it and notify the registrant of its determination. If at any time after the renewal, the Agency determined that the certification was false or the data upon which it was based do not support the certification for any reason, the registration would be subject to regulatory or enforcement action or both.

4. *Failure to submit.* EPA would not notify registrants of the upcoming expiration of their product registrations. Registrants would be responsible for monitoring the status of their registrations, conducting the testing and submitting the required certification in a timely manner. Failure to submit would result in the expiration of the registration automatically and without hearing rights. If the registration expired, the registrant would have to submit a new application for registration to once again market the product.

If EPA has no other information or data to suggest that the product is no longer efficacious, EPA would permit the registrant 90 days to distribute and sell his/her existing stocks of product (product in existence on or before the date of registration expiration). Product already distributed by the registrant and in channels of trade could be distributed and sold for 1 year after expiration.

5. *Products that fail efficacy testing.* If a product fails efficacy testing at its 5–year renewal, the registrant would be unable to certify as required by § 152.458, and the product registration would expire at its 5–year anniversary.

Moreover, there is a continuing obligation under FIFRA section 6(a)(2) to report information concerning adverse effects to the Agency. In certain cases this obligation extends beyond the life of the registration (for example, to an expired registration). If the registrant conducts efficacy testing at any time, and the product fails to meet the performance standard of part 156, subpart W, for each public health claim, the registrant is required to report such failure to EPA in accordance with the procedures and timeframes in 40 CFR part 159. Section 159.188 specifically details the information required to be submitted concerning antimicrobial public health products. The requirement to submit under FIFRA section 6(a)(2) and the regulations in 40 CFR part 159 is a separate requirement from that under this proposal.

X. General Conditions of Registration

EPA proposes in § 152.459 to establish conditions of registration for antimicrobial pesticides. Under FIFRA section 3(c)(7), EPA is authorized to register pesticide products conditionally. Current regulations in § 152.115 implement EPA's authority, and specify general conditions applicable to registrations. Section 152.115(c) permits EPA to establish, on a case-by-case basis, other conditions applicable to registration under FIFRA section 3(c)(7).

For antimicrobial pesticides, EPA proposes in § 152.459(a) to cross-reference the conditions of § 152.115. These conditions relate primarily to submission of missing data subsequent to registration.

Further, EPA proposes to establish as a condition of registration a requirement that registrants of non-public health products submit efficacy data upon request by the Agency. Registrants are currently required to maintain efficacy data for non-public health products, but EPA does not routinely review them as part of the application. Upon request, registrants are required to submit the data. When this request is made prior to approval of a new application, EPA can refuse to register the product if the registrant does not comply. EPA proposes in § 152.459(b) to establish as a condition of registration that registrants must submit upon request any efficacy data for a non-public health product that were not required to be submitted with the application. By establishing submission as a condition of registration, EPA makes explicit the authority and action it will take (expedited cancellation under FIFRA section 6(e)) if registrants fail to provide these data after registration.

XI. EPA/FDA Jurisdiction Over Antimicrobial Products Used in or on Food

A. Background

Since EPA was created in 1970, EPA and FDA have shared authority under FFDCA over pesticide residues in food. Prior to FQPA, the division of jurisdiction between EPA and FDA was governed by a number of somewhat complicated provisions of FFDCA. FQPA modified the FFDCA to create much clearer lines of jurisdiction. In the

process, FQPA transferred to EPA regulatory responsibility for a number of antimicrobial substances which for many years had been under FDA jurisdiction.

In the 2 years after FQPA enactment, EPA and FDA held extensive discussions on their respective legal authorities pre- and post-FQPA. The two agencies issued a joint **Federal Register** notice entitled ''Legal and Policy Interpretation of the Jurisdiction under the Federal Food, Drug, and Cosmetic Act of the Food and Drug Administration and the Environmental Protection Agency over the use of Antimicrobial Substances with the Potential to Become Components of Food'' [hereinafter ''Policy Interpretation''] issued in the **Federal Register** on October 9, 1998 (63 FR 54532) (FRL–5773–8). In that notice EPA and FDA discussed a proposed allocation of jurisdiction over antimicrobial substances which would transfer back to FDA regulatory authority over many of the substances that had been transferred to EPA in 1996 by FQPA.

EPA would have effected the transfer in a subsequent regulation by revising its declaration of a FIFRA ''pest'' in § 152.5 to exclude certain microorganisms occurring in food processing facilities, packaging and food contact articles. Readers are referred to the Policy Interpretation for a full discussion of the proposed approach.

B. FDA Regains FFDCA Jurisdiction

On October 30, 1998, however, Congress passed the ''Antimicrobial Regulation Technical Corrections Act of 1998'' (ARTCA), Public L. 105–324, which amended FFDCA section 201(q)(1) and 408(j) in a manner that essentially accomplished the two Agencies' planned regulatory approach, and obviated the need for EPA to issue regulations. ARTCA supersedes the Policy Interpretation with respect to FFDCA regulatory authority over antimicrobial residues in food except for residues of ethylene and propylene oxides, which were retained as ''pesticides.'' ARTCA, however, does not address the interpretation of the FIFRA term ''processed food'' that was included in the Policy Interpretation.

C. EPA Retains FIFRA Jurisdiction

Under the Policy Interpretation, EPA intended to propose to yield both FFDCA and FIFRA authority over those antimicrobial substances addressed in the Policy Interpretation. EPA and FDA viewed the regulatory approach of redefining FIFRA ''pests'' to be the best means of accomplishing the transfer agreed upon between the Agencies. No authority under FFDCA would have achieved this objective before passage of ARTCA.

Unlike the proposed change discussed in the Policy Interpretation, however, the statutory change put in place by ARTCA affects only FFDCA authority over antimicrobial residues in food. ARTCA does not affect the status of any substance as a ''pesticide'' within the meaning of FIFRA. The legislative history of ARTCA makes this point clear:

> This amendment would affect the regulation of antimicrobial pesticides only under the FFDCA. EPA would continue to regulate antimicrobial pesticides under FIFRA, and EPA's authorities under that statute would not be changed.

In light of ARTCA, which provides specific Congressional direction, EPA is not proposing to exclude or exempt these products from FIFRA requirements, as discussed in the Policy Interpretation.

Because the legislation is complex, EPA has developed an overview table of current FFDCA authority post-ARTCA. Table 4 below is an overview of antimicrobial substances whose use may result in residues in food. Column 1 lists the category of antimicrobial substances. Column 2 further subdivides the major categories. Column 3 gives the current jurisdiction under FFDCA over antimicrobial substances after ARTCA. Note that, even where FFDCA authority is vested in FDA, EPA retains FIFRA authority for antimicrobial products other than those used on processed food. Such products will continue to require registration.

Table 4.—Jurisdiction Under FFDCA Over Residues of Antimicrobial Substances in or on Food[a]

Use Sites/Categories	Subcategories, if Applicable	Currect Jurisdiction under FFDCA
1. Edible raw agricultural commodities	a. Pre- and post-harvest field use on crops	EPA
	b. In a food processing facility[b]	FDA
	c. Consumer use (e.g., home gardens)	EPA
2. Process water that contacts edible food	a. Post-harvest field treatment[c] of raw agricultural commodities	EPA
	b. In a food processing facility[b]	FDA
	c. Consumer use (e.g., home produce washes for raw agricultural commodities)	EPA
3. Edible processed food	All uses	FDA
4. Animal drinking water	Uses other than animal drugs	EPA
5. Permanent or semi-permanent food-contact surfaces	All sites, including food processing facilities[b]	EPA
6. Production of food packaging materials and in or on finished materials, including plastic, paper, and paperboard	All, regardless of whether the food to be packaged is a raw or processed food	FDA
7. Production of food-contact articles, other than food packaging	a. No intended antimicrobial effect in the finished article; any ongoing effect is not an effect on the surface of the article	FDA

Table 4.—Jurisdiction Under FFDCA Over Residues of Antimicrobial Substances in or on Food[a]—Continued

Use Sites/Categories	Subcategories, if Applicable	Currect Jurisdiction under FFDCA
	b. An intended ongoing antimicrobial effect on the surface of the finished article	EPA

[a]The term ''food'' is defined according to FFDCA section 201(f).
[b]EPA has used this term for convenience in this overview table. FFDCA section 2(q)(1)(B) describes the scope of activities to include ''locations where food is prepared, packed, or held for commercial purposes.''
[c]EPA has used this term for convenience in this overview table. FFDCA section 2(q)(1)(B) describes the scope of these treatments to include: (1) treatments in facilities where the treatment does not change the raw agricultural status of the food; and (2) treatments applied during transportation between the field and the treatment facility.

XII. Efficacy Performance and Labeling Standards for Antimicrobial Products

EPA proposes to create a new Subpart W (§§ 156.440 through 156.458) in part 156, entitled *Public Health Claims for Antimicrobial Pesticides*. Subpart W would establish labeling requirements for antimicrobial pesticides that make public health claims based upon the level and type of efficacy demonstrated by testing. The efficacy performance standards upon which the proposed requirements are based are derived from the testing requirements of 40 CFR part 158, and the test methods and standards provided in Subdivision G of the Pesticide Assessment Guidelines. Today's proposal would also codify certain labeling requirements that are currently applied to antimicrobial pesticides individually at the time of registration, but are contained only in Guidelines (Subdivision H of the Pesticide Guidelines). Neither the performance standards nor the labeling requirements are a departure from current and longstanding policies.

A. Need for Rule

EPA bears a special responsibility to ensure that antimicrobial efficacy for public health products be substantiated and maintained over the life of the product because of the potentially serious consequences of lack of efficacy, and the fact that users cannot independently ascertain product efficacy. For that reason, EPA not only must review antimicrobial efficacy data to ensure that products indeed perform at the claimed level of antimicrobial activity, but also must assure that product labeling accurately expresses the type and level of activity to be expected. Effective control of public health pests is not only a function of the availability of products that work as intended, but also of users' ability to select an appropriate product for their needs, and to use it properly. The product labeling is critical in conveying this information. By issuing performance standards and associated labeling standards as rules rather than the current Guidelines, EPA expects to ensure consistency in labeling, promote a common understanding among registrants and the user community of performance expectations and limitations, and thereby maintain the benefits of these products in protecting public health.

B. 1984 Proposal

EPA originally proposed these performance and labeling standards in substantially similar form in 1984 as part of a larger general pesticide labeling proposal (September 26, 1984, 49 FR 37959), but did not finalize them. Because of the intervening time, EPA is reproposing those efficacy performance and labeling standards today. In response to the 1984 proposal, EPA received eight comments pertaining to the efficacy performance and labeling standards. The commenters included two trade associations (the Chemical Specialties Manufacturers' Association and the International Sanitary Supply Association), and six individual producers of antimicrobial pesticides. A copy of these comments or a summary is available in the public docket. EPA has not reviewed these comments in detail for this new proposal, and invites commenters to reiterate any comments they believe are relevant to this proposal.

C. Current Proposal

Every pesticide product must be properly labeled, in accordance with general labeling requirements of part 156, including, among other things, use directions that describe the site of application, the target pests associated with each site, the dosage rate, the method of application, the frequency and timing of application and any particular limitations on use. Antimicrobial products covered by subpart W must comply with part 156 labeling requirements. In addition, for public health antimicrobial products, the labeling must identify the type and level of antimicrobial activity demonstrated by efficacy testing. A product that does not meet the applicable performance standard of proposed subpart W for a specified level of activity (such as sterilizer, disinfectant, or sanitizer) or type of activity (tuberculocidal, virucidal) may not be identified as such on the label, and, in some cases, will be required to bear a disclaimer to make clear the limitations of product performance.

Under proposed § 156.440, the applicability of subpart W to antimicrobial products is the same as that in part 152, subpart W. This will clarify that all antimicrobial public health products, not just those meeting the definition of ''antimicrobial pesticide,'' are subject to the efficacy performance and labeling standards. This clarifies the status of food use antimicrobials, which are excluded from the statutory definition, but covered under EPA's proposed rule.

However, proposed § 156.440 would limit applicability of subpart W to end use products. EPA does not expect manufacturing use products to make specific public health claims. Typically a manufacturing use product must be supported by presumptive efficacy testing demonstrating that the active ingredients are capable of antimicrobial activity. The labeling typically bears information on the results of these screening or presumptive efficacy tests. End use products must, however, be supported by specific efficacy data on the end use formulation, on the sites and under the expected conditions of use of the product itself. The performance standards on which the labeling standards of subpart W rely are based upon end use product testing, not presumptive testing of manufacturing use products. The labeling statements and limitations therefore would also relate only to end use products.

Proposed § 156.441 contains pertinent definitions, including the levels of antimicrobial activity that are permitted on labeling (e.g., sterilizer, disinfectant, sanitizer). This listing is not necessarily exhaustive; in the future, EPA may define additional categories of antimicrobial activity or public health pesticides.

Proposed § 156.443 describes what types of claims EPA considers to be public health claims. In general, public

health claims encompass three types of claims: (1) Claims of control of specific microorganisms that are pathogenic to man; (2) claims of levels of antimicrobial activity that are associated with public health protection (e.g., disinfect), even if specific organisms are not named; and (3) claims that make non-specific assertions relating to impact on public health or safety, e.g., ''provides a germ-free environment.'' The use of such terms on a product label is deemed to bring a product within the ambit of FIFRA regulation as a public health product.

Among the last, EPA has specifically included reference to the term ''sanitary'' as an antimicrobial public health claim. EPA believes that this is a logical extension of the term ''sanitize,'' that should be considered to bring a product under FIFRA regulation as a public health pesticide. EPA regards a product that claims to ''create a sanitary environment'' or is intended to achieve ''sanitary'' effects beyond itself to be making an assertion of impact on public health. The presence of such a claim would clearly constitute a pesticide claim.

At the same time, EPA recognizes that the term ''sanitary'' may be used on a product in the more traditional sense of ''hygienic,'' i.e., to convey the fact that the product is clean or has been treated to render it free of harmful organisms (for example, ''sanitary'' napkins). When used in such a sense, EPA believes that there is no intent or claim that the product will have an antimicrobial function beyond protection of itself. In the absence of an express claim, EPA proposes to consider the claim ''sanitary'' as an implied pesticide public health claim, and the product on which it appears as a pesticide subject to FIFRA, if: (1) The product composition is similar to other products registered under FIFRA that make antimicrobial claims; or (2) the product contains a substance that is capable of antimicrobial activity at the levels in the product and there is no other functional reason for the ingredient to be present in the product. The burden would be on the producer of a product that makes a ''sanitary'' claim to demonstrate that the claim is not a public health claim. EPA seeks comment as to whether its interpretation of ''sanitary'' claims is sufficiently clear to unambiguously delineate pesticide products or whether it could be overly broad and draw inappropriate products under FIFRA.

Proposed § 156.444 lists examples of specific antimicrobial-related claims that EPA considers to be unacceptable because they are misleading. These are an extension and clarification of existing prohibitions against false and misleading statements found in § 156.10(a)(5). Again, the listings are intended to be exemplary; EPA may determine on a case-by-case basis that a label statement or claim is misleading.

A product that bears a public health claim, but which does not meet the performance standard for that claim in subpart W would be considered misbranded under FIFRA section 12(a)(1)(E). Registrants have been on notice of the unacceptability of these statements from previous and current Agency guidelines and policies. On the effective date of the final rule, EPA would prohibit these claims from appearing on new products. To ensure that all registrants of current produts are provided adequate notice and have ample opportunity to evaluate their label statements and delete or modify those that are unacceptable, EPA proposes to permit registrants a 1 year period in which to modify labeling before the Agency would find the products to be misbranded. As of a date approximately 1 year after the effective date of the rule, the actual date to be specified in the final rule, EPA may take action against any product that it determines is misbranded based upon the criteria in proposed § 156.444. EPA requests comments on whether a 1 year period for label compliance is adequate. Based on comments, EPA may in the final rule adopt a compliance date of more or less than 1 year.

The remainder of subpart W (§§ 156.445 through 156.458) describes the performance standards and acceptable claims that may be made for various antimicrobial public health pesticides. Each section generally contains the following:

1. The performance standard for a level of antimicrobial efficacy on a specified site (e.g., sanitizing claim on hard surfaces) or, alternatively, a description of a use site and the performance standards that apply (e.g., fabrics and textiles, air sanitizers).

2. A reference to the appropriate Guideline for an acceptable test protocol. The performance standards are based upon testing in accordance with the test methods of the Pesticide Assessment Guidelines, Subdivision G, or ''its equivalent.''

The term ''equivalent'' is defined in § 156.441 to mean a protocol or method that accomplishes the purposes of the cited Guidelines, and that provides data equal in quality and completeness for EPA assessment as that of the cited Guideline. With respect to antimicrobial protocols, an equivalent protocol or method must be validated by multiple laboratories studies that demonstrate equivalency. The term ''Guidelines'' is defined to include both the Pesticide Assessment Guidelines, Subdivision G, and the OPPTS Harmonized Guidelines. For antimicrobial efficacy testing, these differ only in the numbering and formatting of the Guidelines. Ultimately, the OPPTS Guidelines are intended to supersede the OPP Guidelines. EPA expects the Harmonized Guidelines to be issued before the rule is promulgated. Therefore, in proposed subpart W we have included references only to those updated Guidelines. A copy of the latest draft of the Harmonized Guidelines for Antimicrobial Performance (810 series) is included in the public docket. If the Harmonized Guidelines are not final and available at the time of promulgation, EPA will substitute references to the existing Pesticide Assessment Guidelines in the final rule.

3. A statement of the acceptable claim(s) that may be made on labeling of a product that meets the performance standard. Typically, explicit terminology or wording is provided, which must be used to ensure uniformity of claims. In this respect, § 156.442 would clarify that EPA requirements for specific terminology also authorize grammatical variations on that terminology, or its use in statements and phrases. For example, when EPA specifies that an acceptable claim is as a ''tuberculocide,'' a product would be permitted to use the term ''tuberculocidal'' in a statement or phrase describing the activity of the product.

4. Any restrictions or limitations upon use of the claim. For example, proposed § 156.455 states that an air sanitizer must bear a statement that accurately describes the limited nature of the sanitizing claim.

5. In some cases, a description of unacceptable claims. Generally, both restrictions on claims and unacceptable claims are needed to ensure that users, who may have broader expectations of efficacy than the product demonstrates and the labeling conveys, are fully informed of product limitations. For example, proposed § 156.455 specifies that an air sanitizer may not make claims as a sterilant, disinfectant or germicide.

Proposed subpart W does not contain all required use directions for antimicrobial public health products. It contains only the specific performance standards and closely related restrictions and limitations on labeling claims derived from those standards. Adequate use directions for achieving expected efficacy require detailed instructions that vary depending on the type of product, use site and target

organism, and must be determined on a case-by-case basis. Particularly for antimicrobial pesticides, use instructions must reflect very specific test parameters keyed to sites of use. For example, the presence of soil or moisture on a surface may affect the ability of a product to perform, and must be accounted for both in efficacy testing and in labeling use directions. These more detailed use instructions are contained in Subdivision H, Labeling Requirements for Pesticide Use Directions, Antimicrobial Products.

XIII. Other Labeling Revisions

A. Use Dilution Labeling

FIFRA section 3(c)(9)(D) provides that antimicrobial products that are or may be diluted for use may bear a different ''statement of caution or protective measures'' for the recommended diluted solution than for the concentrate, provided that adequate data have been submitted to support the proposed statement and the label provides adequate protection for exposure to the diluted solution of the pesticide. The Agency has developed policy and procedural guidance pertaining to use dilution labeling, and will apply the policy to all pesticide products, not just antimicrobial products as required by FIFRA. Today's proposal would modify current regulations in part 156 to provide specifically for use dilution labeling.

1. *Data requirements.* EPA intends to specify in a future part 158 proposal the data required to support use dilution labeling for antimicrobial products.

The data needed to support use dilution labeling changes consist of data on acute toxicity of the diluted product. If a product is diluted with water, systemic toxicity (acute oral or dermal toxicity) categorization can be supported by calculations from the concentrated product. In general, systemic toxicity categories differ by a factor of 10. Therefore, in most cases, if dilutions are an order of magnitude or more, the toxicity category for a particular route of exposure can be expected to be the next lower category (Category I is highest). For example, if the concentrated product toxicity category is II and the product as used is diluted at least 10-fold, the diluted product should be in toxicity category III; if it is diluted more than 100-fold, the diluted product should be in toxicity category IV.

On the other hand, label statements triggered by skin or eye irritation or dermal sensitization must be supported by new or cited studies. Calculations are not acceptable because irritation and sensitization effects do not necessarily correlate directly with the degree of dilution.

