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Title 3—

The President

Proclamation 7267 of January 14, 2000

Religious Freedom Day, 2000

By the President of the United States of America

A Proclamation

On January 16, 1786, the Virginia legislature enacted a law whose impact is still felt around the world today. Authored by Thomas Jefferson and introduced by James Madison, this act affirmed religious freedom as one of the ''natural rights of mankind'' and pledged that none would ''suffer on account of his religious opinions or beliefs.'' Recognizing the fundamental importance of this right to human dignity, our founders modeled the First Amendment to our Constitution on the Virginia statute and made religious freedom and tolerance core values of our democracy. More than a century and a half later, Eleanor Roosevelt, as the Chairperson of the U.N.'s Commission on Human Rights, worked to extend that vision to peoples around the world through her contributions to the U.N.'s Universal Declaration of Human Rights.

Americans draw great strength from the free exercise of religion and from the diverse communities of faith that flourish in our Nation because of it. Our churches, mosques, synagogues, meetinghouses, and other places of worship bring us together, support our families, nourish our hearts and minds, and sustain our deepest values. Our religious beliefs give direction to our lives and provide moral guidance in the daily decisions we make.

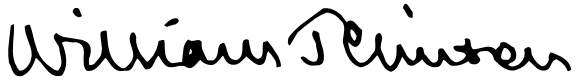
Freedom of religion, however, still has enemies. In America in recent years, churches and synagogues have been destroyed by arson and people have been attacked because of their religious affiliation. Across the globe, many people still live in countries where the right to religious freedom is restricted or even prohibited. Some totalitarian and authoritarian regimes actively persecute those who seek to practice their religion, imprisoning, torturing, and even killing men and women because of their faith. Other governments monitor and harass religious minorities, tolerating and even encouraging hostility or acts of violence against them.

My Administration is committed to safeguarding freedom of religion at home and promoting it around the globe. Federal, State, and local law enforcement officials are working in partnership to prosecute and prevent crimes aimed at people because of their religious affiliation, and I have called on the Congress to pass the Hate Crimes Prevention Act to strengthen the Federal Government's ability to combat such crimes. On the international front, we have made issues of religious liberty a consistent and fundamental part of our public diplomacy. My Ambassador at Large for International Religious Freedom and his staff have crisscrossed the globe, from China and Uzbekistan to Laos and Russia, to advance religious freedom and to assist those who are being persecuted for their beliefs. In accordance with the International Religious Freedom Act that I signed into law in 1998, the United States recently published the first annual report on the status of religious freedom worldwide and publicly designated the most severe international violators. This report highlights the many crucial efforts of individuals and agencies in the Federal Government to advocate religious freedom abroad, from negotiating with foreign heads of state to pursuing individual cases of persecution or discrimination.

As we observe Religious Freedom Day this year, let us give thanks for the wisdom of America's founders in protecting our precious right to express our beliefs and practice our faith freely and openly. Let us resolve to be vigilant in defending that freedom and teaching tolerance in our homes, schools, communities, and workplaces. And let us continue to lead the world in assisting those who are persecuted because of their religious faith and in proclaiming the rights and dignity of every human being.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2000, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies, activities, and programs, and I urge all Americans to reaffirm their devotion to the fundamental principles of religious freedom and tolerance.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Presidential Documents

Proclamation 7268 of January 14, 2000

Martin Luther King, Jr., Federal Holiday, 2000

By the President of the United States of America

A Proclamation

Just this month, thousands of Americans gathered at the Lincoln Memorial to welcome a new year, a new century, and a new millennium. There—where 37 years ago Martin Luther King, Jr., so eloquently voiced his dream for America's future—we pledged not only to keep Dr. King's dream alive, but also to bring it to reality in the 21st century.

We are living in a time of unprecedented peace and prosperity for our Nation, where the struggles of the valiant and visionary men and women who came before us have borne fruit with the guarantee of civil rights at home and the triumph of freedom in nations across the globe. But we cannot afford to become complacent. As Dr. King so wisely observed, ''We have learned to fly the air like birds and swim the sea like fish, but we have not learned the simple art of living together as brothers. Our abundance has brought us neither peace of mind nor serenity of spirit.''

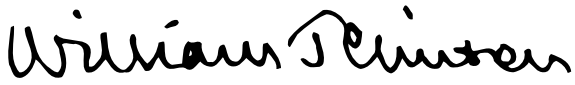
We must seize this rare moment in our Nation's history to build a society in which we accept our differences and honor our common humanity. We must unite against the forces of hatred, fear, and ignorance that seek to divide us. We must use our economic success and our technological prowess to widen the circle of opportunity, to eliminate poverty, and to give all our children the education, values, and encouragement they need to reach their full potential.

Each year since 1994, when I signed into law the King Holiday and Service Act, Americans have marked this observance by devoting the day to service projects in their communities. By renovating schools, cleaning up neighborhoods, tutoring children, donating blood, organizing food drives, or reaching out in some other way to those in need, our citizens can work together to make this a day on, not a day off, and to make their own contributions to Dr. King's legacy of service.

Martin Luther King, Jr., was not content to rest on past successes or to compromise his convictions. If he were with us now to mark his 71st birthday, he would exhort us not to grow weary in doing good but to reach out to one another in the spirit of service and forge a future in which all Americans are proud of our diversity and united in our reverence for freedom, justice, and equality.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, January 17, 2000, as the Martin Luther King, Jr., Federal Holiday. I call upon all Americans to observe this occasion with appropriate programs, ceremonies, and activities in honor of Dr. King's life and achievements and in response to his call to service.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of January, in the year of our Lord two thousand, 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 932

[Docket No. FV00–932–1 IFR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2000 and subsequent fiscal years from $26.18 to $21.73 per ton of olives handled. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: January 20, 2000. Comments received by March 20, 2000, 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. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, and Rose Aguayo, 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 No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives 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 olive 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 olives beginning on January 1, 2000, 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 2000 and subsequent fiscal years from $26.18 per ton to $21.73 per ton of olives.

The California olive 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 olives. 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 1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal 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 December 9, 1999, and unanimously recommended fiscal year 2000 expenditures of $2,472,235 and an assessment rate of $21.73 per ton of olives. In comparison, last year's budgeted expenditures were $1,845,185. Recommended budget expenditures for research are significantly higher this year because of higher anticipated research expenses. The higher research budget of $868,550 is needed to fund: (1) Continued research and development of the

mechanical olive harvester and (2) scientific studies to develop chemical or biological defenses to counteract a potential threat from the olive fruit fly in the California production area.

The following table compares major budget expenditure recommendations for the 2000 fiscal year with those from last year.

Budget expenditure	1999	2000
Administration	$346,485	$356,190
Research	302,000	868,550
Market Development	1,190,500	1,212,495

The assessment rate recommended by the Committee was derived by considering anticipated expenses, estimated assessable tonnage, and additional pertinent factors. The estimate of assessable olives for the 2000 fiscal year is 113,750 tons. This compares to an assessable tonnage of 67,990 for fiscal year 1999. The increase in 2000, due in large part to the alternate-bearing nature of olives, has allowed the Committee to lower the assessment rate from $26.18 to $21.73 per ton, a decrease of $4.45. Income derived from handler assessments, interest, and carryover of reserve funds would be adequate to cover budgeted expenses. Funds in the reserve at the end of fiscal year 2000 would be less than the maximum permitted by § 932.40 of the order (approximately one fiscal year's expenses).

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 fiscal 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 2000 budget and those for subsequent fiscal 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 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 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 1,200 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers have been 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. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000 and subsequent fiscal years from $26.18 per ton to $21.73 per ton of olives. The Committee unanimously recommended fiscal year 2000 expenditures of $2,472,235 and an assessment rate of $21.73 per ton. The assessment rate of $21.73 is $4.45 lower than the 1999 rate. The estimated quantity of assessable olives for the 2000 fiscal year is 113,750 tons. Thus, the $21.73 rate should be adequate to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

The following table compares major budget expenditure recommendations for the 2000 fiscal year with those from last year.

Budget expenditure	1999	2000
Administration	$346,485	$356,190
Research	302,000	868,550
Market Development	1,190,500	1,212,495

The higher research budget of $868,550 is needed to fund: (1) Continued research and development of the mechanical olive harvester and (2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area.

A lower assessment rate is recommended for 2000 because the estimated 2000 fiscal year assessable tonnage is approximately 67 percent larger than last fiscal year's tonnage, due in large part to the alternate bearing nature of the crop. A comparison of assessable tonnage for fiscal year 2000 with the two previous fiscal years is listed below:

1998	1999	2000
85,585	67,990	113,750

The Committee reviewed and unanimously recommended fiscal year 2000 expenditures of $2,472,235, which reflects increases in the research, market development, and administrative budgets. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, the Research Subcommittee, and the Marketing Subcommittee. Alternate spending levels were discussed by these groups, based upon potential reductions in the funding of various research and marketing projects. The Committee determined it was not necessary to increase the assessment rate to cover these expenses because the increased assessable tonnage will provide sufficient funds to cover anticipated expenses. The assessment rate of $21.73 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that grower revenue for the 1999–2000 crop year will approximate $64,126,725. With an assessment rate of $21.73 per ton and assessable tonnage totaling 113,750 tons, the Committee's assessment revenue for fiscal year 2000 will be $2,471,788, or approximately 3.9 percent of grower revenue.

This action decreases the assessment obligation imposed on handlers for fiscal year 2000 by $506,187. 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 olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 9, 1999,

meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on California olive 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 small business guide on complying with fruit, vegetable, and specialty 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 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: (1) Fiscal year 2000 begins on January 1, 2000, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) this action decreases the assessment rate for assessable olives beginning with the 2000 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2000, an assessment rate of $21.73 per ton is established for California olives.

Dated: January 12, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–1221 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim and final free and restricted percentages for domestic inshell hazelnuts for the 1999–2000 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: *Effective Date:* This interim final rule is effective January 20, 2000. *Applicability Date:* This interim final rule applies during the period July 1, 1999, through June 30, 2000. Comments received by March 20, 2000 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 available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. 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 No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is 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. It is intended that this action apply to all merchantable hazelnuts handled during the 1999–2000 marketing year (July 1, 1999, through June 30, 2000). 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 the date of the entry of the ruling.

This rule establishes marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 38,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The adjusted inshell trade demand used by the Board was the average of the past three years' sales (4,136 tons), plus an additional 10 percent for market development (414 tons), minus the declared carryin from last year's crop (110 tons).

The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

Based on the NASS crop estimate of 38,000 tons, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, at its August 31, 1999, meeting. This action initially released 3,552 tons of hazelnuts from the 1999 supply for domestic inshell use as the preliminary free percentage. The preliminary restricted percentage of the 1999 supply for export and kernel markets thus initially totaled 31,143 tons.

A special meeting of the Board was held on October 26, 1999, to increase the percentage of free product released for market development from 10 percent (414 tons) to 20 percent (827 tons) which is 120 percent of the three-year average trade acquisitions of inshell hazelnuts. The Board took this action because it determined that the demand for domestic inshell hazelnuts was greater than previously thought. Based upon the new adjusted trade demand of 4,854 tons, the Board computed revised preliminary free and restricted percentages of 11 percent and 89 percent, respectively. This revised preliminary free percentage (11 percent) released 3,883 tons of hazelnuts from the 1999 supply for domestic inshell use rather than the initially computed 3,552 tons. The revised preliminary restricted percentage (89 percent) of the 1999 supply for export and kernel markets thus totaled 30,720 tons, rather than 31,143 tons.

Under the order, the Board must meet on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 1999, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 15 percent free and 85 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 16 percent free and 84 percent restricted effective March 1, 2000. The final percentages release 5,474 tons of inshell hazelnuts from the 1999 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (36,548 tons) and the following supply and demand information for the 1999–2000 marketing year:

	Tons
Inshell supply	
(1) Total production (Board's estimate)	36,548
(2) Less substandard, farm use (disappearance)	3,271
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	33,277
(4) Plus undeclared carryin as of July 1, 1999, subject to regulation	4
(5) Supply subject to regulation (Item 3 plus Item 4	33,281
Inshell trade demand	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,136
(7) Increase to encourage increased sales (20 percent of Item 6)	827
(8) Less declared carryin as of July 1, 1999, not subject to regulation	109
(9) Adjusted Inshell Trade Demand	4,854
(10) Desirable carryout on August 31, 2000 (15 percent of Item 6)	620
(11) Adjusted Inshell Trade Demand plus desirable carryout (Item 9 plus Item 10)	5,474

	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5)	15	85
(13) Final percentages (Item 11 divided by Item 5) x 100	16	84

In addition to complying with the provisions of the order, the Board also considered the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. At its October 26 and November 15, 1999, meetings the Board recommended that an increase of 20 percent (827 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and will make available an additional 620 tons for desirable carryout effective March 1, 2000. The total free supply for the 1999–2000 marketing year is 4,756 tons of hazelnuts, which is the final trade demand of 4,136 tons plus the 620 tons for desirable carryout. This amount is 135 percent of prior years' sales and exceeds the goal of the Guidelines.

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, the 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 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 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. Using these criteria, virtually all of the producers are small agricultural producers and an estimated 19 of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market while preventing oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 47,000 tons in 1997. Average production has been around 27,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 48 percent of the 10-year average (1989–1998). Production in the biggest crop year (1997) was 173 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the producer price per pound has increased over the last 5 years, from $.32 in 1993 to $.49 in 1998.

The Board discussed not regulating. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the United States. This production represents, on average, less than 5 percent of total U.S. tree nut production, and less than 5 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the United States. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts (kernels) sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements

have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other marketing order programs, reports and forms are periodically reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Further, the Board's meeting was widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the November 15, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 4 are handlers, 5 are producers, and one is a public member. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: 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 Board's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Any comments received will be considered prior to finalization of this rule.

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 action until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 marketing year began July 1, 1999, and the percentages established herein apply to all merchantable hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this rule, which was recommended at an open Board meeting, and need no additional time to comply with this rule; and (3) interested persons are provided a 60-day comment period in which to respond, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 982.247 is added to read as follows:

NOTE: This section will not be published in the annual Code of Federal Regulations.

§ 982.247 Free and restricted percentages—1999–2000 marketing year.

(a) The interim final free and restricted percentages for merchantable hazelnuts for the 1999–2000 marketing year shall be 15 and 85 percent, respectively.

(b) On March 1, 2000, the final free and restricted percentages for merchantable hazelnuts for the 1999–2000 marketing year shall be 16 and 84 percent, respectively.

Dated: January 12, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–1223 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–99–17]

Soybean Promotion and Research: the Procedures To Request a Referendum; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date of the correction published in the **Federal Register** on January 3, 2000. The effective date is being changed from January 3, 2000, to December 30, 1999, to permit the corrected subpart F, Procedures to Request a Referendum, to be published in the 2000 issue of the Code of Federal Regulations.

DATES: The effective date of the January 3, 2000 rule is corrected to December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed program, (202) 720–1115.

SUPPLEMENTARY INFORMATION: The Department of Agriculture (Department) published a correction in the **Federal Register** on January 3, 2000 (65 FR 1), redesignating section numbers to a final rule published in the **Federal Register** on August 20, 1999 (64 FR 45413), which established the procedures for a Request for Referendum pursuant to the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311) and the Soybean Promotion and Research Order (7 CFR part 1220).

The substance of the January 3, 2000, correction requires no change. However, the effective date of the correction is being changed to December 30, 1999, to enable those changes to appear in the 2000 issue of the Code of Federal Regulations.

Correction

In the **Federal Register** issue of January 3, 2000 (65 FR 1), make the following correction. On page 1, in the first column, under the caption **EFFECTIVE DATE** correct the date to read: ''December 30, 1999.''

January 12, 2000

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–1224 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–67–AD; Amendment 39–11514; AD 2000–01–16]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 300 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 75–23–08 R5, which currently requires repetitively inspecting and replacing or repairing the exhaust system on certain Cessna Aircraft Company (Cessna) 300 and 400 series airplanes. The requirements of this AD replace the inspections and replacements that are required by AD 75–23-08 R5 with inspections and replacements containing new simplified procedures for all 300 and 400 series airplanes (models affected by the current AD plus additional models). This AD also revises the inspection intervals and requires replacing certain unserviceable parts and removing the exhaust system for a detailed inspection. This AD is the result of numerous incidents and accidents relating to the exhaust systems on Cessna 300 and 400 series airplanes dating from the middle 1970's to the present, including six incidents since issuance of AD 75–23–08 R5 where exhaust problems were cited. The actions specified by this AD are intended to detect and correct cracks and corrosion in the exhaust system, which could result in exhaust system failure and a possible uncontrollable in-flight fire with pilot and/or passenger injury.

DATES: Effective February 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before April 14, 2000.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–67–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

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 Cessna 300 and 400 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 6, 1999 (64 FR 36307). The NPRM proposed to supersede AD 75–23–08 R5, Amendment 39–5451, with a new AD. AD 75–23–08 R5 currently requires repetitively inspecting, using visual methods, the exhaust system on certain Cessna 300 and 400 series airplanes; and repairing or replacing any unserviceable parts. The actions specified in the NPRM proposed to replace the inspections and replacements that are required by AD 75–23–08 R5 with inspections and replacements containing new simplified procedures for all 300 and 400 series airplanes (models affected by the current AD plus additional models). The NPRM also proposed to revise the inspection intervals and proposed to require replacing certain unserviceable parts and removing the exhaust system for a detailed inspection. Other provisions included in the NPRM, as currently written, are:

—Prohibiting patch-type repairs; and

—Removing the exhaust system and sending it to a designated facility for metallic identification, airworthiness determinations, and repair or replacement of any unserviceable parts.

The NPRM was the result of numerous incidents and accidents relating to the exhaust systems on Cessna 300 and 400 series airplanes dating from the middle 1970's to the present, including six incidents since issuance of AD 75–23–08 R5 where exhaust problems were cited.

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

Introduction to the Comment Disposition

The FAA received over 350 comments on the NPRM. Many of the comments indicate that some kind of action needs to be taken regarding the ongoing problems with the exhaust systems on Cessna 300 and 400 series airplanes. Many commenters present detailed suggestions for alternatives to the proposed actions included in the NPRM. The FAA believes that, for the most part, these suggestions and alternatives have merit and the final rule reflects many of these suggestions and alternatives.

The FAA will continue to make available information that relates to the exhaust system problems on the Cessna 300 and 400 series airplanes. However, the FAA does not believe that this advisory information alone will alleviate and eliminate the unsafe condition of the exhaust system problems on the Cessna 300 and 400 series airplanes. The FAA also does not believe that continuing to only mandate the actions of AD 75–23–08 R5 will provide the safety level that is necessary for the affected airplanes.

The NPRM proposed to require an inspection to determine the type of material (Inconel or stainless steel) and the condition of the exhaust system. Of note is that the minimum wall thickness criteria was established as an attempt to remove from service those systems that were over 30 years old. However, the FAA did not account for those unused or recently installed exhaust systems that were manufactured over 30 years ago and either are currently held as or until recently were held as spares. The final rule accounts for this by requiring an inspection of the tailpipes 5 years after installation of an unused or overhauled exhaust system or within 100 hours time-in-service (TIS) after the effective date of the AD (the prevalent one being that which occurs later).

In addition, the FAA has found that Cessna has not manufactured any exhaust assemblies that are 100-percent Inconel material. Much of the confusion raised on and in opposition to the proposal stems from sending the exhaust system to a facility to get a determination on whether the system was a stainless steel or Inconel exhaust system. The different compliance times for the different systems adds to the confusion and opposition. The FAA has revised the proposal to include the same compliance times for all airplanes regardless of the exhaust system material and to remove the proposed requirement of sending the exhaust system to a specific facility for a material determination.

The final rule reflects other changes made based on the FAA's analysis of the comments received and all other information related to the exhaust systems on the Cessna 300 and 400 series airplanes. All changes, like the ones referenced above, will alleviate the burden upon the public as proposed in the NPRM while still providing the necessary safety level intended by this AD.

The following paragraphs present the comments received with the FAA's response and changes to the AD, as applicable:

Comment Issue No. 1: Include Alternative Proposals

Numerous commenters recommend that the FAA incorporate the provisions of proposals that the Cessna Pilot's Association and Twin Cessna Flyer submitted. The commenters state that there is a need for the AD, and that these proposals provide a viable safety alternative.

The FAA evaluated both of these proposals, determined that many of these comments have merit, and has made changes to the final rule. Among

the items in the proposals that the FAA incorporated into the final rule include:

—Eliminating the check of the system for wall thickness;

—Having the same compliance schedule for all airplanes regardless of whether the exhaust systems are made of Inconel or stainless steel; and

—Eliminating the proposed requirement of removing the exhaust system and sending it to a specific facility for a material determination.

Comment Issue No. 2: The Existing AD is Sufficient

Many commenters state that the current actions of AD 75–23–08 R5 are sufficient to meet the necessary safety level intended by this AD for the exhaust systems of the Cessna 300 and 400 series airplanes. Several commenters state that, if AD 75–23–08 R5 was complied with in a correct and timely matter, the incidents referenced in the NPRM may not have happened. Some commenters believe that changing the inspection requirements from that already required by AD 75–23–08 R5 will cause confusion and add unnecessary costs to the inspections. One other commenter suggests that the FAA issue a Special Airworthiness Information Bulletin (SAIB) to address the requirements of the AD.

The FAA does not concur that AD 75–23–08 R5 is sufficient. Analysis of the incidents and accidents pertaining to the exhaust systems on the Cessna 300 and 400 series airplanes that have occurred since the issuance of AD 75–23–08 R5 reveals the need to require different inspection requirements to meet the conditions known today. The FAA believes that the changes made to the final rule will also make the inspections easier to accomplish and will allow them to be accomplished to coincide with regularly scheduled maintenance.

The FAA does not concur that an SAIB should be issued instead of an AD. An SAIB is an ''information only'' document and has no regulatory requirement; therefore, it is not mandatory. The only vehicle the FAA has of assuring that certain actions are complied with is through the issuance of an AD. No changes have been made to this AD as a result of this comment.

Comment Issue No. 3: Cost Impact

Many commenters state that the FAA's estimate of the cost impact upon U.S. owners/operators of the affected airplanes is incorrect. Some also believe that the FAA should have completed the Regulatory Flexibility Analysis before issuing the NPRM. Among the specific cost issues that were identified is the FAA's failure to account for the revenue lost due to airplane downtime and the fact that the cost of the proposed AD would affect the airplanes' value and make them unaffordable.

The FAA does not concur that the estimate of the cost impact upon U.S. owners/operators of the affected airplanes is incorrect. The FAA has no way of determining the number or extent of repairs and replacements that would be necessary based on the inspections proposed in the NPRM. Therefore, the FAA can only account for the costs of the inspections. The FAA believes it is the owners'/operators' responsibility to repair or replace parts when found damaged, regardless of whether the action is required by AD.

The FAA does not concur that it was necessary to complete the Regulatory Flexibility Analysis before issuing the NPRM. Having this analysis completed prior to issuing the NPRM is preferred; however, the FAA did not believe it could wait to initiate rulemaking on this subject. The FAA has until 180 days after issuance of the final rule AD action to have the completed Regulatory Flexibility Analysis in the docket file.

The FAA concurs that airplane downtime is not accounted for in the estimate of the cost impact. The FAA has no way of determining the operational characteristics of each owner/operator of the affected airplanes. Therefore, estimating the lost expenses due to the affected airplanes being out of service is not possible. Even if this were possible, the safety aspects of the proposed rule would outweigh the potential lost revenue due to airplane downtime.

Comment Issue No. 4: V-Band Clamp Replacements

Several commenters state that the proposed V-band replacement requirements are inconsistent with what is currently required by AD 75–23–08 R5 and would be difficult to accomplish. The commenters request clarification on the FAA's intent.

The FAA's intent was to maintain the V-band replacements from AD 75–23–08 R5. Based on this and after evaluating all the comments and information on this subject, the FAA has revised the proposal to only require replacement of the multi-band V-clamps at 500-hour TIS intervals. Inspection of the other V-band clamps is part of the exhaust system inspections required by this AD.

Comment Issue No. 5: Concerns With the Slip Joint Requirement

Many commenters express concerns regarding the requirements of the slip joints, specifically either require (1) replacement of the old style joints; (2) lubrication of the slip joints; or (3) a change to the compliance time of the slip joint removal and inspection requirements. The majority of these commenters state that removing the slip joints would cause more damage than would be caused during normal usage.

The FAA concurs that removing the slip joints too frequently could cause damage. The FAA has determined that the necessary safety level intended by this AD will be reached by requiring the slip joints to be annually inspected for freedom of movement without removing the slip joints from the nacelle. The slip joints will be removed for inspection at each 2,500-hour TIS inspection. The FAA believes that the inspections will reveal deterioration of the older style joints and require replacement.

Comment Issue No. 6: Stainless Steel Versus Inconel

Many commenters state that the different compliance times for stainless steel exhaust systems and Inconel exhaust systems need clarification. These commenters request that the FAA define an ''all Inconel system'' since all exhaust systems consist of some stainless steel parts. Several commenters state that having different compliance times for different exhaust systems is confusing, and request that all exhaust systems be treated equally.

The FAA concurs that no exhaust system is made exclusively of Inconel alloy and that the current compliance times could cause confusion among those airplane owners/operators and mechanics trying to accomplish the AD. The FAA has revised the AD to provide compliance times that are applicable to all exhaust systems. This eliminates the need to send the exhaust system to an authorized facility for material determination. The FAA has revised the compliance times to coincide with regularly scheduled maintenance.

Comment Issue No. 7: Facilities and Personnel

Numerous commenters express concern about the FAA's requirement of the qualifications of the personnel to accomplish the work and what facilities must be used to accomplish portions of this AD. These concerns include:

—The three approved facilities would not be able to accomplish the parts evaluation and inspections on these parts evaluations and inspections on all of the affected airplanes in a timely manner;

—Foreign airworthiness authorities that adopt an FAA AD verbatim for their

countries would then require all airplanes certificated for operation in those countries to have the parts evaluations and inspections accomplished at one of the three U.S. facilities; and

—Maintenance personnel in foreign countries with equivalent ratings to those specified in the proposed AD would not be able to accomplish the work under the current wording of this AD.

The FAA has evaluated these concerns and has changed this AD to include:

—Clarifying who can accomplish what actions in this AD, including a clause of ''or for non U.S. registered airplanes: the state of registry's equivalent facility in accordance with their applicable procedure'';

—Consolidating the actions of all airplanes into one compliance program so the need to send to one of the three facilities to determine the material used for the exhaust system and the condition is no longer necessary; and

—Changing the facilities required to do the repair work to any FAA-approved exhaust repair facility.

Comment Issue No. 8: Compliance Times

Many commenters request changes to the proposed compliance times. The main reason for these proposed changes is to time the actions specified in the NPRM to coincide with regular maintenance intervals, i.e., engine overhaul and annual inspections. Several commenters also request a 10-percent adjustment on inspection compliance times.

The FAA has re-evaluated the compliance times and has changed the final rule to add provisions that would make the actions coincide with regularly scheduled maintenance activities. Having one compliance time for all airplanes, regardless of the exhaust system type (Inconel or stainless steel) allowed this to be accomplished. The FAA is also allowing the 10-percent adjustment allowance to allow the actions to be accomplished with other scheduled maintenance. All of these adjustments actually reflect a reduction in the burden upon U.S. operators over that proposed in the NPRM.

Comment Issue No. 9: Cessna Service Bulletins

A few commenters suggest that the FAA issue an AD that mandates the Cessna service bulletins that relate to this subject instead of what is proposed in the NPRM. These commenters state that the actions specified in the service bulletins are adequate to address the unsafe condition.

The FAA does not concur. The Cessna service bulletins were not available at the time of issuance of the NPRM. Cessna has issued the following service bulletins since the NPRM:

—Service Bulletin (SB) MEB99–8, SB MEB99–11, SB MEB99–14, and SB MEB99–15, all dated August 2, 1999. These service bulletins specify and include procedures for replacing the crossfeed fuel lines with stainless steel cross feed lines. Each service bulletin applies to various Cessna airplane models.

—SB MEB99–6, SB MEB99–9, and SB MEB99–12, all dated August 2, 1999. These service bulletins specify and include procedures for installing access panels to help with exhaust system inspections. Each service bulletin applies to various Cessna airplane models.

—SB MEB99–7, SB MEB99–10, and SB MEB99–13, all dated August 2, 1999. These service bulletins specify and include procedures for installing stainless steel engine beam covers and inspecting the engine beams. Each service bulletin applies to various Cessna airplane models.

The FAA has determined that the best course of action is accomplishing that specified in the final rule (the actions of the NPRM as modified based on the comments received) instead of incorporating the Cessna service bulletins. Reasons include:

—The service bulletins focus more on the protection of the affected airplanes once the exhaust system has failed; and

—The service bulletins do not address the turbocharger installation on the firewall, including the engine exhaust pipes and the tail pipe. The leakage of exhaust gases in this area is considered the unsafe condition.

The FAA does believe that installing the access panels as specified in the Cessna service bulletins will aid in the repetitive exhaust system inspections. The FAA has added a note to the AD to include this access panel information. No other changes to the final rule have been made as a result of these comments.

Comment Issue No. 10: Supplemental Type Certificates and Parts Manufacturer Approvals

Two commenters suggest that airplanes that have been modified through the incorporation of Riley Aviation supplemental type certificates (STC's) not be subject to this AD, or that the FAA wait for the Riley Aviation solution to the unsafe condition for those affected airplanes. In addition, two commenters request explanation related to installation requirements of STC and parts manufacturer approval (PMA) parts as they relate to the exhaust systems on Cessna 300 and 400 series airplanes.

The FAA does not concur. The Riley Aviation modification through STC's utilizes design parts that are equivalent to the original type design. The FAA has determined that exhaust systems that have been modified through Riley Aviation STC's are subject to the unsafe condition addressed by this AD. Although Riley Aviation may indeed develop actions to address this unsafe condition, the FAA cannot delay AD action waiting for actions that have yet to be developed or approved. However, any owners/operators of the affected airplanes can present data to show that their exhaust systems utilize design parts that should not be subject to this AD by submitting an alternative method of compliance request in accordance with the procedures specified in this AD. The FAA will evaluate the merits of each request and either grant or deny the alternative method of compliance. No changes have been made to this AD as a result of these comments.

Comment Issue No. 11: Maintenance and Pilot Training

Numerous commenters state that part of the safety problem comes from inadequate maintenance and the need for pilot training. These commenters suggest that additional pilot training and mandated preflight checks could alleviate the unsafe condition. Many commenters feel that the FAA is arbitrarily punishing the majority of owners/operators of the affected airplanes because of the inadequate maintenance practices of a few operators. These commenters state that the existing maintenance requirements are adequate to provide the necessary safety level intended by this AD, and that if the FAA enforced the existing rules there would not be any problems.

The FAA concurs that pilot training and preflight checks could reduce the potential for the unsafe condition from occurring. However, the FAA has determined that the unsafe condition is in part the result of maintenance practices that are not adequate to provide the necessary safety level intended by this AD. The FAA has determined that the condition should be addressed through inspections and exhaust system repair and parts replacement. No changes to this AD

have been made as a result of these comments.

Comment Issue No. 12: Part 135 Operations

Five commenters suggest that the FAA exempt those airplanes that are regulated by a maintenance program such as that required for airplanes operating in accordance with part 135 of the Federal Aviation Regulations (14 CFR part 135). The commenters state that such maintenance programs already require the actions specified in the NPRM.

The FAA partially concurs. The FAA agrees that certain actions may already be accomplished by maintenance programs required under 14 CFR part 135. A note has been added to this AD that specifies that the owners/operators of those airplanes operating under 14 CFR part 135 may have already had the actions of this AD incorporated, and appropriate ''unless already accomplished'' credit could be taken for the applicable portion of this AD. The FAA cannot exempt these airplanes from this AD because operators are not obligated to fly predominately in part 135 operations and could operate under part 91 of the Federal Aviation Regulations (14 CFR part 91).

Comment Issue No. 13: Leak Testing for Cracks

Several commenters suggest that the FAA allow a leak test to detect cracked exhaust system parts. The FAA presumes that these commenters would prefer the leak test over the currently proposed pressure tests.

The FAA has determined that the pressure checks required in this AD will detect cracks, pinholes, or other damage, and that leak testing is not required. Owners/operators of the affected airplanes can submit an alternative method of compliance to the FAA that contains appropriate data and information to show that an equivalent level of safety to this AD would be obtained through leak testing. No changes to this AD have been made as a result of these comments.

Comment Issue No. 14: Firewall, Bulkhead, Engine Beams, and Fuel Lines

Many commenters request modification or explanation concerning the need to inspect the firewall, bulkheads, engine beams, and fuel lines. The commenters suggest that the FAA only require inspection of the fuel lines and areas behind the firewall to be inspected if damage has occurred or work has been done in the firewall area. These commenters also request the FAA define the acceptable limits of corrosion in the engine beams and associated structure.

The FAA maintains that the firewalls, canted bulkheads, and engine beams should be inspected and has written the compliance time of these inspections to allow them to be accomplished during the regular maintenance schedule that coincides with other inspections or repairs. The FAA concurs that the fuel lines should only be inspected upon condition, and this AD has beenwill be changed to only require the inspections if there is evidence of past damage to the firewalls, canted bulkheads, and engine beams. The fuel lines will be replaced if damage is found.