In some cases, a diluted product may be more irritating than the concentrated product. Data may be cited if another registered product (such as a ready to use formulation) with a composition similar to the diluted product is supported by acceptable data. In all cases in which the diluent is other than water, data must be submitted, since diluents other than water may themselves be toxic.

2. *Permitted use dilution labeling.* EPA proposes to expand its current labeling regulations in 40 CFR part 156 to address opportunities for use dilution labeling. Currently § 156.10 requires that a product be labeled with information on the product as distributed and sold. The product that is marketed to users may be a concentrate product with directions for use dilution, or may be a ready-to-use product requiring no dilution. In many cases, a concentrate product as diluted will be substantially similar in composition and hazards to a ready-to-use product. It makes sense, then, that registrants should be permitted to provide additional information on precautions and protective measures for the diluted product. At the same time, the addition of statements appropriate for the product as diluted should not be allowed to detract from or mislead the user as to the hazards of the product in its undiluted form.

EPA believes that the ''statement of caution or protective measures'' referred to in FIFRA section 3(c)(9)(D) includes the first aid or practical treatment statement, the human (and animal) precautionary statements, and various personal protective equipment statements. EPA believes that a ''statement of caution'' does not extend to the signal word (DANGER, WARNING, or CAUTION), word POISON and skull and crossbones, or child hazard warning (''Keep Out of Reach of Children''), which should reflect and alert users to the typically higher hazards associated with the concentrate product.

If the labeling allows a range of dilution, EPA would permit use dilution labeling only for the most concentrated dilution. EPA believes that there is little value in multiple sets of precautionary statements reflecting various levels of use dilution, and that product users would find multiple statements cluttering and confusing.

Because the concentrate product typically presents higher hazards than the diluted product, EPA would not permit dilution-based statements either to substitute for or modify existing statements for the concentrate product. Rather, EPA would permit additional statements that augment the information for the concentrate product to appear following the concentrate product information. For example, the wording in italics could be added to precautionary or first aid statements:

HAZARDS TO HUMANS. ''Causes substantial but temporary eye injury. Do not get in eyes or on clothing. Wear goggles or face shield. Wash thoroughly with soap and water after handling. Wash contaminated clothing before reuse. *After product is diluted, goggles or face shield are not required.*''

FIRST AID. ''If on skin: Take off contaminated clothing. Rinse skin immediately with plenty of running water. Call a doctor or poison control center for further treatment advice. *If diluted product gets on skin, medical attention is not required.*''

Separate statements could also be used, with appropriate headings for ''Concentrate'' and ''Diluted product'' or similar wording.

B. Reorganization of Labeling Regulations

EPA proposes to reorganize § 156.10(h), which describes labeling requirements pertaining to hazard statements, to upgrade its structure. EPA believes that this long overdue reorganization is needed to accommodate the new use dilution provisions, and to improve the readability of the human hazard and precautionary sections of its labeling regulations. Ultimately EPA intends to upgrade part 156 entirely, but at present is doing so only as part of other regulatory proposals that affect labeling.

EPA has already proposed to upgrade the structure of its use direction labeling requirements as part of its proposal on Pesticides and Ground Water State Management Plans (June 26, 1996; 61 FR 33260). That proposal would create subpart G to contain directions for use.

Today's proposal carries this organizational upgrading one step further. EPA proposes to create new subpart D in part 156 (comprising §§ 156.60 through 156.79), and locate in it all human hazard and precautionary statements, including physical and chemical hazards. Environmental hazard and precautionary statements, currently located in § 156.10(h)(2)(ii) would be located in new subpart E.

In reformatting, EPA has reworded the provisions of current § 156.10(h) for clarity, and is proposing several minor changes:

1. Section 156.64 would eliminate the requirement that a product in Toxicity

Category IV by all routes of exposure bear a signal word. Currently, products in Toxicity Categories III and IV bear the same signal word, CAUTION. Products in Toxicity Category IV are of minimal toxicity, and EPA believes that a signal word is not necessary for effecting the purposes for which the product is intended. Indeed, the same signal word for two different categories of toxicity may contribute to misunderstanding of the hazards of products in both categories.

In recent research conducted under the Consumer Labeling Initiative, users of several types of consumer products tended to ascribe a higher level of hazard to products bearing the signal word CAUTION than to products bearing no signal word at all. Thus the signal word CAUTION on a Category IV product has the potential to be misunderstood. Users may consider all products bearing the signal word CAUTION as similar in toxicity, even though those in Toxicity Category IV pose negligible hazard while those in Category III pose moderate but real hazards.

The hierarchical Toxicity Category scheme is designed to allow distinctions to be made among products based on acute toxicity. Signal words assigned to the four toxicity categories are intended to allow users to make informed choices about the risks of the products they purchase. Having the same signal word for two categories runs counter to this goal. The hierarchy of product toxicity would be easier to convey on labeling if each category were clearly differentiated from another. Absent a new signal word to assign to Toxicity Category IV products, EPA proposes to eliminate the signal word entirely. The label would still be required to bear the child hazard warning.

2. Section 156.66 would clarify that the child hazard warning, ''Keep Out of Reach of Children'' is not always appropriate for all products, and that EPA may require or permit an alternative wording of the statement. This change would codify existing policy.

3. Section 156.68 would require the heading ''First Aid,'' instead of the currently required ''Practical Treatment,'' for the statement regarding emergency treatment by a user to mitigate pesticide exposures. This change was recommended in the Consumer Labeling Initiative Phase I Report (September 30, 1996), in which consumer interviews identified label improvements for consumer pesticide and non-pesticide products.

4. Section 156.68 would also require that a first aid statement appear on the front panel of the label for each product in Toxicity Category I, including for the first time eye and skin irritation effects. Currently, the statement is required on the front panel only for products in Toxicity Category I based upon systemic effects.

EPA believes that the current distinction between systemic and irritation effects is not justified. The corrosive effects associated with exposure to a Toxicity Category I skin or eye irritant are potentially irreversible, and EPA believes that information on mitigating those effects should be clearly and immediately available to the user. Logically, then, first aid measures for skin irritation should be as prominently located on the label as those for dermal toxicity. Location on the front panel affords the greatest prominence to first aid statements.

5. In creating new subpart E in which to locate environmental hazard and precautionary statements, EPA has included in a general section (§ 156.80) introductory language describing the location and type size of environmental hazards statements. Otherwise the requirements are the same as those in current § 156.10(h), and comment is not requested on this reorganization.

C. Updated Toxicity Categories

EPA had intended to propose to update its current Toxicity Categories for acute hazard labeling. The Toxicity Categories in § 156.10(h) were established in 1975 and are no longer current. In September 1998, however, the United States agreed in principle with the Organization for Economic Cooperation and Development to harmonize internationally the classification systems for a number of hazard criteria, including acute toxicity. The proposed classification scheme differs markedly from EPA's current scheme, both in the number of and criteria for acute toxicity categories. Implementation plans for the new scheme are intended to be developed by the year 2000.

In light of the proposed internationally harmonized scheme, EPA has decided not to propose to update its toxicity categories. At best, updating would be an interim step, which would be superseded in 2 to 3 years by U.S. implementation of the new scheme, which itself will be a major undertaking for the pesticide industry.

XIV. Chemical Sterilants

A. Liquid Chemical Sterilants Excluded by Statute

FIFRA section 2(u) specifically excludes from the definition of ''pesticide'' liquid chemical sterilants (and their subordinate disinfectant claims) for use on a critical or semi-critical device. This change in FIFRA was effective on August 3, 1996, and supersedes the interim guidance outlined in PR Notice 94-4 (June 30, 1994). That notice pertains to registration procedures for liquid chemical sterilant products affected by the June 3, 1993 Memorandum of Understanding (MOU), as amended, between EPA and FDA. In accordance with the MOU, EPA was preparing a rule to exempt such products from FIFRA regulation under section 25(b), which would have yielded regulatory jurisdiction solely to FDA. That proposal is no longer needed since the jurisdictional change was accomplished statutorily.

The effect of the exclusion under FIFRA is that such products are regulated solely by FDA as ''devices'' as defined in section 201 of the FFDCA. EPA has issued a notice to registrants of affected sterilant products (PR Notice 98-2, January 15, 1998), informing them of the change in regulatory jurisdiction. Today's proposal will codify in new § 152.6 the statutory exclusion for liquid chemical sterilants, though codification is merely a convenience for the regulated community and is not necessary for the exclusion to be effective.

Codification of the liquid chemical sterilant exclusion does not change the interim measures outlined in PR Notice 94-4 for general purpose disinfectants, nor does it affect liquid chemical sterilant products intended for use on non-medical devices, such as those intended for use solely on environmental surfaces, or those which are intended for veterinary purposes.

B. Non-liquid Chemical Sterilants Exempted by Regulation

EPA proposes further to use its authority under FIFRA section 25(b) to exempt from FIFRA regulation the following additional antimicrobial product types: (1) Non-liquid chemical sterilants for use on critical/semi-critical devices, except ethylene oxide; (2) non-liquid chemical sterilants bearing, in addition, subordinate disinfectant claims for use on critical/semi-critical devices.

FQPA modified the definition of ''pesticide'' in FIFRA section 2(u) so as to grant FDA exclusive jurisdiction over

liquid chemical sterilants for use on critical/semi-critical devices. Congress did not, however, address non-liquid chemical sterilants, which have similar uses as liquid chemical sterilants. In fact, under FFDCA section 510, FDA regulates *all* chemical sterilants used on all medical devices, not just liquid chemical sterilants on critical and semi-critical devices. In modifying FIFRA, Congress affirmed that FDA jurisdiction under FFDCA section 510 was an adequate means of regulating these sterilant products, and that dual oversight with EPA was unnecessary to protect the public health.

FIFRA section 25(b) authorizes EPA, by regulation, to exempt a pesticide from any or all provisions of FIFRA if the pesticide is adequately regulated by another Federal agency. EPA believes that Congress' expression of the adequacy of FDA's approval process for liquid chemical sterilants and their subordinate disinfection claims on critical/semi-critical devices as a statutory matter is an adequate basis for EPA to determine that non-liquid chemical sterilant products regulated under the same approval process are adequately regulated by another Federal agency.

C. Antimicrobial Products Neither Excluded nor Exempted

1. *Any claims on non-critical medical devices.* EPA does not propose to exempt sterilants or disinfectant products used on non-critical medical devices from FIFRA regulation. Non-critical medical devices potentially cover a wide array of items and surfaces, such as blood pressure cuffs and bedpans. EPA and FDA currently share jurisdiction over products used on non-critical medical devices. However, under its 1993 MOU with FDA, EPA and FDA agreed to an approach under which FDA would grant sole responsibility for products used on non-critical medical devices to EPA. FDA has issued a proposal to exempt general purpose disinfectant products from the requirement for pre-market clearance under FFDCA section 510(k) (63 FR 59917, November 6, 1998).

2. *Any claims on non-medical devices.* EPA has sole jurisdiction over all claims on non-medical devices. These products are not regulated jointly with FDA.

The combination of the statutory exemption for liquid chemical sterilants and the exemptions proposed under FIFRA section 25(b) would give FDA sole jurisdiction over all chemical sterilants (except ethylene oxide), together with their subordinate level disinfection claims for use on all critical and semi-critical medical devices. Exempting from FIFRA coverage additional sterilants and uses and consolidation of regulatory jurisdiction with FDA will eliminate dual regulatory requirements and unnecessary paperwork requirements.

Table 5 below sets out concisely the status of chemical sterilants and other antimicrobial products used on medical devices, and the statutory and regulatory transfers that are occurring for liquid and non-liquid chemical products. Where the table indicates ''no change'' in the last column, the jurisdiction has not changed by statute, and EPA is not proposing any regulatory change.

Table 5.—Antimicrobial Products Used on Medical Devices

Product	In this form--	For this Use--	Is under the Jurisdiction of--	By Virtue of--
Sterilant + any subordinate level disinfectant claim (except ethylene oxide)	Liquid	Critical/semi-critical medical devices	FDA	Statutory exclusion
		Non-critical medical devices	FDA and EPA	No change
		Sites other than medical devices	EPA	No change
	Non-liquid	Critical/semi-critical medical devices	FDA	FIFRA exemption
		Non-critical medical devices	FDA and EPA	No change
		Sites other than medical devices	EPA	No change
Products bearing disinfectant or sanitizer claims only	All forms	Non-critical medical devices	EPA and FDA	No change
		Sites other than medical devices	EPA	No change

D. Ethylene Oxide

Ethylene oxide is a gaseous form of sterilant, and thus was not transferred to FDA jurisdiction by statute. EPA does not propose to exempt the sterilant ethylene oxide because, in contrast to the other non-liquid sterilants that would be exempted, ethylene oxide use is not limited to medical and hospital use. Ethylene oxide is used as a fumigant for foods, particularly for fumigation of whole spices, a use regulated by no other Agency except EPA. Thus, even if EPA were to exempt the ethylene oxide sterilization use on critical/semi-critical devices, EPA might retain significant oversight over ethylene oxide for other uses. It makes sense, then, for EPA to retain jurisdiction over the sterilant use of ethylene oxide on medical devices.

XV. Nitrogen Stabilizers

A. Nitrogen Stabilizers are Regulated as Pesticides

FQPA expanded the FIFRA definition of ''pesticide'' to include nitrogen stabilizers, but by definition in FIFRA section 2(hh) ''nitrogen stabilizer'' excludes certain substances. Two named substances (dicyandiamide and ammonium thiosulfate) are excluded outright. Other substances are excluded

if they meet the criteria in section 2(hh)(3): They were introduced into commercial agronomic use by January 1, 1992, without being registered under FIFRA, and thereafter have not made specific claims of ''prevention or hindering of nitrification, denitrification, ammonia volatilization [or] urease production'' (collectively referred to in this discussion as ''nitrogen stabilization claims''), except where required to do so under State pesticide regulations.

EPA proposes to add to new § 152.6 those substances that are not nitrogen stabilizers by statutory definition and therefore not regulated as pesticides when used for nitrogen stabilization purposes. All other nitrogen stabilizer products are regulated as pesticides under FIFRA. This unit discusses how EPA will determine which nitrogen stabilizers it will treat as pesticides.

B. What is a Nitrogen Stabilizer?

1. *Action on soil bacteria*. To be a nitrogen stabilizer in the first instance, a product must accomplish the purpose of nitrogen stabilization through ''action upon soil bacteria.'' Clearly, this phrase excludes fertilizer products, which increase soil nitrogen by simple addition of nitrogen-containing substances rather than any soil bacterial action. However, any product that enhances soil nitrogen availability by affecting the soil bacteria is a nitrogen stabilizer, regardless of whether it also functions as a fertilizer after action on soil bacteria. Such dual products that function both as nitrogen stabilizers and fertilizers are regulated under FIFRA if they meet the other statutory criteria for nitrogen stabilizers.

2. *Date of introduction into commerce*. The first criterion pertains to the date of introduction of the product into commerce. Section 2(hh) specifies January 1, 1992, as the date before which the product must have been in ''commercial agronomic use'' but not registered as a pesticide (as well as the date after which no specific claims of nitrogen stabilization must have been made in connection with its sale and distribution; see below). EPA can verify from its records what products were registered before January 1, 1992 (these are nitrogen stabilizers that must continue to be registered). EPA interprets ''commercial agronomic use'' to mean that a product is being distributed and sold at the wholesale and retail levels. A product that is being distributed only in a limited or restricted way in preparation for full marketing is not considered to have achieved commercial marketing status.

3. *Specific claims*. The second criterion relates to claims made for the product. The statute does not define what is meant by a ''specific claim of prevention or hindering of the process of nitrification, denitrification, ammonia volatilization [or] urease production.'' Moreover, there is no explanatory legislative history to guide EPA in discerning Congressional intent. Therefore, EPA is interpreting the phrase in a common sense manner.

Nitrification, denitrification, ammonia volatilization, and urease production denote specific undesirable actions of soil bacteria with the result that nitrogen availability is decreased. Clearly, any product that uses these terms on the label is making a ''specific claim'' of mitigating that effect. However, other claims which focus only on the end result of nitrogen stabilization (increased/prolonged availability of nitrogen) are also used on product labels. EPA identifies examples of these phrases in proposed § 152.6(b)(4). The phrases listed in that section, to the Agency's knowledge, could be used to describe only two functions of products—either the fertilizer effect of addition of slow-release nitrogen-containing substances, or the pesticidal effect on soil bacteria that is nitrogen stabilization and has the same end result.

Although these label claims could theoretically be used to describe fertilizers, EPA believes that they are in practice claims of nitrogen stabilization rather than fertilizer claims, for the following reasons. First, fertilizer products are already excluded from FIFRA regulation by EPA's own regulations in § 152.8, and a fertilizer product need only be labeled as such (and bear no other pesticide claims) to avoid FIFRA regulation. It would make little sense for a fertilizer product to bear claims such as ''increases nitrogen uptake'' or ''prolongs nitrogen availability'' when a simple declaration as a ''fertilizer'' would suffice under FIFRA, and ''fertilizer'' is a description of such a product that would be understood by all purchasers. The only other plausible use of these ambiguous claims relates to nitrogen stabilizing effects on soil bacteria.

More telling is EPA's experience in evaluating such products. A first-hand examination of the labeling and ingredients declaration of a product is the most reliable method to determine if products with such claims are to be regulated under FIFRA. An examination of this sort is similar to the process used for many years to determine the pesticide/non-pesticide status of plant regulators (pesticide) versus fertilizer (non-pesticide) products. In each instance that EPA has examined a product bearing a claim such as described in § 152.6(b)(4), EPA has determined that the product was, in fact, functioning as a nitrogen stabilizer, and that the product composition was consistent with an expected nitrogen stabilization purpose rather than, or in addition to, a fertilizer purpose.

Moreover, such an interpretation of indirect claims is in keeping with EPA's past and current policies on nitrogen stabilizers. EPA's policy has been to treat claims that indicate pesticidal intent as pesticide claims that subject the products to regulation under FIFRA. Therefore, EPA proposes to treat any claim that states or implies that the product will prevent or hinder nitrification, denitrification, ammonia volatilization, or urease production as a claim that brings the product under the purview of FIFRA as a nitrogen stabilizer. If a product functions solely as a fertilizer or a slow- or delayed-release fertilizer, is labeled as such with explanatory information on the method used to accomplish any delayed- or slow-release action (e.g., by encapsulation) and bears no additional claims that appear to be nitrogen stabilization claims, it would not be considered a pesticide.

EPA believes that to do otherwise would create an administrative and enforcement inequity that could potentially undermine the intent of the statute to the point where it would have little practical effect. The purpose of incorporating nitrogen stabilizers into the definition of ''pesticide'' in FIFRA section 2(u) is to regulate certain nitrogen stabilizers as pesticides. If EPA were to interpret the Act to limit the regulatory coverage of nitrogen stabilizers to products that use the magic words ''nitrification,'' ''denitrification,'' ''ammonia volatilization,'' or ''urease production,'' while ignoring other language that makes equivalent but differently phrased claims, a product that Congress intended to be regulated could escape FIFRA regulation merely by using a ''code phrase'' that conveys the same meaning as these terms. Arguably, under such a restrictive interpretation, the only nitrogen stabilizers covered by FIFRA might be those already registered as of January 1, 1992. EPA believes that Congress could not have intended to extend coverage of FIFRA to nitrogen stabilizers, only to exclude most or all of those products by a mere turn of phrase.

4. *State exclusion*. Congress did provide a specific exclusion for statements that are required by State

legislative or regulatory authorities. A product that makes a claim of nitrogen stabilization in its labeling or other materials only because of a State requirement is not thereby brought under FIFRA regulation. Congressional intent is clear: Federal regulatory authority over nitrogen stabilizers should not be enlarged by actions of the States. Nor does EPA believe that Congress intended that a product that triggered Federal regulation by making nitrogen stabilizer claims be removed from regulation by subsequent action of a State. Proposed § 152.6 therefore makes clear that the State requirement for labeling must be a pre-existing one, that is, in place prior to the assertion of nitrogen stabilizing claims by the seller or distributor.

Moreover, a product for which nitrogen stabilization claims are made because of a State requirement is nonetheless subject to FIFRA regulation if at any time since January 1, 1992, nitrogen stabilization claims have been made for the product with respect to its distribution and sale in another State that does not have such a requirement. Sale or distribution of such a product in any State, including the State which imposed the labeling requirement, is subject to the provisions of FIFRA.

The producer of a product who claims eligibility under this exclusion would need to maintain sufficient records to clearly demonstrate that, as of January 1, 1992, the product was being commercially distributed and sold (sales records, for example), and that no nitrogen stabilization claims were made after that date (dated copies of labeling and advertising, for example). These records are maintained by producers as a normal business practice, so no additional recordkeeping would be required by this proposal.

XVI. Notification of Registration Changes

A. FQPA Modifications

EPA proposes to modify its current notification procedures for antimicrobial products to conform to those established under FIFRA section 3(c)(9). The statutory provisions requiring these changes are discussed in Units IV.I. and V.B.

Prior to FQPA, FIFRA did not provide a notification scheme. In 1988, EPA implemented a regulatory notification framework (contained in § 152.46), under which EPA determines acceptable modifications to registration that may be made by notification. The types of acceptable notifications are set out in direct notices to registrants, together with the procedures for submitting notifications.

FQPA modified FIFRA with respect to notifications for antimicrobial pesticides only, in both substance and procedure. For the first time, FIFRA establishes a statutory right for antimicrobial registrants to make certain types of changes by notification. Specifically, a registrant may modify the labeling of an antimicrobial pesticide product to include relevant information on product efficacy, product composition, container composition or design or other characteristics, that do not relate to any pesticide claim or pesticidal activity. Further, FIFRA sets up a procedure for antimicrobial notifications that holds both registrants and EPA to a high degree of accountability.

FIFRA section 3(c)(9) became effective on August 3, 1996; today's proposal would codify the procedures of the Act that are already in effect. Neither current regulations nor this proposal address the types of actions that may be accomplished by notification.

The notification provisions of the Act apply only to antimicrobial products. As a policy matter, EPA could extend both the types of notifications and the procedures for notifications to other products. After consideration, EPA has decided to allow non-antimicrobial registrants to avail themselves of the new types of notifications provided by FIFRA section 3(c)(9), but will not propose changes in its current procedures for notifications for such products. Although EPA believes that the new statutory process for antimicrobials is superior in some ways to the existing notification scheme, it is reluctant to add an additional procedural layer to a system that appears to work well as currently administered.

Consequently, after the effective date of the rule, EPA would have in place two notification schemes (antimicrobials/other pesticide products), but would have a unified set of notification actions. After the effective date of the rule, antimicrobial registrants would be required to follow the notification procedures of § 152.446 only; they would not be permitted to follow the current procedures in § 152.46. EPA welcomes comment on whether the notification procedures for antimicrobials should be adopted across-the-board. If persuaded by commenters that there are benefits without undue costs in making the procedures for notifications uniform for all products, EPA could, in the final rule, adopt the procedures across-the-board. If it does so, EPA would simply adopt the provisions of § 152.446 to replace those currently in § 152.46.

Although EPA does not propose to apply the new procedures to all products, it believes that the types of notifications permitted by FIFRA section 3(c)(9) should be extended to all products rather than limiting them to antimicrobials. Doing so does not require that EPA modify its regulations in § 152.46, since permitted notifications are detailed in direct notices to registrants (PR Notices), a practice EPA would continue. Current permitted notifications are specified in PR Notice 98-10, issued October 22, 1998.

B. Comparison of Current and New Procedures for Antimicrobial Products

This unit describes the new procedures for antimicrobial product notifications and compares them to the current procedures for all other products, which are not proposed for change. The significant differences between antimicrobial procedures and current notification procedures in § 152.46 are that:

1. Registrants who submit antimicrobial notifications must wait 60 days after submission before distributing or selling the modified product. Registrants of other products may distribute or sell immediately upon submission.

The new scheme offers an eminently practical solution for the uncertainties of compliance and enforcement in the current notification process. Under the current scheme, a registrant who ships immediately upon notification runs the risk that EPA might thereafter determine the notification is improper, and the product would be in violation of FIFRA. Because FIFRA section 3(c)(9) prohibits sale and distribution of a modified product for 60 days after submission, but requires Agency action within 30 days, there will always be some period of time after the Agency's decision before an antimicrobial product can be shipped legally. There is no possibility (as exists under the current scheme) that a registrant will ship an antimicrobial product only to have the Agency disapprove the notification. The benefit of certainty is somewhat offset by the fact that an antimicrobial registrant must wait before shipping. However, EPA proposes in § 152.446 to allow shipment at any time after receipt of approval by the Agency (30 days), thereby almost halving the 60–day waiting time.

2. EPA is obligated to disapprove antimicrobial notifications it finds unacceptable within 30 days after receipt. Under the current process,

EPA's goal is to make its determination within 30 days, but it is not required to do so.

The new process involves some increase in resources and time on EPA's part. Requiring a review and specific disapproval decision within 30 days of receipt is more demanding than the current scheme which lacks a decision deadline. Nonetheless, antimicrobial notifications are currently being processed within 30 days, so EPA anticipates little pressure on its current antimicrobial program resources to accommodate the 30–day decision deadline.

3. EPA may require substantiating information for an antimicrobial notification. Current EPA regulations in § 152.46 do not explicitly mention substantiation. EPA proposes that antimicrobial registrants be required to retain, and submit upon request, substantiating information for each modification. Substantiating information might be required to be submitted if the registrant objected to the Agency's disapproval of his/her notification. The provision for substantiation of claims for antimicrobial products offers EPA greater assurance that the claims are in fact accurate, and can be verified objectively or scientifically.

4. Antimicrobial registrants may formally object to the Agency's disapproval of an antimicrobial notification. Current § 152.46 contains no provision for appeal of an Agency disapproval. The availability of an administrative appeals process, if used frequently, would increase resource needs to administer the process. However, EPA anticipates few appeals since the types of notifications permitted by the statute are relatively straightforward decisions for which the current notification scheme was designed.

XVII. Conforming and Organizational Changes

A. Changes in Definitions

EPA is proposing to modify, delete, or add a number of definitions to § 152.3. Definitions located in § 152.3 apply to all pesticide applications, including antimicrobial applications. The definition of ''pesticide'' would be deleted because it has become so long and complicated in the statute itself that it adds no value to reiterate the definition in regulations. The definition of ''active ingredient'' would be modified to conform to the change made by FQPA adding nitrogen stabilizers. Definitions to be added include the following:

1. ''Antimicrobial pesticide,'' to allow reference to new subpart W. The definition proposed here interprets the statutory definition to clarify and give practical meaning to the exclusions from the definition for ''wood preservative,'' ''antifouling paint product,'' ''fungicide for agricultural use'' and ''aquatic herbicide.''

2. ''Applicant,'' ''registrant'' and ''application for registration,'' to create concise terms that cover both new and amended registrations.

3. ''Complete application.'' This definition is being added to apply to all pesticide applications because a number of FIFRA provisions (not just those for antimicrobial products) depend upon the submission of a ''complete application,'' including: (1) the timeframes for all ''fast-track'' applications under section 3(c)(3)(B); (2) the priority given to review of minor use applications under section 3(c)(3)(C); and (3) the priority given to so-called ''safer'' pesticides under section 3(c)(10). For antimicrobial pesticides, § 152.450 contains detailed information on what constitutes a complete application.

4. ''Fast-track application,'' to formalize the term widely used by the Agency and the regulated community for applications under FIFRA section 3(c)(3).

5. ''Nitrogen stabilizer,'' to include the statutory term here for convenience.

B. Exclusions and Exemptions under FIFRA

EPA proposes to compile in one location in its regulations the various exclusions that have accumulated in FIFRA over the years. Exclusions from FIFRA regulation are statutorily designated substances that are not to be regulated under FIFRA. Readers should note that ''exclusions'' do not include exemptions granted under FIFRA section 25(b), which are pesticides specifically removed from FIFRA regulation by Agency action.

Several exclusions already exist in FIFRA, and are identified in current regulations. These include:

1. Substances used against organisms that are not ''pests'' by definition in FIFRA section 2(t).

2. Substances that are not ''pesticides'' by definition in FIFRA section 2(u).

3. Substances that indirectly are not ''pesticides'' by virtue of being excluded from definitions of substances that are pesticides, such as ''vitamin-hormone horticultural products,'' which are excluded from the definition of ''plant growth regulator'' in FIFRA section 2(v).

FQPA amended FIFRA to add two additional exclusions for substances that are not to be regulated under FIFRA. Because the existing exclusions are scattered in FIFRA and have been expanded by FQPA, EPA believes it would be useful and convenient to consolidate them in one location in its regulations. Accordingly, EPA proposes to create new § 152.6 and to include in it both existing and new exclusions.

Existing exclusions, which have not been altered, include those in § 152.8 for pests of living man and animals (human and animal drugs) and various soil amendment products, in § 152.20 for human drugs and in § 152.25 for vitamin hormone products. New exclusions include those for certain liquid chemical sterilants and certain nitrogen stabilizer products. EPA believes that proposed § 152.6 contains all exclusions provided by statute or existing regulations. If EPA finds that it has inadvertently omitted any exclusions provided by statute, it will in the final rule add them to § 152.6.

XVIII. Consultations During the Development of this Proposal

FIFRA section 3(h) requires that EPA, in developing this proposed regulation, ''solicit the views from registrants and other affected parties to maximize the effectiveness of the rule development process.'' EPA has consulted, and maintains an open dialogue with, a number of interested parties, both in establishing the streamlined antimicrobial program itself and in developing this proposal.

A. Stakeholder Meetings

Stakeholder meetings were begun shortly after enactment of FQPA--the first was in November 1996--with a view to engaging the antimicrobial industry (which is largely composed of small businesses), public health, consumer and environmental groups, in discussions and suggestions that could be implemented in the rule. Since then, EPA has held a number of open public meetings, approximately every quarter, to discuss issues arising from the development of the antimicrobial rule and the administration of the antimicrobial registration program. These open meetings have been announced in the **Federal Register** and have been attended by registrants, trade associations representing antimicrobial producers and users, other Federal agencies, and environmental and consumer groups. Information about the meetings and summaries have been placed in a public docket (OPP docket control number 00473, located at the address given under ADDRESSES). EPA

intends to conduct further meetings of this nature, and will make special efforts to continue and expand the participation of small businesses in the dialogue fostered through such meetings.

To enhance pre-proposal input into the regulatory development process, draft language for this proposal was released to the public in April 1997, and again in June 1998. Ensuing discussions and comments raised a number of issues of concern. Among them were the following:

1. *The opportunity to rebut Agency's conditions of registration*. When EPA issues a registration, it often does so with conditions attached, generally labeling changes. Registrants have not had the opportunity to have EPA reconsider conditions they believed were onerous or unnecessary. EPA has now modified the proposal to allow applicants who disagree with EPA's imposition of labeling changes as a condition of registration to submit a rebuttal for consideration.

2. *A shorter review period for resubmissions*. Industry was concerned that EPA might choose to start its review clock over for minor resubmissions to complete an application or respond to Agency questions. In response, EPA is proposing a specific new category of shortened review period for ''qualifying resubmissions.'' This new category would shorten the review period that would otherwise apply by 30 days for applications with review periods of 120 days or less. EPA estimates that approximately 75% of antimicrobial applications each year would have review periods of 120 days or less, and would benefit from this provision.

3. *How EPA would deal with indications of product lack of efficacy*. EPA had considered a scheme whereby applicants would agree to accept as a condition of registration the imposition of a variety of measures if their product was found to be inefficacious after registration. Industry was concerned about the vague nature of EPA's proposal, and viewed it as potentially costly. As a result, EPA has scrapped this scheme, and developed a new one (the sunset provision in § 152.458), to respond to their concerns.

B. Workshops

To complement the stakeholder meetings and extend their approach to stakeholder involvement to a larger group of participants, on January 8-9, 1997, EPA held a highly successful 2–day antimicrobial regulation workshop attended by over 300 participants. At a number of plenary sessions and small discussion groups, EPA explored with participants issues such as improving and streamlining the registration process for antimicrobial products, self-certification, harmonization with States and the international community, applying for registration, and antimicrobial data requirements. A second workshop was held on June 15-16, 1998, and was attended by an even larger group of stakeholders. A major trade association with extensive small business membership was fully represented at both workshops. In addition, individual representatives of more than 15 small firms attended.

C. Food and Drug Administration

FQPA modified both FIFRA and FFDCA in ways that either explicitly or effectively transferred regulatory authority over a number of pesticides between EPA and FDA. As a result, EPA has consulted frequently with FDA in preparing this proposal with respect to liquid chemical sterilants (see Unit. XIV.) and the transfer of regulatory jurisdiction over certain food use antimicrobial residues back to FDA (see Unit XI.).

D. Canada

In the fall of 1996, EPA held discussions with the Pest Management Regulatory Agency of Health Canada, which is the Canadian government agency responsible for regulation of certain antimicrobial pesticides in Canada. These consultations focussed primarily on Canada's system of categorizing antimicrobial pesticide types, its administrative procedures that EPA might adopt to streamline, simplify and accelerate the Agency's procedures, and ways to harmonize data requirements for antimicrobial products.

Although the majority of the discussions targeted administrative rather than regulatory changes, EPA has included in this proposal expanded application contents (§ 152.450) that will, in addition to assisting U.S. regulators of antimicrobial pesticides, foster harmonization of application reviews between Canada and the U.S. For example, the requirement that an applicant supply copies of available data reviews conducted by other countries (such as Canada) will contribute to more efficient regulation of antimicrobial products. In addition, EPA's rigorous application of completeness criteria as a resource management tool mirrors that of Canada.

XIX. Table of Affected Sections

Because today's proposal covers myriad and diverse topics that affect several portions of the Code of Federal Regulations, EPA has summarized in Table 6 below all parts and sections for which additions or changes are being proposed today.

Table 6.—CFR Sections Affected by Proposal

CFR Part or Section Number	Title	Proposed Action
§ 152.1	Scope	Conforming changes
§ 152.3	Definitions	Additions
§ 152.6	Substances excluded from regulation by FIFRA	New
§ 152.8	Products that are not pesticides because they are not for use against pests	Material moved to § 152.6
§ 152.20	Exemptions for pesticides regulated by another Federal agency	Material moved to § 152.6; new material added
§ 152.25	Exemptions for pesticides of a character not requiring FIFRA regulation	Material moved to § 152.6
§ 152.44	Application for amended registration	Clarification and reformatting

Table 6.—CFR Sections Affected by Proposal—Continued

CFR Part or Section Number	Title	Proposed Action
Part 152, subpart W (§§ 152.440 - 152.459)	Registration of Antimicrobial Products	New
§ 156.10	Labeling requirements	Material moved to new subparts D and E; conforming changes
Part 156, subpart D (§§ 156.60 - 156.78)	Human Hazard and Precautionary Statements	Reorganized material from § 156.10
Part 156, subpart E (§§ 156.80 - 156.85)	Environmental Hazard and Precautionary Statements	Reorganized material from § 156.10
Part 156, subpart W (§§ 156.440 - 156.458)	Public Health Claims for Antimicrobial Products	New

XX. Statutory Review Requirements

In accordance with FIFRA section 25(a), this proposal was submitted to the FIFRA Scientific Advisory Panel, the Secretary of Agriculture (USDA), the Secretary of Health and Human Services (HHS), and appropriate Congressional Committees. The Scientific Advisory Panel waived its review of this proposal.

A. USDA Comments

1. USDA suggested that the document include a discussion of the issues surrounding microbial pest resistance.
Response: While there is evidence that microorganisms develop resistance to antibiotics, EPA is not aware of evidence that microorganisms are developing resistance to antimicrobial pesticides. Microorganisms respond to biocidal agents, and differ markedly in susceptibility and resistance responses to agents such as disinfectants and antiseptics. Bacterial resistance to biocides is usually considered to be of two types: (1) Intrinsic (a natural property of an organism); or (2) acquired (by genetic mutation or physiological adaptation). The mechanisms of susceptibility and resistance to biocides and techniques that would enhance or reduce susceptibility/resistance are not well understood and would require further research.

EPA expects that it would become aware of developing microbial pest resistance in public health products either through registrant reporting of lack of efficacy under FIFRA section 6(a)(2) or through the 5–year retesting program. A public health product that failed to demonstrate efficacy at the 5–year mark would be removed from the marketplace by automatic expiration of the registration.

2. USDA suggested that EPA clarify in the proposal the status of agricultural microorganisms other than fungi, for example, nematodes.
Response: EPA has revised Unit VI.C. of the preamble and the definition of ''antimicrobial pesticide'' in § 152.3 to clarify that an agricultural fungicide is one applied to crops or plants pre-harvest. It should be noted that nematodes are not considered microorganisms, but invertebrates, and thus would not be included in the definition of antimicrobial pesticide in any case.

3. USDA suggested that EPA standardize the review processes and times for wood preservatives and antifoulant paints.
Response: FIFRA section 2(mm) specifically excludes wood preservatives and antifoulant paints from the definition of ''antimicrobial pesticide,'' and thus, with only limited exceptions, also excludes such products from the application review periods that this proposal would establish for antimicrobial pesticides. Therefore, EPA is not proposing to include wood preservatives and antifoulant paints within the scope of this regulation and its review periods. Unit VIII.H.4. contains a full explanation of when the review periods apply to certain wood preservative products. The review periods discussed in that unit, however, do not extend to antifoulant paints.

As a practical matter, the review processes for all wood preservatives and antifoulant paints are the same regardless of where within the EPA organization they originate. The data requirements and risk assessments for such products are the same and depend on the chemical and the potential risks from its use, regardless of whether there is a statutory review period.

B. HHS Comments

HHS provided informal comments on the draft, many of which were questions, clarifications, or corrections to the proposal. EPA has made changes to the draft proposal in many instances based upon their suggestions. A brief summary of their substantive comments follows.

1. HHS wanted to know the relationship between ''antimicrobial pesticides'' and ''public health pesticides'' and whether they were treated differently in the proposal.
Response: Both terms are defined in FIFRA. ''Antimicrobial pesticide'' is defined in FIFRA section 2(mm) to include, among other things, products intended to ''disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.'' ''Public health pesticide'' is defined in FIFRA section 2(nn) to include products for the ''. . . prevention or mitigation of viruses, bacteria, or other microorganisms . . . that pose a threat to public health.'' An antimicrobial pesticide may be a public health pesticide if it is intended to destroy or mitigate microoganisms that pose a threat to public health.

However, there is a single standard for registrability of a pesticide in FIFRA section 3(c)(5), namely that the pesticide itself, or in its intended use, not cause ''unreasonable adverse effects'' on man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. This is a risk/benefit balancing provision. Of significance, though, is that EPA is specifically directed to take into account the health risks posed by the disease vectors controlled by a public health pesticide when weighing its risks and benefits. Under FIFRA section 6(b)(2), when EPA is contemplating action against a public health pesticide based on risk, HHS should provide information on use and benefits to the Agency to inform its risk/benefit decision.

2. HHS asked about the scope of the proposed rule in relation to HHS activities under FFDCA section 409. HHS noted the statutory definition of ''antimicrobial pesticide'' in FIFRA,

which excludes pesticides that require a clearance under either FFDCA secton 408 or 409. HHS also noted that ARTCA grants jurisdiction over many antimicrobial pesticide residues in food to FDA (discussed in Unit XI.), but it still requires registration of the pesticides under FIFRA.

Response: The definition of ''antimicrobial pesticide'' applies only to registration activities under FIFRA; it does not affect activities related to any FFDCA section 409 food additive regulation. EPA has no jurisdiction under section 409. Any action affecting the registration of an antimicrobial pesticide under FIFRA, such as cancellation or expiration under the ''sunset provision,'' would not necessarily require that FDA revise or revoke any food additive regulations associated with that pesticide.

A similar situation could arise if EPA has established a tolerance or exemption under section 408 for a pesticide whose registration has expired under the sunset provision. As noted in Unit IX, the sunset provision is intended to ensure efficacy of public health products, not to determine whether the tolerance fails to meet the ''reasonable certainty of no harm'' standard of FFDCA. It is unlikely that the cancellation or expiration of any single product registration would trigger action to revoke the tolerance because there likely would remain other products on the market for the same use that are supported by the same tolerance or food additive regulation.

That said, EPA proposes to include all antimicrobial products in the scope of its proposed regulation. Unit VIII.B contains a full explanation of the applicability of subpart W. Under § 152.441, subpart W applies not only to ''antimicrobial pesticides,'' but also to antimicrobial products whose registration requires a clearance under FFDCA section 408 or 409. Because the proposed rule affects only FIFRA actions, however, the difference in coverage of the statutory term ''antimicrobial pesticide'' and the broader coverage of the proposed rule is not expected to affect HHS activities under FFDCA over those same pesticides.