Comment No. 15: Wall Thickness

Numerous commenters state that the wall thickness inspection is unworkable due to the thickness limit of .025 inches. Some of these commenters are concerned that some new parts would not pass the thickness requirement. The commenters recommend specific thickness of .049 inches for the ''wye'' and .035 inches for the tailpipe.

After further analysis of the wall thickness inspection requirement, the FAA has determined that overly thin parts will be detected and corrected in the general airworthiness inspections required on the ''wye'' and tailpipe. Therefore, the FAA has deleted this requirement from this AD.

Comment Issue No. 16: Install an Insulation Blanket

Five commenters suggest installing an insulation blanket (such as Kevlar) as an alternative to the actions specified in the NPRM. Another commenter states that installing this insulation blanket would complicate inspections.

The FAA concurs that the addition of an insulation blanket could relieve some of the potential difficulties, although it would only alleviate the condition and would not provide the necessary safety level intended by this AD. Also, the FAA concurs that installing an insulation blanket could make already required inspections difficult to accomplish. Based on this, the FAA has determined that the installation of an insulation blanket will not meet the necessary safety level intended by this AD and the FAA has not incorporated this suggestion. No changes have been made to this AD as a result of these comments.

Comment Issue No. 17: Inadequate Maintenance Practices

Several commenters state that the NPRM lacks test and inspection procedures. These commenters suggest specific changes or additions to these inspection methods, including:

1. Make a video tape of the inspection process;
2. Require an inspection for exhaust stains;
3. Specify wear rates and leakage rates on the pressure tests;
4. Include information about the confusion concerning the various types of slip joints utilized on the affected airplanes;
5. Clarify what is meant by an exhaust repair station;
6. Require only visual inspections;
7. Clarify the pressure check requirements because this check is too judgmental, and that an unacceptable leak is not identified;
8. Add a ''tap test'' to check parts; and
9. Clarify and mandate assembly and torquing sequence requirements.

The FAA concurs with some of the recommendations, as follows:

1. The FAA believes a video could be a great visual aid in illustrating the inspection, but the FAA has determined that it could only be an informational aid and cannot be mandated by AD action. No changes have been made to this AD as a result of this comment;

2. The FAA does not consider the exhaust stains to be a reliable indication of whether exhaust problems exist. Stains could be a sign to look further, but not a true indicator. No changes have been made to this AD as a result of this comment;

3. As specified in Comment Issue No. 13, the FAA has determined that the pressure checks required in this AD will detect cracks, pinholes, or other damage, and that leak testing is not required. Owners/operators of the affected airplanes can submit an alternative method of compliance to the FAA that contains appropriate data and information to show that an equivalent level of safety to this AD would be obtained with this method. No changes have been made to this AD as a result of this comment;

4. The FAA has revised this AD to only require removal of the slip joints during the 2,500-hour TIS engine overhaul inspection;

5. The FAA has revised the AD to specify an FAA-approved exhaust system repair facility. This means a facility that has FAA approval to work on exhaust systems;

6. Due to the extent and location of the damage found on the Cessna 300 and 400 series airplanes, the FAA has determined that visual inspections will not provide the necessary safety level intended by this AD. No changes have been made to this AD as a result of this comment;

7. The pressure check is intended to identify leakage that is considered to be excessive or in locations where it will help identify crack, pinholes, or damage. Any application of the pressure test will be judgmental; however, many owners/operators have already accomplished this test on the affected airplanes with success so the FAA has determined that authorized or appropriate maintenance personnel can accomplish the procedure repeatedly with acceptable results. No changes have been made to this AD as a result of this comment;

8. The FAA concurs that a ''tap test'' may be helpful in identifying damaged parts, however, the FAA has determined that this procedure is not definitive and any suspect part should be further investigated. No changes have been made to this AD as a result of this comment; and

9. After re-examining the procedures and information in the maintenance manuals and service information for the affected airplanes, the FAA has determined that the assembly and torquing techniques are acceptable to meet the necessary safety level intended by this AD. No changes have been made to this AD as a result of this comment.

Comment Issue No. 18: Incorporate a Design Change

Many commenters recommend that the FAA incorporate a design change to the exhaust systems rather than requiring repetitive inspections and testing. One commenter states that various failure modes of the system should be analyzed and that various system changes should be implemented to prevent failure. Five commenters suggest that adding provisions to isolate the crossfeed lines or adding crossfeed valves could be a proposed solution to the problem. Each of the other commenters recommend at least one of the following:

—Installing a fire detector system;
—Incorporating a ''tell tale'' patch that changes color with heat exposure, or using paint that changes color when exposed to heat;
—Incorporating heat shields to protect the fuel lines that are behind the firewall from the effects of the exhaust heat; and
—Adding heat shields to the firewall.

The FAA concurs that adding a design change would be a more desirable solution to the exhaust system problems on the Cessna 300 and 400 series airplanes rather than relying on repetitive inspections and testing to detect any problems. The FAA reviewed many of the design ideas presented above, and found that they are designed to mitigate the effects of an exhaust system failure, but none prevent failure of the exhaust system. The FAA currently knows of no such design changes that would provide the same safety level as those actions in this AD. The FAA will look at any design changes on an individual basis if they are submitted as an alternative method of compliance in accordance with the procedures specified in this AD. No changes have been made to this AD as a result of this comment.

Comment Issue No. 19: V-Band Clamps

One commenter recommends that the FAA change the word V-band clamps in paragraph (g) of the NPRM to multi-segment V-band clamps. This commenter states that this was an oversight by the FAA.

The FAA concurs and has revised this AD accordingly.

Comment Issue No. 20: All Airplanes Should Not Be Affected

Five commenters suggest that there are design differences in the affected airplanes and believe that this AD should not apply to all airplanes. One commenter states that less demand is placed on the exhaust system of unpressurized airplanes and this AD should only apply to pressurized airplanes.

The FAA's analysis and interpretation of the service history on the exhaust systems of the Cessna 300 and 400 series airplanes does not indicate that certain designs are more/less susceptible to the exhaust system problems than others. No changes have been made to this AD as a result of this comment.

Comment Issue No. 21: Lesser Requirements for Newer Exhaust Systems

Several commenters believe that less stringent initial inspection requirements should exist for airplanes with newer exhaust systems installed. The commenters do not feel that the potential for damage exists for airplanes with exhaust systems that have not been in service for very long.

The FAA sees merit in this comment and has re-evaluated the compliance time of the initial inspection for cracks, corrosion, holes, or distortion, which is the inspection that requires removal of the tailpipes. The FAA has determined that the initial inspection compliance time should read ''upon the accumulation of 5 years since installing a new or overhauled exhaust system or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs later.''

The FAA has revised the AD accordingly.

Comment Issue No. 22: Certification Process of Exhaust Systems

One commenter believes that the FAA is changing the certification process of exhaust systems because the requirements of this AD were not required at the time the airplanes were type certificated.

The FAA does not concur. The exhaust systems that were certificated with the airplane met all design criteria at the time of certification are not available to the field or the current maintenance procedures are AD's are the vehicle that the FAA uses to mandate modifications, inspections, etc. to correct an unsafe condition that is caused by airplane usage (fatigue), quality control, or maintenance problems (where the procedures to accomplish such maintenance not meeting the necessary safety level). The FAA has determined that the current maintenance procedures for the exhaust systems of the Cessna 300 and 400 series airplanes, including those required by AD 75–23–08 R5, are not adequate to eliminate the unsafe condition. No changes have been made to this AD as a result of this comment.

Comment Issue No. 23: Welds and Weld Repairs

Several commenters express opinions concerning welds and the use of weld repairs in the NPRM. The comments vary and include the following:

—Patch welds should be banned;
—Patch welds should be retained;
—Inlay weld repairs should be allowed;
—Multi-seam welds should be defined;
—Butt welds are a better type of weld;
—No welds should be allowed; and
—Patch or multi-seam weld repairs should not be left in service for 500 hours TIS and should be removed after 100 hours TIS.

The FAA has further examined the subject of welds on the exhaust systems as a method of repair and has incorporated the following into this AD:

—Overlay patch-type and parallel multi-seam weld repairs will not be permitted;
—Inlay patch repairs and multi-seam welds at the joints that are similar to the original construction are acceptable;
—Inspection schedules have been adjusted; and
—Removal of patch and multi-seam welds will not be required at 100 hours TIS, and will be inspected on

condition until removed with the rest of the exhaust system.

Comment Issue No. 24: Exhaust System Removal Requirement

One commenter recommends that the FAA remove paragraph (i) from the NPRM. This paragraph specifies removal of the exhaust system from the slip joints and specifies the system be sent to an exhaust repair facility to be inspected for serviceable condition with accomplishment of necessary repairs. The FAA infers that the commenter believes that these requirements are not necessary.

The FAA does not concur. Based on its analysis of all information related to this subject, the FAA has determined that the removal, inspection, and possible repair requirements are necessary to reach the necessary safety level intended by this AD. The FAA has revised the compliance time to coincide with engine overhauls, when the system is removed for other reasons, thereby reducing the downtime of the airplane.

Comment Issue No. 25: No Compelling Safety Issues

Five commenters state that there are no compelling safety issues driving this AD action. These commenters further explain that this is evidenced through the AD process delays and the amount of time it took the FAA to issue the NPRM. The FAA infers that the commenters would like the NPRM withdrawn.

The FAA does not concur. The FAA has determined that an unsafe condition exists and this condition must be corrected. No changes have been made to this AD as a result of this comment.

Comment Issue No. 26: No Guarantee That the AD Will Work

One commenter states that there is no guarantee that the actions specified in the NPRM will eliminate the unsafe condition on the affected airplanes. The FAA infers that the commenter wants the NPRM withdrawn.

The FAA believes that, based on its analysis and evaluation of all available information related to this subject, the actions in this AD address items that have directly contributed to exhaust system incidents and accidents on the Cessna 300 and 400 series airplanes. The FAA also believes that the final rule AD (with the changes made to the NPRM) will be easier to comply with than AD 75–23–08 R5.

Comment Issue No. 27: Impossible To Comply With the AD

One commenter states that Environmental Protection Agency (EPA) requirements make it impossible to comply with the NPRM. The commenter expresses that this is due to the requirement to use certain solvents that the EPA has banned.

No banned substances are required to accomplish this AD. No changes have been made to this AD as a result of this comment.

Comment Issue No. 28: Extend the Comment Period

One commenter requests an extension to the comment period to allow persons to comment. The commenter states that this is necessary because the existence of the NPRM was not widely known.

The FAA does not concur. Based on the fact that over 350 comments were received, the FAA believes that it was widely known that the NPRM was issued and available. The FAA is aware that several owner associations sent their members individual letters advising them of the content and availability of the NPRM, and encouraging the owners to comment. In addition, the FAA is aware of several news articles that publicized the proposed action. The FAA has determined that there was adequate time to comment on the NPRM. No changes have been made to this AD as a result of this comment.

Comment Issue No. 29: More Information on the Accident Airplanes

One commenter requests more information on the accidents referenced in the NPRM. The FAA infers that the commenter does not believe the action is justified based on the information provided in the NPRM. The commenter is requesting information such as the age of the airplanes, the maintenance of the airplanes, the frequency in which the airplanes were flown, the States where the accidents occurred, any temperature swings that were involved, and the provider of the failed parts.

The FAA did a thorough investigation and examination of all the information available on the exhaust system failures of the Cessna 300 and 400 series airplanes, and has determined that the explanation presented in the NPRM adequately explained the situation. No changes have been made to this AD as a result of this comment.

Comment Issue No. 30: Exhaust System Time Is Not Always Recorded

One commenter states that, although required by FAA regulations, exhaust system component time is not always recorded or recorded correctly. The commenter states that improper maintenance and recordkeeping can negate any mandated action. The commenter makes no suggestion as to modifying or eliminating this AD action.

No changes had been made to this AD as a result of this comment.

Comment Issue No. 31: Exhaust Systems Have a Limited Life

One commenter states that exhaust system components have a limited life. This commenter believes that the FAA should require replacement of the exhaust system at a certain time of hours TIS.

The FAA concurs that exhaust systems have a limited life. However, the utilization differences between operators and the environment where the airplanes are operated contribute to the condition. For these reasons, a definite life limit on the exhaust systems could not be established and the FAA is requiring repetitive inspections and tests to assure that the condition of the systems is adequate. No changes have been made to this AD as a result of this comment.

Comment Issue No. 32: Apply a Corrosion Standard

Several commenters suggest that the FAA should incorporate a 10-percent corrosion standard for the corrosion inspection of the engine beams and bulkhead. These commenters state that the proposed AD will require structural repair if any corrosion is found on the engine beams, canted bulkhead, or firewalls.

The FAA concurs that a reasonable standard should be applied. Revisions have been incorporated that require further investigation if corrosion or damage is found during the inspections. This includes holes or defects in the structural components. A 10-percent material thickness requirement for engine beam damage has been included in the AD.

Comment Issue No. 33: Visual Examination and Pressure Tests Are Adequate

Many commenters believe that visual examination and pressure tests of the exhaust systems are adequate to meet the necessary safety level intended by this AD. These commenters state that they have found defects by visual and pressure checking.

The FAA does not concur. Although visual examination and pressure tests will reveal defects, many defects may go undetected if only these tests are utilized. No changes have been made to this AD as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject

presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above in the comment disposition and minor editorial corrections. The FAA has determined that these changes and minor corrections will not change the meaning of this AD and will not add any additional burden upon the public than was already proposed. In fact, the changes made based on the comments received will actually reduce the burden that was originally proposed in the NPRM.

Comments Invited

Although this action is in the form of a final rule that was preceded by notice and opportunity for comment, public comments are again invited on this rule. The FAA has determined that because of the large number of comments received on the proposed rule and the controversial nature of the situation, the public should be provided an opportunity to comment on the changes being made in this final rule. In addition, the FAA is in the process of completing a regulatory flexibility analysis for this action. The FAA anticipates completion of the analysis well within 180 days after issuance of this AD and will accept comments on the analysis at any time, even after the comment closing date for comments on this final rule. The FAA is particularly interested in receiving factual information on alternative means of compliance with the AD as well as the regulatory flexibility analysis

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–67–AD.'' The postcard will be date stamped and returned to the commenter.

Cost Impact

The FAA estimates that 6,500 airplanes in the U.S. registry will be affected by this AD. The cost of the inspections will be as follows at an average labor rate of approximately $60 per hour. The cost of any necessary repair depends on the extent of the rework and replacement needed based on the results of the inspections.

—The repetitive visual inspections of the exhaust system will take approximately 3 workhours to accomplish, with a labor cost of $180 per airplane for each inspection;

—The repetitive visual inspections of the removed tailpipes will take approximately 1 workhour per tailpipe to accomplish, with a labor cost of $120 per airplane for each inspection;

—The inspection of the engine beams and canted bulkheads, as a result of damage to the tailpipes, will take approximately 3 workhours to accomplish, with a labor cost of $180 per airplane;

—The inspection of the fuel tubing behind the firewall, as a result of damage to the tailpipes, engine beams, and canted bulkheads, will take approximately 16 workhours to accomplish, with a labor cost of $960 per airplane;

—The replacement of the fuel tubing, if necessary, will take approximately 30 workhours to accomplish, with a labor cost of $1,800 per airplane;

—The requirement of removing exhaust system prior to shipping to an approved facility will take approximately 8 workhours, with a labor cost of $480 per airplane. The cost of shipping the exhaust system to the facility and the inspections by the facility is estimated at $500 per airplane;

—The repetitive pressure test is estimated to take 1 workhour, with a labor cost of $60 per airplane; and

—The multi-band V-clamp replacement is estimated to take 1 workhour, with a labor cost of $60 per airplane.

The total cost impact on the U.S. operators for the initial inspections is estimated to be $28,210,000, or $4,340 per airplane. The maximum expense for full exhaust parts replacement is estimated to be approximately $60,000 per airplane. These figures do not take into account the costs of any repetitive inspections or repairs or replacements that may be necessary. The FAA has no way of determining the number of repetitive inspections an owner/operator will incur over the life of the airplane, or the extent of the repairs and replacements that may be necessary for any affected airplane.

Compliance Time of This AD

Certain repetitive inspections of this AD are presented in both calendar time and hours time-in service (TIS). The unsafe condition specified in this AD is a result of the stress cracking and/or corrosion that results over time. Stress corrosion starts as a result of high local stress incurred through operation of the affected part (the exhaust systems). Corrosion can then develop regardless of whether the airplane is in operation. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations (while in-flight) or temperature changes (either while in-flight or on the ground) could then cause rapid crack growth. In order to assure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is utilized.

Regulatory Flexibility Analysis

The FAA believes that this regulation may have a significant economic impact on a substantial number of small businesses.

Due to the urgent nature of the safety issues addressed, the FAA was not able to complete a regulatory flexibility analysis prior to issuing the NPRM. As stated in the NPRM, the FAA will complete the final regulatory flexibility analysis within 180 days after issuance of this AD. Copies of this analysis may be obtained at that time at the Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–67–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

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) may have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 75–23–08 R5, Amendment 39–5451, and by adding a new AD to read as follows:

2000–01–16 Cessna Aircraft Company: Amendment 39 11514; [Docket No. 97–CE–67–AD].

Applicability: Models T310P, T310Q, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 321 (Navy OE–2),401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) 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 compliance table in Figure 1 of this AD, unless already accomplished. Compliance times of this AD may be extended 10-percent to work the actions in with already scheduled maintenance.

To detect and correct cracks and corrosion in the exhaust system, which could result in exhaust system failure and a possible uncontrollable in-flight fire with pilot and/or passenger injury, accomplish the following:

(a) The following paragraphs present the type of individuals who have the authority to accomplish the actions of this AD:

(1) *Repairs:* Required to be accomplished at an FAA-approved exhaust repair facility (or for non U.S.-registered airplanes: the state of registry's equivalent facility in accordance with their applicable procedure).

(2) *Replacements:* Required to be accomplished in accordance with the appropriate Cessna Service Manual and must be accomplished by a person holding a currently effective mechanic certificate with both an airframe and powerplant (A&P) rating or by an individual authorized to represent an FAA-approved repair station (or for non U.S.-registered airplanes: the state of registry's equivalent facility in accordance with their applicable procedure).

(3) *Visual inspections except for paragraph (g) of this AD:* Required to be accomplished by a person holding a currently effective mechanic certificate with both an airframe and powerplant (A&P) rating (or for non U.S.-registered airplanes: the state of registry's equivalent facility in accordance with their applicable procedure).

Note 2: Commercial certificate holders operating under part 121 or part 135 of the Federal Aviation Regulations (14 CFR part 121 or 14 CFR part 135) could have accomplished the actions of this AD if in compliance with an FAA-approved maintenance program. ''Unless already accomplished'' credit should be taken in these situations.

Note 3: Cessna service information and Maintenance Manual Revisions include assembly, disassembly, and general guidance information for the subject of this AD. These documents should not be utilized for repairs. This AD takes precedence over these documents.

Figure 1 of Docket No. 97-CE-67-AD
Compliance Table

Letters in ( ) correspond with AD paragraphs	(b)	(c)	(d)	(e)	(f)	(g)	Throughout the AD
Actions of Docket No. 97-CE-67-AD	*Visually inspect the exhaust system.*	*Remove the tailpipes and visually inspect for any crack, corrosion, holes, or distortion.*	*Visually inspect the outboard engine beams, firewalls, and canted bulkheads.*	*Inspect and pressure test the exhaust system.*	*Replace the multi-segment V-band clamps.*	*Remove the exhaust system from the slip joints aft to all turbo-charger components.*	*If any damage is found on any component or part, repair or replace the damaged component or part in accordance with this AD.*
Initial Compliance Time	Within the next 50 hours TIS after the effective date of this AD or within the next 30 calendar days, whichever occurs later.	Upon the accumulation of 5 years since installing a new or overhauled exhaust system or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Within the next 100 hours TIS after the effective date of this AD.	Upon the accumulation of 5 years since installing a new or overhauled exhaust system or within the next 100 hours TIS after the effective date of this AD, whichever occurs later.	Within 500 hours TIS after the last replacement required by AD 75-23-08 R5 or within the next 500 hours TIS after the effective date of this AD, whichever occurs first.	At whichever occurs later: - At the next engine overhaul that occurs after the accumulation of 2,500 hours TIS since installing a new or overhauled exhaust system; or - Within the next 100 hours TIS after the effective date of this AD.	Prior to further flight after damage is found.
Repetitive Compliance Times	Thereafter at intervals not to exceed 50 hours TIS or 30 calendar days, whichever occurs later.	Thereafter at intervals not to exceed 12 calendar months.	Thereafter at intervals not to exceed 500 hours TIS.	Thereafter at intervals not to exceed 12 calendar months.	Thereafter at intervals not to exceed 500 hours TIS.	Thereafter at intervals not to exceed 2,500 hours TIS or 12 years, whichever occurs first. These inspection intervals are established to coincide with each regularly scheduled engine overhaul.	Prior to further flight after damage is found.

(b) At the Initial Compliance Time and Repetitive Compliance Times specified in Figure 1 of this AD, visually inspect the exhaust system for burned areas, cracks, or looseness. If any area of the exhaust system shows damage as defined in the Appendix of this AD, prior to further flight, repair or replace the damaged part.

Note 4: Cessna Service Bulletin (SB) MEB99–6, Cessna SB MEB99–9, and Cessna SB MEB99–12, all dated August 2, 1999, specify and include procedures for installing access panels to help with the exhaust system inspections. Each service bulletin applies to various Cessna airplane models.

(c) At the Initial Compliance Time specified in Figure 1 of this AD, remove the tailpipes and visually inspect for cracks, corrosion, holes, or distortion.

(1) If no crack, corrosion, hole, or distortion is found, continue to visually inspect at intervals indicated in Repetitive Compliance Times in Figure 1 of this AD.

(2) If a crack, corrosion, hole, or distortion is found during any inspection, prior to further flight, repair or replace the tailpipe.

Note 5: Although not required by this AD, the FAA recommends removing and cleaning internally (every 12 calendar months) all

tailpipes that are more than 5 years old from the date of manufacture or overhaul (yellow tag). This includes accomplishing the following:

—inspecting for cracks, pinholes, corrosion buildup, and general airworthiness;

—overhauling the tailpipe or replacing all parts considered suspect; and

—approving for return to service of all parts considered airworthy.

Note 6: The FAA recommends checking the turbocharger wheel for ease of rotation any time the tailpipe is removed. Excessive friction in the turbocharger wheel bearings can cause high exhaust back pressure, which can adversely affect the cylinder compression, the exhaust valve guide, and the exhaust valve and piston life. The turbine wheel should continue to rotate for at least three seconds after spinning induced by fingers or a wooden tool.

Note 7: The FAA recommends examining the system to assure that cables and torque tag values are intact on the single-piece V-band clamps.

(d) At the Initial Compliance Time and Repetitive Compliance Times specified in Figure 1 of this AD, visually inspect the outboard engine beam (adjacent to the tailpipe) and the canted bulkheads for signs of distress, chafing, corrosion, or cracking. Even though some airplanes may have stainless steel engine beams, carefully inspect the areas of contact between the engine beam and canted bulkhead for corrosion.

(1) If damage to the engine beams is found that exceeds 10-percent of the material thickness or there is evidence of overheating on the firewall beyond that which can be removed with ''scotchbrite '' or equivalent, prior to further flight, replace the firewall and the aluminum fuel lines behind the firewall. Stainless steel fuel lines are available from the Cessna Aircraft Company. Replacement of the fuel lines behind the firewall may require removing and replacing the firewall or accomplishing major repair of the firewall.

(2) Prior to further flight, accomplish one of the following:

(i) Repair any chafing, corrosion, or cracking on the engine beams or canted bulkheads or distress or damage beyond that which is described in paragraph (d)(1) of this AD, in accordance with data provided by any individual or facility that is authorized by the FAA to perform the necessary repairs or provide the FAA approved data to authorized personnel for repair of these items; or

(ii) Replace any parts that have chafing, corrosion, or cracking on the engine beams or canted bulkheads, or distress or damage beyond that which is described in paragraph (d)(1) of this AD.

(e) At the Initial Compliance Time (which is based on the condition of the exhaust system at the slip joints and aft) and Repetitive Compliance Times specified in Figure 1 of this AD, inspect the exhaust system from the slip joints and aft and perform a pressure test in accordance with the Appendix of this AD. If any condition as specified in the Appendix of this AD is found, prior to further flight, send these parts to an FAA-approved exhaust repair facility for inspection and possible repair or replace the affected parts with serviceable parts approved for the affected airplanes.

(f) At the Initial Compliance Time and Repetitive Compliance Times specified in Figure 1 of this AD, replace all multi-segment V-band clamps per the appropriate Cessna Service Manual.

(g) At the Initial Compliance Time and Repetitive Compliance Times specified in Figure 1 of this AD, remove the exhaust system from the slip joints and aft to all turbo-charger attached components, and send to any FAA-approved exhaust repair facility. The FAA approved exhaust repair facility will inspect this portion of the exhaust system for serviceable condition and make any necessary repairs to these items. No overlay patch-type or parallel multi-seam weld repairs are permitted. Inlay patch repairs and multi-seam welds at joints that are similar to the original construction are acceptable.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Isolation of the fuel cross feed lines behind the firewall may be required.

(i) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(2) Alternative methods of compliance approved in accordance with AD 75–23–08 R5 are not considered approved as alternative methods of compliance for this AD.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(j) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(k) This amendment supersedes AD 75–23–08 R5, Amendment 39–5451.

Appendix to Docket No. 97–CE–67–AD

Visual Inspection

(a) Cleaning

In order to properly inspect the exhaust system, components must be clean and free of oil, grease, *etc.* If required, clean as follows:

(1) Clean engine exhaust components with a suitable solvent, allow to drain, and wipe dry with a clean cloth.

WARNING: Never use highly flammable solvents on engine exhaust systems. Never use a wire brush or abrasives to clean exhaust systems or mark on the system with lead pencils.

(2) Remove the heat shields from the turbocharger in accordance with the heat shield removal procedures in the appropriate Cessna Aircraft Service Manual.

(3) Remove shields around the exhaust bellows or slip joints, multi-segment ''V'' band clamps at joints, and other items that might hinder the inspection of the system. Removal of the ''V'' band clamps may not be necessary.

(4) Using crocus cloth, polish any suspect surfaces to verify that no cracks or pinholes exist in the material. Replace or repair any part where cracks or pinholes exist.

(b) Visual Inspection of Complete System

Note 1: Conduct this inspection when the engine is cool.

(1) Visually inspect exhaust stacks for burned areas, cracks, bulges, and looseness. Make sure the attach bolts are properly torqued, in accordance with the appropriate Cessna Aircraft Service Manual.

Note 2: During this inspection, pay special attention to the condition of the bellows, if installed, and welded areas along the seams; the welded areas around the bellows; and the welded seams around the exhaust system components.

(2) Visually inspect the flexible connection between the waste-gate and overboard duct (when applicable) for cracks and security.

(3) Visually inspect the exhaust joint springs for correct compression. If the joint is disturbed or if the springs are obviously loose or frozen, proceed with the following inspection (see Figure 1 of this Appendix).

(i) Before removal of the exhaust joint springs, measure the installed length of each spring, and replace the springs compressed to less than .45 inch.

(ii) Remove all the springs and measure the free length. Replace any spring having a free length of less than .57 inch.

Note 3: Add AN960–10 (or FAA-approved equivalent part number) washers under the head of the joint bolts as required to obtain the correct dimension. During installation, the joint bolts should be tightened gradually and spring length checked frequently to prevent overcompression of the springs.

(iii) Reinstall the springs and measure the installed length. The length must be .51 inch (+.00, −.03 inch).

(4) If installed, visually inspect the slip joint(s) for bulges beyond the normal manufacturing irregularities of .03 inches and/or cracks. If any bulges and/or cracks are present, replace the bulged or cracked slip joint(s). (Refer to the appropriate Cessna Aircraft Service Manual) (See Figure 2 of this Appendix).

(c) Inspection of the Multi-Segment ''V'' Band Clamp(s) (Between Engine and Turbocharger)

(1) Using crocus cloth, clean the outer band of the multi-segment ''V'' band clamp(s). Pay particular attention to the spot weld area on the clamp(s).

(2) With the clamp(s) properly torqued, progress to the following actions:

(i) Visually inspect the outer band in the area of the spot weld for cracks (see Figure

3 of this Appendix). If cracks are found, replace the clamp(s) with new multi-segment ''V'' band clamp(s).

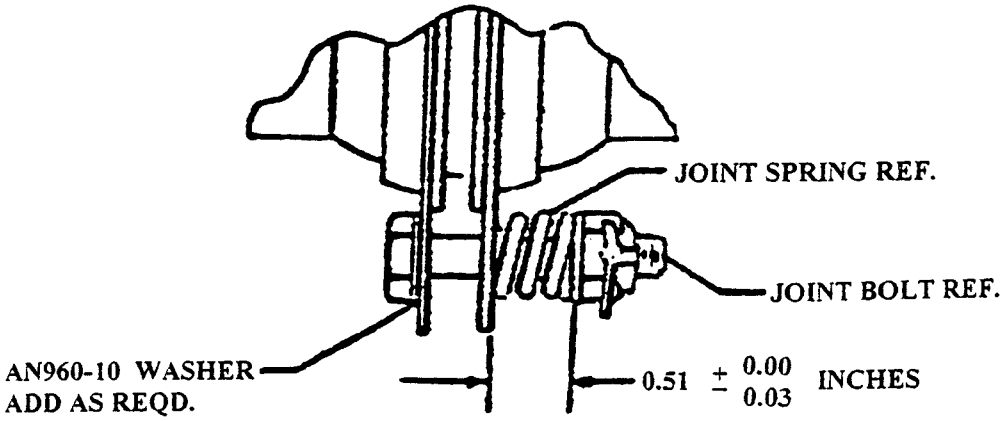
Appendix to Docket No. 97–CE–67–AD (continued)

(ii) Visually inspect the corner radii of the clamp inner segments for cracks (see Figure 3 of this Appendix). This inspection requires careful use of artificial light and inspection mirrors.

(iii) Visually inspect the flatness of the outer band, especially within 2 inches of the spot welded tabs that retain the T-bolt fastener. This can be done by placing a straight edge across the flat part of the outer band as shown in Figure 4 of this Appendix, then check the gap between the straight edge and the outer band. This gap should be less than 0.062 inch. If deformation exceeds the 0.062-inch limit, replace the clamp(s) with new multi-segment clamp(s). (See Figure 3 of this Appendix). See Cessna maintenance manual(s) and revisions for correct installation procedures.