3. HHS commented that EPA's proposal would expand the scope of FDA authority over chemical sterilants beyond that agreed to by EPA and FDA.

Response: EPA has revised the proposal to align its provisions with FDA's understanding of our respective responsibilities (see Unit XIV.).

4. HHS comments suggested several areas where increased EPA/FDA consultation was desirable or necessary, for example, enforcement of labeling claims for products subject to both EPA and FDA jurisdiction.

Response: EPA and HHS are in the process of developing a Memorandum of Understanding (MOU) that would address responsibilities and consultations in a number of areas. The MOU is expected to establish a consultative process between the Agencies that will facilitate information exchange and resolution of issues. EPA expects that the consultations undertaken under the MOU will serve the various purposes noted by FDA. Currently EPA consults informally with counterparts in the FDA, the Centers for Disease Control, and other HHS offices on issues of joint authority and mutual interest.

5. HHS requested that EPA clarify the status under the Freedom of Information Act (FOIA) of data and/or data reviews provided to other agencies if the applicant authorizes EPA to share such data.

Response: The status of data provided to another agency under a registrant authorization would not change under FOIA because of the data sharing. A request to HHS for the release of such data would be treated the same under FOIA as a request to EPA.

6. HHS had a number of comments related to the efficacy performance standards (part 156, subpart W).

a. *Virucidal claims*. HHS suggested that EPA consider selecting representative viruses with differing intrinsic resistance to antimicrobial chemicals and use those as benchmark viruses for test purposes in support of a general virucidal claim.

Response: Currently, EPA requires that each specific virus intended to be claimed on the label be tested, and identified on the labeling. EPA takes the position that there is no known data base that assures that all viruses have the same susceptibility or resistance responses to antimicrobial agents, or that allows across-the-board extrapolation of results. Nonetheless, EPA has funded a 3–year research project on the use of surrogate viruses. The results from this study are currently under review.

b. *Efficacy terminology*. HHS noted that there are differences in terminology between EPA and HHS performance measures. HHS considers a laboratory test demonstrating product efficacy to be a test of a chemical's ''potency'' and not its ''efficacy.'' HHS believes that ''efficacy'' is demonstrated only in the ability of an antimicrobial agent to reduce or prevent transmission of disease.

Response: EPA acknowledges these differences. In the case of antimicrobial pesticides, EPA uses the term ''efficacy'' to refer to laboratory testing that demonstrates ''presumptive'' efficacy of a product in reducing microbial populations on environmental surfaces. FIFRA specifically excludes as pests microorganisms in or on living man or other living animals (as opposed to microorganisms on surfaces to which man might be exposed). Effectiveness testing that would demonstrate performance of an antimicrobial pesticide against microorganisms in man and that would meet HHS' definition concerning actual reduction or prevention of disease is not within EPA's purview.

Based upon the laboratory tests that demonstrate efficacy for FIFRA purposes, EPA permits label claims only to the extent that the product reduces or eliminates target organisms under standard laboratory conditions or carefully defined simulated use protocols. Because EPA does not require or evaluate data on disease-related claims, antimicrobial pesticide products are not permitted to bear claims concerning reduction in transmission or prevention of disease, though they may claim the ability to reduce precursor microorganisms.

c. *''Sanitization'' claims*. HHS requested clarification of the scope of the Agency's policy on ''sanitary'' and ''sanitize'' as pesticide public health claims. HHS noted that a product that ''sanitizes'' food equipment would not be an ''antimicrobial pesticide'' under FIFRA section 2(mm) because such use would be a food use requiring a tolerance or exemption under section 408. They requested clarificaiton as to whether such a sanitizer would be subject to subpart W labeling requirements, and whether it would be a public health pesticide.

Response: Yes. A pesticide that sanitizes food equipment would be a public health pesticide because sanitization is a claim of a specific level of antimicrobial activity against microorganisms associated with public health protection. It would therefore be subject to the labeling requirements of proposed subpart W of part 156. As noted earlier, the definition of ''antimicrobial pesticide'' in the proposal is broader than that in the statute. EPA has revised § 156.440 to clearly state that the applicability of part 156, subpart W, corresponds to that in part 152, subpart W, which would encompass food use sanitizers.

XXI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), entitled *Regulatory Planning and Review*, this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). This proposal is not expected to have significant impacts on antimicrobial pesticide producers and would have no impacts on any other sector of the economy. Moreover, a number of its provisions, including exemptions for various antimicrobial sterilants, reduction in duplicative regulation with FDA, and mandatory review periods for antimicrobial applications, are expected to decrease costs and burdens currently associated with the registration of antimicrobial pesticide products.

EPA has prepared an economic analysis of the potential costs associated with this proposed action, which is contained in a document entitled *Regulatory Impact Analysis of the Proposed Antimicrobial Pesticide Rules*. This document is available in the public record for this action and is summarized in this unit.

The only costs anticipated as a result of this action are the costs of compliance with the ''sunset provision.'' Under this provision, proposed in § 152.458, registration of a public health antimicrobial pesticide would expire every 5 years unless the registrant certifies, based upon efficacy and composition studies conducted within the year prior to expiration, that the product continues to meet the standards for registration. The studies required are an analysis of the product composition to confirm certified limits of the ingredients, and efficacy studies for each public health claim on the product labeling.

The costs of the analysis and certified limits determination are estimated to be approximately $6,100 per product. The average cost of the efficacy studies is estimated to be just under $25,500 per product, based upon an average of six efficacy tests per product. The average annualized testing cost per product is $5,620. However, while all public health products would be subject to product analysis testing, only about 61% of products would be subject to efficacy testing, because some products can rely on testing developed for substantially similar products. Accordingly the adjusted annualized testing cost for products expected to actually have to conduct the testing is $3,897. The total annualized cost for both existing and new products is estimated to be $12.3 million.

In neither case are these costs expected to result in additional capital costs to applicants because such studies are currently required of applicants for registration, whether conducted by the applicants themselves, or, more typically, contracted for with outside laboratories.

The assumptions used in the analysis result in an overstatement of the costs of the rule, for the following reasons:

1. The analysis assumes that the testing requirement imposes costs effective immediately upon promulgation in 1999. However, actual costs will be imposed only as products are submitted for new or amended registration or reregistration over the next several years, on a schedule that EPA cannot predict. For a product first registered, amended or reregistered in 1999, the testing cost would be imposed only in the fourth year of registration (2003).

2. The analysis assumed that no firms were already complying with the sunset provisions that would be imposed. Based upon consultation with a limited number of small businesses, EPA estimates that approximately 11% of firms currently conduct testing that would comply fully, and others conduct testing that would comply partially. It is likely that a higher percentage of large firms would already be fully or partially complying.

All other provisions of this proposal would reduce the costs of compliance with FIFRA for producers of antimicrobial pesticides. Provisions that reduce costs include increased opportunities for notification instead of amendment of registration, elimination of dual jurisdiction with FDA, exemption of certain antimicrobial products from FIFRA regulation, more precise and clearer application and labeling information, and mandatory review periods for antimicrobial applications that are shorter than historical review times.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this proposed action, if promulgated as proposed, action will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is contained in the Economic Analysis referenced in Unit XXI.A., and summarized in this unit. The only provisions in this proposal that would impose costs on any business, including small businesses, are the sunset provisions, discussed in Unit XXI.A.

For the purpose of analyzing potential impacts on small entities, EPA used the RFA definition of small entities in section 601(6) of the RFA. Under this section, small entities include small governments, small nonprofit organizations, and small businesses. Because EPA does not believe that governments or nonprofit organizations are likely to be burdened by this proposed rule, EPA's analysis presents only the estimated potential impacts on small businesses.

Table 7 below summarizes the results of EPA's analysis.

Table 7.—Impacts on Small Businesses

Level of Impact[1]	Percent of Small Firms Impacted	Number of Small Firms Impacted[2]
>1%[3]	16.4%	139
>3%	4.6%	39
>10%	0.7%	6

[1] Calculated as a percentage of Annual Sales Revenue.
[2] Calculated on the basis of 848 small businesses registering antimicrobial products.
[3] The totals are cumulative, that is, the >3% and >10% values are included in the >1% totals.

EPA believes that all costs and burdens of this proposed rule are attributable to the ''sunset provision'' requiring periodic efficacy retesting and analysis of products after registration. In preparing for today's proposal, EPA conducted discussions with all segments of the industry, including small business (see discussion in Unit XVIII.A.), and we have adopted many of their suggestions to minimize burden. We invite comment on whether there are additional accommodations specific to the sunset provision that the Agency

should consider to further reduce the burden on small businesses.

Based on consultation with the regulated community, EPA believes that all other provisions would be both beneficial and cost-efficient to all segments of the antimicrobial industry, including small business. Specifically, EPA believes that there are overall reduced paperwork burdens and costs associated with increased notifications and exemptions from FIFRA; increased flexibility for applicants due to the many opportunities for informal consultations, rebuttals, and negotiations; greater clarity in the requirements for antimicrobial registration and product labeling; and cost savings for individual firms in obtaining registrations within the shortened review periods, allowing earlier entry into the market. We invite comment on whether there are additional accommodations we should consider that might further facilitate the registration process for small businesses.

Are there costs or burdens, efficiencies or savings attributable to this proposed rule that you believe have not been adequately identified and addressed? What are they and how great are these burdens or efficiencies? If you have a proposal for additional accommmodations to small business, please explain what you are proposing and provide information on costs or benefits of your approach.

For a discussion of the Agency's outreach to the antimicrobial industry, including small businesses, and changes to this proposal resulting from input by industry, including small businesses, refer to Unit XVIII.A.

Since the Agency's economic analysis for this proposal estimates that 83% of all antimicrobial registrants are small businesses, EPA is particularly interested in receiving comment from small businesses as to the benefits, costs, and impacts of this proposed rule.

Information relating to EPA's certification is provided upon request to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking. Any comments regarding the economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency at the address listed in ADDRESSES.

C. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), EPA has determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The costs associated with this action are described in the Executive Order 12866 section above. In addition, EPA has determined that the proposed rule will not significantly or uniquely affect small governments and does not contain a significant Federal intergovermental mandate. As such, this action is not subject to sections 202, 203, 204 or 205 of UMRA.

D. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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.''

Tribal governments would not be subject to the requirements of today's proposal. In addition, for the most part, today's proposal implements requirements specifically set forth by the Congress in FIFRA without the exercise of any discretion by EPA. The remainder of today's proposal 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 proposal.

E. Enhancing Intergovernmental Partnerships

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

For the most part, today's proposal implements requirements specifically set forth by the Congress in FIFRA without the exercise of any discretion by EPA. The remainder of today's proposal would not impose any enforceable duties on State, local or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposal.

F. Federalism Review

The Agency has determined that this action will not have a substantial direct effect on States, the relationship between the Federal government and States, the distribution in power between the Federal government and States, the responsibilities among the levels of government, or involve the potential pre-emption of State law as described by Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987).

G. Children's Health Protection

This proposed rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because this action is not an economically significant regulatory action as defined by Executive Order 12866 (see section A. of this unit). This proposed rule is procedural in nature and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. This proposed regulation does not involve technical standards that would require Agency consideration of voluntary consensus standards. EPA requests comment on this conclusion.

I. Environmental Justice

This proposed rule does not directly affect minority populations or low-income groups. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities.

J. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 277.12) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division; Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to: farmer.sandy@epa.gov. An electronic copy has also been posted with the **Federal Register** notice on EPA's homepage with other information related to this action and included in the public version of the official record for the proposed rule. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

The annual public burden for this collection of information, which will be submitted for approval as an addendum to the existing ICR approved under OMB Control No. 2070-0060, is estimated to range from 1 hour to 10.4 hours per response, depending upon the activity. The cost is estimated to range from $71.00 to $755.00 per response, again depending on the particular response. The actual number of respondents and the frequency of response are not known because many of the responses are at the discretion of the respondent. However, based upon EPA estimates, the revisions in the proposed rule would increase the current burden by an estimated 6,395 hours and $466,740.

Under the PRA, ''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. For this collection it includes the time needed to review instructions; processing and maintaining information, and disclosing and providing information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 152 and 156

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 7, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, subchapter E be amended as follows:

PART 152—[AMENDED]

1. In part 152:

a. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

b. Section 152.1 is revised to read as follows:

§ 152.1 Scope.

Part 152 sets out procedures, requirements, and criteria for the registration of pesticide products under FIFRA section 3, and for associated regulatory activities affecting registration.

(a) Subparts A, B, C, E, F, G, I, and U of this part apply to all products except antimicrobial products.

(b) Subparts A, B, E, F, G, I, U, and W of this part apply to antimicrobial products.

c. Section 152.3 is amended by removing the paragraph designations for the existing definitions, removing the definition for ''pesticide,'' revising the definitions for ''active ingredient''and ''applicant'', and adding alphabetically new definitions to read as follows:

§ 152.3 Definitions.

* * * * *

Active ingredient means any substance (or group of structurally similar substances if specified by the Agency) in a pesticide product that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, defoliant, or nitrogen stabilizer.

* * * * *

Antimicrobial pesticide means a pesticide product that:

(1) Is intended to have pesticide activity against microbiological pests, or to protect inanimate articles, substances, industrial processes or systems from deterioration, fouling, or contamination caused by bacterial, viral, fungal, protozoan, algal or slime pests; and

(2) In the intended use is exempt from or not subject to the requirement for a tolerance under FFDCA section 408 or a food additive regulation under FFDCA section 409.

(3) The term does not include any of the following:

(i) A wood preservative or antifouling paint that makes any non-antimicrobial pesticidal claim (such as insecticidal), regardless of whether it also makes an antimicrobial claim. A wood preservative that makes only an antimicrobial claim is an antimicrobial pesticide.

(ii) A fungicide for agricultural use. A fungicide is considered to be for agricultural use if it is intended to be applied to soil or to growing plants before harvest. A fungicide intended for post-harvest use is not considered to be

for agricultural use. ''Fungus,'' as defined in FIFRA, includes rust, smut, mildew, mold, yeast, and bacteria.

(iii) A herbicide for aquatic use. A herbicide is considered to be for aquatic use if it is intended to be applied directly to natural or environmental bodies of water (such as lakes, ponds, or streams) or to terrestrial areas bordering environmental bodies of water for control of algae or weeds. A pesticide solely for control of algae in non-environmental waters (such as swimming pools or industrial water systems) is considered to be an antimicrobial pesticide and not an aquatic herbicide.

* * * * *

Applicant means a person applying for a new registration, or a registrant applying for an amended registration or submitting a notification.

Application for registration means an application for new or amended registration.

* * * * *

Complete application means an application for registration that contains all data, forms, and information required by EPA to be submitted with the application, and that will allow EPA to initiate review, notwithstanding that EPA may determine that additional information is required to approve the application. To be a complete application, each required item, and the application as a whole, must be determined by EPA to be complete, accurate, readable, and submitted in the format and number of copies required by the Agency.

* * * * *

Fast-track application means an application under FIFRA section 3(c)(3).

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C 201 *et seq.*).

* * * * *

Nitrogen stabilizer means any substance or mixture of substances intended for preventing or hindering the process of nitrification, denitrification, ammonia volatilization or urease production through action upon soil bacteria, except that the term does not include:

(1) Dicyandiamide and ammonium thiosulfate; or

(2) Any substance or mixture of substances in commercial agronomic use before January 1, 1992, that was not registered before January 1, 1992, and for which the seller or distributor has made no specific claims of preventing or hindering the process of nitrification, denitrification, ammonium volatilization or urease production after January 1, 1992.

Registrant means a person to whom a registration has been issued. In this part 152, if the term ''applicant'' and ''registrant'' would both apply, the term ''applicant'' is used.

* * * * *

d. By adding new § 152.6 to read as follows:

§ 152.6 Substances excluded from regulation by FIFRA.

Products and substances listed in this section are excluded from FIFRA regulation if they meet the specified conditions or criteria.

(a) *Liquid chemical sterilants.* A liquid chemical sterilant product is not a pesticide under FIFRA section 2(u) if it meets all of the following criteria. Excluded products are regulated by the Food and Drug Administration. Products excluded are those meeting all of the following criteria:

(1) *Composition*. The product must be in liquid form as sold or distributed. Pressurized gases or products in dry or semi-solid form are not excluded by this provision. Ethylene oxide products are not liquid products and are not exempt under this exclusion.

(2) *Claims*. The product must bear a sterilant claim, or a sterilant plus subordinate level disinfection claim. Products that bear antimicrobial claims solely at a level less than ''sterilant'' are not excluded and are jointly regulated by EPA and FDA. ''Sterilant'' is defined in § 156.441 of this chapter.

(3) *Use site*. The product must be intended and labeled only for use on ''critical or semi-critical devices.'' A ''critical device'' is any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body. A ''semi-critical device'' is any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. Liquid chemical sterilants that bear claims solely for non-critical medical devices are jointly regulated by EPA and FDA. Liquid chemical sterilants bearing claims solely for use sites that are not medical devices, such as veterinary equipment, are not excluded and are regulated by EPA.

(b) *Nitrogen stabilizers.* A nitrogen stabilizer is excluded from regulation under FIFRA if it is a substance (or mixture of substances) meeting all of the following criteria:

(1) The substance prevents or hinders the process of nitrification, denitrification, ammonia volatilization, or urease production through action affecting soil bacteria and is distributed and sold solely for those purposes and no other pesticidal purposes.

(2) The substance was in ''commercial agronomic use'' in the United States before January 1, 1992. EPA considers a substance to be in commercial agronomic use if it is available for sale or distribution to users for direct agronomic benefit, as opposed to limited research, experimental, or demonstration use.

(3) The substance was not registered under FIFRA before January 1, 1992.

(4) Since January 1, 1992, the distributor or seller has made no claim that the product prevents or hinders the process of nitrification, denitrification, ammonia volatilization, or urease production. EPA considers any of the following claims (or their equivalents) to be a claim that the product prevents or hinders nitrification, denitrification, ammonia volatilization, or urease production:

(i) Improves crop utilization of applied nitrogen.

(ii) Reduces leaching of applied nitrogen or reduces ground water nitrogen contamination.

(iii) Prevents nitrogen loss.

(iv) Prolongs availability of nitrogen.

(v) Increases nitrogen uptake, availability, usage, or efficiency.

(5) A product will be consider to have met the criterion of paragraph (b)(4) of this section that no nitrogen stabilization claim has been made if:

(i) The nitrogen stabilization claim, in whatever terms expressed, is made solely in compliance with a State requirement to include the claim in materials required to be submitted to a State legislative or regulatory authority, or in the labeling or other literature accompanying the product; and

(ii) The State requirement to include the claim was in effect both before the product bearing the claim was introduced into commercial agronomic use, and before the effective date of this rule.

(6) A product that meets all of the criteria of this paragraph with respect to one State is not thereby excluded from FIFRA regulation if distributed and sold in another State whose nitrogen stabilization statement requirement does not meet the requirements of paragraph (b)(5)(ii) of this section.

(c) *Human drugs.* Human drugs for use in or on living man are not for use against ''pests'' as defined in FIFRA section 2(t). Human drugs are subject to regulation by the Food and Drug Administration under the FFDCA.

(d) *Animal drugs.* Viruses, bacteria or other microorganisms on or in living animals are not ''pests'' under FIFRA section 2(t). A ''new animal drug'' as

defined in section 201(w) of the FFDCA, or an animal drug that FDA has determined is not a ''new animal drug'' is not a pesticide under FIFRA section 2(u). Animal drugs are subject to regulation by the Food and Drug Administration under the FFDCA.

(e) *Animal feeds.* An animal feed containing a new animal drug is not a pesticide under FIFRA section 2(u). Animal feeds containg new animal drugs are subject to regulation by the Food and Drug Administration under the FFDCA.

(f) *Vitamin hormone products.* A product consisting of a mixture of plant hormones, plant nutrients, inoculants, or soil amendments is not a ''plant regulator'' under FIFRA section 2(v), provided it meets the following criteria:

(1) The product, in the undiluted package concentration at which it is distributed or sold, meets the criteria of § 156.62 of this chapter for Toxicity Category III or IV; and

(2) The product is not intended for use on food crop sites, and is labeled accordingly.

§ 152.8 [Amended]

e. In § 152.8, by removing paragraphs (a), (b), (c), introductory text, (c)(2), (c)(3), and (c)(4), and redesignating paragraph (c)(1) as paragraph (a) and redesignating paragraph (d) as paragraph (b).

f. In § 152.20, by revising paragraph (b) to read as follows:

§ 152.20 Exemptions for pesticides regulated by another Federal agency.

* * * * *

(b) *Non-liquid chemical sterilants.* A non-liquid chemical sterilant, except ethylene oxide, that meets the criteria of § 152.6(a)(2) with respect to its claims and § 152.6(a)(3) with respect to its use sites is exempted from regulation under FIFRA.

§ 152.25 [Amended]

g. Section 152.25 is amended by removing paragraph (d) and redesignating (e) through (g) as paragraphs (d) through (f).

h. Section 152.44 is amended by removing paragraph (b)(3), redesignating paragraph (b)(4) as paragraph (b)(3), and adding new paragraph (c) to read as follows:

§ 152.44 Application for amended registration.

* * * * *

(c) A registrant may at any time submit identical minor labeling amendments affecting a number of products as a single application if no data are required for EPA to approve the amendment (for example, a change in the wording of a storage statement for designated residential use products). A consolidated application must clearly identify the labeling modification(s) to be made (which must be identical for all products included in the application), list the registration number of each product for which the modification is requested, and provide required supporting materials (for example, labeling) for each affected product.

i. By adding new subpart W to read as follows:

Subpart W—Registration of Antimicrobial Products

Sec.

152.440 General.
152.441 Applicability.
152.442 Definitions.
152.443 Who may apply.
152.444 Alternate formulations.
152.445 Types of antimicrobial applications.
152.446 Notifications and non-notifications.
152.447 Consultation with EPA.
152.450 Contents of application.
152.451 How to submit applications.
152.455 Action on applications.
152.457 Review periods for applications.
152.458 Duration of registration.
152.459 Terms and conditions of registration.

Subpart W—Registration of Antimicrobial Products

§ 152.440 General.

(a) FIFRA section 3(h) requires EPA to establish by regulation procedures for the registration of certain antimicrobial pesticide products.

(b) In order to register, and lawfully distribute or sell, an antimicrobial product, a wood preservative or an antifouling paint covered by FIFRA section 3(h), an applicant must comply with each of the following:

(1) This subpart, which describes the requirements, procedures, conditions, and Agency review of applications for registration of antimicrobial products. This subpart W substitutes for subpart C of this part, which applies to all other products.

(2) Subparts A, B, E, F, G, I, and U of this part. If any provision of subpart W conflicts with any provision of these subparts, subpart W applies instead.

(3) Part 158 of this chapter, which describes the data requirements for registration of antimicrobial products, wood preservatives, and antifouling paints.

(4) Part 156 of this chapter, which describes the labeling requirements applicable to all products. Subpart W of part 156 of this chapter specifies efficacy performance standards and acceptable labeling claims for antimicrobial products bearing public health claims.

(5) Part 157 of this chapter, which establishes the criteria and requirements for the use of child-resistant packaging.

§ 152.441 Applicability.

(a) This subpart applies to an application for registration of a pesticide product that is any of the following:

(1) An antimicrobial pesticide, as defined by FIFRA section 2(mm) and § 152.3, including a wood preservative or antifouling paint product that makes only claims of antimicrobial pesticidal activity. All sections of this subpart apply to such products.

(2) Any product for which an antimicrobial claim is made, and which is used in such a manner that a new or modified clearance is required under FFDCA section 408 or 409. All sections of this subpart apply to such products, except § 152.457.

(b) This subpart does not apply to an application for registration of a pesticide product that is any of the following:

(1) A wood preservative that makes any non-antimicrobial pesticidal claim (for example, an insecticidal or fungicidal claim), regardless of whether an antimicrobial claim is also made for the product.

(2) An antifoulant product that makes any non-antimicrobial pesticidal claim, regardless of whether an antimicrobial claim is also made for the product.

§ 152.442 Definitions.

Terms used in this subpart have the same definitions as in the Act and subpart A of this part. For the purposes of this subpart, the following terms are defined:

Clearance means any of the following:

(1) A tolerance under FFDCA section 408(b).

(2) An exemption from the requirement of a tolerance under FFDCA section 408(c).

(3) A food additive regulation under FFDCA section 409.

(4) An approval of a medical device under FFDCA section 510(k).

Complete application means an application for registration that contains all data, forms, and information required by EPA to be submitted with the application, and that will allow EPA to initiate review, notwithstanding that EPA may determine that additional information is required to approve the application. To be a complete application, each required item, and the application as a whole, must be determined by EPA to be complete, accurate, readable, and submitted in the format and number of copies required by the Agency.

Major new use means a new antimicrobial use of a registered active ingredient, as used in FIFRA section 3(h).

Minor amendment means an amendment to an antimicrobial registration that does not require the review of scientific data.

Substantive amendment means an amendment to an antimicrobial registration that requires scientific review of data.

§ 152.443 Who may apply.

(a) *New registration.* Any person may apply for new registration of an antimicrobial product. A person seeking a new registration for an antimicrobial product must submit an application for registration containing the information specified in § 152.450. An application for new registration must be approved by the Agency before the product may lawfully be distributed or sold, except as provided by § 152.30.

(b) *Amended registration.* (1) Any registrant may apply for amendment of his/her registration to modify the composition, labeling, or packaging of the product. Except as provided by § 152.446, a registrant may modify the registration only by submitting an application for amended registration. The applicant must submit the information specified in § 152.450, as applicable to the change requested.

(2) Except as provided by paragraph (c) of this section, the registrant must submit a separate application for each amendment.

(3) If an application for amendment is required, the application must be approved by the Agency before the product, as modified, may lawfully be distributed or sold.

(c) *Consolidation of amendments.* A registrant may at any time submit identical minor labeling amendments affecting a number of products as a single application if no data are required for EPA to approve the amendment (for example, a change in the wording of a storage statement for designated household products). A consolidated application must clearly identify the labeling modification(s) to be made (which must be identical for all products), list the registration number of each product for which the modification is requested, and provide required supporting materials (for example, labeling) for each affected product.

(d) *Alternatives to amendment.* In its discretion, the Agency may:

(1) Waive the requirement for submission of an application for amended registration.

(2) Permit an applicant to modify a registration by notification or non-notification in accordance with § 152.446.

(e) *Certification statement.* In its discretion, the Agency may permit an applicant to certify to the Agency that the applicant has complied with an Agency directive or requirement with respect to any element of a new or amended registration. If the Agency determines that a requirement may be satisfied by an applicant certification, the Agency will provide, through a guidance document available to the general public, detailed instructions on a certification process. The guidance document will specify the content of a certification statement, any materials that must be submitted with the certification or maintained by the applicant, and the manner of submission of the certification.

§ 152.444 Alternate formulations.

(a) A product proposed for registration must have a single, defined composition of active and inert ingredients, except that EPA may approve a basic formulation and one or more alternate formulations under a single registration.

(b) An alternate formulation must meet the criteria listed in paragraph (b)(1) through (b)(4) of this section. The Agency may require the submission of data to determine whether the criteria have been met.

(1) The alternate formulation must contain, and have the same certified limits for, each active ingredient in the basic formulation.

(2) If the alternate formulation contains an inert ingredient or impurity of toxicological significance, the formulation must have the same upper certified limit for that substance as the basic formulation.

(3) The label text of the alternate formulation product must be identical to that of the basic formulation.

(4) The analytical methods required under § 158.180 of this chapter must be suitable for use on both the basic formulation and the alternate formulation.

(c) Notwithstanding the criteria in this section, the Agency may determine that an alternate formulation must be separately registered. If EPA makes this determination, the Agency will notify the applicant of its determination and its reasons. Thereafter the application for an alternate formulation will be treated as an application for new registration.

§ 152.445 Types of antimicrobial applications.

The following types of applications are identified solely for purposes of this subpart, in order to establish review periods. Identification of application types in this section does not modify similar terms used elsewhere in EPA regulations. Application categories generally differ based upon factors related to the active ingredient status, the product formulation type, the uses proposed, and whether data are required with the application. An application may fall into only one category, as determined by EPA.

(a) *Application for registration of a food or feed use.* (1) Any application for registration that proposes a use that would require the establishment of a new or modified clearance under the FFDCA. Under the FFDCA, a clearance must be granted, either by EPA or by FDA, for uses that might result, directly or indirectly, in residues in raw or processed food or animal feed.

(2) The review periods in § 152.457 do not apply to applications covered by paragraph (a)(1) of this section. Such applications require significantly more data, require a longer review time, and are subject to formal approval by regulation under the FFDCA.

(b) *Application for new registration*—(1) *New active ingredient.* An application for registration of a new product containing any active ingredient that is not contained in a currently registered product.

(2) *Substantially similar product.* An application for new registration of a product that meets all of the criteria in this paragraph.

(i) *Formulation.* The product formulation contains the same active ingredients and is substantially similar in composition to a cited currently registered product.

(ii) *Uses.* The proposed uses are substantially similar to the uses on the label of the cited product. The proposed product may bear fewer uses than the cited product, but may not bear expanded uses or different uses or claims.

(iii) *Method of data support.* The application relies solely upon data from a substantially similar registration for support (with the exception of certain product chemistry data, which must be submitted for all new products) and does not require the submission of efficacy data.

(3) *Identical product.* An application for registration of a product that meets both of the criteria in this paragraph.

(i) *Formulation.* The formulation (including inert ingredients) is identical in composition to a cited currently registered formulation. Typically such a product either is a currently registered formulation that is being repackaged as a new product without separate

production, or is a formulation of identical composition to another product that is being separately produced according to specifications provided by the registrant of the cited product.

(ii) *Uses and claims.* The proposed uses are identical to those on the cited product, with no deviation in use sites or directions for use. A product may have fewer uses than on the cited product, but not different or expanded uses or claims.

(4) *New product with major new use.* An application for new registration that also proposes a ''major new use,'' as described in paragraph (c)(1) of this section. Any application for a new registration that proposes only an additional or different use that is not a major new use will be considered to be a new registration described in paragraph (b)(5) of this section.

(5) *Other new product.* Any application for new registration that does not meet the criteria of paragraph (b)(1) through (b)(4) of this section. These products usually require the submission of data. Examples of what would be included in this category are applications for registration of a product of any of the types listed below.

(i) The product is a formulation of different active ingredients than is contained in any currently registered product.

(ii) The product contains the same active ingredients, but is in a different physical form (liquid, powder) than any other registered product containing the same active ingredients, or is not substantially similar in composition to a cited currently registered product.

(iii) The product has any unregistered source of any active ingredient, regardless of the fact that the active ingredient is currently registered in another product. Use of an unregistered source of active ingredient requires review of supporting data for the unregistered ingredient.

(iv) The product has an additional use that is not currently registered for any substantially similar product.

(v) The product requires the submission of efficacy data because the formulation is not identical to another product.

(c) *Amendments to registration*—(1) *Major new use.* An application for amended registration to add a major new use that is not currently registered for one or more of the active ingredients in the product. The major new use would generally be significantly different in the manner of use and exposure to humans or the environment from other registered use patterns for the active ingredient.

(2) *Substantive amendment.* An amendment that is not a major new use, and that requires scientific review of data. These include, but are not limited to, the following types of amendments:

(i) Any amendment that contains a data submission.

(ii) The addition of a use that has been approved for another registered product containing the same active ingredients, but which is not a substantially similar product as the registration for which the amendment is sought.

(iii) Except as permitted by § 152.446, Notifications and non-notifications, a change in precautionary or other hazard statements, use instructions, minor changes in ingredients that do not modify label statements, change in use concentrations, method of application, or pests.

(3) *Minor amendment.* An amendment to an existing registration which does not require scientific review of any type. In no case does an application for a minor amendment contain data for review. A minor amendment might include, but is not limited to, changes for which EPA must:

(i) Examine briefly or determine the applicability of previously submitted data (without scientific evaluation of such data).

(ii) Compare composition, characteristics or labeling with other products.

(iii) Evaluate the adequacy of the applicant's data citations or method of support.

(iv) Determine whether an adequate basis exists for a proposed label statement.

(v) Determine whether a proposed use is substantially similar to an approved use for a cited substantially similar product.

§ 152.446 Notifications and non-notifications.

(a) *Changes permitted by notification*—(1) *Notifications permitted by statute.* A registrant of an antimicrobial product may add relevant information on product efficacy, product composition, container composition or design, or other characteristics that do not relate to pesticidal claims or activity. An example of a product efficacy claim that does not relate to pesticidal claims or activity would be a cleaning, deodorizing, or polishing claim.

(2) *Notifications permitted by EPA.* In addition, EPA may determine that certain minor modifications to registration having no potential to cause unreasonable adverse effects to the environment may be accomplished by notification to the Agency, without requiring the registrant to obtain Agency approval. If EPA so determines, it will issue a notice to registrants describing the types of modifications permitted by notification.

(b) *Procedure for notification.* All notifications must be submitted in accordance with the procedures of this paragraph and any supplemental notice to registrants.

(1) *Submission.* A registrant must submit the notification to the Agency at least 60 days before distribution or sale of a product as modified.

(2) *Substantiation.* The registrant must retain, and submit to the Agency upon request, substantiating information or data supporting the proposed modification. These data need not be submitted with the notification unless specified in a notice issued in accordance with paragraph (a)(2) of this section. The substantiating information may be required, however, in accordance with paragraph (b)(4) of this section if the notification is disapproved.

(3) *Agency decision.* Within 30 days after receipt, the Agency will notify the registrant in writing if the notification is disapproved and state the reasons why it is unacceptable.

(4) *Objection.* A registrant may file an objection to a disapproval in writing not later than 30 days after receipt of the Agency's disapproval. If the basis for the disapproval is that substantiating information is needed, the registrant must submit such information as part of the objection. A decision by EPA after receipt and consideration of an objection is a final agency action.

(5) *Distribution or sale.* A registrant may not distribute or sell a product for which a modification by notification is proposed until the registrant receives EPA notice of approval, or until 60 days after submission of the notification, whichever comes first. A registrant may not sell or distribute a product bearing a disapproved modification.

(c) *Changes permitted without notification.* EPA may determine that certain minor changes to registration having no potential to cause unreasonable adverse effects to the environment may be accomplished without notification to or approval by the Agency. If EPA so determines, it will issue a notice to registrants describing the types of changes permitted without notification (known as non-notifications). A registrant may distribute or sell a product changed as permitted by such notice without notification to or approval by the Agency.

(d) *Effect of non-compliance.* Notwithstanding any other provision of

this section, if the Agency determines that a product has been modified through notification or without notification in a manner inconsistent with paragraphs (a) through (c) of this section or any notice issued thereunder, EPA may initiate regulatory or enforcement action, or both, without first providing the registrant with an opportunity to submit an application for amended registration.

§ 152.447 Consultation with EPA.

(a) *Optional consultation.* An applicant may consult the Agency at any time prior to submitting an application. Consultations should be by the most efficient and least time-consuming method available that satisfies the applicant's need. For minor questions or guidance, fax and e-mail are preferred, so that the Agency may respond both rapidly and in writing.

(b) *Meetings.* If a meeting is desired, applicants should contact the appropriate team leader or Branch Chief and provide a proposed agenda, list of likely attendees, and requested date(s). If EPA agrees that a meeting would be productive, EPA will schedule the meeting, honoring the applicant's requested times insofar as practicable, and will invite needed Agency personnel. EPA may choose not to meet with applicants if matters can be resolved by other means.

(c) *Required consultation.* An applicant must consult the Agency before submitting an application for registration if:

(1) The application is for a new chemical or major new use. It is strongly recommended that this consultation be a meeting or conference call with written confirmation of any agreements.

(2) The applicant wishes to develop data using different or modified protocols for required efficacy studies, or if no test method is specified. In some cases, EPA approval of alternate protocols and test standards is required. Consultation would typically consist of a written explanation of the modifications proposed or the proposed protocol, which EPA would approve in writing.

(d) *Written determinations.* An applicant may rely upon regulatory determinations only if in writing from EPA.

(e) *Reliance on EPA determinations.* EPA will not change the regulatory decisions contained in a written determination issued under paragraph (d) of this section unless:

(1) EPA concludes that its determination was in error.

(2) The applicant modifies the circumstances upon which the determination was based or EPA determines that the circumstances are other than described by the applicant.

(3) The applicant fails to submit the application in a timely manner, such that EPA's determination no longer comports with Agency regulations or policy; or

(4) EPA has information that raises concerns that an unreasonable adverse effect on the environment may result unless it changes its determination.

§ 152.450 Contents of application.

Each application for registration must include the data, information, and forms listed in this section.

(a) *Application for registration.* The applicant must submit an application form provided by the Agency. The application form is required for all applications, both new and amended, as well as for notifications under § 152.446. To be complete:

(1) The applicable parts of the form must be properly and accurately filled in, according to the instructions provided with the form.

(2) The applicant must identify on the form which type of application the applicant believes is being submitted for purposes of review time computation. Types of applications are listed in § 152.445.

(3) If the application relies on an ''identical'' or ''substantially similar'' product, the applicant must provide the EPA Registration Number of the product claimed as identical or substantially similar.

(4) The form must be signed by an authorized representative of the applicant and must be dated.

(b) *Authorization for agent.* The applicant must submit a letter of authorization designating an agent residing in the United States if the applicant is located outside of the United States or if the applicant wishes to use an agent. To be complete, the authorization must:

(1) Be on the applicant's company letterhead.

(2) Provide identifying information for the agent, including name, address, and telephone numbers (fax and e-mail are requested if available).

(3) Affirm that the person designated is authorized to serve as agent with respect to specified applications or registrations and provide a clear description of the products or applications covered and any limitations on the authorization.

(4) Be signed (with name and title) by an authorized representative of the applicant and be dated.

(c) *Summary of application.* An application for registration must contain a publicly releasable summary of the application, including a list of the data submitted or cited in support of the application, together with a brief summary of the results of any studies submitted. This summary may be combined with that required for any other purpose.

(d) *Statement of Formula.* (1) The applicant must submit a Statement of Formula that identifies the composition of the product proposed for registration. A Statement of Formula is required for:

(i) Each application for new registration.

(ii) Each application for amended registration that proposes any change in the product composition or a change in other information on the previous Statement of Formula.

(iii) Each notification under § 152.446 which affects the composition of the product.

(2) To be complete, the Statement of Formula must be accurately filled out with all required information, and must be signed by an authorized representative of the applicant.

(e) *Labeling.* (1) The applicant must submit the number of copies of draft labeling specified by the Agency. Generally four copies of draft labeling must be submitted. Draft labeling is required for:

(i) Each application for new registration.

(ii) Each application for amended registration, if the amendment proposes a label change or a labeling change is otherwise necessitated by the amendment (e.g., a change in composition affecting the labeling).

(iii) Each notification under § 152.446 that modifies any portion of the labeling.

(2) To be complete, the labeling submission must:

(i) Include both the product label and any supplemental labeling, brochures, or other printed material that is intended to accompany the product in distribution or sale.

(ii) In the case of an amendment to existing labeling, be identical in wording to the last approved labeling, except for proposed changes (and any previously accepted notification), which must be marked.

(iii) Be suitable for photocopying. In general, highlighting does not photocopy; changes need to be marked or circled in black ink. Product packaging bearing the labeling is not acceptable for this purpose.

(f) *Method of support documentation.* The applicant must submit documentation of the method of support that will be used to satisfy each data requirement that applies to the

application. Various forms provided by the Agency must be submitted to document the applicant's choices. This paragraph summarizes data support requirements. The applicant must comply with subpart E of this part, which contains detailed requirements and exceptions to the data support process.

(1) In general, the following choices for each data requirement are available:

(i) The applicant may submit the data. In all cases, an applicant may submit a study that satisfies a data requirement. Typically certain data must be submitted (product chemistry) and may not be cited. Refer to paragraph (g) of this section for information on data submission.

(ii) The applicant may cite the data with permission or offer to pay. If the data are exclusive use data, the applicant must have written permission from the data submitter. If the data are subject to compensation provisions, the applicant must have made appropriate offers to pay to each data submitter(s). Refer to paragraph (f)(2) of this section for the forms used to properly document citation of data.

(iii) The applicant may request in writing a waiver of the data requirement, together with a rationale for each waiver requested. A waiver request without a rationale is not complete.

(2) To be complete, the applicant who submits or cites data to satisfy any data requirement must submit, as applicable, one or more of the following:

(i) A data reference sheet (data matrix). This is a listing of all data requirements applicable to the product, identifying the means of satisfying each requirement, and must be submitted whenever an applicant submits his/her own data or uses the selective method of data support (see § 152.90). To be complete, each citation of data must include the Master Record Identification number, if known, or contain sufficient detail (title, date of submission, name and EPA identifying number of product) that EPA may clearly identify the item of data in its files.