(iv) Visually inspect the one-piece ''V'' band clamp (overboard exhaust to turbocharger) with a light and mirror, in the area of the clamp surfaces adjacent to the intersection of the ''V'' apex and bolt clips, and the entire length of the ''V'' apex of the clamp for signs of cracks or fractures. If cracks or fractures are visible, replace the clamp (see Figure 5 of this Appendix). See Cessna service manual(s) and revisions for correct installation procedures

Appendix to Docket No. 97-CE-67-AD (continued)



Typical Exhaust Joint Spring Installation

FIGURE 1 to the Appendix

Appendix to Docket No. 97-CE-67-AD (continued)

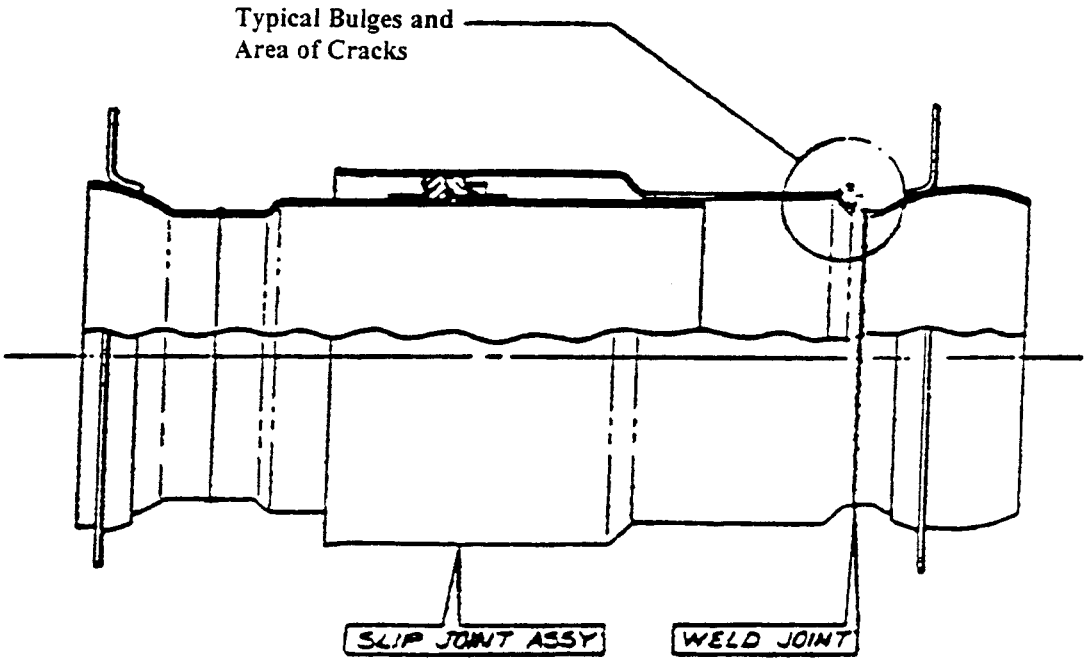
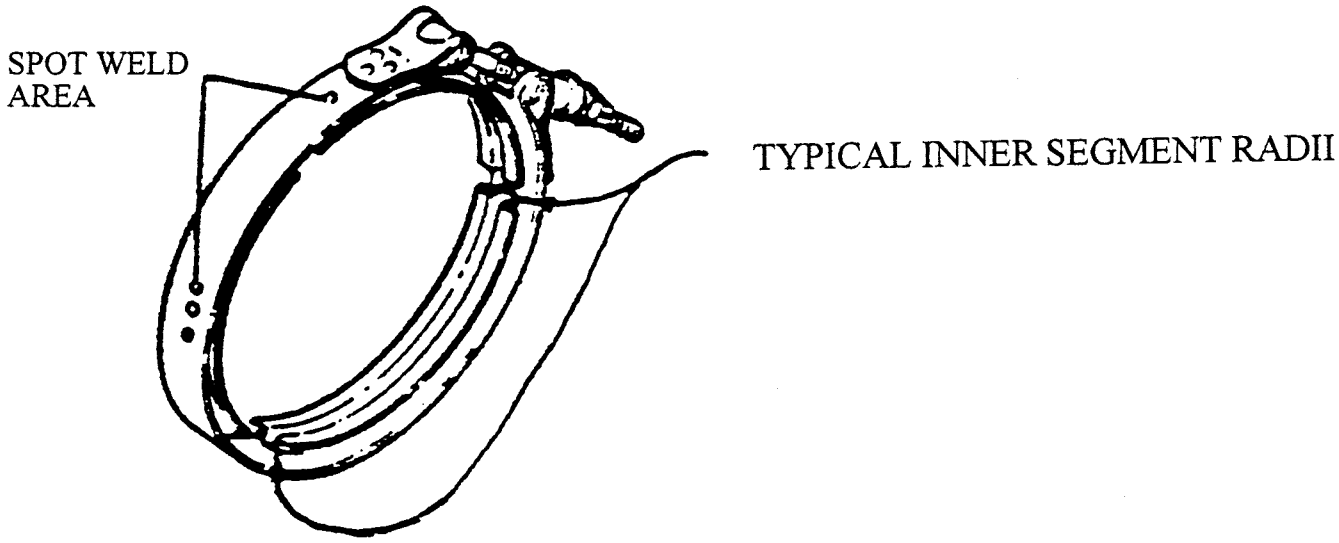


FIGURE 2 to the Appendix

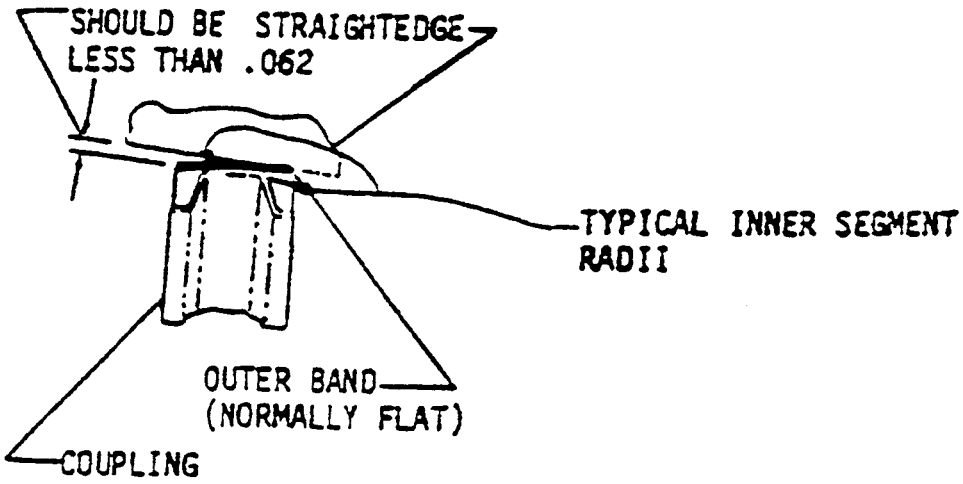
Appendix to Docket No. 97-CE-67-AD (continued)



Multi-Segment "V" Band Clamp

FIGURE 3 to the Appendix

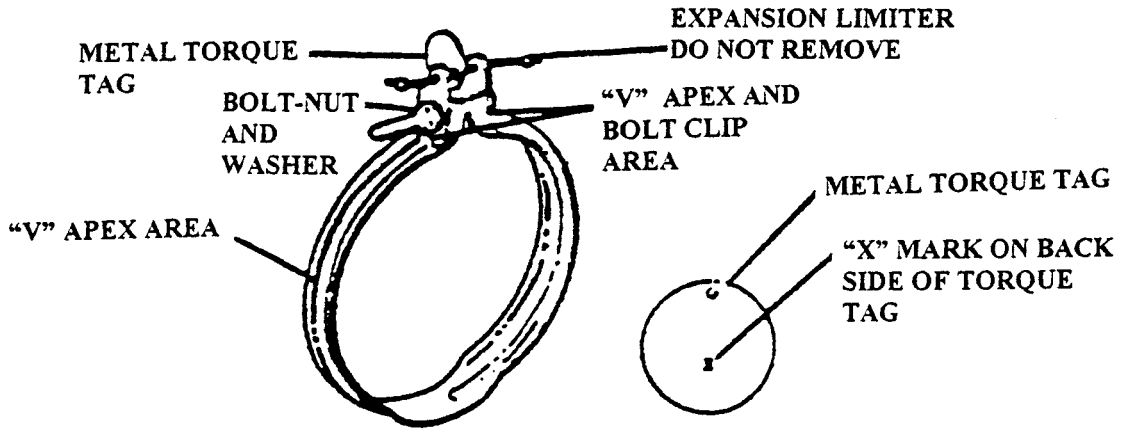
Appendix to Docket No. 97-CE-67-AD (continued)



Multi-Segment "V" Band Clamp Outer Band Flatness Check

FIGURE 4 to the Appendix

Appendix to Docket No. 97-CE-67-AD (continued)



One-Piece "V" Band Type Clamp

FIGURE 5 to the Appendix

Inspection of the Exhaust System Aft of the Slip Joints

(a) Remove all top and bottom engine cowlings, as well as the under-nacelle inspection panels (on aircraft so equipped). Remove the nacelle-mounted induction air filter canister, slip-joint heat shields, turbocharger heat shields, and any other readily-removable components that facilitate a better view of the exhaust system aft of the slip joints.

(b) Visually inspect each elbow pipe that runs from the slip joint to the wye duct. Carefully inspect the hard-to-see areas where the manifold passes through the canted bulkhead, beneath the clamp-on heat shields, and around the flange and V-band clamp, where it joins the wye. Use a flashlight and mirror to inspect the areas that cannot be seen directly.

(1) Look for evidence of exhaust stains, bulges, cracks, or pinholes.

(2) Exhaust stains or evidence of heat-induced corrosion on any portion of the engine mount beams or canted bulkhead should be grounds for removing the elbow pipe for closer inspection.

(3) Inspect for cracks, bulges, pinholes, or corrosion on the elbow (manifold) pipe, and if any of this damage is found, replace the elbow pipe.

(c) Visually inspect each wye duct beneath the turbocharger for leakage, stains, cracks, or pinholes, and, if damaged, repair or replace. Carefully inspect the hard-to-see area between the duct and firewall.

(1) Carefully inspect the turbocharger and waste-gate flanges and welded seams between the ducts and the firewall for evidence of exhaust stains on the wye or the firewall, bulges, cracks, or pinholes.

(2) If exhaust stains, bulges, cracks or pinholes are found, repair or replace the damaged part.

Pressure Test

(a) Pressurize the exhaust system with air regulated to 20 PSI or below.

(b) Apply this air pressure to the tailpipe. Fabricate shop fixtures as required to accomplish this.

(c) Seal off the waste-gate pipe.

(d) Check the tailpipe, elbow pipes and the wye duct for leaks by spraying leak check fluid (bubbling) on these parts and looking for the appearance of bubbles. Some air leakage is normal at the joints and flanges, but none should be seen anywhere else.

(e) Pay special attention to any weld repairs, and various hard-to-see areas described previously.

(f) If the tailpipes, elbow pipes, or the wye ducts fail the pressure test, repair or replace the distressed component.

(m) This amendment becomes effective on February 15, 2000.

Issued in Kansas City, Missouri, on January 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–951 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–209–AD; Amendment 39–11515; AD 2000–01–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90 series airplanes, that requires a one-time detailed visual inspection to detect fatigue cracking of certain longerons and the attaching frames of the lower left nose; and repair, if necessary. This amendment also requires installation of a preventive modification. This amendment is prompted by several reports of fatigue cracking of certain longerons and the attaching frames. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane.

DATES: Effective February 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carl Fountain, Aerospace Engineer, Airframe Branch, ANM–120L; FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90 series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57789). That action proposed to require a one-time detailed visual inspection to detect fatigue cracking of certain longerons and the attaching frames of the lower left nose; and repair, if necessary. That action also proposed to require installation of a preventive modification.

Comments

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

The commenter states that it has no objection to the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 7 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $360, or $60 per airplane.

It will take approximately 6 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Parts will cost approximately $312 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $4,032, or $672 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–01–17 McDonnell Douglas: Amendment 39–11515. Docket 99–NM–209–AD.

Applicability: Model MD–90 series airplanes, as listed in McDonnell Douglas Service Bulletin MD90–53–004, dated August 20, 1998, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of longerons 22 through 26 and the attaching frames, which could result in reduced structural integrity of the fuselage, and consequent loss of pressurization of the airplane, accomplish the following:

Inspection and Modification

(a) Prior to the accumulation of 40,000 total landings, or within 24 months after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking of longerons 22 through 26 (inclusive) and the respective attaching frames at station frames Y=160.000 and Y=200.000 of the left lower nose, in accordance with McDonnell Douglas Service Bulletin MD90–53–004, dated August 20, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is detected: Prior to further flight, install clips and doublers under the longeron flanges and shim the longerons in accordance with the service bulletin.

(2) If any cracking is detected: Prior to further flight, repair the cracks and install clips and doublers under the longeron flanges and shim the longerons in accordance with the service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Service

Bulletin MD90–53–004, dated August 20, 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 23, 2000.

Issued in Renton, Washington, on January 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–950 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–217–AD; Amendment 39–11516; AD 2000–01–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires a one-time eddy current conductivity test to determine the material type of the lower cap of the wing front spar; and modification of the lower cap of the wing front spar, if necessary. This amendment is prompted by reports of stress corrosion cracking in the forward tang of the lower caps of the wing front spar. The actions specified by this AD are intended to prevent such stress corrosion cracking, which if not corrected, could result in reduced structural integrity of the wing.

DATES: Effective February 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg DiLibero, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on October 27, 1999 (64 FR 57792). That action proposed to require a one-time eddy current conductivity test to determine the material type of the lower cap of the wing front spar; and modification of the lower cap of the wing front spar, if necessary.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 294 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $45,180, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–01–18 McDonnell Douglas: Amendment 39–11516. Docket 99–NM–21–AD.

Applicability: Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–030, Revision 05, dated April 28, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) 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 stress corrosion cracking of the lower cap of the wing front spar, which if not corrected, could result in reduced structural integrity of the wing, accomplish the following:

(a) Within 48 months after the effective date of this AD, perform a one-time eddy current conductivity test to determine the material type of the forward tang of the lower cap of the front spar in the center section of the wing, in accordance with McDonnell Douglas Service Bulletin DC8–57–030, Revision 05, dated April 28, 1998, or Revision 04, dated August 17, 1995.

(1) If 7079–T6 aluminum is not found, no further action is required by this AD.

(2) If any 7079–T6 aluminum is found, within 48 months after the effective date of this AD, modify the forward tang of the lower cap of the front spar, in accordance with the service bulletin.

(b) Accomplishment of the eddy current conductivity test, and modification, if necessary, specified in paragraph (a) of this AD constitutes terminating action for the repetitive inspection requirements of paragraph (a) of AD 90–16–05, amendment 39–6614, as it applies to the inspections of the forward tang of the lower cap of the front spar specified in McDonnell Douglas Service Bulletin DC8–57–030, Revision 3, dated December 10, 1970.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin DC8–57–030, Revision 05, dated April 28, 1998, or McDonnell Douglas Service Bulletin DC8–57–030, Revision 04, dated August 17, 1995. 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 23, 2000.

Issued in Renton, Washington, on January 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–1119 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–47–AD; Amendment 39–11511; AD 2000–01–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT9D series turbofan engines, that currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action adds additional critical life-limited parts for enhanced inspection. This amendment is prompted by additional focused inspection procedures for other critical life-limited rotating engine parts that have been developed by the manufacturer. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective February 23, 2000.

ADDRESSES: The information referenced in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238–7134, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding (AD) 99–08–12, Amendment 39–11118 (64 FR 17954, April 13, 1999), that is applicable to Pratt & Whitney (PW) JT9D series turbofan engine was published in the **Federal Register** on August 16, 1999 (64 FR 44446). That action proposed to require revisions to the Time Limits section in the Engine Manual (EM) for certain Pratt & Whitney (PW) JT9D series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed by PW.

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

Both commenters suggest having the same format for the two tables in the AD. One also suggests using the term ''all'' rather than individual part numbers to simplify recordkeeping tasks for the operators. The FAA concurs with their suggestions, and has combined the two tables into one and substituted the word ''all'' rather than using specific part numbers. .

No comments were received on the economic analysis contained in the proposed rules. Based on that analysis, the FAA has determined that the annual per engine cost of $60 does not create a significant economic impact on small entities.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11118 (63 FR 40220, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

AD 2000–01–13 Pratt & Whitney: Amendment 39–11511 Docket No. 98–ANE–47–AD. Supersedes AD 99–08–12, Amendment 39–11118.

Applicability:

Pratt & Whitney (PW) JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines, installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus Industrie A300 and A310 airplanes.

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

Compliance: Required as indicated, unless accomplished previously. For all the fan hubs and HPT disks listed in the following tables, the focused inspections should shall be conducted per the applicable documents.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 35 days after the effective date of this AD, revise the Engine Time Limits Section (TLS) of the Engine Manual (EM), JT9D Part Numbers 646028, 754459, 770407, 770408, 777210, 785058, 785059, 789328, as indicated below, and for air carrier operations revise as appropriate the approved continuous airworthiness maintenance program, by adding the following: ''MANDATORY INSPECTIONS''

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Engine mode	Part Nomenclature	Engine Manual Part Number	FPI per Manual Section	Inspection
7/7A/7AH/7F, 7H/7J/20/20J	All Fan Hubs	646028 (or the equivalent customized versions, 770407 and 770408).	72–31–04	02
7/7A/7AH/7F, 7H/7J/20J	All HPT 1st Disks	646028 (or the equivalent customized versions, 770407 and 770408).	72–51–02	01
7/7A/7AH/7F, 7H/7J/20J	All HPT 2nd Disks	646028 (or the equivalent customized versions, 770407 and 770408).	72–51–02	03
59A/70A	All fan hubs	754459	72–31–00	Heavy maintenance check
59A/70A	All HPT 1st disks	754459	72–51–02	Heavy maintenance check
59A/70A	All HPT 2nd disks	754459	72–51–02	Heavy maintenance check
7Q/7Q3	All fan hubs	777210	72–31–00	03
7Q/7Q3	All HPT 1st disks	777210	72–31–06	01
7Q/7Q3	All HPT 2nd disks	777210	72–31–07	01
7R4	All fan hubs	785058, 785059 and 789328	72–31–02	03
7R4	All HPT 1st disks	785058, 785059 and 789328	72–51–01	01
7R4	All HPT 2nd disks	785058, 785059 and 789328	72–51–01	01

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS of the manufacturer's ICA.

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

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

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

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) must maintain records of the mandatory inspections that result from revising the Time Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

(f) This amendment becomes effective on February 23, 2000.

Issued in Burlington, Massachusetts, on January 6, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–1193 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

RIN 2700–AC38

Inspection of Persons and Personal Effects on NASA Property

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA is amending 14 CFR part 1204 by revising Subpart 10, ''Inspection of Persons and Personal Effects on NASA Property.'' This revision updates the subpart consistent with current Federal policy and NASA practice. It prohibits certain conduct on NASA installations. Accordingly, Subpart 10 of 14 CFR part 1204 has also been retitled, ''Conduct or Trespass, and Inspection of Persons and Personal Effects.''

DATES: *Effective Date:* This rule is effective May 18, 2000.

Comment Date: Comments due on or before March 20, 2000.

ADDRESSES: Send comments to NASA Security Management Office, Code JS, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mark R.J. Borsi, 202–358–2457.

SUPPLEMENTARY INFORMATION: This action revises Subpart 10 of 14 CFR part 1204 to update the regulation consistent with current Federal policy and Agency practice. The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12866.

List of Subjects in 14 CFR Part 1204

Conduct, Federal buildings or property (including real estate), Government contractors, Government employees or personnel, Inspections, Installations, Security, Trespass, Weapons.

For reasons set out in the Preamble, 14 CFR part 1204 is amended as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

1. 14 CFR part 1204, subpart 10 is revised to read as follows:

Subpart 10—Conduct or Trespass, and Inspection of Persons and Personal Effects

Sec.

1204.1000 Scope of subpart.
1204.1001 Policy.
1204.1002 Responsibility.
1204.1003 Procedures.
1204.1004 Trespass.
1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.
1204.1006 Violations.

Subpart 10—Conduct or Trespass, and Inspection of Persons and Personal Effects

Authority: 42 U.S.C. 2455.

§ 1204.1000 Scope of subpart.

This subpart establishes NASA policy and prescribes minimum procedures concerning the inspection of persons and property in their possession while entering, or on, or exiting NASA real property or installations (including NASA Headquarters, Centers, or Component Facilities). In addition, it prohibits unauthorized entry and proscribes conduct at any NASA installation.

§ 1204.1001 Policy.

In the interest of national security, NASA will provide appropriate and adequate protection or security for personnel, property, installations (including NASA Headquarters, Centers, and Component Facilities), and information in its possession or custody. In furtherance of this policy, NASA reserves the right to conduct an inspection of any person, including any property in the person's possession or control, as a condition of admission to, continued presence on, or exiting from, any NASA installation.

§ 1204.1002 Responsibility.

The NASA Center Directors and the Associate Administrator for Headquarters Operations are responsible for implementing the provisions of this subpart. In implementing this subpart, these officials will coordinate their action with appropriate officials of other affected agencies.

§ 1204.1003 Procedures.

(a) All entrances to NASA real property or installations (including NASA Headquarters, Centers, or Component Facilities) will be conspicuously posted with the following notice:

> Entry into, continued presence on, or exiting from, this real property, facility, or installation is contigent upon your consent to inspection of your person, and property in your possession or under your control.
>
> Unauthorized carrying, transporting, or otherwise introducing or causing to be introduced, or using firearms or other dangerous weapons, explosives or other incendiary devices, or other dangerous instrument, substance, or material likely to produce substantial injury or damage to persons or property, into or upon this real property, facility, or installation, is prohibited.

(b) Only NASA security personnel or members of the installation's uniformed security force will conduct inspections pursuant to this subpart. Such inspections will be conducted in accordance with guidelines established by the Director, Security Management Office, NASA Headquarters.

(c) If an individual does not consent to an inspection, it will not be conducted, but the individual will be denied admission to, or be escorted off the installation.

(d) If, during an inspection, an individual is found to be in unauthorized possession of items believed to represent a threat to the safety or security of the installation, the individual will be denied admission to or be escorted off the installation, and appropriate law enforcement authorities will be notified immediately.

(e) If, during an inspection conducted pursuant to this subpart, an individual is in possession of U.S. Government property without proper authorization, that person will be required to relinquish the property to the security representative pending proper authorization for the possession of the property or its removal from the installation. The individual relinquishing the property will be provided with a receipt for the property.

§ 1204.1004 Trespass.

Unauthorized entry upon any NASA real property or installation is prohibited.

§ 1204.1005 Unauthorized introduction of firearms or weapons, explosives, or other dangerous materials.

(a) The unauthorized carrying, transporting, or otherwise introducing or causing to be introduced, or using firearms or other dangerous weapons, explosives or other incendiary devices, or other dangerous instrument, substance, or material likely to produce substantial injury or damage to persons or property, into or upon NASA real property, facility, or installation, is prohibited.

(b) paragraph (a) of this section shall not apply to:

(1) The lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, or NASA contractor, who is authorized to carry firearms or other material covered by paragrapy (a) of this section.

(2) The lawful carrying of firearms or other dangerous weapons at or on a NASA installation after written prior approval has been obtained from the installation Security Office in connection with sanctioned hunting, range practice, or other lawful purpose.

§ 1204.1006 Violations.

We will enforce violation as provided in Title 18 United States Code (U.S.C), Section 799 which states that whoever willfully shall violate, attempt to violate, or conspire to violate any regulation or order promulgated by the Administrator of the National Aeronautics and Space Administration for the protection or security of any laboratory, station, base, or other facility, or part thereof, or any aircraft, missile, spacecraft, or similar vehicle, or part thereof, or other property or equipment in the custody of the Administration [NASA], or any real or personal property or equipment in the custody of any contractor under any contract with the Administration or any subcontractor of any such contractor, shall be fined under this title [Title 18],

or imprisoned not more than one year, or both.

Daniel S. Goldin,

Administrator.

[FR Doc. 00–1126 Filed 1–18–00; 8:45 am]

BILLING CODE 7510–01–P

FEDERAL TRADE COMMISSION

16 CFR PART 256

Rescission of Guides for the Law Book Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: On March 18, 1999, the Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's (''Commission'') Guides for the Law Book Industry (''Law Book Guides'' or ''Guides'') and seeking public comment. The Commission has now completed its review, and this document announces its decision to rescind the Guides and removes the Guides from the Code of Federal Regulations.

EFFECTIVE DATE: January 19, 2000.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The notice is available on the Internet at the Commission's website, *http://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez, Attorney, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue NW, S–4302, Washington, DC 20580, (202) 326–3147, e-mail Erodriguez@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of the Commission's ongoing review of all current Commission rules and guides, the Commission published a **Federal Register** notice on March 18, 1999, 64 FR 13369, seeking comments about the Law Book Guides' overall costs and benefits, and the continuing need for the Guides. The Law Book Guides contain 17 sections that provide guidance regarding the sale of legal reference materials to the legal profession, law schools, and other consumers. The 17 sections cover practices ranging from the marketing of legal reference materials to consumers, to the supplementation of these materials, and billing practices employed by sellers, and specify detailed disclosures that should be made in direct mail promotional materials and oral representations soliciting the sale of legal reference materials.

The Commission issued the Guides in 1975, 40 FR 33436, to assist the legal publication industry with compliance with section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45. The Commission issued the Guides following consideration of public comments submitted in response to a request from purchasers and their representatives, such as the American Association of Law Libraries. Earlier, Raymond M. Taylor, then Librarian for the North Carolina Supreme Court, had published an article detailing alleged abuses in the legal publishing industry.[1] These abuses include practices such as putting new titles and new binders on old material, misrepresenting that certain publications are ''new'' or ''revised or enlarged,'' misrepresenting the jurisdictional application of publications, adding remotely related books to established sets to assure their automatic sale, failing to disclose prices, failing to issue supplements for publications that otherwise soon would become obsolete. The article suggested, among other things, that the Commission should prescribe appropriate practices that industry should follow in the publication, advertising, and sale of legal publications.

II. Comments Received

The Commission received five comments in response to the **Federal Register** notice.[2] All of the comments state that the Guides serve a useful purpose and that there is a continuing need for them. Four comments assert that there continue to be abuses or other problems in the legal publications industry,[3] such as failing to disclose in advertisements the manner in which electronic versions of legal reference materials vary from their print counterparts,[4] failing to disclose prices in advertisements,[5] or sending and billing customers for materials only remotely related to what they have purchased.[6] DeVaun states that mergers in the legal publishing industry have caused the accuracy of information provided by legal publishers' customer service personnel to suffer. Several comments suggest that the Commission adopt revisions to the Guides to recognize certain current market practices, including the distribution and licensing of electronic legal resources (*e.g.,* those provided on CD–ROM or by other electronic means).

III. Commission's Determinations

After extensive review of the Guides and their effect on the legal reference industry and purchasers of legal reference materials, the Commission has decided that the Guides no longer are necessary to promote compliance with section 5 of the FTC Act. For the reasons set forth below, the Commission has determined to rescind the Guides.

First, the Guides are overly regulatory in that they include significantly more detail regarding suggested disclosures and other practices than the Commission would promulgate today. Further, repealing the Guides would not impair the Commission's ability to prosecute abuses in the legal reference materials industry, if necessary. Under the FTC Act the Commission may seek administrative or federal district court orders against companies or individuals who engage in unfair or deceptive practices,[7]prohibiting future violations, and providing other relief such as consumer redress, disgorgement of ill-gotten gains, consumer notification, and civil penalties, in some cases. The Commission, for example, could prosecute sellers who failed to clearly and conspicuously disclose material information or sent or billed customers for unordered materials. Such practices would violate section 5 of the FTC Act, or section 3009(a) of the Postal Reorganization Act of 1970, 39 U.S.C. 3009, which declares that mailing, or

[1] Raymond M. Taylor, *Law Book Consumers Need Protection,* 55 A.B.A.J. 553 (1969).

[2] The Commission's request for public comment elicited comments from: (1) Linda DeVaun, Technical Services Librarian for Sonnenschein, Nath & Rosenthal, Chicago, IL (''DeVaun''), #00001; (2) Robert L. Oakley, Washington Affairs Representative, American Association of Law Libraries (Mr. Oakley is also director of the law library and professor of law at the Georgetown University Law Center) (''AALL''), #00002; (3) Carl C. Monk, Executive Director, Association of American Law Schools (''AALS''), #00003; (4) Lorna Tang, University of Chicago Law Library (''Tang''), #00004; and (5) Kenneth H. Ryesky, attorney and adjunct professor of law (''Ryesky''), #00005. these comments are on the public record in file number P994243 as document numbers B25345900001 through B25346100005. They are cited in this notice as #00001, #00002, etc. The comments are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, from 8:30 am to 5 pm, Monday–Friday.

[3] DeVaun, #00001; ALL, #00002; Tang, #00004; Ryesky, #00005.

[4] DeVaun, #00001.

[5] AALL, #00002, at 7.

[6] Tang, #00004.

[7] *See* Federal Trade commission Policy Statement on Deception, *appended to Cliffdale Associates, Inc.,* 103 F.T.C. 110, 174–184 (1984); and Federal Trade Commission Policy Statement on Unfairness, *appended to International Harvester Co.,* 104 F.T.C. 949, 1070–76 (1984).

billing for, unordered merchandise constitutes a violation of section 5 of the FTC Act.[8] Prior cases brought by the Commission to enforce the Postal Reorganization Act and Section 5 of the FTC Act provide guidance to industry regarding the illegality of sending and attempting to collect for unordered merchandise.[9]

Second, guides are particularly useful when they resolve uncertainty over what claims are likely to be considered ''unfair or deceptive'' under Section 5. Several of the provisions in Guides, however, do little more than advise against making untrue or deceptive claims, or failing to disclose material information where silence would be deceptive.

Moreover, the Commission understands from the comments that the industry is quickly evolving into electronic media and increasingly using licensing techniques to distribute legal publications, which present new technological and intellectual property issues for consideration. Thus, although the Guides provide overly detailed suggestions regarding presale disclosures, they are so narrowly focused that they do not include these or other new and perhaps more important areas of concern to sellers and purchasers.

Third, there appears to be no justification for singling out this particular industry for unusually detailed and specific advice, or why legal reference material purchasers are in greater need of protection than purchasers in other industries. Industry associations, or purchaser associations such as AALL or AALS, can adopt guides of their own to educate sellers and purchasers about the information purchasers of legal reference materials need to make purchasing decisions. Indeed, eliminating the Guides may provide the incentive for these associations to develop their own guides that address their members' most important concerns.

Based on comments, the Commission has concluded that there no longer is a need for the Guides. The Commission, therefore, has rescinded the Guides.

List of Subjects in 16 CFR Part 256

Advertising, Law, Trade practices.

PART 256—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 256.

By direction of the Ccommission.

Donald S. Clark,

Secretary.

[FR Doc. 00–994 Filed 1–18–00; 8:45 am]

BILLING CODE 6750–01–M

[8] *See* 35 FR 14328 (1970). Under this law, sellers, other than charitable organizations soliciting contributions, may not ship unordered merchandise to consumers unless the recipient has expressly agreed to receive it or unless it is clearly identified as a gift, free sample, or the like. In addition, sellers cannot try to obtain payment for or the return of the unordered merchandise. Consumers who receive unordered merchandise are legally entitled to treat the merchandise as a gift. The Postal Reorganization Act refers to ''mailing'' of unordered merchandise. The Commission, however, has explained that the application of Section 5 of the FTC Act to such practices is not limited to unordered merchandise distributed through the U.S. mail, 43 FR 4113 (1978).

[9] *E.g., Hachette Book Group USA, Inc.,* No. 39CV00116 (D. Conn. 1994) (settlement in which FTC charged that defendants failed to notify consumers that they would receive yearbooks or supplements unless they returned a mail cancellation card, failed to obtain consumers' agreement to return cancellation coards if they did not want the merchandise, and mailed merchandise and bills to consumers who had not placed orders; settlement included a $200,000 civil penalty); *Field Publications Ltd. Partnership,* No. H–90–932 PCD (D. Conn. 1990) (settlement in which FTC charged that Field shipped unordered books to subscribers who had agreed to receive another series of books as part of a continuity plan; settlement included a $175,000 civil penalty); *Standard Reference Library, Inc.* 77 F.T.C. 969, 976 (1970) (consent order prohibited respondents from representing that consumers' failure to return rejection cards or take any affirmative action to prevent the shipment of merchandise constituted a request to receive merchandise where consumers had not agreed to take on that obligation).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 00–4]

RIN 1515–AC29

Boarding of Vessels in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document, as a primary focus, amends the Customs Regulations regarding the boarding of vessels arriving in ports of the United States. These amendments are made to implement amendments to the underlying statutory authority enacted as part of the Customs Modernization Act, as well as to reflect policy determinations necessitated as a result of those amendments. To this same end, certain general amendments are made to the regulations concerning vessel entry and clearance as well as the issuance of permits to lade and unlade merchandise.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT: Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202–927–1287.

Operational aspects: Robert Watt, Office of Field Operations, 202–927–3654.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182), Title VI of which is popularly known as the Customs Modernization Act (the Act). Sections 653 and 656 of the Act significantly amended the statutes governing the entry and the lading and unlading of vessels in the United States. These operations are governed, respectively, by sections 434 and 448 of the Tariff Act of 1930, as amended (19 U.S.C. 1434 and 1448).

Prior to the subject amendments, the entry of vessels of the United States and vessels of foreign countries had been governed by separate statutes (19 U.S.C. 1434 and 1435), neither of which included elements concerning preliminary vessel entry or the boarding of vessels. The Act repealed 19 U.S.C. 1435 and amended 19 U.S.C. 1434 to provide for the entry of American and foreign-documented vessels under the same statute. Additionally, the amended 19 U.S.C. 1434 now provides authority for the promulgation of regulations regarding preliminary vessel entry, and while neither mandating boarding for all vessels nor specifying that optional boarding must be accomplished at any particular stage of the vessel entry process, the amended law does require that a sufficient number of vessels be boarded to ensure compliance with the laws enforced by the Customs Service.

The general authority provided for Customs to board vessels is found in section 581, Tariff Act of 1930, as amended (19 U.S.C. 1581). Prior to amendment, 19 U.S.C. 1448 as previously cited had linked the granting of preliminary vessel entry to a mandatory boarding requirement and physical presentation of manifest documents to a Customs boarding officer. The amended 19 U.S.C. 1448 no longer contains provisions regarding preliminary vessel entry, vessel boarding, or manifest presentation, all of which are now provided for in other statutes. The statute now provides that Customs may electronically issue permits to lade or unlade merchandise

pursuant to an authorized data interchange system, as an alternative to physical document presentation.

Accordingly, on July 6, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 36379) soliciting comments to amend the Customs Regulations in order to properly implement the foregoing statutory amendments, as well as certain other statutory changes and revised Customs interpretations, governing the boarding of vessels arriving in ports of the United States, vessel entry and clearance, and the issuance of permits to lade and unlade merchandise. The specific Customs Regulations affected were §§ 4.1, 4.3, 4.8, 4.9, 4.16, 4.30, 4.60, 4.61, 4.68 and 4.70 (19 CFR 4.1, 4.3, 4.8, 4.9, 4.16, 4.30, 4.60, 4.61, 4.68 and 4.70).

Discussion of Comments

Nine comments were received in response to the notice of proposed rulemaking. There were two comments received from representatives of Federal Government agencies, four from trade associations representing vessel owners and operators, one from a vessel operating company, one from an interested individual, and one from a Member of Congress. A discussion of the comments follows.