(ii) A formulator's exemption form. This form is used when the applicant claims an exemption from certain data requirements because the applicant produces his/her product using a purchased registered source product. A single formulator's exemption form may be used for all data requirements to which the exemption applies. The form must identify the registration number of each source product.

(iii) Certification with respect to citation of data. This form is used to certify that the applicant has complied with all requirements pertaining to data submission and citation. The form must be submitted with each application for registration.

(g) *Data and information*. (1) The applicant must satisfy data requirements by submitting or properly citing data and information in support of the application, unless the applicant obtains a waiver of the data requirement, or unless EPA permits an alternate method of satisfying data requirements (such as certification). Data requirements are found in part 158 of this chapter.

(2) To be complete, the data submission must meet the following criteria:

(i) Final report of study. The submission must contain a final report of each study, including all information specified in Agency guidance (e.g., identity of substance tested).

(ii) Summary of results of data. The application must include a publicly releasable summary of the results of each study submitted. The results of all studies may be consolidated into a single summary.

(iii) Format. Each study individually, and the data submission as a whole, must conform to Agency requirements for formatting and presentation, as specified in § 158.32 of this chapter and Agency guidance.

(iv) Confidential business information (CBI). Each study must conform to Agency requirements in § 158.33 of this chapter with respect to identification, marking, and presentation of CBI.

(v) Certification of Good Laboratory Practice (GLP) compliance. Each study must include a certification in accordance with § 160.12 of this chapter.

(vi) Identification of studies demonstrating potential adverse effects. Each study that meets the criteria of § 158.34 of this chapter for potential adverse effects must be identified and the certification statement required by that section must be included. The studies to which this requirement applies are subchronic and chronic toxicity studies.

(h) *Data or information pertaining to adverse effects*. An applicant must submit any factual information regarding unreasonable adverse effects of this pesticide on man or the environment. The information that must be submitted is that which would be required to be reported under FIFRA section 6(a)(2) if the product were registered (see part 159 of this chapter). This requirement applies to each application for new registration. The requirement does not apply to an application for amended registration. To be complete, submission of adverse effects information must be in accordance with part 159 of this chapter.

(i) *Food use clearance*. If the application proposes a use of the pesticide on food or feed crops, or if the intended use of the pesticide results or may be expected to result, directly or indirectly, in pesticide chemical residues in or on food or feed, the applicant must submit one of the following:

(1) A citation to each clearance that covers the proposed food or feed use(s).

(2) A petition under FFDCA section 408 requesting the establishment of a food clearance for each ingredient for which there is no current clearance. Requirements for pesticide petitions are contained in 40 CFR part 180. If a petition is required, an application for registration is not complete unless all requirements for the petition are satisfied.

(3) Evidence of acceptance of a petition for a food additive regulation by the FDA, if a food additive regulation is required. A copy of the notice of filing of the petition in the **Federal Register** is acceptable for this purpose.

(j) *Documentation of pre-submission consultation*. If a pre-submission consultation is required by § 152.447, the applicant must submit written documentation that the consultation took place, and a copy of any resulting regulatory decisions regarding the application or its review (for example, agreement as to the type of application being submitted, or specific data requirements imposed or waived).

(k) *Data reviews conducted by other regulatory authorities*. The applicant must state whether the data supporting the application have been, or are being, reviewed by State, Federal, or other national regulatory authorities. If so, the applicant must identify the reviewing authority and purpose of the review and must submit any available data reviews conducted by such regulatory authorities that are in the applicant's possession. The applicant is not required to obtain regulatory reviews for this purpose.

(l) *Other clearances*. If the applicant is required to obtain clearances or approvals from other Federal (not State) agencies before a product may be distributed and sold, or used as proposed on the label, the applicant must submit either:

(1) A copy of each such clearance or approval if already obtained; or

(2) A copy of a request to the appropriate agency for each such clearance or approval.

(m) *Packaging*—(1) Child-resistant packaging (CRP). If the product is

required by part 157 of this chapter to be distributed and sold only in CRP, or if the product will be sold in CRP, the applicant must submit a certification statement that the product meets the criteria for CRP in § 157.32 of this chapter.

(2) In no case is actual product packaging to be submitted with an application for registration. If EPA needs to evaluate the actual product packaging, it will request submission.

(n) *Product samples*. In no case is a sample of the product to be submitted with an application. Product or ingredient samples may be required by the Agency for various purposes, but will be requested separately and must be submitted to the address in the request.

(o) *Self-addressed notice for completeness determination*. (1) An applicant may (but is not required to) provide a postcard (preferred) or form letter that EPA may use for notification of receipt of an application that EPA has preliminarily determined is complete.

(2) A postcard or form letter for this purpose must be addressed to the applicant at his/her address of record, stamped with sufficient U.S. postage, and provide a means (checkoff, space, box) for EPA to record the registration number or file symbol of the application, the fact that the application is complete, the date of EPA receipt, and the expected date for decision based upon the type of application.

(3) If a means of notifying the applicant is not provided, EPA will not otherwise notify an applicant in writing that the application is complete. EPA may, but is not required to, telephone or e-mail an applicant who does not provide written means of notification.

(p) *Fees*. If fees are required to be submitted for any application, or in conjunction with a petition for a clearance associated with an application, such fees must be submitted in accordance with Agency guidance. An application is not complete unless required fees have been submitted.

(q) *Authorizations*. (1) The applicant is requested, but not required, to provide authorization for EPA to share studies submitted by the applicant, or EPA's reviews of such studies, with other regulatory authorities, including Federal, State, or national bodies that may regulate pesticides. Such authorization would apply only to the exchange of data or EPA reviews of data that might contain Confidential Business Information (CBI) or information protected under FIFRA section 10(g), unless the applicant provided a broader disclosure authorization.

(2) If the applicant chooses to authorize any degree of data/review sharing, the applicant should include with his/her application, on company letterhead and signed by an authorized representative of the applicant, one of the following:

(i) A blanket authorization for EPA to exchange data or EPA data reviews pertaining to all of the applicant's products.

(ii) A specific authorization for EPA to exchange data or EPA data reviews pertaining to an ingredient(s) or product(s) designated in the authorization.

(iii) A specific authorization for EPA to exchange data or EPA data reviews pertaining to data submitted with the application.

(iv) Any other form of authorization, identifying the ingredients, products or data to which the authorization pertains and limitations upon the authorization.

(3) If an applicant chooses not to authorize EPA data/review sharing at the time of application, EPA may, in its discretion, disclose data or reviews in those circumstances where no authorization is needed, and seek consent for disclosure where needed on a case-by-case basis.

§ 152.451 How to submit applications.

(a) Applications must be submitted to the Agency by U.S. mail, courier service, or in person. EPA provides in guidance documents or upon request the appropriate address for each type of delivery. Applications may not be submitted electronically or by fax.

(b) EPA will not automatically provide evidence of receipt of an application. An applicant who wishes confirmation of delivery to EPA should use certified mail or courier services that provide confirmation.

§ 152.455 Action on applications.

(a) *Incomplete application*. EPA will screen each application for completeness, as specified in § 152.450. If EPA determines that the application is not complete, EPA will notify the applicant in writing of the deficiency(ies) in the application. EPA will not place into review, or compute review periods, for any application it finds incomplete.

(b) *Preliminary determination of complete application*. If EPA makes a preliminary determination that the application is complete, it will place the application into review. The appropriate review period in § 152.457 will be computed from the date of receipt by EPA of the last item that completes the application.

(c) *EPA review of application*. EPA will review each application for which a preliminary determination of completeness has been made. EPA will notify the applicant in writing of its decision on the application upon completion of all required reviews. EPA may, in its discretion, communicate with the applicant informally on the progress and interim results of the review. Such informal communications do not constitute a decision on the application, and do not affect the review period.

(d) *Decision on application*. When all reviews are completed, EPA will take one of the following actions on the application:

(1) *Approve the application*. (i) EPA will approve an application for registration if it meets the criteria of § 152.112, § 152.113, or § 152.114, as applicable.

(ii) If EPA approves the application, EPA will issue a Notice of Registration and provide the applicant a copy of the stamped approved labeling, together with any labeling modifications that must be made. Before distributing or selling the pesticide product, the applicant must submit final printed labeling to the Agency, modified as specified by EPA in approving the registration and in the number of copies required by EPA. Thereafter, the registrant may distribute and sell the product under the terms approved by EPA.

(iii) If EPA approves the application for a product on terms that differ from those requested by the applicant, the applicant may file a written objection and request that EPA reconsider the terms that are objectionable. An objection must be filed within 30 days of the date on which EPA approved the application, and must set out in detail the basis of the objection and the alternative terms of registration requested. The applicant may not distribute or sell the product until the objection is resolved. EPA will use its best efforts to respond within 45 days of receipt of a timely, written objection.

(2) *Determine that the application remains incomplete*. EPA may determine that, notwithstanding its preliminary determination of completeness, the application remains incomplete. If EPA so determines, it will notify the applicant of the deficiencies in the application. The applicant's resubmission will be treated in accordance with either paragraph (d)(2)(i) or (d)(2)(ii) of this section.

(i) Qualifying resubmission. EPA will treat a complete and timely response

from the applicant as a ''qualifying resubmission'' subject to the review period in § 152.457(e), and will make a final decision on the application without recomputing a full second review period provided by § 152.457(c) or (d), if:

(A) The original application has a review period of ≤120 days;

(B) EPA determines, in its sole discretion, that the deficiency is less serious; and

(C) The deficiency is corrected within 30 days of receipt of EPA's notice to the applicant.

(ii) Non-qualifying resubmission. EPA will recompute a second full review period beginning on the date of receipt of the last item completing the application, and will make a final decision on the application within the review periods in § 152.457(c) or (d), as applicable, if:

(A) The original application has a review period of >120 days;

(B) EPA determines, in its sole discretion, that the deficiency is serious; or

(C) The applicant does not respond within 30 days.

(3) *Determine that the applicant has not supplied all data or information required to determine the acceptability of the registration*. EPA may determine that, despite its preliminary determination of completeness, the applicant has not supplied sufficient information to issue a registration decision. If EPA so determines, it will notify the applicant, identify the additional information or data needed, and require that the applicant submit, by a specified date, the information or data needed. As of the date of EPA's notification to the applicant, the review period will stop. The elapsed time between date of notification and receipt of response will not be counted in computing the date for a decision under § 152.457. Based upon the nature of the deficiencies, the time anticipated for the applicant to correct the deficiencies, and the additional time needed by EPA to review the material submitted in response to the notice of deficiency, EPA will specify in its notification one of two review period decisions:

(i) EPA may specify that the review period will resume as of the date of receipt of the applicant's complete and timely response; or

(ii) EPA may specify that the review period will resume after a specified period following receipt of the applicant's complete and timely response.

(4) *Deny the application for failure to submit required information*. If, after notification in accordance with paragraph (d)(3) of this section, the applicant does not respond, or does not provide all required data or information within the specified time, EPA may deny the application in accordance with the procedures of § 152.118. These procedures provide that EPA will issue a Notice of Intent to Deny (NOID) the application, stating the reasons and factual basis for denial, and permit the applicant 30 days to take corrective action. The Agency's issuance of a NOID would constitute the action required by FIFRA section 3(h) to notify an applicant of the Agency's decision, and the 30 days allowed for correction or other action would not be counted in the computation of the review period. Alternatively, EPA may determine that the application remains incomplete, in accordance with paragraph (d)(2) of this section. In either case, any subsequent submission will be treated as if it were an original application, and the review period will start over upon receipt of a complete application.

(5) *Deny the application for failure to meet the registration standard*. EPA may deny an application for registration if the Agency determines that, based upon review of a complete application and all data required by the Act, this part and part 158 of this chapter, the product does not meet the criteria of FIFRA section 3(c)(5) or (7), as specified in § 152.112, § 152.113, or § 152.114. If EPA proposes to deny an application on this basis, the Agency will follow the procedures of § 152.118. The Agency's issuance of a NOID would constitute the action required by FIFRA section 3(h) to notify an applicant of the Agency's decision, and the 30 days allowed for correction or other action would not be counted in the computation of the review period.

§ 152.457 Review periods for applications.

EPA will complete review of, and make a decision on whether to approve, each application type listed in § 152.445 within the review periods given in this section. The statutory timeframes are based upon submission of a complete application. The process of submission is not complete until EPA has received the application. Accordingly, review periods are computed from the date that EPA receives the last item of an application that it determines thereafter is a complete application.

(a) *Applications involving food/feed uses*. The time frames in this section do not apply to applications involving food or feed uses that may require a clearance under the FFDCA. EPA will attempt to review such applications in a time commensurate with similar non-food actions, but because these applications may require significantly more data and more formal procedures for approval, EPA has not established any review periods for such applications.

(b) *Fast-track applications*. An application that qualifies as a fast-track application under FIFRA section 3(c)(3)(B)(i) will be reviewed within 90 days after receipt of a complete application.

(c) *Application for new registration*. Except as provided in paragraph (e) of this section, EPA will issue a decision on a complete application for new registration within the review period listed in the table to this paragraph.

Review Period for Applications for New Registration

Type of application	Calendar days for issuance of decision after receipt of a complete application
New active ingredient product	540
Identical or substantially similar product	90
Product bearing a major new use	270
Other new product	120

(d) *Application for amended registration*. Except as provided in paragraph (e) of this section, EPA will issue a decision on a complete application for amended registration within the review period given in the table to this paragraph.

Review Period for Applications for Amendment

Type of amendment	Calendar days for issuance of decision after receipt of a complete application
Major new use amendment	270
Minor amendment	90
Substantive amendment	90–180

(e) *Qualifying resubmission*. In the case of a qualifying resubmission under § 152.455(d)(2)(i), EPA will issue a decision on an application of the following type within the review period given in the table to this paragraph.

Review Period for Qualifying Resubmissions

Resubmission of an application for--	Calendar days for issuance of decision after receipt of a complete resubmission
Registration of an identical or substantially similar product	60
Registration of ''other new product''	90
Minor amendment	60

(f) *Applicant recourse for failure to issue decision within review period.* If EPA has not notified the applicant that the application is approved or denied within the review period set out in this section, or within an alternative review period agreed to by EPA and the applicant, the applicant may seek judicial review under 5 U.S.C. 7.

§ 152.458 Duration of registration.

(a) *Products not bearing public health claims.* The registration of a product that bears no public health claim, as defined in § 156.443 of this chapter, will be effective until EPA takes action to suspend or cancel the registration.

(b) *Products bearing public health claims.* The registration of a product bearing a public health claim, as defined in § 156.443 of this chapter, will expire 5 years after the date specified in paragraph (b)(1) or (b)(2) of this section, as applicable, unless the requirements of paragraph (b)(3) of this section have been met. At the end of each 5–year period thereafter, the registration will expire unless the requirements of paragraph (b)(3) of this section have been met with respect to the most recent 5–year period.

(1) *New products.* The 5–year period for products first registered after the effective date of this rule begins on the date of registration. EPA will incorporate the 5–year term of registration in the notice of registration.

(2) *Existing products.* The 5–year period for products already registered as of the effective date of this rule begins on the earliest of the following dates:

(i) The date of EPA approval of the first amendment after the effective date of this rule. EPA will incorporate the 5–year term of registration into the letter of approval.

(ii) The date of EPA approval of reregistration of the product under FIFRA section 4. EPA will incorporate the 5–year term of registration into the letter of reregistration.

(iii) A date certain approximately 1 year after the effective date of this rule.

(3) The registration will not expire if:

(i) Within 1 year before each expiration date of the registration, the registrant completes one or more chemical analyses of the product according to the analytical method submitted under § 158.180 of this chapter.

(ii) Within 1 year before each expiration date of the registration, the registrant completes efficacy testing for each public health claim on the label in accordance with the most current Agency guidelines.

(iii) No later than 90 days before each expiration of the registration, the registrant submits to the Office of Pesticide Programs at EPA a written certification, signed by an authorized representative of the registrant. The registrant must certify to each of the following:

(A) The registrant has conducted the required tests, identifying the tests that were conducted.

(B) Each test was conducted in accordance with the most current EPA guidelines for product composition testing and efficacy testing, and with applicable Good Laboratory Practice standards of part 160 of this chapter.

(C) Based upon the product composition tests, the product composition continues to conform to the most recent Statement of Formula approved by EPA.

(D) Based upon the efficacy testing, the product meets applicable performance standards of part 156, subpart W, for each public health claim made.

(E) The test results are maintained with the registrant and will be submitted to EPA upon request.

(4) If the registration expires, the product will be deemed to be an unregistered product. EPA will permit the continued distribution and sale of existing stocks of the product by the registrant for 90 days after the expiration date, and by others for 1 year after the expiration date, unless the Administrator determines that a different time period is needed.

§ 152.459 Terms and conditions of registration.

(a) *General conditions.* A registration shall be subject to such terms and conditions as EPA may establish at the time of issuance, including, but not limited to, the terms and conditions in § 152.115. Such terms and conditions will be specified in the notice of registration or letter approving an amendment of registration.

(b) *Submission of efficacy data for non-public health products.* Efficacy data for non-public health products are not generally required to be submitted with an application for registration, but are required to be maintained by the registrant. Upon request by EPA, the registrant must submit the efficacy data required by part 158 for a non-public health product. EPA will notify the registrant and allow 30 days from date of receipt for submission of the data.

PART 156—[AMENDED]

2. In part 156:

a. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136 - 136y.

b. In § 156.10, by revising paragraph (a)(1)(vii) and removing paragraph (h) to read as follows:

§ 156.10 Labeling requirements.

(a) * * *

(1) * * *

(vii) Hazard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and subpart E of this part for environmental hazards.

* * * * *

c. By adding new subpart D to read as follows:

Subpart D—Human Hazard and Precautionary Statements

Sec.

156.60 General.
156.62 Toxicity category.
156.64 Signal word.
156.66 Child hazard warning.
156.68 First aid statement.
156.70 Precautionary statements for human hazards.
156.78 Precautionary statements for physical or chemical hazards.

Subpart D—Human Hazard and Precautionary Statements

§ 156.60 General.

Each product is required to bear hazard and precautionary statements for humans and for domestic animals (if applicable) as prescribed in this subpart. Hazard statements describe the type of hazard that may occur, while precautionary statements will either direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

(a) *Location of statements*—(1) *Front panel statements.* The signal word, child hazard warning, and, in certain cases, the first aid are required to appear on the front panel of the label, and also in any supplemental labeling intended to accompany the product in distribution or sale.

(2) *Statements elsewhere on label.* Hazard and precautionary statements

not required on the front panel may appear on other panels of the label, and may be required also in supplemental labeling. These include, but are not limited to, the human hazard and precautionary statements, domestic animal statements if applicable, Notes to Physician, and physical or chemical hazard statements.

(b) *Placement and prominence*—(1) *Front panel statements.* All required front panel warning statements shall be grouped together on the label, and shall appear with sufficient prominence relative to other front panel text and graphic material to make them unlikely to be overlooked under customary conditions of purchase and use. The table to this paragraph shows the minimum type size requirements for the front panel warning statements for various front panel sizes:

Type Sizes for Front Panel Warning Statements

Size of Label Front Panel (Square Inches)	Point Size	
	Signal Word All Capital Letters	Child Hazard Warning
5 and under	6	6
Over 5 to 10	10	6
Over 10 to 15	12	8
Over 15 to 30	14	10
Over 30	18	12

(2) *Other required statements.* All other hazard and precautionary statements must be at least 6 point type.

§ 156.62 Toxicity category.

This section establishes four Toxicity Categories for acute hazards of pesticide products, Category I being the highest toxicity category. Most human hazard, precautionary statements, and human personal protective equipment statements are based upon the Toxicity Category of the pesticide product as sold or distributed. In certain cases, statements based upon the Toxicity Category of the product as diluted for use are also permitted. A Toxicity Category is assigned for each of five types of acute exposure, as specified in the table to this paragraph.

ACUTE TOXICITY CATEGORIES FOR PESTICIDE PRODUCTS

Hazard Indicators	I	II	III	IV
Oral LD_{50}	Up to and including 50 mg/kg	> 50 thru 500 mg/kg	> 500 thru 5,000 mg/kg	> 5,000 mg/kg
Dermal LD_{50}	Up to and including 200 mg/kg	> 200 thru 2,000 mg/kg	> 2,000 thru 20,000 mg/kg	> 5,000 mg/kg
Inhalation LC_{50}	Up to and including 0.2 mg/liter	> 0.2 thru 2 mg/liter	> 2 thru 20 mg/liter	> 20 mg/liter
Eye irritation	Corrosive; corneal opacity not reversible within 7 days	Corneal opacity reversible within 7 days; irritation persisting for 7 days	No corneal opacity; irritation reversible within 7 days	No irritation
Skin irritation	Corrosive	Severe irritation at 72 hours	Moderate irritation at 72 hours	Mild or slight irritation at 72 hours

§ 156.64 Signal word.

(a) *Requirement.* Except as provided in paragraph (a)(4) of this section, each pesticide product must bear on the front panel a signal word, reflecting the highest Toxicity Category (Category I is the highest toxicity category) to which the product is assigned by any of the five routes of exposure in § 156.62. The signal word must also appear together with the heading for the human precautionary statement section of the labeling (see § 156.70).

(1) *Toxicity Category I.* Any pesticide product meeting the criteria of Toxicity Category I for any route of exposure must bear on the front panel the signal word ''DANGER.'' In addition, if the product is assigned to Toxicity Category I on the basis of its oral, inhalation or dermal toxicity (as distinct from skin and eye irritation), the word ''Poison'' must appear in red on a background of distinctly contrasting color, and the skull and crossbones symbol must appear in immediate proximity to the word ''Poison.''

(2) *Toxicity Category II.* Any pesticide product meeting the criteria of Toxicity Category II as the highest category by any route of exposure must bear on the front panel the signal word ''WARNING.''

(3) *Toxicity Category III.* Any pesticide product meeting the criteria of Toxicity Category III as the highest category by any route of exposure must bear on the front panel the signal word ''CAUTION.''

(4) *Toxicity Category IV.* A pesticide product meeting the criteria of Toxicity Category IV by all routes of exposure is not required to bear a signal word. If a signal word is used, it must be ''CAUTION.''

(b) *Use of signal words.* In no case may a product:

(1) Bear a signal word reflecting a higher Toxicity Category than indicated by the route of exposure of highest toxicity, unless the Agency determines that such labeling is necessary to prevent unreasonable adverse effects on man or the environment;

(2) Bear a signal word reflecting a lesser Toxicity Category associated with a diluted product. Although precautionary statements for use dilutions may be included on label, the signal word must reflect the toxicity of the product as distributed or sold; or

(3) Bear different signal words on different parts of the label.

§ 156.66 Child hazard warning.

(a) Each pesticide product must bear on the front panel of the label the statement ''Keep Out of Reach of Children.'' The statement must appear on a separate line in close proximity to the signal word. The statement is required on Toxicity Category IV products that do not otherwise require a signal word.

(b) EPA may waive the requirement, or require an alternative child hazard warning, if:

(1) The applicant can demonstrate that the likelihood of exposure of children to the pesticide during distribution, marketing, storage or use is remote (for example, an industrial use product); or

(2) The pesticide is approved for use on children (for example, an insect repellent).

(c) EPA may approve an alternative child hazard warning that more appropriately reflects the nature of the pesticide product to which children may be exposed (for example, an impregnated pet collar). In this case, EPA may also approve placement on other than the front panel.

§ 156.68 First aid statement.

(a) *Product as sold and distributed.* Each product must bear a first aid statement if the product has systemic effects in Category I, II, or III, or skin or eye irritation effects in Category I or II. First aid statements are based upon the Toxicity Category by each route of exposure for the product.

(b) *Product as diluted for use.* If the product labeling bears directions for dilution with water prior to use, the label may also include a statement describing how the first aid measures may be modified for the diluted product. Such a statement must reflect the Toxicity Category(ies) of the diluted product, based upon data for the route of exposure (or calculations if appropriate). If the labeling provides for a range of use dilutions, only that use dilution representing the highest concentration allowed by labeling may be used as the basis for a statement pertaining to the diluted product. The statement for a diluted product may not substitute for the statement for the concentrate, but augments the information provided for the concentrate.

(c) *Heading.* The heading of the statement must be ''First Aid.''

(d) *Location of first aid statement.* The first aid statement must appear on the front panel of the label of all products assigned to Toxicity Category I by any route of exposure. Upon review, the Agency may permit reasonable variations in the placement of the first aid statement if a reference such as ''See first aid statement on back panel'' appears on the front panel. The first aid statement for products assigned to Toxicity Categories II or III may appear on any panel of the label.

§ 156.70 Precautionary statements for human hazards.

(a) *Requirement.* Human hazard and precautionary statements as required must appear together on the label or labeling under the general heading ''Precautionary Statements'' and under appropriate subheadings similar to ''Humans and domestic animals,'' ''Environmental hazards'' (see subpart E of this part) and ''Physical or chemical hazards.'' The phrase ''and domestic animals'' may be omitted from the heading if domestic animals will not be exposed to the product.

(b) *Content of statements.* When data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect. The precautionary paragraph must be immediately preceded by the appropriate signal word.

(c) *Typical precautionary statements.* The table to this paragraph presents typical hazard and precautionary statements. Specific statements pertaining to the hazards of the product and its uses must be approved by the Agency. With Agency approval, statements may be augmented to reflect the hazards and precautions associated with the product as diluted for use. Refer to § 156.68(b) for requirements for use dilution statements.

Typical Human Hazard and Precautionary Statements

Toxicity Category	Systemic Effects (Oral, Dermal, Inhalation Toxicity)	Irritation Effects (Skin and Eye)	Sensitizer (There are no categories of sensitization)
I	Fatal (poisonous) if swallowed [inhaled or absorbed through skin]. Do not breathe vapor [dust or spray mist]. Do not get in eyes, on skin, or on clothing. [Front panel first aid statement required.]	Corrosive, causes eye and skin damage [or skin irritation]. Do not get in eyes on skin, or on clothing. Wear goggles or face shield and rubber gloves when handling. Harmful or fatal if swallowed. [Front panel first aid statement required.]	If product is a sensitizer: Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.
II	May be fatal if swallowed, [inhaled or absorbed through the skin]. Do not breathe vapors [dust or spray mist]. Do not get in eyes, on skin, or on clothing. [Appropriate first aid statement required.]	Causes eye [and skin] irritation. Do not get in eyes, on skin, or on clothing. Harmful if swallowed. [Appropriate first aid statement required.]	

Typical Human Hazard and Precautionary Statements—Continued

Toxicity Category	Systemic Effects (Oral, Dermal, Inhalation Toxicity)	Irritation Effects (Skin and Eye)	Sensitizer (There are no categories of sensitization)
III	Harmful if swallowed [inhaled or absorbed through the skin]. Avoid breathing vapors [dust or spray mist]. Avoid contact with skin [eyes or clothing]. [Appropriate first aid statement required.]	Avoid contact with skin, eyes or clothing. In case of contact immediately flush eyes or skin with plenty of water. Get medical attention if irritation persists.	
IV	No precautionary statements required	No precautionary statements required.	

§ 156.78 Precautionary statements for physical or chemical hazards.

(a) *Requirement.* Warning statements on the flammability or explosive characteristics of the pesticide product are required if a product meets the criteria in this section. Warning statements pertaining to other physical/chemical hazards (e.g., oxidizing potential, conductivity, chemical reactions leading to production of toxic substances) may be required on a case-by-case basis.

(b) *Pressurized products.* The table to this paragraph sets out the required flammability label statements for pressurized products:

Flammability Statements for Pressurized Products

Flash point/flame extension of product	Required labeling statement
Flash point at or below 20 °F or Flashback at any valve opening	Extremely flammable. Contents under pressure. Keep away from fire, sparks, and heated surfaces. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.
Flash point > 20 °F to 80 °F or Flame extension more than 18 inches long at a distance of 6 inches from the flame	Flammable. Contents under pressure. Keep away from heat, sparks and open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

Flammability Statements for Pressurized Products—Continued

Flash point/flame extension of product	Required labeling statement
All other pressurized products	Contents under pressure. Do not use or store near heat or open flame. Do not puncture or incinerate container. Exposure to temperatures above 130 °F may cause bursting.

(c) Non-pressurized products. The table to this paragraph sets out the required flammability label statements for non-pressurized products:

Flammability Statement for Non-Pressurized Products

Flash point	Required labeling statement
At or below 20 °F	Extremely flammable. Keep away from fire, sparks, and heated surfaces.
Greater than 20 °F to 80 °F	Flammable. Keep away from heat and open flame.
Greater than 80 °F to 150 °F	Combustible. Do not use or store near heat or open flame.

(d) *Total release fogger products.* (1) A ''total release fogger'' is defined as a pesticide product in a pressurized container designed to automatically release the total contents in one operation, for the purpose of creating a permeating fog within a confined space to deliver the pesticide throughout the space.

(2) If a pesticide product is at total release fogger containing a propellant with a flash point at or below 20 °F, then the following special instructions must be added to the ''Physical and Chemical Hazards'' warning statement, in addition to any flammability statement required by paragraph (b) of this section:

This product contains a highly flammable ingredient. It may cause a fire or explosion if not used properly. Follow the Directions for Use on this label very carefully.

(3) A graphic symbol depicting fire, such as illustrated in this paragraph, or an equivalent symbol, must be displayed along with the required language adjoining the ''Physical and Chemical Hazards'' warning statement. The graphic symbol must be no smaller than twice the size of the first character of the human hazard signal word.

d. By adding new subpart E to read as follows:

Subpart E—Environmental Hazard and Precautionary Statements

Sec.

156.80 General.
156.85 Non-target organisms.

Subpart E—Environmental Hazard and Precautionary Statements

§ 156.80 General.

(a) *Requirement.* Each product is required to bear hazard and precautionary statements for environmental hazards, including hazards to non-target organisms, as prescribed in this subpart. Hazard statements describe the type of hazard that may be present, while precautionary statements direct or inform the user of actions to take to avoid the hazard or mitigate its effects.

(b) *Location of statements.* Environmental hazard and precautionary statements may appear on any panel of the label and may be

required also in supplemental labeling. The environmental hazard statements must appear together under the heading ''Environmental hazards.'' Typically the statements are grouped as a sub-category within the ''Precautionary Statements'' section of the labeling.

(c) *Type size*. All environmental hazard and precautionary statements must be at least 6 point type.

§ 156.85 Non-target organisms.

(a) *Requirement*. Where a hazard exists to non-target organisms, EPA may require precautionary statements of the nature of the hazard and the appropriate precautions to avoid potential accident, injury, or damage.

(b) *Examples*. The statements in this paragraph illustrate the types of hazard statements that EPA may require and the circumstances under which they are typically required. These statements are not comprehensive; other statements may be required if more appropriate to the formulation or use.

(1) If a pesticide intended for outdoor use contains an active ingredient with a mammalian acute oral LD_{50} of 100 mg/kg or less, the statement, ''This pesticide is toxic to wildlife'' is required.

(2) If a pesticide intended for outdoor use contains an active ingredient with a fish acute LC_{50} of 1 ppm or less, the statement, ''This pesticide is toxic to fish'' is required.

(3) If a pesticide intended for outdoor use contains an active ingredient with an avian acute oral LD_{50} of 100 mg/kg or less, or a subacute dietary LC_{50} of 500 ppm or less, the statement, ''This pesticide is toxic to wildlife'' is required.

(4) If either accident history or field studies demonstrate that the use of the pesticide may result in fatality to birds, fish or mammals, the statement, ''This pesticide is extremely toxic to wildlife (fish)'' is required.

(5) If a product is intended for or involves foliar application to agricultural crops, forests or shade trees, or mosquito abatement treatments, and contains a pesticide toxic to pollinating insects, the label must bear appropriate label cautions.

(6) If a product is intended for outdoor use other than aquatic applications, the label must bear the caution, ''Keep out of lakes, ponds or streams. Do not contaminate water by cleaning of equipment or disposal of wastes.''

e. By adding new subpart W to read as follows:

Subpart W—Public Health Claims for Antimicrobial Products

Sec.

156.440 Scope and applicability.
156.441 Definitions.
156.442 Use of terms and statements on labeling.
156.443 Public health claims.
156.444 Unacceptable statements and claims.
156.445 Sterilant claim on hard surfaces.
156.446 Disinfectant claim on hard surfaces.
156.447 Fungicidal claim on hard surfaces.
156.448 Virucidal claim on hard surfaces.
156.449 Tuberculocidal claim on hard surfaces.
156.451 Sanitizing claim on hard surfaces.
156.452 Residual self-sanitizing claim on hard surfaces.
156.453 Laundry additives.
156.454 Fabrics and textiles.
156.455 Air sanitizers.
156.456 Toilets and urinals.
156.457 Human drinking water.
156.458 Swimming pool and spa water.

Authority: 7 U.S.C. 136-136y.

§ 156.440 Scope and applicability.

(a) *Scope*—(1) *Performance standards*. This subpart establishes performance standards for antimicrobial public health claims. The performance standards are based upon required efficacy testing for antimicrobial products specified in part 158 of this chapter. Test methods and standards, evaluation procedures and reporting standards referred to in this subpart are contained in the Pesticide Assessment Guidelines, Subdivision G. This subpart does not cover performance standards for non-public health claims.

(2) *Acceptable public health claim*. This subpart describes public health claims that may be made on antimicrobial product labeling based upon efficacy performance standards. This subpart also establishes limitations on the use of certain claims, as well as specific antimicrobial claims that are not acceptable on product labeling. An antimicrobial public health product that does not meet the performance standard in this subpart for a public health claim may not bear that claim.

(3) *Use directions*. This subpart describes certain use directions associated with public health claims, which are necessary to ensure that the product will achieve the level of antimicrobial performance claimed. This subpart does not set out use directions for non-public health antimicrobial products, nor does it describe comprehensively the use directions for public health products or claims, which are specific to the use sites and patterns. Additional detailed guidance on use directions for antimicrobial products is provided in the Pesticide Assessment Guidelines, Subdivision H.

(b) *Applicability*. (1) This subpart applies to any antimicrobial product that is subject to the provisions of part 152, subpart W, and that makes a public health claim.

(2) This subpart applies to end use antimicrobial products. This subpart does not apply to manufacturing use products.

§ 156.441 Definitions.

Terms defined in FIFRA and part 152 of this chapter are used with the same definitions as given therein. In addition, the following terms are defined for the purposes of this subpart:

Disinfectant means a substance that destroys or eliminates a specific species of infectious or other public health microorganism, but not necessarily bacterial spores, in the inanimate environment.

Equivalent, when used with respect to a test protocol or method, means a test protocol or method, validated by multiple laboratory studies and approved by EPA, that accomplishes the purposes intended by the cited Guidelines test protocols, and that is expected to provide data of equal quality and completeness as data derived from testing according to an EPA Guideline protocol.

Fungicide means a substance that destroys fungi (including yeasts) and fungal spores pathogenic to man or other animals in the inanimate environment.

Guidelines means the Pesticide Assessment Guidelines, Subdivision G - Product Performance Test Guidelines, or the Harmonized OPPTS Test Guidelines, which are an updated, reformatted compilation of guidelines used for both pesticide and other chemical testing.

Microbiological water purifier means any unit, water treatment product or system that removes, kills or inactivates all types of disease-causing microorganisms from the water, including bacteria, viruses and protozoan cysts, so as to render the treated water safe for drinking.

Public health product means an antimicrobial product that bears a public health claim as defined in § 156.443. A public health product is also a ''public health pesticide'' as defined by FIFRA section 2(nn).

Sanitizer means a substance that reduces the bacterial population in the inanimate environment by significant numbers, but does not destroy or eliminate all bacteria or other microorganisms.

Sterilant means a substance that destroys or eliminates all forms of microbial life in the inanimate environment, including all forms of vegetative bacteria, bacterial spores, fungi, fungal spores, and viruses. For purposes of this subpart, ''sporicide'' and ''sterilant'' are synonymous.

Tuberculocide means a substance that destroys or irreversibly inactivates tubercle bacilli in the inanimate environment.

Virucide means a substance that destroys or inactivates viruses in the inanimate environment.

§ 156.442 Use of terms and statements on labeling.

When this subpart authorizes the use of a term on product labeling, other grammatical variants, phrases and statements having the same or equivalent connotation are also authorized, unless EPA, on a case-by-case basis, prohibits their use. For example, authorization to use the term ''sterilant'' also means that ''sterilizer,'' ''sterilization,'' and similar terms may be used. EPA approves the content of each label, and may, in its discretion, limit the use of certain terms, phrases or statements.

§ 156.443 Public health claims.

EPA will consider a product to make a public health claim if any of the following applies:

(a) A claim is made for control of specific microorganisms or classes of microorganisms that are directly or indirectly infectious or pathogenic to man (or both man and animals). Examples of specific microorganisms include *Mycobacterium tuberculosis*, *Pseudomonas aeruginosa*, *E. coli*, *HIV*, *Streptococcus*, and *Staphylococcus aureus*. Claims for control of microorganisms infectious or pathogenic only to animals (such as canine distemper virus or hog cholera virus) are not considered public health claims.

(b) A claim is made for the product as a sterilant, disinfectant, virucide, or sanitizer, regardless of the site of use of the product, and regardless of whether specific microorganisms are identified.

(c) A claim is made for the product as a fungicide against fungi infectious or pathogenic to man, or the product does not clearly indicate it is intended for use only against non-public health fungi.

(d) A claim is made for the product as a microbiological water purifier (see § 156.457).

(e) A non-specific claim is made that the product will beneficially impact or affect public health at the site of use or in the environment in which applied (such as a ''sanitary'' claim), and:

(1) The product contains one or more ingredients that, under the criteria in 40 CFR 153.125(a), is considered an active ingredient with respect to a public health microorganism and there is no other functional purpose for the ingredient in the product; or

(2) The product is similar in composition to registered products that make explicit antimicrobial public health claims.

§ 156.444 Unacceptable statements and claims.

No pesticide or device, including an antimicrobial pesticide product, may bear false or misleading claims or statements (including the name of the product). Claims or statements of the type identified in this section are deemed to be false or misleading and are not acceptable on antimicrobial product labeling. Effective on [date certain - 1 year], EPA will regard an antimicrobial product bearing a statement, claim, or product name that is unacceptable under this section to be misbranded under FIFRA section 2(q).

(a) Statements or claims that suggest or imply greater effectiveness because of composition, e.g., ''hospital'' strength or grade, ''industrial strength,'' ''extra strength.''

(b) Statements or claims that suggest or imply that the product can or will prevent or control disease or offer health protection. Claims such as ''prevents infection,'' ''controls infection'' or ''prevents cross-infection'' or that the product will control or mitigate any disease (such as Legionnaire's disease), infection, or pathological condition constitute drug claims regulated by the Food and Drug Administration. A claim that the product ''controls cross-contamination from treated surfaces,'' or ''kills [name of specific organism] in the inanimate environment'' is acceptable.

(c) Statements or claims that are overly broad, non-specific, ambiguous or exaggerated.

(1) The terms ''microbicide'' and ''microbistat'' are not acceptable on a public health product. If used on a non-public health product, the claim must be qualified to indicate that the product does not provide public health protection.

(2) The term ''biocide'' is unacceptable on a public health product because it implies that the product can kill all living organisms, including plants and animals. If used on a non-public health product, the term must be qualified by directions for use or other statements that make clear the types of organisms to be controlled.

(3) The term ''antibacterial'' or ''germicidal'' is not acceptable on a non-public health product. If used on a public health product, the labeling must identify the specific organisms to be controlled.

(4) The term ''antimicrobial'' is not acceptable on a non-public health product, unless clearly and properly qualified to indicate that the product does not provide public health protection. ''Clearly and properly qualified'' means, at a minimum, that:

(i) The term ''antimicrobial'' is clearly associated with, and in close proximity to, its qualifying statement on the labeling. It is always unacceptable for the term ''antimicrobial'' to appear on a different label panel from its qualifying statement.

(ii) The term ''antimicrobial'' is not highlighted or given prominence over the qualifying statement by means of placement or presentation (e.g., type size, style, color or contrast).

(iii) The term ''antimicrobial'' is not part of the product name.

(5) The prefix ''steri-'' implies sterilant activity, and may not be used in the product name or on a product that is not a sterilant.

(6) Statements or claims implying indefinite or all-encompassing antimicrobial protection against bacteria, fungi or algae (''germ-free,'' ''mildew-proof,'' ''algae-free'') are not acceptable.

(d) Claims or statements that differ from or do not accurately reflect the results demonstrated by testing.

(1) Product names, or claims or statements expressing or implying a higher level of antimicrobial activity than that demonstrated by testing, even if qualified (for example, ''sterisure bacteriostat''). The labeling must unambiguously identify the level of antimicrobial activity (disinfectant, sanitizer, etc).