Comment

Three commenters suggested, in connection with proposed § 4.1, that Customs board every vessel arriving in a United States port, whether directly from a foreign location or pursuant to a permit to proceed from another domestic port. Each of the commenters believes that Customs has been boarding and searching every vessel and that ceasing the practice would compromise our enforcement mission.

Customs Response

Customs has never boarded and searched every vessel, which presently number approximately 95,000 arrivals a year. Confusion concerning this matter could be the result of certain procedures which were followed regarding vessel arrivals. Prior to the most recent amendments, statute and regulations required every vessel to be boarded by Customs for the purpose of receiving a vessel's cargo declaration, and Customs Form 1300 (Master's Oath of Vessel in Foreign Trade). Once Customs received the named documents, preliminary entry was granted that would permit the vessel to unlade prior to completing formal entry. Customs might also have performed formal entry on board a vessel. Neither procedure entailed a search of a vessel nor an examination of cargo. Both procedures were ministerial acts involving the routine review of documents and the collection of fees.

At the time, the outlined procedures were important aspects of the Customs enforcement mission since there was no alternative means to obtain a vessel's cargo declaration. Customs needs cargo declarations, in part, to ensure that importers make proper entry of each shipment of goods aboard a vessel. With the advent of advanced technology including automation, facsimile transmission, and express delivery service, Customs now regularly requires submission of cargo declarations in advance of vessel arrival for prescreening enforcement purposes.

The present amendments are replacing the outdated procedures outlined above, which were resource intensive and lacked significant enforcement results. Resources conserved by eliminating the prior boarding policy will enable Customs to allocate more toward doing meaningful comprehensive boardings with examination of high risk vessels and cargoes.

Comment

Four commenters expressed the opinion that allowing only 24 hours following arrival to make formal entry, as set forth in proposed § 4.3, was restrictive and unnecessary.

Customs Response

Customs agrees with this comment and will retain the current 48-hour time limit to make formal entry in § 4.3(a).

Comment

With reference to proposed § 4.3, two commenters expressed concern about potentially being charged both ''expenses incurred,'' meaning reimbursable expenses, and Commercial Vessel User Fees in connection with a single vessel arrival.

Customs Response

The phrase ''expenses incurred,'' found in § 4.3(b)(2), as proposed, is stated in the context of a port director allowing the provision of services outside the limits of a port of entry. Current user fee law under 19 U.S.C. 58c(a)(1) and 19 U.S.C. 58c(c)(2) requires the collection of user fees to cover costs of services provided to vessels which arrive at a port of entry. Any services provided outside of a port of entry are considered extraordinary and involve expending resources beyond those expected to be recovered through user fee collections (19 CFR 24.17). Therefore, Customs may collect both user fees and other expenses during a calendar year if services are requested both within and outside of port boundaries. It may even be necessary to collect both fees during the same voyage if a vessel requests services outside of the limits of a port and then moves inside the port limits to unlade or request additional services such as vessel clearance.

Comment

Two commenters expressed concern with the prescribed time periods allowed for presentation of necessary documents for preliminary entry, and stated that if the time periods are not met, parties would have to request formal entry on board vessels at time of arrival in order to avoid delays in the unlading of cargoes. Concern was expressed here with reference to the discretionary authority vested in port directors to deny requests for formal entry aboard a vessel at time of arrival. The discretion is expressed in proposed § 4.3(b)(2), which would allow port directors to take local resources into consideration when determining whether to allow formal entry of a vessel at a place other than the customhouse. The vessel operating public has become accustomed to the routine meeting of vessels upon arrival and may consider that any reduction in this service will cause unnecessary delays. One of the commenters suggested that the current entry procedures around the country work well and should not be changed.

Customs Response

It is necessary to first address the current procedures employed around the country regarding vessel entry. Those procedures caused Customs to review the entire vessel entry process. There is a substantial lack of uniformity around the country when it comes to the entry of vessels. At many locations, it is the rare circumstance where Customs performs formal entry aboard a vessel while at other locations formal entry is performed aboard nearly every vessel which arrives in port.

In addition, the procedures for granting preliminary entry vary widely. At many locations preliminary entry is granted merely by submitting a CF 3171 and reporting arrival. At other locations, an inspector has to board a vessel and receive those documents required by § 4.7. We have designed the new policy to create more uniformity. With the new procedures at all Customs locations, except in those instances where Customs boards a vessel for compliance or enforcement reasons, if a vessel operator can supply required documentation within prescribed time

limits the vessel will obtain permission to unlade upon arrival without the requirement that an inspector board the vessel. Evidence suggests that most vessels currently present required documents within prescribed time limits. Once preliminary entry is granted the 48-hour entry period will allow ample opportunity for a vessel operator to come into the customhouse to conduct formal entry.

There may be circumstances when the Customs office is closed and a vessel operator cannot provide the CF 3171 or CF 1302 within the prescribed times in order to obtain preliminary entry. In such cases, the port director has the discretion to perform formal entry not only aboard vessels at time of arrival, but at other locations and outside of normal business hours. This might be accomplished by assigning a Customs employee outside normal business hours to locations near places of arrival. Vessel operators might then come to that location in order to obtain formal entry. To the extent possible, ports will attempt to accommodate legitimate needs to allow entry outside of normal business hours.

Comment

A separate concern was also expressed in connection with proposed § 4.3(b)(2) about a port director's discretion to permit vessel entry at places other than the customhouse including locations outside actual port limits. The commenter states that the regulation as written gives the public and the maritime industry the false impression that Customs entry outside the designated port of entry relieves them of other federal agency clearance requirements. The commenter believes that the proposed procedures could lead parties to either unwittingly or intentionally avoid the clearance requirements of other federal agencies.

Customs Response

The proposed regulation was written to formalize a practice which had become standard at many Customs port locations. Customs currently permits the procedure because many locations where vessels unlade cargo happen to be outside the boundaries of ports of entry. To deny entry and unlading at such locations could unduly burden commerce. Customs does recognize the legitimate missions fulfilled by other federal agencies, and our final regulations make it clear that we are not supplanting the roles of those other entities. The United States Immigration and Naturalization Service (INS), as well as the United States Department of Agriculture's Animal Plant Health Inspection Service (APHIS), and Plant Protection and Quarantine (PPQ) are notable examples of such entities. Accordingly, we are amending the language as proposed in § 4.3(b)(2) to make it clear that fulfillment of Customs requirements does not relieve parties of complying with requirements which are enforced by other agencies.

Comment

Three commenters expressed concern about the requirement in proposed § 4.8 that a complete manifest, as prescribed in § 4.7, be presented in order to obtain a grant of preliminary entry at the time of or subsequent to vessel arrival. Concern was also expressed that the same section requires the submission of Customs Form 3171 and the CF 1302, or their electronic equivalent, 48 hours in advance in order to obtain a grant of preliminary entry prior to vessel arrival. For vessels on voyages shorter than two days, submission is allowed at any time prior to arrival in order to receive preliminary entry in advance of arrival. It is the opinion of the commenters that vessel operators may not always have required information available within the prescribed time limitations.

Customs Response

With respect to the requirement that a complete manifest be available in connection with granting preliminary entry at or subsequent to arrival, it must be pointed out that § 4.7 currently requires that every arriving vessel have on board a complete manifest. A complete manifest includes such documents as the crew list, ships store's list, passenger list, cargo declaration, and crew effect's list. Since these documents have been and continue to be required, no additional burden is placed upon vessel operators if preliminary entry is conditioned upon presentation of these documents to Customs. Further, the submission of these documents allows Customs to combine preliminary and formal entry, and many ports have been combining preliminary and formal entry which would entail presentation of all of the named documents. There has been no evidence of any significant delays in vessel unladings as a result.

The CF 1302 and CF 3171 information is required 48 hours prior to arrival in order to be granted advanced preliminary entry because Customs needs advance notification of a vessel's arrival and an adequate description of the cargo on board in order to expedite entry of the vessel and release of the cargo. This amendment is merely requiring by regulation something which has been in practice by much of the vessel carrier community. Due to this practice, Customs has been able to conduct needed pre-arrival review of manifest information, enabling Customs to identify, in advance of arrival, which cargo needs to be examined. The benefit to the trade community is that vessel operators are immediately informed as to which shipments need to be examined, instead of waiting several days after vessel arrival for examination requirements to be fulfilled.

It may be that some carriers will have to modify their procedures in order to obtain grants of advanced preliminary entry. One of the commenters suggested that non-automated carriers may not be able to participate in the electronic submission of documents. If a particular carrier does not wish to automate, there are designated service centers across the United States which are available to transmit the cargo declaration information to Customs for them. Interested parties may obtain a list of service centers by contacting Ms. Becky Lally, Customs Office of Information Technology, at (301) 210–6368. Customs has no information regarding any fees which these service centers may charge.

Comment

Two commenters had many and varied observations regarding the entry and clearance requirements for American-flag vessels with in-bond cargoes aboard, as set forth in proposed §§ 4.9 and 4.61, respectively. Both commenters stated that Customs should not require such vessels to have to enter and clear, with one suggesting that the requirements would serve no practical purpose. One stated that the Customs laws and regulations have never before imposed such requirements, and that not imposing any changes to in-bond control procedures regarding similar rail or truck movements amounts to unequal protection under the law.

It was suggested that the proposed requirements were contrary to the amended statutory law in that Congress intended that an in-bond control transaction would meet the definition of entered merchandise. Concern was also expressed regarding the procedural requirements which would be imposed upon vessels to present in-bond or bill of lading numbers for in-bond cargo, stating that a carrier may not even know whether in-bond cargo is aboard a vessel. It was emphasized that the initial bonded carrier already provides cargo information to Customs through existing in-bond procedures, and that asking for it again would be contrary to the Paperwork Reduction Act. Finally, the point was made that the new procedures would place an undue financial burden

on American vessels carrying in-bond shipments, such as the payment of user fees and the cost of hiring vessel agents to deal with Customs.

Customs Response

By amending the laws concerning vessel entry and clearance, the Congress, not Customs, for the first time placed the requirements under discussion on American-flag vessels carrying merchandise on in-bond movements. No laws applicable to rail or truck traffic were either enacted or amended in a similar fashion; thus, the focus of our regulatory amendments is on vessels.

Customs agrees with the commenter that the production of bills of lading or Immediate Transportation documents should not be required under the entry and clearance procedures. Instead, the documentary requirements for entry and clearance for these vessels will be satisfied by presenting to Customs a completed Customs Form 1301 (General Declaration). The General Declaration is primarily required to provide Customs with the necessary information to record all vessel entries and clearances on the Customs Forms 1400 and 1401, respectively, and to make that record available for public inspection.

Accordingly, §§ 4.9(b) and 4.61(b) are changed to reflect that the completed Customs Form 1301 (General Declaration) will be acceptable instead of requiring the production bills of lading or Immediate Transportation documents. However, this in no way limits the authority of a Customs officer to demand production of any documents or papers considered necessary for the proper inspection and examination of a vessel and its cargo or passengers as provided in 19 U.S.C. 1581(a). Sections 4.9(b) and 4.61(b) are further changed to make this clear.

With respect to perceived financial burdens, 19 U.S.C. 58(c) specifically requires that Customs collect fees for services in connection with the arrival of a vessel. Customs, through this rulemaking, is affording the domestic vessel industry as much relief as possible given the constraints of the statutes. For American-flag vessels transporting in-bond merchandise, all that will be necessary is for such vessels to report arrival or departure, supply Customs with completed Customs Form 1301 (General Declaration), and pay Customs user fees if applicable. As to the user fee collection, vessel operators need only present payment to Customs at the time of arrival. Payment upon each arrival may be avoided by prepayment of the annual fee maximum, as presently allowed.

Comment

One commenter asked that the term ''merchandise'' be defined by Customs, for purposes of proposed § 4.9, to mean foreign merchandise for which entry has not been made.

Customs Response

The term ''merchandise'', for Customs purposes, is already defined by statute (19 U.S.C. 1401(c)) as meaning goods, wares, and chattels of every description.

Comment

One commenter urged that the requirement for deposit of a vessel's document with Customs or a foreign consular office be removed from proposed § 4.9(c) as no longer needed.

Customs Response

Prior to amendments made by the Customs Modernization Act, there had been authority under 19 U.S.C. 1434 and 1435 to require operators of American and foreign vessels to deposit their ship's registers or documents with Customs until vessel clearance. Section 1437 of title 19, United States Code (19 U.S.C. 1437), which had provided for the return to the master or owner of an American or foreign vessel's register or document upon vessel clearance, was repealed without replacement by that same Act. Still operative, however, is section 1438 of title 19, United States Code (19 U.S.C. 1438), which was amended by the Act. As amended, section 1438 provides for a penalty to be issued against any foreign consul returning to the master the register or document of a foreign vessel deposited with the consul prior to the vessel receiving clearance from Customs. The result of the amendments and repeals affecting sections 1434, 1435, 1437, and 1438 is that Customs will require an operator of a foreign-flag vessel to surrender the register or document to either Customs or the foreign consul of that country.

Comment

One commenter inquired as to whether the collection of shipping articles agreements for American-flag vessels under proposed § 4.61(c)(9) is still necessary.

Customs Response

The requirement that shipping articles be presented before the grant of clearance to such vessels is statutory (46 U.S.C. App. 10314(d)) and must continue to be complied with.

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above should be adopted.

Additional Changes

In addition, the requirement for a master's oath on Customs Form 1300 is removed from §§ 4.9(a) and 4.61(a), inasmuch as the underlying statutory authority for this, 19 U.S.C. 282, was repealed by section 690(a)(2) of the Customs Modernization Act, Pub. L. 103–182. Also, § 4.60(a)(4) is changed, consistent with statutory law (46 U.S.C. App. 91), to fully reflect those vessels for which Customs clearance must be obtained.

Regulatory Flexibility Act and Executive Order 12866

This final rule amends the Customs Regulations principally in order to accurately reflect and implement changes to the underlying statutory authority regarding the boarding of vessels arriving in ports of the United States. To this same end, certain general amendments are made to the regulations concerning vessel entry and clearance as well as those concerning issuance of permits to lade and unlade merchandise. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor does this document meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information referenced in this final rule have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned the following OMB Control Numbers:

1515–0013—Application-Permit-Special License, Unlading-Lading-Overtime Services (Customs Form 3171);

1515–0062—General Declaration (Customs Form 1301);

1515–0078—Cargo Declaration (inward and outward) (Customs Form 1302); and 1515–0144—Customs Bond Structure (Customs Form 301 and Customs Form 5297).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. A copy should also be sent to U.S. Customs Service, Information Services Group, Attention: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Entry, Inspection, Merchandise, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 as well as the specific authority citations for §§ 4.3, 4.7, 4.8 and 4.30 continue to read as follows, while the specific authority citations for §§ 4.1, 4.9 and 4.68 are revised, and a specific authority citation for § 4.61 is added in appropriate numerical order, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 163;

* * * * *

Section 4.3 also issued under 19 U.S.C. 288, 1441; 46 U.S.C. App. 111;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * *

2. Section 4.1 is amended by revising paragraph (a) to read as set forth below; and by removing paragraph (b) and redesignating paragraphs (c), (d), (e), (f), and (g), as paragraphs (b), (c), (d), (e) and (f), respectively:

§ 4.1 Boarding of vessels; cutter and dock passes.

(a) Every vessel arriving at a Customs port will be subject to such supervision while in port as the port director considers necessary. The port director may detail Customs officers to remain on board a vessel to secure enforcement of the requirements set forth in this part. Customs may determine to board as many vessels as considered necessary to ensure compliance with the laws it enforces.

* * * * *

3. Part 4 is amended by removing and reserving Footnote 1.

4. Section 4.3 is revised to read as follows:

§ 4.3 Vessels required to enter; place of entry.

(a) *Formal entry required.* Unless specifically excepted by law, within 48 hours after the arrival at any port or place in the United States, the following vessels are required to make formal entry:

(1) Any vessel from a foreign port or place;

(2) Any foreign vessel from a domestic port;

(3) Any vessel of the United States having merchandise on board which is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; or

(4) Any vessel which has visited a hovering vessel as defined in 19 U.S.C. 1401(k), or has delivered or received merchandise or passengers while outside the territorial sea.

(b) *Completion of entry.* (1) When vessel entry is to be made at the customhouse, either the master, licensed deck officer, or purser may appear in person during regular working hours to complete preliminary or formal vessel entry; or necessary documents properly executed by the master or other authorized officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(2) The appropriate Customs port director may permit the entry of vessels to be accomplished at locations other than the customhouse, and services may be requested outside of normal business hours. Customs may take local resources into consideration in allowing formal entry to be transacted on board vessels or at other mutually convenient approved sites and times within or outside of port limits. When services are requested to be provided outside the limits of a Customs port, the appropriate port director to whom an application must be submitted is the director of the port located nearest to the point where the proposed services would be provided. That port director must be satisfied that the place designated for formal entry will be sufficiently under Customs control at the time of entry, and that the expenses incurred by Customs will be reimbursed as authorized. It may be required that advance notice of vessel arrival be given as a condition for granting requests for optional entry locations. A master, owner, or agent of a vessel who desires that entry be made at an optional location will file with the appropriate port director an application on Customs Form 3171 and a single entry or continuous bond on Customs Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as that port director deems appropriate but not less than $1,000. If the application is approved, the port director or a designated Customs officer will formally enter the vessel. Nothing in this paragraph relieves any person or vessel from any requirement as to how, when and where they are to report, be inspected or receive clearance from other Federal agencies upon arrival in the United States.

5. Section 4.8 is revised to read as follows:

§ 4.8 Preliminary entry.

(a) *Generally.* Preliminary entry allows a U.S. or foreign vessel arriving under circumstances that require it to formally enter, to commence lading and unlading operations prior to making formal entry. Preliminary entry may be accomplished electronically pursuant to an authorized electronic data interchange system, or by any other means of communication approved by the Customs Service.

(b) *Requirements and conditions.* Preliminary entry must be made in compliance with § 4.30, and may be granted prior to, at, or subsequent to arrival of the vessel. The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising

a complete manifest as provided in § 4.7. Vessels seeking preliminary entry in advance of arrival may do so by presenting to Customs a complete Customs Form 1302 (Cargo Declaration) showing all cargo on board the vessel and Customs Form 3171, electronically or otherwise, no less than 48 hours prior to vessel arrival. The CF 3171 will also serve as notice of intended date of arrival. The port director may allow for the presentation of the CF 1302 and CF 3171 less than 48 hours prior to arrival in order to grant advanced preliminary entry if a vessel voyage takes less than 48 hours to complete from the last foreign port to the first U.S. port, or if other reasonable circumstances warrant. Preliminary entry granted in advance of arrival will become effective upon arrival at the port granting preliminary entry. Additionally, Customs must receive confirmation of a vessel's estimated time of arrival in a manner acceptable to the port director.

6. Section 4.9 is revised to read as follows:

§ 4.9 Formal entry.

(a) *General.* Section 4.3 provides which vessels are subject to formal entry and where and when entry must be made. The formal entry of an American vessel is governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term ''American vessel'' means a vessel of the United States (see § 4.0(b)) as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c)). The formal entry of a foreign vessel arriving within the limits of any Customs port is also governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). Alternatively, information necessary for formal entry may be transmitted electronically pursuant to a system authorized by Customs.

(b) *Procedures for American vessels.* Under certain circumstances, American vessels arriving in ports of the United States directly from other United States ports must make entry. Entry of such vessels is required when they have merchandise aboard which is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel entry requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with the usual formal entry procedures, American vessels carrying no unentered foreign merchandise but which have in-bond merchandise aboard may satisfy vessel entry requirements by making a required report of arrival, and presenting a completed Customs Form 1301 (General Declaration). Report of arrival as provided in § 4.2 of this part, together with presenting a completed Customs Form 1301 (General Declaration), satisfies all entry requirements for the subject vessels.

(c) *Delivery of foreign vessel document.* The master of any foreign vessel will exhibit the vessel's document to the port director on or before the entry of the vessel. After the net tonnage has been noted, the document may be delivered to the consul of the nation to which such vessel belongs, in which event the vessel master will certify to the port director the fact of such delivery (see section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434), as applied through section 438, Tariff Act of 1930, as amended (19 U.S.C. 1438)). If not delivered to the consul, the document will be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document will not be delivered to the master of the foreign vessel until clearance is granted under § 4.61. It will not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of 19 U.S.C. 1434 until such master will produce to him a clearance in due form from the director of the port where such vessel has been entered. Any consul violating the provisions of this section is liable to a fine of not more than $5,000 (section 438, Tariff Act of 1930, as amended; 19 U.S.C. 1438).

(d) *Failure to make required entry; penalties.* Any master who fails to make entry as required by this section or who presents or transmits electronically any document required by this section that is forged, altered, or false, may be liable for certain civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. Further, any vessel used in connection with any such violation is subject to seizure and forfeiture.

§ 4.16 [Reserved]

7. Part 4 is amended by removing and reserving § 4.16.

8. Section 4.30 is amended by adding the word ''fees'' between the words ''clearance'' and ''under'' in introductory paragraph (a); and by revising paragraph (b) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(b) Application for a permit or special license will be made by the master, owner, or agent of the vessel on Customs Form 3171, or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service, and will specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Vessels that arrive in a Customs port with more than one vessel carrier sharing or leasing space on board the vessel (such as under a vessel sharing or slot charter arrangement) are required to indicate on the CF 3171 all carriers on board the vessel and indicate whether each carrier is transmitting its cargo declaration electronically or is presenting it on the Customs Form 1302. In the case of a term permit or term special license, upon entry of each vessel, a copy of the term permit or special license must be submitted to Customs during official hours in advance of the rendering of services so as to update the nature of the services desired and the exact times they will be needed. Permits must also be updated to reflect any other needed changes including those in the name of the vessel as well as the slot charter or vessel sharing parties. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation will be specifically noted on the application.

* * * * *

9. Section 4.60 is amended by revising paragraph (a) to read as follows:

§ 4.60 Vessels required to clear.

(a) Unless specifically excepted by law, the following vessels must obtain clearance from the Customs Service before departing from a port or place in the United States:

(1) All vessels departing for a foreign port or place;

(2) All foreign vessels departing for another port or place in the United States;

(3) All American vessels departing for another port or place in the United States that have merchandise on board that is being transported in-bond (not including bonded ship's stores or supplies), or foreign merchandise for which entry has not been made; and

(4) All vessels departing for points outside the territorial sea to visit a hovering vessel or to receive merchandise or passengers while outside the territorial sea, as well as foreign vessels delivering merchandise or passengers while outside the territorial sea.

* * * * *

10. Section 4.61 is revised to read as follows:

§ 4.61 Requirements for clearance.

(a) *Application for clearance.* Application for clearance for a vessel will be made by filing a General Declaration, Customs Form 1301, by or on behalf of the master at the customhouse. The master, licensed deck officer, or purser may appear in person to clear the vessel, or documents properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by Customs. Clearance will be granted either on Customs Form 1378 or by approved electronic means. Customs port directors may permit the clearance of vessels at locations other than the customhouse, and at times outside of normal business hours. Customs may take local resources into consideration in allowing clearance to be transacted on board vessels themselves or at other mutually convenient sites and times either within or outside of port limits. Customs must be satisfied that the place designated for clearance is sufficiently under Customs control at the time of clearance, and that the expenses incurred by Customs will be reimbursed as authorized. Customs may require that advance notice of vessel departure be given prior to granting requests for optional clearance locations.

(b) *When clearance required.* Under certain circumstances, American vessels departing from ports of the United States directly for other United States ports must obtain Customs clearance. The clearance of such vessels is required when they have merchandise aboard which is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel clearance requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with usual clearance procedures, American vessels carrying no unentered foreign merchandise but that have in-bond merchandise aboard may satisfy vessel clearance requirements by reporting intended departure within 72 hours prior thereto by any means of communication that is satisfactory to the local Customs port director, and by presenting a completed Customs Form 1301 (General Declaration). Also, the Customs officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew. Report of departure together with providing information to Customs as specified in this paragraph satisfies all clearance requirements for the subject vessels.

(c) *Verification of compliance.* Before clearance is granted to a vessel bound to a foreign port as provided in § 4.60 and this section, the port director will verify compliance with respect to the following matters:

(1) Accounting for inward cargo (see § 4.62).

(2) Outward Cargo Declarations; shippers export declarations (see § 4.63).

(3) Documentation (see § 4.0(c)).

(4) Verification of nationality and tonnage (see § 4.65).

(5) Verification of inspection (see § 4.66).

(6) Inspection under State laws (46 U.S.C. App. 97).

(7) Closed ports or places (see § 4.67).

(8) Passengers (see § 4.68).

(9) Shipping articles and enforcement of Seamen's Act (see § 4.69).

(10) Medicine and slop chests.

(11) Load line regulations (see § 4.65a).

(12) Carriage of United States securities, etc. (46 U.S.C. App. 98).

(13) Carriage of mail.

(14) Public Health regulations (see § 4.70).

(15) Inspection of vessels carrying livestock (see § 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (see § 4.72).

(17) Neutrality exportation of arms and munitions (see § 4.73).

(18) Payment of State and Federal fees and fees due the Government of the Virgin Islands of the United States (46 U.S.C. App. 100).

(19) Orders restricting shipping (see § 4.74).

(20) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the United States (see § 4.14).

(21) Illegal discharge of oil (see § 4.66a).

(22) Attached or arrested vessel.

(23) Immigration laws.

(d) *Vessel built for foreign account.* A new vessel built in the United States for foreign account will be cleared under a certificate of record, Coast Guard Form 1316, in lieu of a marine document.

(e) *Clearance not granted.* Clearance will not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel (22 U.S.C. 454a).

(f) *Clearance in order of itinerary.* Unless otherwise provided in this section, every vessel bound for a foreign port or ports will be cleared for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

11. Part 4 is amended by removing and reserving Footnotes 97, 99 and 100a through 101.

12. Section 4.68 is revised to read as follows:

§ 4.68 Federal Maritime Commission certificates for certain passenger vessels.

No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports will be granted a clearance at the port or place of departure from the United States unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission.

13. Section 4.70 is revised to read as follows:

§ 4.70 Public Health Service requirements.

No clearance will be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service.

Raymond W. Kelly,

Commissioner of Customs.

Approved: December 22, 1999.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–1120 Filed 1–18–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203, 250, 251, 253, 254, and 256

Outer Continental Shelf Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendments.

SUMMARY: This document makes minor technical changes to regulations that were published in various **Federal Register** documents and are codified in the Code of Federal Regulations. These changes will correct the name of form MMS–126; correct a citation in 30 CFR 250, subpart N; and correct the instructions in 30 CFR parts 203, 251, 253, 254, and 256 for commenting on information collection burdens.

EFFECTIVE DATE: January 19, 2000.

FOR FURTHER INFORMATION CONTACT: Alexis London, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

These technical amendments affect all offshore oil, gas, and sulphur operators and lessees. The following are explanations of the corrections.

(1) On February 5, 1997 (62 FR 5331), we published a final rule revising the 30 CFR 250, subpart N, regulations on OCS civil penalties (subsequently redesignated at 63 FR 29479 on May 29, 1998). The final rule contained a citation error in § 250.1409(d)(3). We are correcting the citation.

(2) In September 1999, under the requirements of the Paperwork Reduction Act of 1995 (PRA), the Office of Management and Budget (OMB) reapproved the information collected on form MMS–126. When we submitted the form to OMB for approval, we made no changes to the information collected, but we did shorten the official title of the form. We are correcting the regulations in 30 CFR 250, subpart K, to reflect the change in the title of this form.

(3) Under the PRA, the OMB must approve the information collection burden of all our requirements. Each part of our regulations has a section that provides the OMB control numbers of the approved information collection burdens and other required information. These sections provide instructions on how the public may comment on the burdens. The regulations currently indicate that comments may be submitted directly to the OMB and to MMS. The OMB has now determined that comments should be made only to the agency and not directly to OMB. Agencies are required to address any comments received in subsequent submissions to OMB for reapproval of the information collection burdens. We are correcting our regulations to reflect this change in comment procedures. In addition, we are bringing the section on authority for collecting information in part 256 up-to-date to reflect the 1995 amendments to the PRA and to make the part 256 section consistent with the corresponding sections in the other parts of our regulations.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading or have sections which are no longer technically correct and are in need of clarification.

List of Subjects

30 CFR Part 203

Continental shelf, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 251

Continental shelf, Freedom of information, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Research.

30 CFR Part 253

Continental shelf, Environmental protection, Insurance, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, 30 CFR parts 203, 250, 251, 253, 254, and 256 are amended by making the following technical amendments:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.,* 25 U.S.C. 396a *et seq.*, 25 U.S.C. 101 *et seq.*, 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351 *et seq.*, 30 U.S.C. 1001 *et seq.*, 30 U.S.C. 1701 *et seq.*, 31 U.S.C. 9701 *et seq.*, 43 U.S.C. 1301 *et seq.*, 43 U.S.C. 1331 *et seq.*, and 43 U.S.C. 1801 *et seq.*

2. In § 203.82, paragraph (d) is revised to read as follows:

§ 203.82 What is MMS's authority to collect this information?

* * * * *

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

3. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

4. In § 250.1102, the second sentence of paragraph (b)(2) is corrected to read as follows:

§ 250.1102 Oil and gas production rates.

* * * * *

(b) * * *

(2) * * * Within 15 days after the end of the test period, the lessee must submit a proposed MPR with well potential test for the individual well completion on Form MMS–126, Well Potential Test Report. * * *

§ 250.1409 [Amended]

5. In § 250.1409(d)(3), the citation ''43 CFR part 62, subpart D'' is corrected to read 43 CFR part 12, subpart D''.

PART 251—GEOLOGICAL AND GEOPHYSICAL (G&G) EXPLORATIONS OF THE OUTER CONTINENTAL SHELF

6. The authority citation for part 251 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

7. In § 251.15, paragraph (e) is revised to read as follows:

§ 251.15 Authority for information collection.

* * * * *

(e) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

8. The authority citation for part 253 continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

9. In § 253.5, paragraph (d) is revised to read as follows:

§ 253.5 What is the authority for collecting Oil Spill Financial Responsibility (OSFR) information?

* * * * *

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

PART 254—OIL SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COAST LINE

10. The authority citation for part 254 continues to read as follows:

Authority: 33 U.S.C. 1321 *et seq.*

11. In § 254.9, paragraph (d) is revised to read as follows:

§ 254.9 Authority for information collection.

* * * * *

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

12. The authority citation for part 256 continues to read as follows:

Authority: 42 U.S.C. 6213, 43 U.S.C. 1331 *et seq.*

13. Section 256.0 is revised to read as follows:

§ 256.0 Authority for information collection.

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part under 44 U.S.C. 3501 *et seq.* OMB assigned the control number 1010–0006. The title of this information collection is ''30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.''

(b) MMS collects this information to determine if the applicant filing for a lease on the Outer Continental Shelf is qualified to hold such a lease. Response is required to obtain a benefit according to 43 U.S.C. 1331 *et seq.* MMS will protect proprietary information collected according to section 26 of the OCS Lands Act and 30 CFR 256.10.

(c) 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.

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240.

Dated: January 6, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–1200 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07 99–058]

RIN 2115–AA98

Special Anchorage Area; St. Lucie River, Stuart, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area on the St. Lucie River in Stuart, FL. This area is currently used as a temporary and long-term area for vessels to anchor. The establishment of this anchorage will improve the safety of vessels anchoring within and transiting the highly trafficked area, while also lessening the detrimental impact on the ecosystem by providing a designated safer area for vessels to anchor.

DATES: This regulation becomes effective on February 18, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07 99–058] and are available for inspection or copying at the Seventh Coast Guard District, Room 406, 909 S.E. First Avenue, Miami, FL, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Kerstin Rhinehart, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 536–4566.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We published a notice of proposed rulemaking concerning these regulations in the **Federal Register** on August 30, 1999 (64 FR 47156). Two comments were received during the comment period.

Background and Purpose

This rule is in response to a request made by the City of Stuart to establish a city managed mooring field on the St. Lucie River. The intended effect of the regulation is to reduce the risk of vessel collisions by providing notice to mariners of the establishment of a special anchorage area, in which vessels not more than 65 feet in length shall not be required to carry or exhibit anchor lights as required by the Navigation Rules. The establishment of the special anchorage has been in coordination with and endorsed by the Florida Department of Environmental Protection (DEP). The DEP determined that properly managed mooring and anchorage fields located in appropriate areas, will encourage vessels to utilize them for safety purposes, and as a side benefit the ecosystem will incur lessened or negligible detrimental impacts.

Discussion of Comments and Changes

Two letters were received objecting to the establishment of the a special anchorage in St. Lucie, FL. The letters objected to the regulation of live aboard vessels, the possibility of future development in the area, the cost of utilizing an established mooring within the special anchorage, and the possible restricted use of the waterways between boats in the area. The Coast Guard considered these comments, however has decided not to make any changes to the proposed rule. The Coast Guard has no control over future development in the area and the cost to utilize the anchorage will be determined by the City of Stuart. The Coast Guard still feels that the establishment of this anchorage area as published will improve the safety of vessels in this highly trafficked area

Regulatory Evaluation

This 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. The Office of Management and Budget has not reviewed it 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 proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, 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.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as use of the anchorage area is voluntary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531—1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard, in association with the Florida Department of Environmental Protection, considered the environmental impact of this proposed rule, and determined under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Special anchorage areas.