(2) Claims or statements that are inconsistent with conditions of efficacy established by testing (e.g., a claim of efficacy within 30 seconds, when testing and use directions require 2 minutes contact time for efficacy.)

(e) Statements or claims of efficacy based on unsubstantiated, improbable or irrelevant site/pest relationships. For example, a claim of efficacy against a pest not likely to occur on the site (e.g., athlete's foot fungi in toilet bowls) is misleading.

(f) A statement or claim of presumptive or screening efficacy, even if qualified, is not acceptable on an end use product. Presumptive efficacy testing is intended to demonstrate that an active ingredient is capable of antimicrobial efficacy, but such testing is not conducted under specific conditions of use. An end use product

must be tested for, demonstrate, and be labeled for a specific level of antimicrobial efficacy against identified organisms under conditions of use likely to be encountered.

(1) Legionnaire's disease claims in cooling tower water are not acceptable. Express or implied claims that a product will prevent growth or spread of Legionnaire's Disease bacteria (LDB) are unacceptable. Product labeling may provide accurate information concerning current knowledge and recommendations of the Public Health Service, or laboratory test data showing presumptive effectiveness of the product against pure cultures of LDB. Such information must be qualified by statements to the effect that findings are presumptive, and that there is no evidence that chemical treatment will control LDB growth under actual use conditions, reduce transmission of LDB, or prevent Legionnaire's Disease.

(2) No statement of phenol coefficient may appear on a public health end use product. The phenol coefficient is a calculated comparison of presumptive efficacy.

(g) Certain symbols, icons, or graphics are unacceptable.

(1) The caduceus symbol is not acceptable because it is a medical symbol that implies endorsement by the medical profession or broad medical significance or health protection that is not acceptable in accordance with paragraph (b) of this section.

(2) The name and symbol of the Red Cross are not permitted on any product.

§ 156.445 Sterilant claim on hard surfaces.

(a) *Performance standard*. (1) When tested in accordance with the test methods and standards in OPPTS 810.2100(b)(1) and (2) of the guidelines or its equivalent, the product kills all test spores on all carriers with no failures; and

(2) When tested by a laboratory independent of the registrant in accordance with the test methods and standards in OPPTS 810.2100(b)(4) of the guidelines or its equivalent, the product kills all test spores on all carriers with no failures.

(b) *Acceptable claim*. (1) A product that meets the performance standard in paragraph (a) may bear ''sterilant'' claims or variants of these.

(2) Since a sterilizer by definition destroys or eliminates all forms of microbial life, a sterilant product may bear claims of any lesser efficacy levels, such as disinfectant, bactericidal, tuberculocidal, fungicidal, virucidal or sanitizer. Separate directions for use must be provided for each lesser level of antimicrobial activity.

(c) *Unacceptable claims*. (1) Liquid chemical germicides may not make sterilant claims for critical or semi-critical medical devices. Claims for liquid chemical germicides are limited to pre-cleaning critical or semi-critical medical devices prior to sterilization.

(2) ''One-step'' claims are not allowed for sterilants. The label must require pre-cleaning of surfaces prior to sterilization.

§ 156.446 Disinfectant claim on hard surfaces.

(a) *Performance standard*. (1) When tested in accordance with the test methods and standards in OPPTS 810.2100(c), (d), or (e) of the guidelines or its equivalent, the product kills the test microorganisms on 59 out of each set of 60 carriers/slides. Although the performance standard is the same for all disinfectant claims, the test standards and test microorganisms define the level of disinfectant claim that may be made on product labeling.

(2) An applicant who wishes to make disinfectant claims for additional microorganisms not designated in the test methods and standards may do so based upon efficacy tests conducted with those additional microorganisms. When tested in accordance with the test methods and standards in OPPTS 810.2100(k) of the guidelines or its equivalent, for each organism the product must kill all test organisms on 10 carriers for each of two samples representing two different batches.

(b) *Acceptable limited disinfectant claim*—(1) *Products containing pine oil*. A product containing pine oil (as sole active ingredient or in combination with other ingredients) and that meets the performance standard in paragraph (a) when tested using the test standards in OPPTS 810.2100(c) of the guidelines or its equivalent and the test microorganism *Salmonella cholerasuis* may bear only a claim as a ''limited disinfectant against bacteria of intestinal origin.''

(2) *All other products*. A product that meets the performance standard in paragraph (a) of this section for only one major group of microorganisms (Gram negative or Gram positive bacteria) when tested using the test standards of OPPTS 810.2100(c) of the guidelines or its equivalent may bear only a claim as a ''limited disinfectant.'' The product labeling must identify the specific organisms against which the product is effective.

(c) *Acceptable general or broad spectrum disinfectant claim*. A product that meets the performance standard in paragraph (a) of this section for both Gram negative and Gram positive bacteria when tested using the test standards of OPPTS 810.2100(d) of the guidelines or its equivalent may bear a claim as a ''general or broad spectrum disinfectant,'' and may also bear a claim as a ''hard food contact surface disinfectant.'' The product labeling must identify the specific organisms against which the product is effective.

(d) *Acceptable hospital or medical disinfectant claim*. A product that meets the performance standard in paragraph (a) of this section when tested in accordance with the test standard in OPPTS 810.2100(e) of the guidelines or its equivalent may bear a claim as a ''hospital or medical environment disinfectant,'' and may also bear a claim as a ''hard food contact surface disinfectant.'' The product labeling must identify the specific organisms against which the product is effective.

(e) *Towelette disinfectant claims*—(1) *Single use towelette*. A single use towelette may bear a claim as a ''single use towelette for the disinfection of hard surfaces'' if, when tested by methods and standards approved by EPA (OPPTS 810.2100(i)(1)(i) of the guidelines or its equivalent), it meets the performance standard in OPPTS 810.2100(i)(3)(i) of the guidelines or its equivalent.

(2) *Multiple use towelettes*. A multiple use towelette may bear a claim as a ''multiple use towelette for the disinfection of hard surfaces'' if, when tested by the methods and standards approved by EPA (OPPTS 810.2100(i)(1)(ii) of the guidelines or its equivalent), it meets the performance standard in OPPTS 810.2100(i)(3)(ii) of the guidelines or its equivalent.

(f) *Unacceptable claims*. (1) A product that functions by fogging may not bear claims of disinfection for duct systems, air, or room surfaces.

(2) Products with circulate-in-place (CIP) applications may not bear claims of disinfection because CIP application has not been shown to be effective in disinfecting duct systems, air or room surfaces. CIP products may, however, bear claims of sanitization if they meet the performance standard of § 156.451.

§ 156.447 Fungicidal claim on hard surfaces.

(a) *Performance standard*. (1) The product meets the performance standard of OPPTS 810.2100(d) of the guidelines or its equivalent as a broad spectrum disinfectant; and

(2) When tested in accordance with the test methods and standards in OPPTS 810.2100(f) of the guidelines or its equivalent, the product kills all fungal spores.

(b) *Acceptable claim*. A product that meets the performance standard in

paragraph (a) of this section may bear a claim of effectiveness as a ''fungicide'' or against ''pathogenic fungi'' on appropriate surfaces or sites.

§ 156.448 Virucidal claim on hard surfaces.

(a) *Performance standard*. (1) The product meets the performance standard of OPPTS 810.2100(d) of the guidelines or its equivalent as a broad spectrum disinfectant; and

(2) When tested in accordance with the test methods and standards in OPPTS 810.2100(g) of the guidelines or its equivalent, the product:

(i) Inactivates virus at all dilutions when cytotoxicity is not observed in the assay system, or at all dilutions above the cytotoxic level when cytotoxicity is observed; and

(ii) Achieves at least a 99.9% (3-log) reduction in viral titer in all samples when cytotoxicity is present.

(b) *Acceptable claim*—(1) *Combination disinfectant/virucidal products*. A disinfectant product that also meets the performance standard in paragraph (a) of this section may also bear a claim of effectiveness as a ''virucide'' or as ''virucidal.'' The product labeling must identify the specific viruses against which the product is effective.

(2) *Virucide only products*. A product that meets the performance standard in paragraph (a) of this section, but is not a disinfectant, may bear only a limited claim of effectiveness against viruses specifically tested against, and must bear a disclaimer that the product is not a disinfectant.

(3) *HIV/HBV claims*. A claim for virucidal activity against HIV-1, HIV-2, or hepatitis B (HBV) viruses may be made only for use sites that involve human health care or other sites where there is a likelihood of soiling of inanimate surfaces or objects with blood or body fluids.

§ 156.449 Tuberculocidal claim on hard surfaces.

(a) *Performance standard*. (1) The product meets the performance standard of OPPTS 810.2100(d) of the guidelines or its equivalent as a broad spectrum disinfectant; and

(2) When tested in accordance with one of the test methods and standards in OPPTS 810.2100(h) of the guidelines or its equivalent, the product meets the performance standard for that test method in OPPTS 810.2100(h)(3) of the guidelines or its equivalent.

(b) *Acceptable claim*. A product that meets the performance standard in paragraph (a) of this section may bear a claim of effectiveness as a ''tuberculocide.''

§ 156.451 Sanitizing claim on hard surfaces.

(a) *Products for use on non-food contact surfaces*—(1) *Performance standard*. When tested in accordance with the test methods and standards in OPPTS 810.2100(l) of the guidelines or its equivalent, the product achieves at least a 99.9% (3-log) reduction in the number of test microorganisms over the parallel control count within 5 minutes.

(2) *Acceptable claims*. A product that meets the performance standard in paragraph (a)(1) of this section may bear a claim of effectiveness as a ''sanitizer for hard, non-food contact surfaces.''

(b) *Products for use on previously-cleaned food contact surfaces*—(1) *Performance standard for products containing halides*. When tested in accordance with the test methods and test standards in OPPTS 810.2100(m)(1) of the guidelines or its equivalent, the product meets the performance standard of OPPTS 810.2100(m)(1) of the guidelines or its equivalent.

(2) *Performance standard for products not containing halides*. When tested in accordance with the test methods and test standards in OPPTS 810.2100(m)(2) of the guidelines or its equivalent, the product achieves a 99.999% (5-log) reduction in the number of each test microorganism within 30 seconds.

(3) *Acceptable claims*. A product that meets the appropriate performance standard in paragraph (b) of this section may bear a claim of effectiveness as a ''sanitizer for hard food contact surfaces.''

(4) *Unacceptable claims*. A product labeled for food surface sanitizing may not bear a claim for ''one-step'' or combination cleaning and sanitizing. Sanitizing claims for food surfaces may be made only in conjunction with use directions that require a cleaning step prior to sanitization.

§ 156.452 Residual self-sanitizing claim on hard surfaces.

(a) *Performance standard*. When tested in a controlled or simulated in-use study under OPPTS 810.2100(o) of the guidelines or its equivalent, whose protocol has been approved by the Agency, the product meets the performance standard of OPPTS 810.2100(o)(3) of the guidelines or its equivalent.

(b) *Acceptable claim*. A product that meets the performance standard in paragraph (a) of this section may bear a claim of residual ''self-sanitizing'' activity keyed to the presence of moisture on surfaces that are likely to become and remain wet under normal conditions of use. A ''residual'' claim must also include the duration of effectiveness.

§ 156.453 Laundry additives.

(a) *Pre-soak disinfection*—(1) *Performance standard*. When tested in accordance with the test methods and standards in OPPTS 810.2300(b)(1) of the guidelines or its equivalent, the product meets the performance standard of OPPTS 810.2100(c), (d), and (e) of the guidelines or its equivalent. Although the performance standard is the same for all disinfectant claims, the test standards and test microorganisms define the level of disinfectant claim that may be made on product labeling.

(2) *Acceptable claim*. A product that meets the performance requirement in paragraph (a)(1) of this section may bear a claim as a ''disinfectant'' for pre-soaking fabrics prior to laundering.

(b) *Pre-soak sanitization—(1) Performance standard*. When tested in accordance with the test methods and standards in OPPTS 810.2300(b)(2) of the guidelines or its equivalent, the product achieves at least a 99.9% (3-log) reduction in the number of each test microorganism over the control count within 5 minutes.

(2) *Acceptable claim*. A product that meets the performance requirement in paragraph (b)(1) of this section may bear a claim as a ''sanitizer'' for pre-soaking fabrics prior to laundering.

(c) *Non-residual disinfecting in-use additives*—(1) *Performance standard*. When tested in accordance with the simulated-use procedure in OPPTS 810.2300(b)(3) of the guidelines or its equivalent or an actual in-use study whose protocol has been approved by the Agency, the product meets the performance standard of OPPTS 810.2300(b)(3) of the guidelines or its equivalent.

(2) *Acceptable claim*. A product that meets the performance requirement in paragraph (c)(1) of this section may bear a claim as a ''disinfectant'' for use in laundry operations.

(d) *Non-residual sanitizing in-use additives*—(1) *Performance standard*. When tested in accordance with the test methods and standards in OPPTS 810.2300(b)(4) of the guidelines or its equivalent, the product meets the performance standard of OPPTS 810.2300(b)(4).

(2) *Acceptable claim*. A product that meets the performance requirement in paragraph (d)(1) of this section may bear a claim as a ''sanitizer'' for use in laundry operations.

(e) *Residual self-sanitizing in-use additives*—(1) *Performance standard*. When tested in accordance with the simulated-use procedure in OPPTS

810.2300(b)(5) of the guidelines or its equivalent, the product achieves at least 99.9% (3-log) reduction of each test microorganism over the zero-time and untreated control.

(2) *Acceptable claim*. A product that meets the performance standard in paragraph (e)(1) of this section may bear a claim of ''residual self-sanitizer'' for use in laundry operations when laundered articles are likely to become and remain wet (e.g., diapers), or be exposed to high humidity under normal conditions of use and storage.

§ 156.454 Fabrics and textiles.

(a) *Carpets—(1)* Performance standard. When tested in accordance with the test methods and standards in OPPTS 810.2300(c) of the guidelines or its equivalent, the product achieves at least a 99.9% (3-log) reduction in the number of test microorganisms over the scrubbed controls.

(2) *Acceptable claims*. A product that meets the performance standard in paragraph (a)(1) of this section may bear a claim as a ''sanitizer'' for carpets.

(b) *Mattresses and upholstered furniture*—(1) *Performance standard*. Only gas or fumigant treatments are acceptable for control of pathogenic microorganisms in or on these articles. When tested in accordance with a simulated use study under OPPTS 810.2300(d) of the guidelines or its equivalent, whose protocol has been approved by the Agency, the product meets one of the following standards:

(i) The performance standard in § 156.445(a) for a sterilizer.

(ii) The performance standard in § 156.446(a) for a disinfectant.

(iii) The performance standard in § 156.451(a) for a sanitizer.

(2) Acceptable claims. A product that meets the appropriate performance standard in paragraph (b)(1) of this section may bear the associated claim as a ''sterilant,'' ''disinfectant,'' or ''sanitizer'' for mattresses, upholstered furniture, pillows, and similar bulky articles. Separate directions for use must be provided for each claimed level of activity.

(c) *Impregnated self-sanitizing fabrics and textiles*—(1) *Performance standard*. When tested in a controlled or simulated in-use study under OPPTS 810.2300(e)(3) of the guidelines or its equivalent,, whose protocol has been approved by the Agency, the product meets the performance standard in § 156.452(a).

(2) *Acceptable claims*. A product that meets the performance standard in paragraph (c) of this section may bear a claim for ''residual self-sanitizing'' of treated fabrics and textiles in the presence of moisture. The duration of effectiveness must be specified.

§ 156.455 Air sanitizers.

(a) *Performance standard*—(1) *Glycol-containing products*. When tested in accordance with a protocol that has been approved by the Agency, the product achieves an actual glycol vapor concentration of at least 50% saturation in a test enclosure.

(2) *Other products*. When tested in accordance with a protocol that has been approved by the Agency, the product achieves, for each required test microorganism, at least a 99.9% (3-log) reduction in the number of viable microorganisms in the air of the test enclosure, after correction for settling rates.

(b) *Acceptable claims*. A product that meets either of the performance standards in paragraph (a) of this section may bear a claim as an ''air sanitizer.'' This claim must be accompanied by a statement clearly indicating the mitigating level of the activity, such as ''Temporarily reduces the number of airborne bacteria.''

(c) *Unacceptable claims*. An air sanitizer may not bear a claim as a sterilant, disinfectant, or germicide.

§ 156.456 Toilets and urinals.

(a) *Toilet bowls*—(1) *Performance standard*. When tested in accordance with the test methods and standards in OPPTS 810.2100(c), (d), or (e), or OPPTS 810.2600(b)(2) of the guidelines or its equivalent, the product meets one of the following standards:

(i) The performance standard in § 156.446(a) for a disinfectant.

(ii) The performance standard in § 156.451(a) for a sanitizer.

(2) Acceptable claims. A product that meets the appropriate performance standard in paragraph (a)(1) of this section may bear the associated claim as a ''disinfectant'' or ''sanitizer'' for toilet bowl surfaces. Separate use directions must be provided for ''disinfectant'' and ''sanitizer'' levels of activity.

(3) *Unacceptable claims*. A product may not bear claims for disinfecting the hidden trap of the toilet, nor may a solution for tank use bear claims for disinfecting or sanitizing the bowl surface during flushing.

(b) *Toilet bowl water*—(1) *Performance standard*. When tested in accordance with a simulated-use study described in OPPTS 810.2600(c) of the guidelines or its equivalent, the product achieves at least a 99.9% (3-log) reduction in the number of each test microorganism over the zero-time and parallel untreated inoculated controls.

(2) *Acceptable claims*. A product that meets the performance standard in paragraph (b) of this section may bear a claim as a ''sanitizer'' for toilet water.

(3) *Unacceptable claims*. No claim other than sanitization may be made for toilet in-tank products.

(c) *In-tank products*—(1) *Performance standard*. When tested in accordance with a preliminary simulated in-use test and a laboratory efficacy test whose protocol has been approved by the Agency, the product achieves at least a 99.9% (3-log) reduction in the number of each test microorganism over the zero-time and parallel untreated inoculated controls.

(2) *Acceptable claims*. A product that meets the performance standard in paragraph (c)(1) of this section may bear a claim as an ''in-tank sanitizer'' against pathogenic microorganisms in toilet water.

156.457 Human drinking water.

(a) *Water treatment units and chemical substances—(1) Performance standard*. When tested in accordance with the test methods and standards of the EPA Guide Standard and Protocol, the product achieves the reductions in the numbers of required test microorganisms (bacteria, viruses, and protozoan cysts) given in the table to this paragraph.

Performance Standard Reductions for Microbiological Water Purifiers

Organisms	Minimum required reduction	
	Percent	Log
Bacteria	99.9999	6
Viruses	99.99	4
Protozoan cysts	99.9	3
or		
Particles or spheres, 4-6 microns diameter (for filtration occlusion units)		

(2) *Acceptable claim*. A product that meets the performance standard in paragraph (a)(1) of this section may be labeled as a ''microbiological water purifier'' or ''microbiological water purification system.''

(3) *Unacceptable claim*. A product that does not meet the performance standard in paragraph (a)(1) of this section for all test organisms required by the Guide Standard and Protocol may not bear on the labeling any terms or statements of express or implied ''water purification'' or variants thereof. Similarly terms such as ''sanitize'' or variants thereof, ''pure'' or ''purify'' and

''hygienic'' or variants thereof are not acceptable.

(b) [Reserved]

§ 156.458 Swimming pool and spa water.

(a) *Performance standard.* (1) When tested in accordance with the test methods and standards in OPPTS 810.2700(d) of the guidelines or its equivalent, the product achieves efficacy equivalent to that achieved in a test using a sodium hypochlorite control; and

(2) When tested under in-use conditions (field test) under a protocol approved by the Agency, the product demonstrates that more than 85% of samples collected meet all of the following bacterial indices:

(i) The standard plate count at 35 °C does not exceed 200 colonies per 1.0 milliliter (ml).

(ii) The most probable number of coliform bacteria is less than 2.2 organisms per 100.0 ml, or, if a membrane filter test is used, less than 1.0 coliform organism per 50 ml.

(iii) The most probable number of enterococcal organisms is less than 2.2 organisms per 100.0 ml, or if the membrane filter test is used, less than 1.0 enterococcal organism per 50 ml.

(b) *Acceptable claims.* A product that meets the performance standard in paragraph (a) of this section may bear a claim as a ''disinfectant'' for swimming pool water or water in hot tubs, jacuzzis, spas, or whirlpools.

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LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''. (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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