Final Regulation

In consideration of the foregoing, the Coast Guard amends Part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The Authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.73c is added to read as follows:

§ 110.73c. Okeechobee Waterway, St. Lucie River, Stuart, FL.

The following is a special anchorage area: Beginning on the Okeechobee Intracoastal Waterway between mile marker 7 and 8 on the St. Lucie River, bounded by a line beginning at 27°12′06.583''N, 80°15′33.447''W; thence to 27°12′07.811''N, 80°15′38.861''W; thence to 27°12′04.584''N, 80°15′41.437''W; thence to 27°11′49.005''N, 80°15′44.796''W; thence to 27°11′47.881''N, 80°15′38.271''W; thence to the point of beginning. All coordinates reference Datum NAD:83.

Note: This area is principally used by recreational vessels. The mooring of vessels in this area is administered by the local Harbormaster, City of Stuart, Florida.

Dated: January 10, 2000.

G.W. Sutton,

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

[FR Doc. 00–1228 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–146–9934a; TN–156–9935a; FRL–6520–2]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Adoption of Rule Governing Any Credible Evidence

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 16, 1994, the Tennessee Department of Environment and Conservation submitted to EPA revisions to the Nashville-Davidson County Local Implementation Plan (LIP). These revisions consisted of the adoption of section 10.56.290 Measurement and Reporting of Emissions amendments in the Metropolitan/Nashville Code of Laws.

On May 3, 1995, the Tennessee Department of Environment and Conservation submitted to EPA revisions to the Tennessee State Implementation Plan (SIP). These revisions consisted of the adoption of Rule 1200–3–10–.04 Sampling, Recording and Reporting Required For Major Stationary Sources.

The adoptions of section 10.56.290 into the Nashville-Davidson County LIP and Rule 1200–3–10–.04 into the Tennessee SIP are being implemented to meet the requirements of credible evidence set forth in the May 23, 1994 SIP call letter.

DATES: This direct final rule is effective on March 20, 2000 without further notice, unless EPA receives adverse comment by February 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Office of Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700 Washington DC.

Department of Environment and Conservation, 9th Floor L & C Annex, 401 Church St, Nashville, TN 37243–1531

FOR FURTHER INFORMATION CONTACT: Randy Terry at the above Region 4 address or at 404–562–9032.

SUPPLEMENTARY INFORMATION:P='04'≤

I. Background On Credible Evidence
II. Tennessee Response to Credible Evidence
III. EPA Review of Tennessee Response

I. Background On Credible Evidence

On October 22, 1993, the EPA published a **Federal Register** document proposing an Enhanced Monitoring Program Rule. In that document, EPA proposed both new regulations and amendments to several existing air pollution program regulations. To address the revisions to the Clean Air Act (CAA) regarding the use of any credible evidence, EPA issued a SIP call to all states in a letter dated May 23, 1994. The purpose of this letter was to require the states to revise their SIP to allow for the use of enhanced monitoring as a means of establishing compliance and ''any credible evidence'' to prove violations. A Federal Implementation Plan (FIP) was to be promulgated if the states failed to correct the deficiencies in the SIP by June 30, 1995. However, during the time between which the Enhanced Monitoring Program Rule was proposed and the FIP was to be in place, EPA separated the enhanced monitoring rule into two new parts: ''any credible evidence'' and ''compliance assured monitoring'' (CAM); and promulgated them in separate **Federal Register** documents. The final rule for ''any credible evidence'' was promulgated on February 24, 1997.

II. Tennessee Response to Credible Evidence

In response to the May 23, 1994, SIP call, the Tennessee Department of Environment and Conservation submitted SIP revisions on November 16, 1994 and May 15, 1995. These revisions consisted of the addition of section 10.56.290 Measurement and Reporting of Emissions to chapter 10.56 of the Nashville-Davidson County portion of the Tennessee SIP and the addition of rule 1200–3–10–.04 Sampling, Recording, and Reporting Required for Major Stationary Sources to chapter 1200–3–10 Required Sampling, Recording, and Reporting of the Tennessee SIP.

Section 10.56.290 and Rule 1200–3–10–.04 were created to ensure that monitoring methods may include but are not limited to: source testing, in stack monitoring, process parameter monitoring of material feed rates, temperature, pressure differentials, power consumption or fuel consumption; chemical analysis of feed stocks, coatings, or solvents; ambient monitoring; visible emissions evaluations; control equipment performance parameters of pressure differentials and any other such monitoring that the Technical Secretary may prescribe. In addition, all monitoring (which includes, but is not limited to sampling methods, analytical methods, sensor locations and frequency of sampling) must be conducted in a manner acceptable to the Technical Secretary. The monitoring method must have at least a 95% operational availability rate to prove compliance directly or indirectly with the applicable requirements unless otherwise stipulated by the Technical Secretary in the permit. Recordkeeping can be handwritten or a computerized record and shall be kept in accordance with the manner approved by the Technical Secretary. Reporting shall be in the manner prescribed by the Technical Secretary in the permit or approved by him/her in the source's operating permit application.

III. EPA Review of Tennessee Response

After a thorough review of the submittals, we found that the November 16, 1994, and May 15, 1995, submittals are adequate to meet the credible evidence requirements set forth in the May 1994, SIP call. EPA is approving these revisions because they are consistent with the requirements of the Clean Air Act Amendments of 1990.

Final Action

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 20, 2000 without further notice unless the Agency receives adverse comments by February 18, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 20, 2000 and no further action will be taken on the proposed rule.

I. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to

perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 1999.
A. Stanley Meiburg,
Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart—RR—Tennessee

2. Section 52.2239 is amended by adding paragraph (c)(167) to read as follows:

§ 52.2239 Original Identification of Plan Section.

* * * * *

(c) * * *

(167) The adoption of the credible evidence regulations, which were submitted on November 16, 1994, into the Nashville/Davidson County portion of the Tennessee SIP.

(i) Incorporation by reference. Section 10.56.290 Measurement and Reporting of Emissions effective on October 6, 1994.

(ii) Other material. None.

3. Section 52.2220(c) is amended by adding the entry for section 1200–3–10–.04 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	Federal Register notice
*	* *	*	* *	*
Section 1200–3–10–04	Sampling Recording and Reporting Required For Major Stationary Sources.	09/12/94	January 19, 2000	[Insert citation of this Federal Register Notice when published.]
*	* *	*	* *	*

[FR Doc. 00–964 Filed 1–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–74–1–9941a; FRL–6524–7]

Approval and Promulgation of Implementation Plans, Florida: Approval of Revisions to the Florida State

Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on December 26, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This source-specific revision amends the SIP to include a variance granted to the Harry S. Truman Animal Import Center (HSTAIC) for its incinerator facility located in Monroe County, Florida. The variance allows HSTAIC to operate under the particulate matter standard applicable to biological waste combustion facilities.

DATES: This direct final rule is effective March 20, 2000, without further notice, unless EPA receives adverse comment by February 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The State of Florida through the FDEP submitted a source-specific revision to the Florida SIP for the HSTAIC on December 26, 1996. The HSTAIC is operated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Services and is located on Fleming Key on the grounds of the Key West Naval Air Station. The HSTAIC serves as a quarantine station for animal herds imported into the U.S. from foreign countries and operates an incineration facility for disposal of bedding material and animal carcasses. In addition, should a public health emergency occur, the incinerator facility would be used to cremate infected animal carcasses. Such an emergency has never occurred in the history of the Center.

Florida's biological waste incinerator rule includes standards applicable to three categories of biological and medical waste incinerators. The first category, incinerators with a feed rate of 500 pounds per hour (lbs/hr) or less, is subject to Rule 62–296(4)(a)1., which includes emissions limiting standards and operating requirements applicable to medical waste incinerators and animal crematories and has a particulate

matter emission limit of .080 grains per dry standard cubic foot (gr/ft ^{3}). Because it was assumed that all animal crematories would have capacities less than 500 lbs/hr, the second category (500 to 2000 lbs/hr, subject to Rule 62–296(4)(c)1., 030 gr/ft ^{3}) and third category (greater than 2000 lbs/hr, subject to Rule 62–296(4)(d)1., 020 gr/ft ^{3}) contain standards developed only for medical waste incinerators. The HSTAIC's incinerator facility consists of three units with a potential capacity of over 2000 lbs/hr which would make the HSTAIC subject to the stricter standard, however the HSTAIC incinerator facility routinely only uses one unit with the other two units providing emergency backup capacity. The usual operating capacity of the Center, operating a single unit, is equal to or less than 500 lbs/hr.

The variance being approved allows the HSTAIC to operate under Rule 62–296.401(4)(a)1. This variance addresses solely the particulate matter emission limitation and does not apply to all other emission limitations to which the HSTAIC is subject under Rule 62–296.401(4) which remain applicable to the facility. As a condition of this variance, FDEP requires that the applicant properly install, operate and maintain a continuous opacity monitor and recording device on each combustion unit, to document compliance with the 5 percent opacity limit established under Rule 62–296.401(1)(a). These monitoring records shall be kept at the facility and shall be made available to FDEP for inspection, as required by FDEP rules.

Final Action

EPA is approving the aforementioned changes to the SIP 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 SIP revision should relevant adverse comments be filed. This rule will be effective March 20, 2000, without further notice unless the agency receives relevant adverse comments by February 18, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 20, 2000, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

2. Section 52.520(d) is amended by removing the word ''None'' and adding an entry to the table for the variance for the Harry S. Truman Animal Import Center to read as follows:

§ 52.520 Identification of plan.

* * * * *

(d) EPA-approved State source-specific requirements.

EPA-APPROVED FLORIDA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanation
Harry S. Truman, animal import center	NA	November 26, 1996 ...	January 19, 2000	

[FR Doc. 00–1086 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN116–1a, FRL–6522–1]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a request from Indiana for redesignation of the carbon monoxide (CO) nonattainment areas in Lake and Marion Counties, Indiana to attainment of the CO national ambient air quality standards (NAAQS). The EPA is also approving the plans for maintaining the CO standard in the portions of these counties currently designated as not attaining the CO NAAQS. On December 21, 1999, the State of Indiana submitted a redesignation request and revision to the Indiana State Implementation Plan (SIP) that included maintenance plans for both Lake and Marion Counties.

DATES: This rule is effective on March 20, 2000, unless EPA receives adverse written comments by February 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the material submitted by the State in support of these requests are available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Patricia Morris at (312) 353–8656 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used we mean EPA.

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Introduction

Under the Clean Air Act (Act), EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A. On December 21, 1999, the State of Indiana submitted a redesignation request and section 175A maintenance plan for the Marion County (Indianapolis) and the Lake County (East Chicago) CO nonattainment areas. When approved, the section 175A maintenance plan will become a federally enforceable part of the SIP for these areas.

The following is a detailed analysis of the Marion County and Lake County, Indiana, Redesignation Request and section 175A Maintenance Plan SIP submittal.

I. When were these areas originally designated nonattainment for Carbon Monoxide?

EPA originally designated both the Marion County and the Lake County areas as CO nonattainment areas under section 107 of the Act on March 3, 1978 (43 FR 8962). In 1990, Congress amended the Act (1990 Act) and added a provision which authorizes EPA to classify nonattainment areas according to the degree of severity of the nonattainment problem. In 1991, EPA designated and classified all areas. Both counties were designated as nonattainment and not classified for CO (40 CFR 81.315). This is because at the time of the designation and classification in 1991, air quality monitoring data recorded in the area did not show violations of the CO NAAQS. However, the State had not completed a redesignation request showing that it had complied with all of the requirements of section 107 of the Act. As a result, EPA designated the area as nonattainment, but did not establish a nonattainment classification. The preamble to the Federal Register document for the 1991 designation contains more detail on this action (56 FR 56694).

Since the EPA's 1991 designation, monitors in both the Marion County and Lake County areas have not recorded a violation of the CO NAAQS. As a result, the area is eligible for redesignation to attainment consistent with the 1990 Act. On December 21, 1999, Indiana submitted a SIP revision request to the EPA which contained the redesignation request and maintenance plan, to ensure continued attainment of the CO standard for both the Marion County and Lake County areas. The State held public hearings on the redesignation request and maintenance plans on November 8 and 10, 1999.

II. What are the geographic boundaries of the CO nonattainment areas?

The CO nonattainment areas are much smaller than Lake County and Marion County, respectively. The Lake County nonattainment area is in the City of East Chicago (area bounded by Columbus Drive on the north, the Indiana Harbor Canal on the west, 148th St. if extended, on the south and Euclid Avenue on the east). The Marion County nonattainment area is in the central downtown area of Indianapolis (area bound by 11th St. on the north, Capitol on the west, Georgia

St. on the south and Delaware on the east).

III. What are the criteria for redesignation?

The 1990 Act revised section 107(d)(3)(E), which specifies five requirements that an area must meet to be redesignated from nonattainment to attainment. These requirements are:

1. The area has attained the applicable NAAQS;

2. The area has met all relevant requirements under section 110 and part D of the Act;

3. The area has a fully approved SIP under section 110(k) of the Act;

4. The air quality improvement is permanent and enforceable; and,

5. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

IV. Has the State met the criteria for redesignation?

The EPA has reviewed the Indiana redesignation request for the Marion County area and the Lake County area and finds that the request for both of the areas meets the five requirements of section 107(d)(3)(E).

A. What data shows attainment of the CO NAAQS in Lake and Marion Counties in Indiana

There are currently 2 monitoring sites collecting CO data in Lake County, one at East Chicago Avenue and the other in Gary at Broadway and 15th Avenue. The design value for Lake County for the years 1996 and 1997 is 3.8 ppm. Both sites are showing attainment of the 8-hour and the 1-hour CO standard. Additional historic data are included in the State's request showing the historic downward trend and demonstrating that the area has been monitoring attainment since before 1991.

Currently 2 CO monitoring sites are operating in the Indianapolis area, one at Naval Avionics Center and the other at North Illinois Street. The CO design value for the years 1996 and 1997 in Marion County is 3.9 ppm. Both sites are showing attainment of the 8-hour and the 1-hour CO standard. Additional historic data are included in the State request.

The Indiana request is based on an analysis of quality-assured CO air quality data. Ambient air monitoring data for calendar years 1991 through 1998 show no violations of the CO NAAQS in either the Marion County or the Lake County area. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network.

As a result, the areas meet the first statutory criterion for redesignation to attainment of the CO NAAQS. The State has committed to continue monitoring in these areas in accordance with 40 CFR part 58. As discussed further below, the design values for Lake (3.8 ppm) and Marion (3.9 ppm) Counties meet the test for the limited maintenance plan option since the design values are well below the 7.8 ppm level.

B. How does the State meet the applicable requirements of section 110 and part D?

EPA fully approved Indiana's CO rules on October 28, 1975, (41 FR 35677) as meeting the requirements of section 110(a)(2). Congress amended the Act in 1977 (the 1977 Act) to add part D. The 1990 Act modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for classification of nonattainment areas. Therefore, in addition to complying with requirements of the 1977 Act, for purposes of redesignation, the Indiana SIP must satisfy all applicable requirements of section 110(a)(2) and part D added by the 1990 amendments. The amendments and Part D also added emission reduction requirements for carbon monoxide areas which were classified as moderate and serious. Areas such as Lake and Marion County, which were not classified, did not have additional emission reduction requirements. EPA has reviewed the SIP to ensure that it contains all measures that were required under the amended 1990 Act prior to and at the time Indiana submitted its redesignation request for the Lake County and Marion County areas.

i. Section 110 Requirements

The Lake County and Marion County areas SIP meets the requirements of amended section 110(a)(2). The requirements for enforceable emission limits, control measures, and enforcement did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. The amendments added requirements for determining SIP completeness. The State has met these requirements. The EPA has analyzed the Indiana SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

ii. Part D Requirements

Before EPA may redesignate the Lake County and Marion County areas to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classifiable. EPA designated both the Lake County and Marion County areas as ''not classified'' CO nonattainment areas (56 FR 56694, November 6, 1991), codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, (but not the requirements of subpart 3 of part D).

a. Subpart 1 of Part D—Section 172(c) Provisions

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation. As discussed below, Indiana has satisfied the section 172(c) requirements.

''Reasonable Further Progress'' (RFP), required by section 110, is annual incremental reductions that a nonattainment area must make toward attainment of the NAAQS. This requirement only has relevance during the time it takes an area to attain the NAAQS. Because the Lake County and Marion County areas have attained the NAAQS, the SIP has already achieved the necessary RFP toward that goal.

In addition, because the Lake County and Marion County areas have attained the NAAQS and are no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable, unless EPA does not approve the redesignation request and maintenance plan. However, section 175A contingency measures still apply. The State has submitted an acceptable section 175A contingency plan.

Similarly, once EPA redesignates an area to attainment, nonattainment new source review (NSR) requirements are not applicable. The area then becomes subject instead to prevention of significant deterioration (PSD) requirements (45 FR 29790). The State has an approved NSR program (59 FR 51108, October 7, 1994). In addition, EPA has delegated the federal PSD program at 40 CFR 52.21 to the State of Indiana. Therefore, the State's demonstration is acceptable.

The General Preamble (57 FR 13560, April 16, 1992) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably

Available Control Measures (RACM) as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration. Because the area has reached attainment, no additional measures are needed to provide for attainment.

b. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act (''transportation conformity''), as well as to all other federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Indiana's general conformity rule on December 23, 1997 (62 FR 67000). Indiana does not yet have an approved transportation conformity rule. Indiana has revised its transportation conformity rule several times and must undertake further revision to comply with a March 2, 1999, court decision (see 62 FR 43780). Indiana has committed to submit State transportation conformity regulations consistent with the Federal conformity regulations when revised to meet the court decision.

The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the CO redesignation request for the Lake and Marion County areas notwithstanding the lack of a fully approved transportation conformity SIP.

Included in the December 21, 1999, submittal is a commitment by the State to satisfy the applicable requirements of the final transportation conformity rules. This is acceptable since the Federal transportation conformity rule applies to maintenance areas.

For purposes of transportation conformity, the areas have been considered ''hot spot'' areas. The nonattainment areas are too small for either a budget or ''build/no-build'' analysis to be effective in determining conformity. The State has determined that CO hot spot analysis is required for any regionally significant transportation projects to be completed in these areas. The limited maintenance plan option (discussed in detail below) supports this by concluding that ''an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result.'' The hot spot analysis will continue to be required for any regionally significant transportation projects to be completed in these areas.

c. Subpart 3 Requirements

As noted in the General Preamble, the subpart 3 requirements do not apply to ''not classified'' CO nonattainment areas (57 FR 13535). EPA classified the Lake County and Marion County areas as ''not classified'' CO nonattainment areas on November 6, 1991 (56 FR 56694) codified at 40 CFR 81.323. Therefore, to be redesignated to attainment, the State does not have to meet the requirements of subpart 3 of part D.

C. Fully Approved SIP Under Section 110(k) of the Act

As noted above, because the areas are ''not classified'' nonattainment areas, the 1990 Act did not establish additional requirements under subpart 3. Prior to the 1990 Amendments, EPA had fully approved the State's CO SIP. Since the areas are not subject to the subpart 3 requirements, no additional requirements exist under section 110(k) which the State must address prior to redesignation.

D. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must demonstrate that the actual enforceable emission reductions are responsible for the improvement in air quality.

The State provided a detailed discussion of the emission reductions of CO between 1977 and 1996 which it maintains were responsible for the improvement in air quality. Reductions occurred at stationary sources and mobile sources. The State made all emission estimates using EPA approved emissions inventory techniques. Consistent with EPA emission inventory guidance, the emission inventory represents average winter day *actual emissions* for the Lake and Marion Counties areas.

On-road mobile sources represent the majority of mobile source emissions in the Marion County CO nonattainment area. Reductions in mobile source CO emissions occurred through the Federal Motor Vehicle Control Program (FMVCP) and a number of transportation control measures that were implemented during the late 1970s and 1980s. These measures are still in effect today. In Marion County, 667.1 tons per year of CO were eliminated from the 1977 central business district emissions through transportation control measures (TCMs). After these TCMs were implemented, the area started monitoring attainment of the CO standard.

In Lake County, the steel plants currently contribute over half of the CO emissions in the base year inventory. However, Indiana determined that traffic density and traffic emissions were the primary cause of the CO nonattainment problem. Emissions from mobile sources and other point sources have been reduced through controls such as the FMVCP on motor vehicles and reasonably available control technology (RACT) on stationary sources. Indiana's documentation uses emissions inventory data taken from the Aerometric Information and Retrieval System (AIRS) to demonstrate the reductions in stationary source emissions. In Lake County, emissions from point sources have decreased from 225,379 tons per year in 1985 to 156,221 tons per year in 1996. However, EPA expects some growth in the future. Mobile source emission reductions were made through the FMVCP. A 35% reduction took place during the years 1981 to 1987 from these controls. The Lake County basic vehicle inspection and maintenance (I/M) program has resulted in a 13% reduction in CO emissions in Lake County. An enhanced vehicle I/M program is currently being operated in Lake County which will result in additional reductions. However, Indiana did not quantify the

additional expected reductions from the enhanced vehicle I/M program.

Indiana included actual emissions for point sources from 1985 through 1997. Indiana used actual activity levels, emissions factors based on the EPA Factor Information Retrieval System Version 6.1B, and control technology effectiveness to estimate emissions. All emissions are recorded in the AIRS facility data system.

Although not required under the limited maintenance plan option (discussed in detail below), Indiana projected point source emissions from the base year of 1996 out to the year 2007 by applying the Emissions Growth Analysis System (EGAS) to the 1996 point source inventory.

The State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of CO as a result of the federally enforceable FMVCP and local transportation control measures in Marion County and federally enforceable FMVCP, vehicle inspection and maintenance and stationary control measures in Lake County.

E. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Under section 175A(d) contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

In this action, EPA is approving the State of Indiana's maintenance plan for the Lake County and Marion County areas because EPA finds that Indiana's submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how Indiana's submittal meets these requirements are detailed below.

i. What is the limited maintenance plan option?

The EPA issued guidance on October 6, 1995, titled ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas.'' This option is only available to CO nonattainment areas with design values at or below 7.65 ppm (85 percent of exceedance levels of the CO ambient air quality standard). The limited maintenance plan option allows areas that are well below the national ambient air quality standard (design value at or below 7.65 ppm) to submit a less rigorous maintenance plan than was formerly required. The limited maintenance plan must meet certain core requirements. These requirements are:

a. The State must submit an attainment emissions inventory based on actual ''typical winter day'' emissions of CO in the monitored attainment years.

b. The maintenance demonstration does not need to project emissions over the maintenance period. The design value criteria are expected to provide adequate assurance of maintenance over the initial 10-year period.

c. The State must continue operating an approved air quality monitoring network.

d. The State must have a contingency plan and specific indicators or triggers for implementation of the contingency plan.

e. The conformity determination under a limited maintenance plan can consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

ii. How has the State met the limited maintenance plan requirements?

a. Emissions Inventory. The State has adequately developed an attainment emission inventory for 1996 for both Lake County and Marion County.

TABLE 1. CO MAINTENANCE EMISSION INVENTORY SUMMARY 1996

[tons per typical winter day] for Marion County

Category	1996 tpd
Mobile sources	911
Area sources	140
Foundry	104
Other point sources	4
Total	1159

TABLE 2. CO MAINTENANCE EMISSION INVENTORY SUMMARY 1996

[tons per typical winter day] for Lake County

Category	1996 tpd
Mobile sources	302
Area sources	46
Steel plants	384
Other point sources	19
Total	751

The State has adequately demonstrated continued attainment of the CO NAAQS. The design values for the areas are well below the NAAQS for CO. The State has demonstrated permanent and enforceable reductions from the 1980 time frame when the areas were violating the CO NAAQS.

b. Projection of Emissions Over the Maintenance Period. Although not required for a limited maintenance plan approval, the State projected emissions out to the 2007 time period. The State documentation projects a small increase in emissions for Marion County. However, the projected levels for Marion County will be considerably under the CO levels prior to 1987, when the last exceedance occurred.

c. Verification of Continued Attainment. In the submittal the State commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR part 58 to demonstrate ongoing compliance with the CO NAAQS.

The submittal presents the tracking plan for the maintenance period which consists of continued CO monitoring. The State will continue to monitor CO levels throughout the Lake County and Marion County areas to demonstrate ongoing compliance with the CO NAAQS.

d. Contingency Plan. The contingency plan contains two levels of triggers: Indiana will implement a Level I response if there is a monitored air quality violation of the CO NAAQS, as defined in 40 CFR 50.8. The trigger date will be the date that the State certifies to EPA that the air quality data are quality assured, which will be no later than 30 days after monitoring an ambient air quality violation. In this case, Indiana will select measures that could be implemented in a short time so as to be in place as rapidly as possible.

Indiana will implement a Level II response in the event that monitored ambient CO values exceed 90 percent of the level of any ambient air quality standard at any site in the affected area. A Level II response consists of undertaking a study to determine whether the noted trends are likely to

continue; and, if so, implementing the control measures necessary to reverse the trend.

The level of CO emissions in the Lake County and Marion County areas will largely determine the ability to stay in compliance with the CO NAAQS in the future. As required by section 175A of the Act, Indiana has provided contingency measures with a schedule for implementation if a future CO air quality problem occurs. Contingency measures in the plan include one or more transportation control measures such as trip reduction programs, transit improvements and traffic flow improvements. In addition, Indiana will examine the point source inventory for sources with increased emissions and new sources. Indiana will implement contingency measures with full public participation. For a Level I response, Indiana commits to implementation within 12 months after it becomes aware that a violation occurred.

e. Conformity Determinations. Conformity determinations will be made using a ''hot-spot'' analysis to assure that any new transportation projects in the current CO areas do not cause or contribute to CO nonattainment. Mobile source emissions budgets have not been delineated for Lake or Marion Counties. The limited maintenance plan option allows the State to consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

iii. Commitment to Submit Subsequent Maintenance Plan Revisions

The State has committed to submit a new maintenance plan within eight years of the redesignation of the Lake County and Marion County areas, as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

V. Rulemaking Action

EPA is approving, the Lake County and Marion County redesignation request for CO because the State has complied with the requirements of section 107(d)(3)(E) of the Act. In addition, EPA is approving the Lake County and Marion County CO maintenance plans as a SIP revision meeting the requirements of section 175A.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective March 20, 2000 without further notice unless EPA receives relevant adverse written comment by February 18, 2000. Should the Agency receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 20, 2000.

VI. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal

governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

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

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority for parts 52 and 81: 42 U.S.C. 7401 *et seq.*

Dated: January 3, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations and part 81, chapter I, subchapter C are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.785 is amended by adding paragraph (b) to read as follows:

§ 52.785 Control strategy: Carbon monoxide.

* * * * *

(b) On December 21, 1999, the Indiana Department of Environmental Management submitted carbon monoxide maintenance plans for those portions of Lake and Marion Counties which they requested the Environmental Protection Agency redesignate to attainment of the carbon monoxide national ambient air quality standard.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.315 entitled ''Indiana Carbon Monoxide'' is amended by revising the entry for the ''East Chicago Area'' and the ''Indianapolis Area'' to read as follows:

§ 81.315 Indiana

INDIANA-CARBON MONOXIDE

Designated Areas	Designation		Classification	
	Date[1]	Type	Date[1]	Type
East Chicago Area:				
Lake County (part)	February 18, 2000	Attainment.		
Part of City of East Chicago (area bounded by Columbus Drive on the north, the Indiana Harbor Canal on the west, 148th St. if extended, on the south, and Euclid Ave, on the east..				
Indianapolis Area:				
Marion County (part)	February 18, 2000	Attainment.		
Part of City of Indianapolis (area bounded by 11th St, on the north, Capital on the west, Georgia St. on the south, and Delaware on the east)..				
Lake County (part):				
The remainder of East Chicago and Lake County.		Unclassifiable/Attainment.		
Marion County (part)				
The remainder of Indianapolis and Marion County.		Unclassifiable/Attainment.		
* * * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 00–726 Filed 1–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–6516–7]

State of Alabama; Underground Injection Control (UIC) Program Revision; Approval of Alabama's Class II UIC Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA announces a final rule regarding approval of Alabama's Class II Underground Injection Control (UIC) Program Revision to regulate as ''underground injection'' hydraulic fracturing of coal beds associated with methane gas production. This rule finalizes the Agency's decision to approve the revision to Alabama's Class II UIC program administered by the State Oil and Gas Board of Alabama (the Board). This action determines that the State has an effective program regulating hydraulic fracturing associated with methane gas production as underground injection pursuant to an EPA approved underground injection control program. This action also allows EPA to conclude all withdrawal proceedings initiated by EPA concerning Alabama's Class II UIC program.The Administrator approved the revision to Alabama's Class II UIC program administered by the Board to regulate hydraulic fracturing of coal beds as underground injection on December 22, 1999.

DATES: Pursuant to the ''good cause'' provision of 5 U.S.C. 553(d)(3), this final rule is effective January 19, 2000.

The incorporation by reference of certain publications listed in this regulation was approved by the Director of the **Federal Register** as of January 19, 2000.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents regarding this action are available for review and copying between 8:30 a.m. and 4:00 p.m. Monday through Friday at the Environmental Protection Agency, Region 4, Water Management Division, Ground Water/Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Room 15-T53 Atlanta, GA 30303–8960, PH: (404) 562–9474.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cole, at (404) 562–9474 or at the address above.

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I. Background Information

A. Introduction

On August 2, 1982, EPA granted primary enforcement responsibility (primacy) for the Class II Underground Injection Control (UIC) Program under Section 1425 of the Safe Drinking Water Act (SDWA) to the State of Alabama. The SDWA allows EPA to delegate primary enforcement responsibility to an effective in-place State UIC Program to protect Underground Sources of Drinking Water (USDW) from endangerment that could result from the improper injection of fluids associated with, among other things, oil and gas production. On May 3, 1994, the Legal Environmental Assistance Foundation, Inc. (LEAF) submitted a petition to EPA to withdraw Alabama's UIC Program asserting that the State was not regulating activities associated with coal bed methane gas production wells. Following the Agency's May 5, 1995, denial of the petition, LEAF sought review of this decision by the United States Court of Appeals for the Eleventh Circuit. On August 7, 1997, in *LEAF* v. *EPA,* 118 F. 3d 1467 (11th Cir. 1997), the Court held as follows: ''* * * hydraulic fracturing activities constitute ''underground injection'' under Part C of the Safe Drinking Water Act, id. at 1478; all underground injection is required to be regulated (by permit or rule), *id.* at 1474; and hydraulic fracturing associated with coal bed methane gas production is not currently regulated under Alabama's UIC Program, *id.* at 1471.'' On February 18, 1999, the Eleventh Circuit issued a Writ of Mandamus that directed EPA to enforce the Court's August 1997 decision. The writ established a schedule for EPA to follow to determine whether, in light of the Court's ruling regarding hydraulic fracturing, EPA should withdraw approval of Alabama's UIC Program. The writ also stated that once hydraulic fracturing associated with methane gas production is regulated as underground injection by the State of Alabama and the program revision is approved by EPA, withdrawal proceedings could cease. If the State of Alabama's program revision correcting the deficiencies was not approved by EPA through rulemaking and the withdrawal proceeding were not formally concluded by December 22, 1999, the Writ of Mandamus directed EPA to withdraw approval of Alabama's UIC Program.

B. Withdrawal Activities

Section 1425 of the SDWA and subsequently published EPA guidance documents do not contain express procedures for the withdrawal of a Section 1425 Program. EPA has promulgated procedures in 40 CFR 145.34(b) for withdrawing a Section 1422 Program. In light of the Court's Writ of Mandamus, which essentially tracks the withdrawal procedures in 40 CFR 145.34(b), EPA followed these procedures in proposing to withdraw Alabama's Section 1425 Program.

On March 19, 1999, the Regional Administrator of EPA Region 4 notified the Supervisor of the Board of EPA's decision to initiate the process to withdraw approval of the Alabama UIC Program. The Regional Administrator's notice to the Supervisor of the Board constituted the first step in the withdrawal process. According to the procedures established in 40 CFR 145.34(b) and the Writ of Mandamus, the State was given 30 days after the notice to demonstrate that its UIC Program was in compliance with the SDWA and 40 CFR Part 145 (*i.e.,* that hydraulic fracturing associated with methane gas production was regulated as ''underground injection,'' by permit or rule, pursuant to the EPA approved Underground Injection Control Program). The Supervisor of the Board, in a letter dated April 15, 1999, responded to the Regional Administrator's letter indicating that on March 5, 1999, Alabama promulgated rules regulating hydraulic fracturing of coal bed methane gas wells by rule authorization. These new regulations were added as an Emergency Order and sent to the Alabama Legislative Reference Service under Section 41–22–5 of the Code of Alabama (1975). The regulations became effective on March 11, 1999, for a period of no longer than 120 days, and indicated that the Board rule would be made permanent prior to the expiration of the Emergency Order. The regulations were made permanent on November 5, 1999.

By letter dated May 18, 1999, the Regional Administrator notified the Supervisor of the Board that the Board was not yet in compliance with the requirements of the SDWA. In order to comply with the Court's decision and the SDWA, the regulation of hydraulic fracturing for coal bed methane had to become part of an EPA approved UIC program. Accordingly, Alabama had to submit a revised UIC program package containing new regulations to EPA for review and approval. That action constituted the second step in the withdrawal process set out in 40 CFR 145.34(b) and the Writ of Mandamus.

On May 21, 1999, Region 4 announced in the **Federal Register** a public hearing in the Tuscaloosa Public Library on July 28, 1999, giving the public the opportunity to comment on withdrawal of Alabama's Class II Underground Injection Control Program. Region 4 received written and oral comments at the hearing, but the hearing was canceled prior to its conclusion by the Tuscaloosa City Fire Marshall due to overcrowding. In the August 10, 1999, **Federal Register**, Region 4 rescheduled the July 28, 1999, public hearing for September 9, 1999, and extended the public comment period until September 16, 1999, allowing the public the opportunity to make comments concerning withdrawal of Alabama's Class II UIC program. At the September 9, 1999, public hearing, Region 4 received numerous comments from concerned citizens, environmental groups, industry representatives, and State agency representatives. Comments obtained at both of these public hearings, as well as written comments received by close of business on September 16, 1999, were considered by EPA.

Following conclusion of the public hearing, on September 23, 1999, the Regional Administrator of Region 4 notified the Supervisor of the Board of the continuing program deficiencies and the need for remedial action before the Class II UIC program could be approved by EPA. That action constituted the third step in the withdrawal process set out in 40 CFR 145.34(b) and was necessary because, as of that date, hydraulic fracturing associated with methane gas production was still not regulated as part of Alabama's EPA-approved UIC program. If the State of Alabama's program revision correcting the deficiencies was not approved by EPA through rulemaking and the withdrawal proceedings were not formally concluded by December 22, 1999, the Writ of Mandamus directed EPA to withdraw approval of Alabama's UIC Program. EPA has followed the Writ of Mandamus withdrawal schedule. In order to avoid withdrawal of its Class II UIC program, the State Oil and Gas Board submitted a revised program for approval by EPA. The process for EPA's review of the program revision is detailed in the next section.

EPA has determined that Alabama's Class II UIC program now regulates hydraulic fracturing associated with coal bed methane production consistent with the requirements of the SDWA and the *LEAF* Court mandate. EPA, therefore is concluding its withdrawal proceedings against the State on December 22, 1999.

C. Alabama Class II UIC Program Revision

The Alabama Oil and Gas Board has held primary enforcement authority for

the Class II UIC program since the program was originally approved by EPA on August 2, 1982, pursuant to Section 1425 of the SDWA. Alabama has now revised its program to address the deficiencies outlined in the Regional Administrator's letter of September 23, 1999. The Board submitted an application for program revision on October 6, 1999, requesting that EPA approve the program revision for primary administrative and enforcement authority for the regulation of hydraulic fracturing of coal beds on all lands subject to the State's police power and taxing authority and on all lands owned or under the jurisdiction of the United States, except those wells located on Indian lands as defined in 40 CFR 144.3. The application includes a program description, copies of all applicable rules and forms, a statement of legal authority and appropriate memoranda of agreement. After a comprehensive review of the application package, on October 22, 1999, EPA published in the **Federal Register** a notice of proposed rulemaking, a public hearing and a public comment period relative to EPA approval of Alabama's Class II UIC program. EPA received comments both at the public hearing held on November 22, 1999, and up to November 29, 1999, the extended deadline for comments. EPA is approving Alabama's revision to its Class II UIC program on December 22, 1999.

II. Environmental Impact of Hydraulic Fracturing of Coals Beds

Many written and oral comments were received by the Agency concerning the environmental impact of hydraulic fracturing of coal beds. Several commentors stated that there was a long history of hydraulic fracturing in Alabama with no recorded associated environmental or public health problems. Other commentors, however, provided information regarding problems with private water supplies allegedly impacted by hydraulic fracturing. EPA has responded to these and all other comments received in a separate Response to Comments document which has been placed in the docket for this rulemaking. See Section IV. C. of this preamble below.

When considering the regulation of hydraulic fracturing of coals beds, or more specifically the approval of Alabama's program revision incorporating such regulation, the Safe Drinking Water Act Section 1421(b) and Section 1425(b) directs EPA to judge any regulatory approach on its ability to prevent underground injection which endangers drinking water sources. Cases of past endangerment caused by hydraulic fracturing of coal beds are hard to substantiate. However, it is certainly possible to conclude that underground injection of hydraulic fluids might endanger underground drinking water sources if conducted without proper safeguards. This is especially so considering the proximity of fracturing to USDWs, the volumes of fluids injected, and the pressure at which these fluids are injected. Therefore, EPA believes that hydraulic fracturing of coals beds is appropriate for regulation by Alabama under the SDWA even though a thorough review has not been conducted to substantiate the impact of such injection.

III. Hydraulic Fracturing of Coal Beds and the UIC Regulatory Structure

A. Safe Drinking Water Act

Section 1421(b) of the Safe Drinking Water Act states: ''Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section.'' Subsection (d)(2), otherwise known as the ''endangerment standard,'' states: ''Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.'' This is the standard by which underground injection, including hydraulic fracturing, is generally regulated under the SDWA.

EPA has not promulgated Federal regulations which specifically cover hydraulic fracturing activities. However, pursuant to Section 1422(b), each State is required to have an EPA-approved or EPA-run program meeting the requirements of the SDWA, including the requirements that underground injection not endanger USDWs. In the *LEAF* case, as discussed above, the Eleventh Circuit Court of Appeals held that hydraulic fracturing of coal beds in association with methane gas production was underground injection for purposes of the SDWA and is required to be regulated (by permit or rule). Consistent with that decision and the Court's subsequently issued Writ of Mandamus, EPA has worked with Alabama to review its Class II UIC program pursuant to the SDWA and the Court's decision.

In reference to underground injection associated with oil and gas production, the Act states under Section 1421(b)(2): ''Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or (B) any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.''

The specific language of this section allows EPA to impose, through regulations, requirements that are essential to assure that underground sources of drinking water will not be endangered. In Alabama, hydraulic fracturing of coal beds generally occurs by injecting fluids directly into underground sources of drinking water. Alabama's rule regulating hydraulic fracturing is designed, among other things, to assure that USDWs are not endangered. Because EPA believes that the revised Alabama UIC program covering hydraulic fracturing does not contain any requirements which interfere or impede with oil and gas production which are not essential to prevent endangerment of USDWs, EPA believes that its approval of the Alabama revision is not in conflict with Section 1421(b)(2) of the Safe Drinking Water Act.

B. Well Classification and Regulation

The classification system of underground injection wells was established in the original promulgation of UIC regulations in 1979. Injection wells are classified as either Class I, II, III, IV, or V. (40 CFR 144.6; 146.5) Classes I through IV are each specifically defined by EPA regulation, and Class V is defined as any well that is not Class I, II, III, or IV.

40 CFR 144.6(b) defines Class II wells as follows: ''Wells which inject fluids: (1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection; (2) For enhanced recovery of oil or natural gas; and (3) For storage of hydrocarbons which are liquid at standard

temperature and pressure.'' Hydraulic fracturing of coal beds is a temporary and intermittent process in which fluids are injected underground at high pressures to create fractures in the coals seam that enhance the recovery of methane gas by creating pathways for the gas to flow to the surface.

When the regulations in 40 CFR parts 144 and 146, including the well classifications, were promulgated, it was not EPA's intent to regulate hydraulic fracturing of coal beds. Accordingly, the well classification systems found in 40 CFR 144.6 and 146.5 do not expressly include hydraulic fracturing injection activities. Also, the various permitting, construction and other requirements found in Parts 144 and 146 do not specifically address hydraulic fracturing.

When the Eleventh Circuit determined that EPA must include hydraulic fracturing of coal bed seams as underground injection under the SDWA, the Agency reviewed its well classification definition to determine how to incorporate hydraulic fracturing within the context of its existing regulations. Of the five ''classes'' of injection wells defined in 40 CFR 144.6, hydraulic fracturing of coal beds to produce methane appeared most closely related to Class II, especially that part of the Class II definition covering wells which inject fluids ''for enhanced recovery of oil or natural gas.'' (40 CFR 144.6(b)(2)) It is certainly possible to view the emplacement of fracturing fluids through these methane production wells as designed to enhance the recovery of natural gas by creating fractures through which the methane might flow to the well and up to the surface. However, since the injection of fracture fluids through these wells is often a one-time exercise of extremely limited duration (fracture injections generally last no more than two hours) ancillary to the well's principal function of producing methane, it did not seem entirely appropriate to ascribe Class II status to such wells, for all regulatory purposes, merely due to the fact that, prior to commencing production, they had been fractured. Instead, EPA believes it is reasonable to view hydraulic fracturing of these production wells as a Class II—like underground injection activity which, by itself, does not turn these methane production wells into Class II injection wells for purposes of complying with all of the Class II regulatory requirements in Parts 144 and 146. We believe such a decision is consistent with the Court's mandate that EPA treat hydraulic fracturing of coal beds for methane production as underground injection, while at the same time allowing Alabama the flexibility to fashion an approvable regulatory program addressing hydraulic fracturing which need not mirror all existing requirements in Parts 144 and 146 for Class II wells.

Given that there are currently no Federal regulations specifically addressing hydraulic fracturing of coal beds, the general requirements applicable to all classes of wells provide the minimum Federal regulatory requirements for hydraulic fracturing of coal beds. The key requirement is the ''endangerment standard'' found at 40 CFR 144.12(a) which provides: ''No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons.'' As discussed in Part IV below, EPA has determined that Alabama's revised Class II program meets the applicable requirements of the SDWA and EPA's regulations, including 40 CFR 144.12(a). This determination does not preclude another State from regulating hydraulic fracturing of coal beds in an alternate UIC regulatory scheme.

C. Aquifer Exemptions

EPA's UIC regulations at 40 CFR 146.4 set forth criteria for determining whether an aquifer which meets the definition of a USDW may be determined to be an ''exempted aquifer'' pursuant to 40 CFR part 144. This final rule approving the State program revision does not, in any way, alter the aquifer exemption options provided by Federal regulations under 40 CFR 144.7 and 146.4. If submitted by the State, the Agency would consider any aquifer exemption petition on its own merits. However, exempting any aquifers into which hydraulic fracturing fluids are injected would not remove the requirement that hydraulic fracturing of coal beds generally be regulated by Alabama as underground injection. Therefore, the current action approving Alabama's program revision is separate from an aquifer exemption determination, and, in the future, any such State program revisions exempting aquifers would still be required to be approved by EPA to ensure that the State program remains effective at preventing underground injection that endangers drinking water sources.

IV. Approval of Program Revision

A. Approval Under SDWA Section 1422 Versus Section 1425

As discussed above, Section 1422(b) of the SDWA sets forth criteria for EPA to apply when deciding whether to approve a State's UIC program or program revision. Section 1422(b)(1)(A) requires that an approvable State application program: (1) Meet the requirements of regulations in effect under Section 1421; and (2), keep such records and make such reports as the Administrator may require by regulation. Section 1425 allows an optional demonstration for approving ''that portion of any State underground injection control program which relates to—(1) The underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or (2) any underground injection for the secondary or tertiary recovery of oil or natural gas.''

Although language in Section 1425 of the SDWA does not specifically refer to hydraulic fracturing for methane production, it is reasonable to assume that Congress would have intended that approval of State underground injection programs relating to this type of activity would fall within the more flexible approval standards Congress established in Section 1425. In creating an alternative demonstration for ''secondary or tertiary recovery''-related injection under Section 1425, it is unlikely that Congress meant to leave behind another undefined, yet analogous, category of oil- and gas-related injection activities, like hydraulic fracturing of coal beds, for approval exclusively pursuant to Section 1422. Congress' use of the terms ''secondary or tertiary recovery'' in Section 1425 is broad enough to cover analogous oil- and gas-related injection activities. These activities are like those covered by the *LEAF* decision and Alabama's rule whose purpose, like secondary and tertiary recovery, is to enhance oil or gas production. To conclude otherwise would require States to seek approval for similar parts of their oil- and gas-related UIC program under *both* Section 1425 *and* 1422. This would be both inefficient and inconsistent with Congress' expressed admonition that EPA not prescribe unnecessary requirements related to oil- and gas-related injection (42 U.S.C. 300h(b)(2)). Therefore, EPA interprets Section 1425 broadly as establishing an alternative method (in lieu of the showing required by Section 1422(b)(1)(A)) for a State to obtain

primary enforcement responsibility for those portions of its UIC program related to hydraulic fracturing of coal bed seams for methane production.

Section 1422 (b)(1)(A) requires the State to demonstrate that it ''(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section [1421] of this title; and (ii) will keep such records and make such report with respect to its activities under its underground injection control program as the Administrator may require by regulation.'' As already discussed, there are no specific Federal regulations addressing hydraulic fracturing of coal beds. Therefore, if EPA were to apply Section 1422 to the Alabama program to regulate hydraulic fracturing of coal beds, the Federal regulations in effect under Section 1421 would be those regulations in Parts 144 and 146, like 40 CFR 144.11, 144.12(a) and 144.26, which apply to all classes of wells (see Part III. B. Well Classification and Regulation of this preamble). Section 144.11 is satisfied because the Alabama hydraulic fracturing regulations prohibit any fracturing activities unless written approval of the Supervisor is obtained. [See State Rule 400–4–5–.04(4)] As we demonstrate later, the ''endangerment'' standard, 40 CFR 144.12(a), has essentially been adopted by the State at 400–4–5–.04(2) for the regulation of hydraulic fracturing of coal beds. Moreover, the inventory requirements in 40 CFR 144.26 are also met by State Rule 400–4–5–.04(4).

Section 1425 provides an alternative standard of approval for State UIC programs relating to oil and natural gas. Section 1425 provides that for purposes of EPA approval under Section 1422, in lieu of the showing required under Section 1422(b)(1)(A), the State may show that its program ''meets the requirements of subparagraphs (A) through (D) of section [1421(b)(1)] of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.'' Section 1425 allows the State to adopt and implement a program that prevents, in the judgement of EPA, underground injection which endangers drinking water sources, not simply adopt and implement a program that is no less stringent than EPA's Section 1421 regulations. Since EPA does not have any specific permitting or construction regulations designed to prevent hydraulic fracturing of coal beds from endangering drinking water sources, a State program revision approved under Section 1422 might not have been as preventative in nature as one approved under Section 1425. The requirement applicable to all classes of wells under 40 CFR 144.12(a) is a general prohibition against injection that endangers drinking water sources. It does not establish technical criteria or standards on operators to demonstrate that their injection will not endanger drinking water sources prior to obtaining authorization for injection.

Under Section 1425, however, a State is required to demonstrate that its program will be ''effective'' in preventing endangerment of drinking water sources. Therefore, in addition to containing a 40 CFR 144.12(a)-type requirement prohibiting ''endangerment,'' under Section 1425 the State must demonstrate that its program will be effective in preventing such endangerment. Alabama has, as we demonstrate below, done that through the regulatory system it has adopted addressing coal bed fracturing activities.

Therefore, it is EPA's determination that: (1) Approval under Section 1425 provides for potentially greater protection of underground sources of drinking water with respect to the regulation of hydraulic fracturing of coal beds than Section 1422 since it requires ''effective'' preventative measures, and (2) the Alabama program revision includes regulations that are more stringent than existing Federal regulations for hydraulic fracturing and meets the standards of Section 1425.

B. SDWA Section 1425 Approval Justification

By this notice and final rule, EPA is approving Alabama's UIC program revision in which the State is regulating hydraulic fracturing of coal beds pursuant to Section 1425 of the SDWA. Section 1425 provides that EPA may approve that portion of a State's UIC program which relates to ''any underground injection for the secondary or tertiary recovery of oil or natural gas'' if the program meets certain requirements of Section 1421 and ''represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.''

Pursuant to the State of Alabama's authority under Section 9–17–6(c)(3) and (13) of the Code of Alabama, and in accordance with the Eleventh Circuit's *LEAF* decision, the Board adopted on August 20, 1999, a rule to regulate hydraulic fracturing of coal beds. This rule, and a minor definition revision rule, submitted to EPA as part of Alabama's Class II UIC program revision package, embodied the State's requirements for such fracturing activities. In summary, the new rule (Rule 400–4–5–.04) establishes standards and procedures the Board will apply when evaluating proposals to hydraulically fracture coal beds. Among other things, Rule 400–4–5–.04(1) and (2) of the Board Administrative Code specifically provides that coal beds shall be hydraulically fractured so as not to endanger any underground source of drinking water (USDW). In addition, coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW if the presence of that contaminant may cause a violation of any applicable primary drinking water regulation under 40 CFR Part 141 or, otherwise, adversely affect the health of persons. It is EPA's interpretation that these requirements satisfy the prohibition against endangerment in Part C of the Safe Drinking Water Act.

Section 400–4–5.04(3) of the Alabama rule also establishes requirements that, should hydraulic fracturing of coal bed operations occur in a USDW, the operator must certify that the injectate does not exceed maximum contaminant levels (MCLs) before approval for injection can be obtained. Additional requirements pertaining to the depth of the hydraulic fracturing operation and geologic confining strata were established to prevent impacts on private and public drinking water supplies. For example, under Section 400–4–5–.04(5)(B) of the rule, hydraulic fracturing of coal beds is prohibited at depths of less than 300 feet from the surface. Fracturing at lower depths also requires additional demonstrations, including delineation of drinking water use around the fracturing operation and assurances for the prevention of upward movement of fluids. For every proposal to hydraulically fracture a coal bed, written approval from the Oil and Gas Supervisor must be obtained before the operation can commence.

SDWA Section 1425 requires a State to demonstrate that its Underground Injection Control (UIC) Program meets the requirements of Section 1421(b)(1)(A) through (D) and ''represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.'' Accordingly, Section 1425 requires that a State, in order to receive approval under the optional demonstration, make a successful showing that its program meets the following five conditions: (1) Section

1421(b)(1)(A) requires that an approvable State program prohibit any underground injection in such State which is not authorized by permit or rule. (2) Section 1421(b)(1)(B) requires that an approvable State program shall require that: (i) The applicant for a permit ''must satisfy the State that the underground injection will not endanger drinking water sources;'' and (ii) ''no rule may be promulgated which authorizes any underground injection which endangers drinking water sources.'' (3) Section 1421(b)(1)(C) requires that an approvable State program ''include inspection, monitoring, recordkeeping, and reporting requirements.'' (4) Section 1421(b)(1)(D) requires that an approvable State program apply to: (i) ''Underground injections by Federal agencies, and (ii) to underground injections by any other person, whether or not occurring on property owned or leased by the United States.'' (5) Section 1425(a) requires that an approvable State program represent an ''effective program * * * to prevent underground injection which endangers drinking water sources.''

EPA has concluded that Rule 400–4–5–.04 (Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds), along with the rest of Alabama's revision package, satisfies the above five conditions of Section 1425 for approving a State's program. The basis for our conclusion for each condition is as follows:

(1) Rule 400–4–5–.04(4) states: ''Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained.'' This satisfies the requirement of Section 1421(b)(1)(A). The Alabama rule established conditions, including written approval, under which hydraulic fracturing may take place. Without the Supervisor's written approval signifying that those conditions are met, hydraulic fracturing may not occur.

(2) Section 1421(b)(1)(B)(i) is satisfied because, while the Alabama regulation does not establish a permit requirement, Rule 400–4–5–.04(4) states: ''Coal beds shall not be hydraulically fractured until the written approval of the Supervisor is obtained.'' Section 1421(b)(1)(B)(ii) is also satisfied because Rule 400–4–5–.04(2) states: ''Coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) Cause a violation of any applicable primary drinking water regulation under 40 CFR § 141; or (b) otherwise adversely affect the health of persons.''

(3) Section 1421(b)(1)(C) is satisfied because Rule 400–4–5–.04 includes inspection, monitoring, recordkeeping and reporting requirements. The State rule provides adequate inspection of a hydraulic fracturing operation in accordance with Section 1421(b)(1)(C). The last sentence of Rule 400–4–5–.04(4) states that: ''In accordance with Rule 400–4–3–.01(2), the Supervisor may send a duly authorized representative to witness the fracturing operation.'' Additionally, Rule 400–4–5–.04(5)(c)(3), which covers coal beds in the depth interval of 300 to 749 feet, states that: ''A representative of the Board shall conduct a field reconnaissance within a ¼-mile radius of the coal bed methane gas well to determine the location of any additional fresh-water supply wells that may not be identified in the previously described documents.''

The Alabama rule also provides for adequate monitoring of fracturing operations. Rule 400–4–5–.04(3) states that: ''The operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW,'' and provide evidence supporting how the determination was made. Otherwise, if the proposed fracturing occurs in a USDW, ''the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR. § 141, Subparts B and G.'' EPA believes these requirements of the Alabama rule are adequate in lieu of monitoring requirements because they will ensure USDWs are not endangered, thereby rendering monitoring requirements unnecessary.

The rule provides for adequate reporting requirements. In addition to Rule 400–4–5–.04(3) mentioned above, Rule 400–4–5–.04(5)(a)(3) requires the submittal of Form OGB–7 (Well Record and Completion or Recompletion Report), covering casing and cementing specifications. ''[I]f the coal bed methane gas well is in a state of completion or recompletion, and Form OGB–7 is not required to be filed with the Board prior to the fracturing operation, then the Supervisor shall require the operator to submit a wellbore schematic showing the specifications of the casing and cementing program.''

The rule also provides for adequate recordkeeping. Rule 400–4–5–.04(7) requires that operators ''maintain all records associated with each proposal approved by the Supervisor and implemented by the operator to hydraulically fracture coal beds. Such records shall be maintained until such time that the coalbed methane gas well has been plugged for permanent abandonment, but not less than three (3) years following completion of the fracturing operation.''

(4) Section 1421(b)(1)(D) is satisfied since the State's Rule and Alabama's existing UIC Program applies to all relevant entities. The Alabama Oil and Gas Board has the authority to regulate operators who hydraulically fracture coal beds. Rule 400–1–1.03(32) defines operator as ''any person who, duly authorized, is in charge of the development of a lease or the operation of a producing well, and, in addition, for the purpose of assigning responsibility, may also be the person indicated as operator by the most current records of the Board.'' Rule 400–1–1–.03(34) defines person as ''any natural person, firm, corporation, association, partnership, joint venture, receiver, trustee, guardian, executor, administrator, fiduciary, representative of any kind, or any other group acting as a unit, and the plural as well as the singular number.'' Therefore, this program revision applies to underground injection by Federal agencies and underground injection by any other person, whether or not occurring on property owned or leased by the United States.

(5) Finally, the requirement of section 1425 is met because the current revision application package and Rule 400–4–5–.04 represent an effective program that prevents underground injection which endangers drinking water sources. State Rule 400–4–5–.04(2) states: ''Coal beds shall not be hydraulically fractured in a manner that allows the movement of fluid containing any contaminant into a USDW, if the presence of that contaminant may: (a) Cause a violation of any applicable primary drinking water regulation under 40 CFR § 141; or (b) otherwise adversely affect the health of persons.'' This statement embodies the ''endangerment'' standard in Section 1421(d)(2) of the SDWA and provides the basic prohibition against hydraulic fracturing which endangers drinking water sources.

The State has also adopted additional regulatory provisions preventing underground injection which endangers drinking water sources. State Rule 400–4–5–.04(3) states: ''The operator shall certify in writing to the Supervisor that the proposed fracturing operation will not occur in a USDW. Evidence that supports how the determination was made shall accompany such

certification and be acceptable to the Supervisor. Otherwise, the operator shall certify in writing to the Supervisor that the mixture of fluids to be used to hydraulically fracture the coal beds does not exceed the maximum contaminant levels contained in 40 CFR § 141 Subparts B and G.'' This provision requires a certification that fracturing fluids will not be injected into a USDW or establishes specifications for the quality of the injectate should the injection occur into the USDW. Specifically, it states that the injectate must meet drinking water standards. Therefore, EPA concludes that adequate provisions have been established to prevent endangerment of drinking water sources from hydraulic fracturing operations.

State Rule 400–4–5–.04(5)(a)5 also states: ''A geophysical log, or gamma ray log, shall be evaluated to determine the type and thickness of strata overlying the uppermost coal bed to be fractured. Impervious strata, such as shale, must overlie the uppermost coal bed and be of sufficient thickness and consistency to serve as a barrier to the upward movement of fluids. Otherwise, a fracturing proposal will be denied.'' This provision ensures that underground injection will not cause movement of fluids from the fracturing zone, which may be of lesser quality, into upper underground sources of drinking water. Should injection occur below the USDW where injectate quality is not addressed by State Rule 400–4–5–.04(3), this provision prohibits the upward movement of injectate and other formation fluids into the USDW. The quality of aquifers (measured as total dissolved solids) in the formations where hydraulic fracturing of coal beds occurs generally decreases as depth of the aquifer increases. In other words, if injection does not occur in a USDW, such injection is probably taking place below the lowermost USDW. Therefore, injection occurring below the USDW is prevented from moving upwards into the USDW, and downward movement would not be in the direction of a USDW. EPA concludes that adequate provisions have been established to prevent endangerment from movement of injection fluids and formation fluids into a USDW.

Additional protection is afforded because under 400–4–5–.04(5) operators will be required to follow the requirements of Rule 400–4–3–.02 (Casing Requirements), which will be evaluated by the Supervisor to ensure compliance. Hydraulic fracturing will not be allowed unless the coal bed methane well is constructed in accordance with Rule 400–4–3–.02. Rule 400–4–3.02 provides requirements to ensure the integrity of the surface casing and provides minimum criteria for cased hole and open-hole completion of coal beds methane wells. In accordance with Rule 400–4–5.04(5), ''[A]ny coalbed methane gas well that is not constructed in accordance with Rule 400–4–3.02 shall not be allowed to produce and may be required to be immediately plugged and abandoned.'' Therefore, EPA concludes that adequate provisions have been established to prevent endangerment during hydraulic fracturing caused by well integrity failure.

Additionally, Rule 400–4–5.04(5)(b) requires that a Cement Bond Log, if available, shall be evaluated for coal bed proposals in the 750–1000 feet depth range. Such a log is required in 400–4–5–.04(5)(c) for coal bed proposals in the 300–749 feet depth range to ascertain the top of cement and degree of bonding above the upper most coal bed to be fractured. Rule 400–4–5–.04(5)(c) also requires that ''[R]ecords of fresh-water supply wells located within a ¼ mile radius of the coalbed methane gas well shall be used in delineating the construction and completion depth of such supply wells.'' Moreover, ''a field reconnaissance within a ¼ mile radius * * * to determine the location of any additional fresh-water supply wells'' shall be conducted by a representative of the Board. Fracturing operations shall not be allowed ''if the Supervisor determines that any fresh-water supply well located within ¼ mile radius of the coal bed methane gas well could be adversely impacted in the manner described in section (2) of this rule as a result of the fracturing operation.'' All of these provisions provide additional assurances that underground injection does not endanger drinking water sources.

Rule 400–1–1.06, referenced in Alabama's revision package, requires operators to allow and assist State agents in making any and all inspections that may be required by the Board. The agents are to have access to all records and shall be permitted to come upon any property at all times to make such inspections. This ensures an adequate surveillance program is in place to determine compliance with the requirements of Rule 400–4–5.04 and State regulations and provides an effective means to enforce against violators.

For all these reasons, EPA concludes that Alabama's UIC revision application satisfies Section 1425(a) which requires that an approvable State program represents an effective program to prevent underground injection which endangers drinking water sources. Pursuant to the ''good cause'' provision of 5 U.S.C. 553(d)(3), this final rule is effective January 19, 2000. EPA has determined that there is good cause to make this rule effective January 19, 2000 because that will minimize the gap in the enforceability of these regulations that would result from a 30-day delay in their effectiveness.

C. Response to Comments on Revision Package

Numerous comments were received on EPA's proposals to approve and withdraw Alabama's UIC program to cover hydraulic fracturing associated with coal bed methane production. EPA has considered all comments received on both actions. A written response to each individual comment received is included in the Response to Comments Document, located at the EPA Regional Office, 61 Forsyth Street, SW, Room 15–T53, Atlanta, GA 30303–8960. This Response to Comment Document is included as part of the administrative record for this approval action. If you would like a copy of the Response to Comment Document, contact Larry Cole in Region 4, at (404) 562–9474 at the address provided in the **ADDRESSES** section of this preamble.

V. Regulatory Impact

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

a. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

c. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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: Children's Health Protection

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 Executive Order 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 Executive Order 13045 because it is not ''economically significant'' as defined in Executive Order 12866. This rule merely approves regulations adopted by the State of Alabama and effective as a matter of State law.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this final rule since no information collection requirements are established by this rule. This rule does not create any new requirements but merely approves regulations adopted by the State of Alabama and effective as a matter of State law.

D. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. This rule does not create any new requirements for anyone but merely approves regulations adopted by the State of Alabama and effective as a matter of State law. Accordingly, the rule imposes no additional requirements on small entities beyond those already imposed under Alabama law and, therefore, would have no economic impact on such entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. Today's rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities. The rule would merely approve regulations adopted by the State of Alabama to ensure that hydraulic fracturing of coal bed seams in connection with methane gas production will not endanger underground sources of drinking water. Thus, the requirements of Section 6 of Executive Order 13132 do not apply to this rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate (under the regulatory provisions of Title II of UMRA) for State, local, and tribal governments, or the private sector. Today's rule would merely approve requirements already in place in the State of Alabama. The rule would impose no additional enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

G. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), directs EPA to

use voluntary consensus standards in its regulatory and procurement 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, *etc.*) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, an explanation when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. It merely approves regulations adopted by the State of Alabama. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

Today's final rule would not significantly or uniquely affect Alabama's communities of Indian tribal governments, since the rule does not apply to them. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

I. 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 5 U.S.C. 804 (2). This rule will be effective January 19, 2000.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Intergovernmental relations, Water supply.

Dated: December 22, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 147 is amended as follows:

PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart B—Alabama

2. Section 147.52 is added to Subpart B to read as follows:

§ 147.52 State-administered program—Hydraulic Fracturing of Coal Beds.

The UIC program for hydraulic fracturing of coal beds in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to Section 1425 of the SDWA on December 22, 1999 and effective on January 19, 2000. The Alabama program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in State Oil and Gas Board of Alabama Rule 400–4–1–.02, Definitions, and Rule 400–4–5–.04, Protection of Underground Sources of Drinking Water during the Hydraulic Fracturing of Coal Beds, are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the Federal Register on January 19, 2000 in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the State Oil and Gas Board of Alabama, 420 Hackberry Lane, Tuscaloosa, AL 35489–9780. Copies may be inspected at the Environmental Protection Agency, Region 4, Water Management Division, Ground Water/ Drinking Water Branch, Ground Water & UIC Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Room15–T53, Atlanta, GA 30303-8960, or at the Office of the Federal Register, 800 N. Capitol Street NW, Suite 700, Washington, DC.

(b) Addendum One, Underground Injection Control Program, Memorandum of Agreement Between the State of Alabama and the USEPA Region 4, signed by the Supervisor, Alabama State Oil and Gas Board on December 10, 1999, and the Regional Administrator, U.S. Environmental Protection Agency Region 4, on December 13, 1999.

(c) *Statement of Legal Authority.* ''I hereby certify, pursuant to my authority as Attorney General for the State of Alabama and for reasons set forth in this statement, that in my opinion, the laws of the State of Alabama provide the State Oil and Gas Board (hereinafter referred to as ''the Board'') adequate authority to carry out an Underground Injection Program for the control of underground injection activity related to the hydraulic fracturing of coal beds.'' Opinion by Alabama's Attorney General Office, extracted from Letter from R. Craig Kneisel, Chief, Environmental Division, Office of the Attorney General, dated October 8, 1999, to Dr. Donald F. Oltz, Supervisor, State Oil and Gas Board of Alabama, Subject: Attorney General's Statement for Final Authorization of Alabama Class II Underground injection Control Program.

(d) The Program Description for the Regulation of Hydraulic Fracturing of Coal Beds As required by 40 CFR 145.23—State Oil and Gas Board of Alabama, including Appendices A through F.

[FR Doc. 00–622 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6525–5]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: North Dakota has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements for Final authorization, and is authorizing the State's changes through this immediate Final action. EPA is publishing this rule to authorize the changes without a prior proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the decision to authorize North Dakota's changes to their hazardous waste program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

DATES: This immediate final rule will become effective March 20, 2000 unless EPA receives significant adverse or critical comments by February 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy North Dakota's application at the following addresses: NDDH from 9:00 AM to 4:00 PM, 1200 Missouri Ave, Bismarck, ND, 58504–5264, contact: Curt Erickson, phone number (701) 328–5166 and EPA Region VIII, from 8:00 AM to 3:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions To State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made In This Rule?

We conclude that North Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant North Dakota Final authorization to operate its hazardous waste program with the changes described in the authorization application. North Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out those portions of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by EPA under the authority of HSWA take effect immediately and will be implement by EPA until the State is granted authorization.

C. What is The Effect of Today's Authorization Decision?

The effect of this decision is that a facility in North Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. North Dakota has primary enforcement responsibilities under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- conduct inspections, and require monitoring, tests, analyses, or reports; and
- enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which North Dakota is being authorized are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive comments opposing this authorization, that document will serve as a proposal to authorize the changes.

E. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. What Has North Dakota Previously Been Authorized For?

North Dakota initially received Final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on June 25, 1990, effective August 24, 1990 (55 FR 25836), May 4, 1992, effective July 6, 1992 (57 FR 19087), and April 7, 1994, effective June 6, 1994 (59 FR 16566).

G. What Changes Are We Authorizing With Today's Action?

In October 1994, North Dakota submitted a final revision application, seeking authorization of program changes in accordance with 40 CFR 271.21. At EPA's request, North Dakota amended its application in July 1995, July 1997, August 1998, and September 1999.

We have determined that the manner in which the North Dakota incorporates Federal regulations by reference may cause confusion within the regulated community. During State rulemaking, North Dakota publishes a Public Notice setting forth which Federal rules are adopted by reference, including the date of those Federal rules. However,

publications of State rules after the Public Notice do not include the date of applicable Federal rules. As a result, the regulated community may need to read the North Dakota Public Notice to know which Federal rule applies. With North Dakota's agreement, EPA is approving the current application with the understanding that the State will include Federal regulation dates in the next and all future incorporation-by-reference rulemaking.

We now make an immediate final decision, subject to receipt of written comments opposing this action, that North Dakota's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant North Dakota Final authorization for the following program changes:

Description of Federal requirement	Analogous State authority and effective date
Exceptions to the Burning & Blending of Hazardous Waste [HSWA 3004(q)(2)(A) & 3004 (r)(2) & (3)] (Non-checklist BB).	NDCC 23–20.3–04/1987, NDAC 33–24–02–04; NDAC 33–24–02–06.
Hazardous & Used Oil Fuel Criminal Penalties [HSWA 3006(h), 3008(d), & 3014] (Non-checklist CP).	NDCC 23–20.3–09/1987 NDAC 33–24–05–600 thru 689.
Sharing of Information With the Agency for Toxic Substances & Disease Registry [HSWA 3019, 07/15/85] (Non-checklist SI).	NDCC 44–04–18/1987.
Surface Impoundment Requirements [HSWA 3005 (j)(1) & (6)] (Non-checklist SR1).	NDCC 23–20.3–04; 23–20.3–05/1987, NDAC 33–24–06–16.
Surface Impoundment Requirements [HSWA 3005 (j)(2)–(9) &(13)] (Non-checklist SR2).	NDCC 23–20.3–04/1987, NDAC 33–24–06–16.
Permit Modifications for Hazardous Waste Management Facilities [53 FR 37912–37942, 09/28/88 & 53 FR 41649, 10/24/88] (Checklist 54 & 54.1).	33–24–07–03; 33–24–05–29; 33–24–05–61; 33–24–05–67; 33–24–06–16; 33–24–01–04; 33–24–06–10; 33–24–06–04; 33–24–06–11; 33–24–06–12; 33–24–06–14; 33–24–06–19.
Identification & Listing of Hazardous Waste; Removal of Iron Dextran from the list of Hazardous Wastes [53 FR 43878–43881, 10/31/88] (Checklist 56).	33–24–02–18; 33–24–02, Appendix V.
Identification & Listing of Hazardous Waste; Removal of Strontium Sulfide from the list of Hazardous Wastes [53 FR 43881–43884, 10/31/88] (Checklist 57).	33–24–02–18; 33–24–02, Appendix V.
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting [54 FR 9596–9609, 03/07/89] (Checklist 61).	33–24–07–01; 33–24–07–11; 33–24–07–14; 33–24–06–01; 33–24–06–13; 33–24–06–14; 33–24–06–16.
Land Disposal Restrictions; Amendments to First Third Scheduled Wastes [54 FR 18836–18838, 05/02/89] (Checklist 62).	33–24–05–283.
Land Disposal Restrictions; Corrections to the First Third Scheduled Wastes [54 FR 36967, 09/06/89 & 55 FR 23935, 06/13/90] (Checklist 66 & 66.1).	33–24–05–250; 33–24–05–254; 33–24–05–254; 33–24–05–255; 33–24–05–256; 33–24–05–257; 33–24–05–272; 33–24–05–273; 33–24–05–284; 33–24–05–290.
Modification of F019 Listing [55 FR 5340–5342, 02/14/90] (Checklist 72).	33–24–02–16.
Listing of 1,1-Dimethylhydrazine Production Wastes [55 FR 18496–18506, 05/02/90] (Checklist 75).	33–24–02–17; 33–24–02.
Land Disposal Restrictions for Third Third Scheduled Wastes [55 FR 22520–22720, 06/01/90] (Checklist 78H & N).	33–24–02, App IV; 33–24–02–10 thru 14; 33–24–02–16; 33–24–02–18; 33–24–03–02; 33–24–03–12; 33–24–05, Appendices VIII thru XI; 33–24–05, Appendix XIII 33–24–05–04; 33–24–05–120; 33–24–05–133; 33–24–05–168; 33–24–05–181; 33–24–05–185; 33–24–05–250 thru 252; 33–24–05–256; 33–24–05–258; 33–24–05–275; 33–24–05–280 thru 283; 33–24–06–14; 33–24–06–16.
Toxicity Characteristic; Hydrocarbon Recovery Operations [55 FR 40834–40837, 10/05/90; 56 FR 3978, 02/01/91; 56 FR 13406–13411, 04/02/91] (Checklist 80, 80.1, & 80.2).	33–24–02–04.
Petroleum Refinery Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [55 FR 46354–46397, 11/02/90; 55 FR 51707, 12/17/90] (Checklist 81 & 81.1).	33–24–02, Appendix IV; 33–24–02–16.
Wood Preserving Listings [55 FR 50450–50490, 12/6/90] (Checklist 82)	33–24–02, Table 1, Appendix III; 33–24–02, Appendices IV & V; 33–24–01–04; 33–24–02–04; 33–24–02–16; 33–24–02–19; 33–24–03–12; 33–24–05–103; 33–24–05–501 thru 506; 33–24–06–16; 33–24–06–17.
Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments [56 FR 3864–3928, 01/31/91] (Checklist 83).	33–24–02–03; 33–24–02–10; 33–24–02–16; 33–24–03–02; 33–24–03–12; 33–24–05–251; 33–24–05–256; 33–24–05–258; 33–24–05–273; 33–24–05–275; 33–24–05–280 thru 283; 33–24–05, Appendices I, V, VIII, IX, XI, & XIII.
Toxicity Characteristic; Chlorofluorocarbon Refrigerants [56 FR 5910–5915, 02/13/91] (Checklist 84).	33–24–02–04.
Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment [56 FR 7567–7568, 02/25/91] (Checklist 86).	33–24–02, Appendix V; 33–24–02–18.
Organic Air Emission Standards for Process Vents & Equipment Leaks; Technical Amendment [56 FR 19290, 04/26/91] (Checklist 87).	33–24–05–400; 33–24–05–403; 33–24–05–405; 33–24–05–422; 33–24–06–16; 33–24–06–17.
Administrative Stay for K069 Listing [56 FR 19951, 05/01/91] (Checklist 88).	33–24–02–17.
Revision to the Petroleum Refining Primary & Secondary Oil/Water/Solids Separation Sludge Listings (F037 & F038) [56 FR 21955–21960, 05/13/91] (Checklist 89).	33–24–02–16.
Mining Waste Exclusion III [56 FR 27300–27330, 06/13/91] (Checklist 90).	33–24–02–04.

Description of Federal requirement	Analogous State authority and effective date
Wood Preserving Listings [56 FR 27332–27336, 06/13/91] (Checklist 91).	33–24–02–16; 33–24–05–504; 33–24–06–16.
Wood Preserving Listings; Technical Corrections [56 FR 30192–30198, 7/1/91] (Checklist 92).	33–24–02–04; 33–24–02–19; 33–24–03–12; 33–24–05–501; 33–24–05–502 thru 506; 33–24–06–16; 33–24–06–17.
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) [56 FR 41164–41178, 8/19/91] (Checklist 95).	33–24–02–03; 33–24–02–04; 33–24–05–281; 33–24–05–282.
Exports of Hazardous Waste; Technical Correction [56 FR 43704–43705] (Checklist 97).	33–24–03–20; 33–24–03–23.
Amendments to Interim Status Standards for Down-gradient Ground-Water Monitoring Well Locations [56 FR 66365–66369, 12/23/91] (Checklist 99).	33–24–01–04; 33–24–06–16.
Liners & Leak Detection Systems for Hazardous Waste Land Disposal Units [57 FR 3462–3497, 1/29/92] (Checklist 100).	33–24–01–04; 33–24–05–06; 33–24–05–10; 33–24–05–40; 33–24–05–119; 33–24–05–120; 33–24–05–122; 33–24–05–126; 33–24–05–127; 33–24–05–131; 33–24–05–132; 33–24–05–137; 33–24–05–138; 33–24–05–177; 33–24–05–178; 33–24–05–180; 33–24–05–187; 33–24–05–188; 33–24–06–10; 33–24–06–14; 33–24–06–16; 33–24–06–17.
Administrative Stay for the Requirement that Existing Drip Pads Be Impregnable [57 FR 5859–5861, 2/18/92] (Checklist 101).	33–24–06–16.
Second Correction to the Third Third Land Disposal Restrictions [57 FR 8086–8089, 3/6/92] (Checklist 102).	33–24–05–04; 33–24–05–252; 33–24–05–281; 33–24–05–282; 33–24–06–16
Hazardous Debris Case-by-Case Capacity Variance [57 FR 20766–20770, 5/15/92] (Checklist 103).	
33–24–05–275..	
Used Oil Filter Exclusion [57 FR 21524–21534, 5/29/92] (Checklist 104).	33–24–02–04
Lead-bearing Hazardous Materials Case-by-Case Capacity Variance [57 FR 28628–28632, 6/26/92] (Checklist 106).	33–24–05–275.
Used Oil Filter Exclusion: Technical Corrections [57 FR 29220, 7/1/92] (Checklist 107).	33–24–02–04.
Toxicity Characteristics Revisions: Technical Corrections [57 FR 30657–30658, 07/10/92] (Checklist 108).	33–24–02–04; 33–24–06–16.
Land Disposal Restrictions for Newly Listed Wastes & Hazardous Debris [57 FR 37194–37282] (Checklist 109).	33–24–01–04; 33–24–02–03; 33–24–03–12; 33–24–05, Appendix VI; 33–24–05–59 thru 61; 33–24–05–74; 33–24–05–76; 33–24–05–251; 33–24–05–254; 33–24–05–256; 33–24–05–258; 33–24–05–265; 33–24–05–276; 33–24–05–280 thru 283; 33–24–05–285; 33–24–05–286; 33–24–05–290; 33–24–05–475 thru 500; 33–24–06–14; 33–24–06–16; 33–24–06–17.
Consolidated Liability Requirements [53 FR 33938–33960, 9/1/88; 56 FR 30200, 7/1/91; 57 FR 42832–42844, 9/16/92] (Checklist 113).	33–24–05–75; 33–24–05–77; 33–24–05–79; 33–24–05–81; 33–24–06–16.
Chlorinated Toluenes Production Waste Listing [57 FR 47376–47386, 10/15/92] (Checklist 115).	33–24–02, Appendix IV; 33–24–02–17.
Hazardous Soil Case-By-Case Capacity Variance [57 FR 47772–47776, 10/20/92] (Checklist 116).	33–24–05–275.
Toxicity Characteristic Amendment [57 FR 23062–23063, 06/01/92] (Checklist 117B).	33–24–02–03.
Liquids in Landfills II [57 FR 54452–54461, 11/18/92] (Checklist 118) ...	33–24–05–04; 33–24–05–183; 33–24–05–185; 33–24–06–16.
Toxicity Characteristic Revision; TCLP Correction [57 FR 55114–55117, 11/24/92] (Checklist 119).	33–24–02, Appendix II.
Wood Preserving: Revisions to Listings & Technical Requirements [57 FR 61492–61505, 12/24/92] (Checklist 120).	33–24–02–16; 33–24–05–501 thru 504; 33–24–06–16.
Corrective Action Management Units & Temporary Units [58 FR 8658–8685, 2/16/93] (Checklist 121).	33–24–01–04; 33–24–05–01; 33–24–05–58; 33–24–05–251; 33–24–05–552; 33–24–05–553; 33–24–06–14; 33–24–06–16.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance [58 FR 28506–28511, 5/14/93] (Checklist 123).	33–24–05–275.
Land Disposal Restrictions for Ignitable & Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated [58 FR 29860–29887, 5/24/93] (Checklist 124).	33–24–05–01; 33–24–05–250; 33–24–05–251; 33–24–05–256; 33–24–05–258; 33–24–05–277; 33–24–05–280 thru 283; 33–24–06–14; 33–24–6–16.

[1] North Dakota Administrative Code (NDAC), Article 33–24, as amended through January 1, 1994, unless otherwise indicated.

H. Where Are the Revised State Rules Different Fromt he Federal Rules?

We consider the following State requirements to be more stringent than the Federal requirements: 33–24–01–04.27, because the State does not allow a closed or closing unit to be designated as a corrective action management unit; 33–24–02–04.2.i, because the State excludes only discarded wood or wood products that fail for the Toxic Characteristic Leaching Procedure for arsenic while Federal rules exclude discarded wood or wood products that fail for Hazardous Waste Codes D004 through D017; 33–24–03–12.1.a(1), because North Dakota subjects containers to full status rather than interim status standards; 33–24–03–12.1.a(2), because North Dakota subjects tanks to full status rather than interim status standards; 33–24–03–12.1.a(1), because North Dakota subjects containment buildings to full status rather than interim status standards; 33–24–05–01.2, because the State does not allow for interim status facilities; 33–

24–05–04.1.a, because the State does not allow owners/operators of closed landfills to accept non-hazardous waste under certain conditions; 33–24–05–256.2.e.(3), because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33–24–05–281.2, because the State does not differentiate between high and low zinc non-wastewater (K061 wastes); 33–24–05–282.1.b and 33–24–05–282.1, Table 1, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33–24–05–282.3.a, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33–24–05–282.3.c, because the State does not allow lab packs eligible for land disposal to be disposed at interim status landfills; 33–24–05–283.3.a, because the State does not allow a treatment facility with interim status units to treat hazardous waste; 33–24–05–552.2.a.1 & 2.b, because the State does not have an analog to 40 CFR 265.113 for interim facilities; North Dakota does not have an equivalent to 40 CFR 265.145(f)(9) making the State more stringent. Nevertheless, these requirements are part of North Dakota's authorized program and are Federally enforceable.

We also consider the following State requirements to go beyond the scope of the Federal program: 33–24–06–14(7)(a)(3), because the State has requirements for newly regulated wastes and units that are not required by Federal rules. Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although a facility must comply with these requirements in accordance with State law, they are not RCRA requirements.

EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), and 268.44. EPA will continue to implement these requirements.

I. Who Handles Permits After This Authorization Takes Effect?

North Dakota will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to North Dakota within 30 days of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA and North Dakota have agreed to joint permitting and enforcement for those HSWA requirements for which North Dakota is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in North Dakota?

North Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of North Dakota:

a. Fort Totten Indian Reservation

b. Fort Berthold Indian Reservation

c. Standing Rock Indian Reservation

d. Turtle Mountain Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

In excluding Indian country from the scope of this program revision, we are not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian country. Should the State of North Dakota choose to seek program authorization within Indian country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, we must be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

K. What is Codification and is EPA Codifying North Dakota's Hazardous Waste Program as Authorized in this Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart JJ for this authorization of North Dakota's program until a later date.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because

UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It 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 13132, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' applies to any rule that: (1) the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 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 Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with 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 is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. North Dakota is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the

hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

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.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 5, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

[FR Doc. 00–1067 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6525–3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Renora, Inc., Superfund Site from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (EPA) Region II Office announces the deletion of the Renora, Inc., Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response actions under CERCLA have been implemented at the Site to protect human health and the environment.

DATES: This ''direct final'' action will be effective March 20, 2000 unless EPA receives significant adverse or critical comments by February 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Grisell Dıaz-Cotto, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway-19th Floor, New York, NY 10007–1866.

Comprehensive information on this Site is available for viewing at the Renora, Inc., Site information repositories at the following locations:

Edison Township Public Library, 340 Plainfield Avenue, Edison, New Jersey 08817, (732) 287–2298; and

U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007–1866, Hours: 9:00 am to 5:00 pm—Monday through Friday, Contact: Superfund Records Center (212) 637–4308.

FOR FURTHER INFORMATION CONTACT: Grisell Dıaz-Cotto, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway—19th Floor, New York, New York 10007–1866, (212) 637–4430.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

The United States Environmental Protection Agency Region II announces the deletion of the Renora, Inc., Site (the ''Site''), which is located in Edison Township, Middlesex County, New Jersey, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. 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 these sites. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the National Priorities List remains eligible for Fund-financed remedial actions if future conditions at the site warrant such action.

EPA will accept comments, concerning this document, for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Renora, Inc., Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

As described in § 300.425(e)(3) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA, in consultation with the New Jersey Department of Environmental Protection (NJDEP), 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 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.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if

future Site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region II issued a Record of Decision (ROD) on September 28, 1987, and a ROD Amendment on September 30, 1994, which identified the appropriate remedial actions to be undertaken at the Site; (2) Potentially responsible parties completed all remedial actions; (3) EPA Region 2 determined in a Site Close-Out Report dated September 30, 1996, that all construction activities were completed; (4) The NJDEP concurred with the proposed deletion in a letter dated July 8, 1998; (5) A notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day dissenting public comment period on EPA's Direct Final action to delete; and (6) EPA Region II recommends deletion and has made all relevant documents available for public review in the local Site information repositories.

EPA is requesting only dissenting comments on the Direct Final action to delete. The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion.

Deletion of sites 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 Agency management of Superfund sites. As mentioned in section II of this document, § 300.425 (e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

EPA's Regional Office will accept and evaluate public comments before making a final decision to delete. If appropriate, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

If EPA does not receive significant adverse or critical comments and/or any significant new data submitted during the comment period, the site will be deleted from the NPL, effective March 20, 2000.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Renora, Inc., Site is located at 83 South Main Street in the Bonhamtown section of Edison Township, Middlesex County, New Jersey. The Site occupies approximately one acre of the total property owned by the Clementi Brothers, Inc., and is surrounded by a chain link fence with locking gates. The Clementi property is bordered by Mill Brook to the north, the New Jersey Turnpike to the south, Main Street to the east and a Conrail right-of-way to the west. Land use in the vicinity of the Site is primarily light industrial and residential. The Site is currently zoned for commercial use.

B. History

Renora, Inc., operated at the Site from 1978 until 1982, transporting and accepting materials containing hazardous substances for transfer, storage and blending. Contamination of the Site occurred as a result of spills during the transfer and blending of hazardous substances, and container leaks from the accumulated wastes.

EPA placed the Site on the National Priorities List on September 9, 1983. In 1984, under EPA oversight, the potentially responsible parties (PRPs) removed all containers, contents, and visibly contaminated soil from the Site. In 1987, the PRPs completed a Remedial Investigation/Feasibility Study (RI/FS) to determine the nature and extent of contamination at the Site and to develop and evaluate remedial alternatives for the Site.

A ROD for the site was signed on September 28, 1987. The selected remedy included the following components: excavation and off-site disposal of all polychlorinated biphenyl (PCB) contaminated soils with concentrations above 5 parts per million (ppm); bioremediation of all polynuclear aromatic hydrocarbon (PAH) contaminated soils with concentrations above 10 ppm, using ground water as an irrigation medium in the bioremediation treatment system; and backfilling, grading and vegetation of the Site. The PCB soil excavation and site restoration phase of the selected remedy was completed by the PRPs in January 1989 and a final remedial action report for this phase of the cleanup was approved by EPA in 1990.

In 1990, treatability studies on the PAH-contaminated soils indicated that bioremediation was not effective in reducing the PAH concentrations. A Phase II FS and risk assessment were performed, which concluded that PAH-contaminated surface soils were the only remaining medium of concern at the Site. Therefore, a modified remedy was identified to address the PAH-contaminated surface soils.

Based on these findings, EPA issued a ROD Amendment on September 30, 1994, documenting the selection of a modified remedy for the Site. The major components of the modified remedy were: excavation and off-site disposal of the top two feet of surface soils and any debris from the entire site to an EPA-approved landfill; backfilling the Site with clean fill; and grading and vegetation of the Site. Excavation activities were completed in October 1995 by the PRPs. Backfilling and vegetating were completed in Spring 1996. A final inspection was conducted at the Site in April 1996. The PRPs' final remedial action report was approved by EPA in August 1996. EPA prepared a Site Close-Out Report documenting the completion of construction activities at the Site in September 1996.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and NJDEP have determined that the response actions conducted to date are protective of human health and the environment.

C. Community Relations Activities

Public meetings were held during 1987 and 1994 prior to issuance of the ROD and ROD Amendment for the Site. Public comments were received and addressed in the Responsiveness Summaries appended to the ROD and ROD Amendment. Regular Site updates were mailed to area residents to keep them informed about Site activities. In addition, local officials were kept apprised of Site progress.

D. Monitoring

The following analyses were performed to confirm compliance with the remedial action objectives:

- PCB contaminated soils were excavated to a depth of four feet. All excavated soils were stockpiled into separate piles and sampled for PCB content. Those soils exhibiting PCB concentrations less than 5 ppm were left on site; those exhibiting PCB concentrations greater than or equal to 5 ppm were disposed of off-site at an EPA approved landfill, Wayne Disposal, Inc., in Belleville, Michigan. Post-excavation samples were then collected from all areas where contaminated soils were removed. Additional rounds of excavation and post-excavation sampling were conducted until the

cleanup level was achieved in all areas of concern.

• Once all excavation activities were completed in 1995, the Site was surveyed to ensure that the top two feet of soil had been excavated from the entire Site. Following backfilling, the Site was graded to match the original Site grading.

• A rigorous testing regime was established to ensure that the clean backfill material and topsoil were suitable for use at the Site. Prior to approval for use by EPA and NJDEP, the fill and topsoil were analyzed for total petroleum hydrocarbons, total cyanide, pesticides, PCBs, metals, and semi-volatile and volatile organic compounds.

E. Operation and Maintenance

Since the remedy involved the removal of contaminated soils from the site, there are no operation and maintenance requirements. However, two quarterly site inspections were performed following the completion of the remedial action to determine if there were any erosion of the clean fill or problems with growth of vegetation. Since no problems were observed, no further quarterly inspections were planned.

Although EPA's ROD, as amended, did not require institutional controls, NJDEP independently required that the Site owner place a Declaration of Environmental Restrictions (DER) on the Site which states that the owner and operators shall not excavate, nor allow to be excavated, subsurface soils beyond a depth exceeding five feet. This DER shall remain in effect until terminated by NJDEP.

F. Protectiveness

All the completion requirements for this Site have been met as specified in the Office of Solid Waste and Emergency Response Directive ''Close Out Procedures for National Priorities List Sites''. Contaminated Site soils were remediated as directed in the 1987 ROD and the 1994 ROD Amendment. Confirmatory sampling of the clean fill provided further assurance that the Site no longer poses a threat to human health or the environment.

EPA and NJDEP have determined that all appropriate Fund-financed responses under CERCLA at the Renora, Inc., Site have been completed, and that no further cleanup by responsible parties is expected. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision. Therefore, no further response action is necessary. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and the State of New Jersey find that the remedy implemented continues to provide adequate protection of human health and the environment.

The State of New Jersey concurs with EPA that the criteria for deletion of the release have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective March 20, 2000. However, if EPA receives dissenting comments before or on February 18, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

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

Dated: January 3, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 300, Title 40 of Chapter 1 of the Code of Federal Regulations is amended as follows:

Part 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); 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 the entry for Renora, Inc. site, Edison Township, New Jersey.

[FR Doc. 00–1089 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6524–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Katonah Municipal Well Superfund site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II, announces the deletion of the Katonah Municipal Well site (Site), from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq*. EPA and the New York State Department of Environmental Conservation (NYSDEC) have determined that all appropriate CERCLA actions have been implemented and that, aside from operations and maintenance, no further cleanup by responsible parties is appropriate. Moreover, EPA and NYSDEC have determined that the Site poses no significant threat to public health and the environment.

EFFECTIVE DATES: This ''direct final'' action will be effective March 20, 2000 unless EPA receives significant adverse or critical comments by February 18, 2000. If written significant adverse or critical comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 AM to 5:00 PM, Monday through Friday.

Information on the Site is also available for viewing at the following

information repository: Katonah Village Library, 28 Bedford Road, Katonah, New York 10536, (914) 232–3508.

FOR FURTHER INFORMATION CONTACT: Mr. Duda may be contacted at the above address, by telephone at (212) 637–4270, by FAX at (212) 637–3966 or via e-mail at duda.damian@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

EPA Region II announces the deletion of the Katonah Municipal Well site (Site), located in the Village of Katonah, Town of Bedford, Westchester County, New York, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Contingency Plan (NCP). 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 the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the Site warrant such action.

EPA will accept comments, concerning this document, for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Katonah Municipal Well site and explains 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 § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA shall consider whether any of the following criteria has been met:

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

(ii) All appropriate responses under CERCLA have been implemented, and no further 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 remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site:

(1) EPA Region II issued a Record of Decision (ROD) in September 1987, which described the selected remedy at the Site.

(2) A Potentially Responsible Party (PRP) designed and constructed the remedy at the Site. EPA and the State of New York oversaw the design and construction activities. EPA prepared a Final Closeout Report, which documents that the remedy was implemented in accordance with the ROD.

(3) A five-year review, dated September 30, 1997, determined that the Site remedies are achieving their objectives and that the treatment system is operating as intended. These remedies remain protective of public health and the environment.

(4) EPA Region II issued a Final Closeout Report, dated January 3, 2000, which found that responsible parties or other persons have implemented all appropriate response actions.

(5) EPA Region II recommends deletion and has made all the relevant documents available in the regional office and local information repository.

(6) NYSDEC has concurred with the deletion decision in a letter dated November 4, 1999.

(7) A notice has been published in a local newspaper and has been distributed to appropriate Federal, state and local officials and other interested parties, announcing a thirty (30) day dissenting public comment period on EPA's Direct Final Action to Delete.

EPA is requesting only dissenting comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If necessary, EPA Region II will prepare a Responsiveness Summary to address any significant comments received during the public comment period.

If EPA does not receive significant adverse or critical comments and/or significant new data submitted during the comment period, the Site will be deleted from the NPL effective March 20, 2000.

IV. Basis for Intended Site Deletion

The Site is located in the Village of Katonah (Village), Town of Bedford (Town), Westchester County, New York and is situated on a narrow peninsula extending eastward into the Muscoot Reservoir, which supplies drinking water to New York City.

Before it was shut down in 1978, the Katonah Municipal Well provided over sixty percent of the water supply for 6,200 people in the Village.

In 1978, the Westchester County Department of Health (WCDOH) first discovered organic contamination, including tetrachloroethylene (also called perchloroethylene (PCE), dibromochloromethane, bromodichloromethane and bromoform, in the Katonah Municipal Well. As a result, the well was shut down permanently.

In 1979, four upgradient dry cleaning establishments were identified as possible contamination sources. The dry cleaning establishments were required by WCDOH to pump out their septic systems and to modify their disposal techniques.

On September 25, 1987, EPA issued a Record of Decision. The selected remedy included (1) construction of a new 370 gpm production well with an air stripper and disinfection unit; (2) controlling contaminant migration through pumping of the production well and treatment of extracted groundwater; (3) filling and sealing the existing Katonah Municipal Well to prevent the further migration of contaminants into the aquifer; (4) monitoring of the treated water to detect the presence of identified contaminants in the treated water; and, (5) general cleanup of the peninsula area to remove construction debris. This remedy is considered a containment remedy. Aquifer restoration is a secondary goal which may be achieved through the ongoing operation of the system.

On July 7, 1989, EPA entered into a Consent Decree with the Town to conduct the remedial action, and construction activities were completed in May 1992.

Construction activities consisted of the installation of (1) a new 370 gpm production well with two pumps, (2) a packed column air stripping tower designed for the removal of 99.4% of PCE to a level of less than 1 part per billion (ppb) in the effluent and (3) a chlorination system for disinfection. Since September 1992, treated water is discharged to the Bedford Consolidated Water District distribution system for use as a drinking water supply. The analyses of the treated water samples from the Katonah Municipal Well show that the levels of PCE continue to be below 1 ppb.

The construction completion of the remedies were documented in a Preliminary Close Out report dated July 7, 1992. A September 30, 1997 five-year review found the remedies to be protective of human health and the environment. The final Close Out Report, dated January 3, 2000, found that the responsible parties or other persons have implemented all appropriate required actions.

Actions remaining to be performed include continuation of the quarterly water quality sampling program and continuation of operation and maintenance activities. The O+M activities for the Site are covered under the regulatory authority established under the Federal Safe Drinking Water Act. This Site is also subject to review of the remedies, selected under CERCLA, every five years in accordance with § 300.430(f)(4)(ii) of the NCP. The next five-year review will be conducted on or before September 30, 2002.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision. Therefore, no further response action is necessary. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants. Therefore, human health and potential environmental impacts have been minimized. EPA and the State of New York find that the remedy implemented continues to provide adequate protection of human health and the environment.

The State of New York concurs with EPA that the criteria for deletion of the release have been met. Therefore, EPA is deleting the Site from the NPL.

This action will be effective March 20, 2000. However, if EPA receives dissenting comments by February 18, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous wastes, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: January 3, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 300, Title 40 of Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

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

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); 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 the entry for Katonah Municipal Well, Town of Bedford, New York.

[FR Doc. 00–1084 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 65, No. 12
Wednesday, January 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–2 PR]

Dried Prunes Produced in California; Undersized Regulation for the 2000–2001 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2000–2001 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the excess of dried prunes by approximately 5,100 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 17, 2000, 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 available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: 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, 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.

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 produced 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. This rule is not intended to have retroactive effect. This proposal would 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 the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 2000–2001 crop year for supply management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening would be increased from 28/32 to 30/32 of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule would be in effect from August 1, 2000, through July 31, 2001, and was unanimously recommended by the Committee at a November 30, 1999, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. * * * Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit openings of 23/32

or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes—particularly in the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 165,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000.

For the 1998–99, the carryin inventory level reached a record high of 126,485 natural condition tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 30, 1999, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2000–2001 crop year for supply management purposes. This regulation would be in effect from August 1, 2000, through July 31, 2001.

The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes as of July 31, 2000. This proposed rule would continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99 and 1999–2000 crop years. It is estimated that approximately 5,100 natural condition tons of small prunes would be removed from human consumption channels during the 2000–2001 crop year. This would leave sufficient prunes to fill domestic and foreign trade demand during the 2000–2001 crop year, and provide an adequate carryout on July 31, 2001, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2000–2001 crop is about 39,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing into the next century (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1999–2000 crop years, the yield ranged from 1.2 to 2.6 versus a 10-year average of 2.2 tons per acre); and (4) California's continued excess inventory situation. The production of these small sizes ranged from 1,332 to 8,778 natural condition tons during the 1990–91 through the 1998-99 crop years. The Committee concluded that it has to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The proposed changes to the undersized regulation for the 2000-2001 crop year are the result of these deliberations, and the Committee's desire to gradually bring supplies in line with market needs.

The industry's oversupply situation is expected to continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The 1996–97 through 1998–99 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.2 tons per acre.

The 1999–2000 dried prune crop is expected to be 165,000 natural condition tons. Another large crop of about 200,000 natural condition tons is expected for the 2000–2001 crop year, partly because of an anticipated increase in bearing acreage.

Since the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. The lower producer prices are expected to continue as an incentive for production of larger size prunes. The larger sizes will help the industry better meet the increasing market demand for larger-sized pitted prunes.

The 1998–99 and 1999–2000 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done

to bring supplies into balance with market demand. The excess inventory on July 31, 1999, was 17,873 natural condition tons, and only about 5,130 natural condition tons of dried prunes are expected to be removed from the 1999–2000 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2000–2001 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2000–2001 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 49 percent of parity during the 1994 through 1998 seasons and is in a downward trend. As discussed later, the average grower price for prunes during the 2000–2001 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action would not impact the dried prune import regulation because the action would affect volume control, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

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 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 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 have been 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.

An updated industry profile shows that 7 out of 20 handlers (35%) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 20 handlers (65%) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 109 producers, or less than 9% of the 1,250 total producers, would be considered large growers with annual incomes over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2000–2001 crop year for inventory management purposes. This change in regulation would result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 1999–2000 are expected to remove only 5,130 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes on July 31, 2000. Implementation of the larger openings in 2000–2001 is expected to reduce that surplus by about 5,100 tons.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the state's production), the prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 5,100 tons) to nonhuman consumption outlets. These costs are expected to be minimal and would be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers of these small sizes is quite bleak with producers losing about $260–$270 on every ton delivered to handlers. The 1999–2000 grower field price for 24/32 screen French prunes ranges between $40 and $50 per ton, the same as the 1998–99 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260–$270 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 5,100 tons of small-sized dried prunes during the 2000–2001 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 59,944 tons of natural condition prunes on July 31, 1999, the end of the 1998–99 crop year. The 59,944 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 39,000 natural condition tons. This leaves a 1999–2000 inventory surplus of about 18,000 tons. The near normal size 1999–2000 prune crop (165,000 tons) and undersized regulation will help reduce the surplus, but the anticipated large 2000–2001 prune crop is expected to worsen the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1994–95 through the 1998–99 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $784 per ton during the 1998–99 crop year. The season average price received by producers during that 5-year period averaged about 49 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1999–2000 season is expected to be about $905 per ton, or about 43 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to the proposal.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of $^{23}/_{32}$ of an inch for French prunes and $^{28}/_{32}$ of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to $^{24}/_{32}$ of an inch in diameter for French prunes and $^{30}/_{32}$ of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any 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.

In addition, the Committee's meeting was widely publicized throughout the 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 November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this proposed rule reflects their deliberations completely. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: 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.

The Committee has requested a comment period through April 17, 2000, to allow interested persons to respond to this proposal. This longer comment period is needed to give the Committee more time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes deemed appropriate. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 993.407 is added to read as follows:

§ 993.407 Undersized prune regulation for the 2000–2001 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2000–2001 crop year is hereby established. Undersized prunes are

prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: January 12, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–1222 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL TRADE COMMISSION

16 CFR Parts 250 and 310

Notice of Intent to Request Public Comments on Guides for the Household Furniture Industry and the Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission (''Commission'') rules and guides, the Commission gives notice that it intends to request public comments on the Guides for the Household Furniture Industry and the Telemarketing Sales Rule during 2000. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rule and guides; possible conflict between the rule and guides and state, local, or other federal laws or regulations; and the effect on the rule and guides of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rule or guides should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for each particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following during 2000:

(1) Guides for the Household Furniture Industry, 16 CFR part 250.

Agency Contact: Ingrid E. Whittaker-Ware, Federal Trade Commission, Southeast Region, Suite 5M35, Midrise Building, 60 Forsyth Street, S.W., Atlanta, GA 30303, (404) 6561364.

(2) Telemarketing Sales Rule, 16 CFR Part 310.

Agency Contact: Catherine C. Harrington-McBride, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, Room H238, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–2452.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–993 Filed 1–18–00; 8:45am]

BILLING CODE 6750–01–M

DEPARTMENT OF DEFENSE

32 CFR Part 326

National Reconnaissance Office; National Reconnaissance Office Privacy Act Program

AGENCY: National Reconnaissance Office, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the National Reconnaissance Office Privacy Act Program. This rule establishes policies and procedures for implementing the NRO Privacy Program, and delegates authorities and assigns responsibilities for the administration of the NRO Privacy Program

DATES: Comments must be received by March 20, 2000, to be considered by the agency.

ADDRESSES: National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808-5029.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section 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;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 326

Privacy

Accordingly, Title 32 of the CFR is proposed to be amended in Chapter I, subchapter O, by adding part 326 to read as follows:

PART 326––NATIONAL RECONNAISSANCE OFFICE PRIVACY ACT PROGRAM

Sec.

326.1 Purpose.
326.2 Application.
326.3 Definitions.
326.4 Policy.
326.5 Responsibilities.
326.6 Policies for processing requests for records.
326.7 Procedures for collection.
326.8 Procedures for requesting access.
326.9 Procedures for disclosure of requested records.
326.10 Procedures to appeal denial of access to requested record.
326.11 Special procedures for disclosure of medical and psychological records.
326.12 Procedures to request amendment or correction of record.
326.13 Procedures to appeal denial of amendment.
326.14 Disclosure of record to person other than subject.
326.15 Fees.
326.16 Penalties.
326.17 Exemptions.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 326.1 Purpose.

This part implements the basic policies and procedures outlined in the Privacy Act of 1974, as amended (5 U.S.C. 552a), and 32 CFR part 310; and establishes the National Reconnaissance Office Privacy Program (NRO) by setting policies and procedures for the collection and disclosure of information maintained in records on individuals, the handling of requests for amendment or correction of such records, appeal and review of NRO decisions on these matters, and the application of exemptions.

§ 326.2 Application.

Obligations under this part apply to all employees detailed, attached, or assigned to or authorized to act as agents of the National Reconnaissance Office. The provisions of this part shall be made applicable by contract or other legally binding action to government contractors whenever a contract is let for the operation of a system of records or a portion of a system of records.

§ 326.3 Definitions.

Access. The review or copying of a record or its parts contained in a system of records by a requester.

Agency. Any executive or military department, other establishment, or entity included in the definition of agency in 5 U.S.C. 522(f).

Control. Ownership or authority of the NRO pursuant to federal statute or privilege to regulate official or public access to records.

Disclosure. The authorized transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

He, him, and himself. Generically used in this part to refer to both males and females.

Individual or requester. A living citizen of the U.S. or an alien lawfully admitted to the U.S. for permanent residence and to whom a record might pertain. The legal guardian or legally authorized agent of an individual has the same rights as the individual and may act on his behalf. No rights are vested in the representative of a dead person or in persons acting in an entrepreneurial (for example, sole proprietorship or partnership) capacity under this part.

Interested party. Any official in the executive (including military), legislative, or judicial branches of government, U.S. or foreign, or U.S. Government contractor who, in the sole discretion of the NRO, has a subject matter or physical interest in the documents or information at issue.

Maintain. To collect, use, store, disclose, retain, or disseminate when used in connection with records.

Originator. The NRO employee or contractor who created the document at issue or his successor in office or any official who has been delegated release or declassification authority pursuant to law.

Personal information. Information about any individual that is intimate or private to the individual, as distinguished from 'corporate information' which is in the public domain and related solely to the individual's official functions or public life (i.e., employee's name, job title, work phone, grade/rank, job location).

Privacy Act Coordinator. The NRO Information and Access Release Center Chief who serves as the NRO manager of the information review and release program instituted under the Privacy Act.

Record. Any item, collection, or grouping of information about an individual that is maintained by the NRO, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name or identifying number (such as Social Security or employee number), symbol, or other identifying particular assigned to the individual, such as fingerprint, voice print, or photograph. Records include data about individuals which is stored in computers.

Responsive record. Documents or records that the NRO has determined to be within the scope of a Privacy Act request.

Routine use. The disclosure of a record outside the Department of Defense (DoD) for a use that is compatible with the purpose for which the information was collected and maintained by NRO. Routine use encompasses not only common or ordinary use, but also all the proper and necessary uses of the record even if such uses occur infrequently. All routine uses must be published in the **FEDERAL REGISTER**.

System managers. Officials who have overall responsibility for a Privacy Act system of records.

System notice. The official public notice published in the **Federal Register** of the existence and general content of the system of records.

System of records. A group of any records under the control of the NRO from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

Working days. Days when the NRO is operating and specifically excludes Saturdays, Sundays, and legal public holidays.

§ 326.4 Policy.

(a) *Records about individuals.*—(1) *Collection.* The NRO will safeguard the privacy of individuals identified in its records. Information about an individual will, to the greatest extent practicable, be collected directly from the individual, and personal information will be protected from unintentional or unauthorized disclosure by treating it as marked 'For Official Use Only.' Access to personal information will be restricted to those employees whose official duties require it during the regular course of business.

(i) *Privacy Act Statement.* When an individual is requested to furnish personal information about himself for inclusion in a system of records, a Privacy Act Statement is required to enable him to make an informed decision whether to provide the information requested. A Privacy Act Statement may appear, in order of preference, at the top or bottom of a form, on the reverse side of a form, or attached to the form as a tear-off sheet.

(ii) *Social Security Numbers (SSNs).* It is unlawful for any governmental agency to deny an individual any right, benefit, or privilege provided by law because the individual refuses to provide his SSN. However, if a federal statute requires that the SSN be furnished or if the SSN is required to verify the identity of an individual in a system of records that was established and in use before January 1, 1975, this restriction does not apply. When collecting the SSN, a 'qualified' Privacy Act Statement must be provided even if the SSN will not be maintained in a system of records. The 'qualified' Privacy Act Statement shall inform the individual whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(2) *Maintenance.* The NRO will maintain in its records only such information about an individual which is accurate, relevant, timely, and necessary to accomplish a purpose which is required by statute or Executive Order. All records used by the NRO to make determinations about individuals will be maintained with such accuracy and completeness as is reasonably necessary to assure fairness to the individual.

(3) *Existence.* The applicability of the Privacy Act depends on the existence of an identifiable record. The procedures described in NRO regulations do not require that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier. Nor do these procedures entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding. NRO will maintain only those systems of records that have been described through notices published in

the **Federal Register**. A system of records from which records may be retrieved by a name or some other personal identifier must be under NRO control for consideration under this part.

(4) *Disposal.* The NRO will archive, dispose of, or destroy records containing personal data in a manner to prevent specific records from being readily identified or inadvertently compromised.

(b) *Evaluation of records.* Statutory authority to establish and maintain a system of records does not grant unlimited authority to collect and maintain all information which may be useful or convenient. Directorates and offices maintaining records will evaluate each category of information in records systems for necessity and relevance prior to republication of all system notices in the **Federal Register** and during the design phase or change of a system of records. The following will be considered in the evaluation:

(1) Relationship of each item of information to the statutory purpose for which the system is maintained;

(2) Specific adverse consequences of not collecting each category of information; and

(3) Techniques for purging parts of the records.

(c) *Disclosure of records.* The NRO will provide the fullest access practicable by individuals to NRO records concerning them. Release of personal information to such individuals is not considered public release of information. Upon receipt of a written request, the NRO will release to individuals those records that are releasable and applicable to the individual making the request. Generally, information, other than that exempted by law and this part, will be provided to the individual. NRO personnel will comply with the Privacy Act of 1974, as amended, the DoD Privacy Act Program (32 CFR part 310), and the NRO Privacy Act Program. No NRO records shall be disclosed by any means of communication to any person or to any agency except pursuant to a written request by or the prior written consent of the individual to whom it pertains, unless disclosure of the record will be:

(1) To those employees of the NRO who have an official need for the record in the performance of their duties.

(2) Required to be disclosed to a member of the public under the Freedom of Information Act, as amended.

(3) For a routine use as defined in the Privacy Act.

(4) To the Census Bureau for the purpose of conducting a census or survey or related activity authorized by law.

(5) To a recipient who has provided the NRO with advance, adequate written assurance that the record will be used solely as statistical research and that the record is to be transferred in a form in which the individual is not identifiable.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U. S. Government.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if such activity is authorized by law and if the head of the agency or governmental entity has made a written request to the NRO specifying the particular portion of the record and the law enforcement activity for which the record is sought (blanket requests will not be accepted); a record may also be disclosed to a law enforcement agency at the initiative of the NRO pursuant to the blanket routine use for law enforcement when criminal conduct is indicated in the record.

(8) To a person showing compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is sent to the last known address of the individual to whom the record pertains (emergency medical information may be released by telephone).

(9) To Congress or any committee, joint committee, or subcommittee of Congress with respect to a matter under its jurisdiction. This provision does not authorize the disclosure of a record to members of Congress acting in their individual capacities or on behalf of their constituents making third party requests. However, such releases may be made pursuant to the blanket routine use for Congressional inquiries when a constituent has sought the assistance of his Congressman for the constituent's individual record(s).

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to an order of a court of competent jurisdiction. When the record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, the NRO will make reasonable efforts to notify the individual to whom the record pertains by mail at the most recent address contained in NRO records.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(d) *Allocation of resources.* NRO components shall exercise due diligence in their responsibilities under the Privacy Act and must devote a reasonable level of personnel to respond to requests on a 'first-in, first-out' basis. In allocating Privacy Act resources, the component shall consider its imposed business demands, the totality of resources available to it, the information review and release demands imposed by Congress and other governmental authorities, and the rights of the public under various disclosure laws. The PA Coordinator will establish priorities for cases consistent with established law to ensure that smaller as well as larger 'project' cases receive equitable attention.

(e) *Written permission for disclosure.* Disclosures made under circumstances not delineated in this part shall be made only if the written permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each case; that is, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(f) *Coordination with other government agencies.* Records systems of the NRO may contain records originated by other agencies that may have claimed exemptions for them under the Privacy Act. Where appropriate, coordination will be effected with the originating agency. The NRO will comply with the instructions issued by another agency responsible for a system of records (e.g., Office of Personnel Management) in granting access to such records. Records containing information or interests of another government agency will not be released until coordination with the other agency involved. A request for information pertaining to the individual in an NRO record system received from another federal agency will be coordinated with the originating agency.

(g) *Accounting for disclosure.* Except for disclosures made under paragraphs (c)(1) and (c)(2) of this section, an accurate account of the disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator (PA Coordinator). There need not be a notation on a single document of every disclosure of a particular record. The record holder should be able to construct from its

system of records the accounting information:

(1) When required by the individual to whom the record pertains, or

(2) When necessary to inform previous recipients of any amended records. The accounting shall be retained for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for disclosures made under paragraph (c)(7) of this section.

(h) *Application of rules.* Any request for access, amendment, correction, etc., of personal record information in a system of records by an individual to whom such information pertains will be governed by the Privacy Act of 1974, as amended, DoD regulatory authority, and this part, exclusively. Any denial or exemption of all or part of a record from access, disclosure, amendment, correction, etc., will be processed under DoD regulatory authority and this part, unless court order or other competent authority directs otherwise.

(i) *First Amendment rights.* No NRO official or component may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or pertains to an authorized law enforcement activity.

(j) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under this part and may be maintained by NRO for ready identification, contact, and property control purposes only, provided it is not maintained in a system of records. If at any time the information described in this paragraph is being maintained in a system of records, the information is subject to the Privacy Act.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Geographical or agency contact cards.

(3) Property receipts and control logs for building passes, credentials, vehicles, etc.

(4) Personal working notes of employees that are merely an extension of the author's memory, if maintained properly, do not come under the Privacy Act. Personal notes are not considered official NRO records if they meet the following requirements:

(i) Keeping or discarding notes must be at the sole discretion of the author. Any requirement by supervising authority, whether by oral or written directive, regulation, policy, or memo to maintain such notes, likely would cause the notes to become official agency records.

(ii) Such notes must be restricted to the author's personal use as memory aids, and only the author may have access to them. Passing them to a successor or showing them to other personnel (including supporting staff such as secretaries) would likely cause them to become agency records.

(5) Rosters. The NRO has no restriction against rosters that contain only corporate information such as name, work telephone number, and position. Good recordkeeping practices dictate that only rosters that are relevant and necessary to the NRO's operations may be maintained, and therefore convenience rosters, which by definition do not satisfy the test, may not be maintained.

§ 326.5 Responsibilities.

(a) The Director, NRO (DNRO):

(1) Supervises the execution of the Privacy Act and this part within the NRO.

(2) Appoints:

(i) The Chief, Information Access and Release Center as the NRO Privacy Act Coordinator.

(ii) The Director of Security, the Director of Policy, and the NRO General Counsel as the NRO Appeals Panel; and

(iii) The Chief of Staff as the Senior Official for Privacy Policy and the Privacy Act Appeal Authority.

(b) The Privacy Act Coordinator, NRO:

(1) Establishes, issues, and updates policy for the NRO Privacy Act Program, monitors compliance, and serves as the principal NRO point of contact on all Privacy Act matters.

(2) Receives, processes, and responds to all Privacy Act requests received by the NRO, including:

(i) Granting, granting in part, or denying an initial Privacy Act request for access or amendment to a record, and notifying a requester of such actions taken in regard to that request.

(ii) Granting a requester access to all or part of a record under dispute when, after a review, a decision is made in favor of a requester.

(iii) Directing the appropriate NRO component to amend a record and advising other record holders to amend a record when a decision is made in favor of a requester.

(iv) Notifying a requester, if a request is denied, of the reasons for denial and the procedures for appeal to the Privacy Act Appeal Authority.

(v) Notifying a requester of his right to file a concise statement of his reasons for disagreement with the NRO's refusal to amend a record.

(vi) Directing that a requester's statement of reasons for the request to amend, his concise statement of disagreement with the NRO's refusal to amend a record, and the NRO's letter of denial be included in the file containing the disputed record.

(vii) Referring all appeals to the Privacy Act Appeals Panel and Appeal Authority.

(viii) Notifying a requester of any required fees and delivering such collected fees to the Comptroller.

(ix) Obtaining supplemental information from the requester when required.

(3) Serves as the NRO point of contact with the Defense Privacy Office.

(4) Reviews NRO use of records, and at least 40 calendar days prior to establishing a new agency system of records, ensures that new or amended notices are prepared and published in the **Federal Register** consistent with the requirements of 32 CFR part 310;

(5) Coordinates with forms managers to ensure that a Privacy Act Statement is on all forms or in all other methods used to collect personal information for inclusion in any NRO records system;

(6) Prepares the NRO Privacy Act report for submission to the DoD Privacy Office and to other authorities, as required by 32 CFR part 310.

(7) Reviews all procedures, including forms, which require an individual to furnish information for conformity with the Privacy Act.

(8) Retains the accounting of disclosures for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for disclosures made under paragraph (c)(7) of § 326.4; and

(9) Develops and oversees Privacy Act Program training for NRO personnel.

(c) The Privacy Act Appeals Panel, NRO:

(1) Meets and reviews all denials appealed by means of the NRO internal appeals process; and

(2) Recommends a finding to the Privacy Act Appeal Authority by a majority vote of those present at the meeting and based on the written record and the panel's deliberations.

(d) The Privacy Act Appeal Authority, NRO:

(1) Determines all NRO Privacy Act appeals.

(2) Reports the determination to the PA Coordinator.

(3) Signs the final appeal letter to the requester.

(e) General Counsel, NRO:

(1) Ensures uniformity in NRO legal positions concerning the Privacy Act and reviews proposed responses to

Privacy Act requests to ensure legal sufficiency, as appropriate.

(2) Consults with DoD General Counsel on final denials that may be inconsistent with other final decisions within DoD; raises new legal issues of potential significance to other government agencies.

(3) Provides advice and assistance to the DNRO, the PA Coordinator, and component Directors, as required, in the discharge of their responsibilities pertaining to the Privacy Act.

(4) Advises on all legal matters concerning the Privacy Act, including legal decisions, rulings by the Department of Justice, and actions by DoD and other commissions on the Privacy Act.

(5) Approves all Privacy Act Statements prior to their reproduction and distribution.

(6) Acts as the NRO focal point for Privacy Act litigation with the Department of Justice.

(7) Provides a status report to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, whenever an individual brings suit under subsection (g) of the Privacy Act against NRO.

(f) Chief Information Officer (CIO), NRO:

(1) Ensures that NRO systems of records databases have procedures to protect the confidentiality of personal records maintained or processed by means of automatic data processing (ADP) systems and ensures that ADP systems contain appropriate safeguards for the privacy of personnel.

(2) Coordinates with the PA Coordinator before developing or modifying CIO-sponsored ADP supported files subject to the provisions of this part.

(g) Directorate and Office Managers, NRO:

(1) Ensure that records contained in their directorate or office systems of records are disclosed only to those NRO officials or employees who require the records for official purposes.

(2) Review their own directorate and office systems of records to ensure and certify that no systems of records other than those listed in the **Federal Register** System Notices are maintained; notify the CIO and the PA Coordinator promptly whenever there are changes to processing equipment, hardware, software, or database that may require an amended system notice.

(3) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose which is required by statute or Executive Order and identify the specific provision of law or Executive Order which provides authority for the maintenance of information in each system of records.

(h) System Managers, NRO:

(1) Ensure that adequate safeguards have been established and are enforced to prevent the misuse, unauthorized disclosure, alteration, or destruction of personal information contained in system records.

(2) Ensure that all personnel who have access to the system of records, or are engaged in developing or supervising procedures for handling records, are aware of their responsibilities established by the NRO Privacy Act Program.

(3) Evaluate each system of records during the planning stage and at regular intervals. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purposes for which the system is maintained (all information must be relevant and necessary to the purpose for which it is collected).

(ii) The specific impact on the purpose or mission if categories of information are not collected (all data fields must be necessary to accomplish a lawful purpose or mission).

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The cost of maintaining and disposing of records within the systems of records and the length of time each item of information must be retained according to the NRO Records Control Schedule as approved by the National Archives and Records Administration.

(4) Review system alterations or amendments to evaluate for relevancy and necessity.

(i) Forms and Information Managers. All NRO individuals responsible for forms or methods used to collect personal information from individuals will:

(1) Ensure that Privacy Act Statements are on appropriate forms and that new forms have the required Privacy Act Statement.

(2) Determine, with General Counsel's concurrence, which forms require Privacy Act Statements and will prepare such statements.

(3) Assist the initiators in determining whether a form, format, questionnaire, or report requires a Privacy Act Statement. Privacy Act Statements must be complete, specific, written in plain English, and approved by the Office of General Counsel.

(j) Employees, NRO:

(1) Will be familiar with the provisions of this part regarding the maintenance of systems of records, authorized access, and authorized disclosure;

(2) Will collect, maintain, use, and/or disseminate records containing identifiable personal information only for lawful purposes; will keep the information current, complete, relevant, and accurate for its intended use; and will safeguard the records in a system and keep them the minimum time required;

(3) Will not disclose any personal information contained in any system of records, except as authorized by the Privacy Act and this part;

(4) Will maintain no system of records concerning individuals except those authorized, and will maintain no other information concerning individuals except as necessary for the conduct of business at the NRO;

(5) Will provide individuals a Privacy Act Statement when asking them to provide information about themselves. The Privacy Act Statement will include the authority under which the information is being requested, whether disclosure of the information is mandatory or voluntary, the purposes for which it is being requested, the uses to which it will be put, and the consequences of not providing the information;

(6) May not deny an individual any right or privilege provided by law because of that individual's failure to disclose his SSN unless such information is required by federal statute or disclosure was required by statute or regulations adopted prior to January 1, 1975. If disclosure of the SSN is not required, NRO directorates and offices are not precluded from requesting it from individuals; however, the Privacy Act Statement must make clear that the disclosure of the SSN is voluntary and, if the individual refuses to disclose it, must be prepared to identify him by alternate means.

(7) Will collect personal information directly from the subject whenever possible; employees may collect information from third parties when that information must be verified, opinions or evaluations are required, the subject cannot be contacted, or the subject requests it.

(8) Will keep paper and electronic records which contain personal information and are retrieved by name or personal identifier only in approved systems published in the Federal Register.

(9) Will amend and correct records when directed by the PA Coordinator.

(10) Will report to the PA Coordinator any disclosures of personal information from a system of records, or the

maintenance of any system of records, not authorized by this part.

§ 326.6 Policies for processing requests for records.

(a) An individual's written request for access to records about himself which does not specify the Act under which the request is made will be processed under both the Freedom of Information Act (FOIA) and the Privacy Act and the applicable regulations. Such requests will be processed under both Acts regardless of whether the requester cites one Act, both, or neither in the request in order to ensure the maximum possible disclosure to the requester. Individuals may not be denied access to a record pertaining to themselves merely because those records are exempt from disclosure under the FOIA.

(b) A Privacy Act request that neither specifies the system(s) of records to be searched nor identifies the substantive nature of the information sought will be processed by searching the systems of records categorized as Environmental Health, Safety and Fitness, FOIA/Privacy, General, and Security.

(c) A Privacy Act request that does not designate the system(s) of records to be searched but does identify the substantive nature of the information sought will be processed by searching those systems of records likely to have information similar to that sought by the requester.

(d) The NRO will not disclose any record to any person or government agency except by written request or prior written consent of the subject of the record unless the disclosure is required by law or is within the exceptions of the Privacy Act. If a requester authorizes another individual to obtain the requested records on his behalf, the requester shall provide a written, signed, notarized statement appointing that individual as his representative and certifying that the individual appointed may have access to the requester's records and that such access shall not constitute an invasion of his privacy nor a violation of his rights under the Privacy Act. In lieu of a notarized statement, the NRO will accept a declaration in accordance with 28 U.S.C. 1746.

(e) Upon receipt of a written request, the Privacy Act Coordinator (PA Coordinator) will release to the requester those records which are releasable and applicable to the individual making the request. Records about individuals include data stored electronically or in electronic media. Documentary material qualifies as a record if the record is maintained in a system of records.

(f) Initial availability, potential for release, and cost determination will usually be made within ten working days of the date on which a written request for any identifiable record is received by the NRO (and acknowledgement is sent to the individual). If additional time is needed due to unusual circumstances, a written notification of the delay will be forwarded to the requester within the ten working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response.

(g) All requests will be handled in the order received on a 'first-in, first-out' basis. Requests will be considered for expedited processing only if the NRO determines that there is a genuine health, humanitarian, or due process reason involving possible deprivation of life or liberty which creates an exceptional and urgent need, that there is no alternative forum for the records sought, and that substantive records relevant to the stated needs may exist and be releasable.

(h) Records provided or originated by another agency or containing other agency information will not be released prior to coordination with the other agency involved.

(i) Requesting or obtaining access to records under false pretenses is a violation of the Privacy Act and is subject to criminal penalties.

§ 326.7 Procedures for collection.

(a) To the maximum extent practical, personal information about an individual will be obtained directly from that individual.

(b) Whenever an individual is asked to provide personal information, including Social Security Number (SSN) or a personal identifier, about himself, a Privacy Act Statement will be furnished that will advise him of the authority (whether by statute or by Executive Order) under which the information is requested, whether disclosure of the information is voluntary or mandatory, the purposes for which it is requested, the uses to which it will be put, and the consequences of not providing the information.

(c) When asking third parties to provide information about other individuals, NRO employees will advise them:

(1) Of the purpose of the request, and

(2) That their identities and the information they are furnishing may be released to the individual unless they expressly request confidentiality. All persons interviewed must be informed of their rights and offered confidentiality.

§ 326.8 Procedures for requesting access.

(a) *Request in writing.* An individual seeking notification of whether a system of records contains a record pertaining to him, or an individual seeking access to records pertaining to him which are available under the Privacy Act, shall address the request in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715. The request should contain at least the following information:

(1) *Identification.* Reasonable identification, including first name, middle name or initial, surname, any aliases or nicknames, Social Security Number, and return address of the individual concerned, accompanied by a signed notarized statement that such information is true under penalty of perjury and swearing to or affirming his identity. An unsworn declaration, under 28 U.S.C. 1746, also is acceptable. In the case of a request for records of a sensitive nature if the PA Coordinator determines that this information does not sufficiently identify the individual, the PA Coordinator may requests additional identification or clarification of information submitted by the individual.

(i) In addition, an alien lawfully admitted for permanent residence shall provide his Alien Registration Number and the date that status was acquired.

(ii) The parent or guardian of a minor or of a person judicially determined to be incompetent, or an attorney retained to represent an individual, in addition to establishing the identity of the minor or person represented as required in this part, shall provide evidence of his own identity as required in this part and evidence of such parentage, guardianship, or representation by submitting a certified copy of the minor's birth certificate, the court order establishing such guardianship, or the representation agreement which establishes the relationship.

(2) *Cost.* A statement of willingness to pay reproduction costs. Processing of requests and administrative appeals from individuals who owe outstanding fees will be held in abeyance until such fees are paid.

(3) *Record sought.* A description, to the best of his ability, of the nature of the record sought and the system in which it is thought to be included. In lieu of this, a requester may simply describe why and under what circumstances he believes that the NRO maintains responsive records; the NRO will undertake the appropriate searches.

(b) *Access on behalf of the individual.* If the requester wishes another person to obtain the records on his behalf, the requester will furnish a notarized statement or unsworn declaration appointing that person as his representative, authorizing him access to the record, and affirming that access will not constitute an invasion of the requester's privacy or a violation of his rights under the Privacy Act. The NRO requires a written statement to authorize discussion of the individual's record in the presence of a third person.

§ 326.9 Procedures for disclosure of requested records.

(a) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days.

(b) Upon receipt of a request, the PA Coordinator shall refer the request to those components most likely to possess responsive records. The components shall search all relevant record systems within their cognizance and shall:

(1) Determine whether a responsive record exists in a system of records.

(2) Determine whether access must be denied and on what legal basis. An individual may be denied access to his records under the Privacy Act only if an exemption has been properly claimed for all or part of the records or information requested; or if the information was compiled in reasonable anticipation of a civil action or proceeding.

(3) Approve the disclosure of records for which they are the originator.

(4) Forward to the PA Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as notification of the specific determination for any denial.

(c) When all records have been collected, the PA Coordinator shall notify the individual of the determination and shall provide an exact copy of records deemed to be accessible if a copy has been requested.

(d) When an original record is illegible, incomplete, or partially exempt from release, the PA Coordinator shall explain in terms understood by the requester the portions of a record that are unclear.

(e) If access to requested records, or any portion thereof, is denied, the PA Coordinator shall inform the requester in writing of the specific reason(s) for denial, including the specific citation to appropriate sections of the Privacy Act or other statutes, this and other NRO regulations, or the Code of Federal Regulations authorizing denial, and the right to appeal this determination through the NRO appeal procedure within 60 calendar days. The denial shall include the date of denial, the name and title/position of the denial authority, and the address of the NRO Appeal Authority. Access may be refused when the records are exempt by the Privacy Act. Usually an individual will not be denied access to the entire record, but only to those portions to which the denial of access furthers the purpose for which an exemption was claimed.

§ 326.10 Procedures to appeal denial of access to requested record.

(a) Any individual whose request for access is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial of access by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall consolidate the component responses, review the record, direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination, and make a recommendation to the NRO Appeals Panel, which makes a recommendation to the Appeal Authority.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal, who shall notify the individual of the determination in writing.

(5) If the determination reverses the initial denial, the PA Coordinator shall provide a copy of the records requested. If the determination upholds the initial denial, the PA Coordinator shall inform the requester of his right to judicial review in U.S. District Court and shall include the exact reasons for denial with specific citations to the provisions of the Privacy Act, other statutes, NRO regulations, or the Code of Federal Regulations upon which the determination is based.

(b) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

§ 326.11 Special procedures for disclosure of medical and psychological records.

When requested medical and psychological records are not exempt from disclosure, the PA Coordinator may determine which non-exempt medical or psychological records should not be sent directly to the requester because of possible harm or adverse impact to the requester or another person. In that event, the information may be disclosed to a physician named by the requester. The appointment of the physician will be in the same notarized form or declaration as described in § 326.8 and will certify that the physician is licensed to practice in the appropriate specialty (medicine, psychology, or psychiatry). Upon designation, verification of the physician's identity, and agreement by the physician to review the documents with the requester to explain the meaning of the documents and to offer counseling designed to mitigate any adverse reaction, the NRO will forward such records to the designated physician. If the requester refuses or fails to designate a physician, the record shall not be provided. Under such circumstances refusal of access is not considered a denial for Privacy Act reporting purposes. However, if the designated physician declines to furnish the records to the individual, the PA Coordinator will take action to ensure that the records are provided to the individual.

§ 326.12 Procedures to request amendment or correction of record.

(a) An individual may request amendment or correction of a record pertaining to him/her by addressing such request in writing, to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715. Incomplete or inaccurate requests will not be rejected categorically; instead, the requester will be asked to clarify the request as needed. A request will not be rejected or require resubmission unless additional information is essential to process the request. Usually, amendments under this part are limited to correcting factual errors and not matters of official judgment, such as promotion ratings and job performance appraisals. The requester must

adequately support his claim and must identify:

(1) The particular record he wishes to amend or correct, specifying the number of pages and documents, the titles of the documents, form numbers if any, dates on documents, and individuals who signed them. Any reasonable description of the documents is acceptable. A clear and specific description of passages, pages, or documents to be amended will expedite processing the request.

(2) The desired amending language. The requester should specify the type of amendment, including complete removal of data, passages, or documents from record or correction of information to make it accurate, more timely, complete, or relevant.

(3) A justification for such amendment or correction to include any documentary evidence supporting the request.

(b) Individuals will be required to provide verification of identity as in § 326.8. to ensure that the requester is seeking to amend records pertaining to himself and not, inadvertently or intentionally, the records of another individual.

(c) Minor factual errors in an individual's personal record may be corrected routinely upon request without resort to the Privacy Act or the provisions of this part, if the requester and the record holder agree to that procedure and the requester receives a copy of the corrected record whenever possible. A written request is not required when individuals indicate amendments during routine annual review and updating of records programs conducted by the NRO for civilian personnel and the Services for military personnel. Requests for deletion, removal of records, and amendment of substantive factual information will be processed according to the Privacy Act and the provisions of this part.

(d) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days. No separate acknowledgement of receipt is necessary if the request can be either approved or denied and the requester advised within the ten-day period. For written requests presented in person, written acknowledgement may be provided at the time the request is presented.

(e) The PA Coordinator shall refer such request to the record-holder components, shall advise those components of the date of receipt, and shall request that those components make a prompt determination on such request.

(f) The record-holder components shall promptly:

(1) Make any amendment or correction to any portion of the record which the individual believes is not accurate, relevant, timely, or complete and notify the PA Coordinator and all holders and recipients of such records and their amendments that the correction was made; or

(2) Set forth the reasons for the refusal, if they determine that the requested amendment or correction will not be made or if they decline to make the requested amendment but instead augment the official record, and so inform the PA Coordinator.

(g) The Privacy Act Coordinator shall:

(1) Inform the requester of the agency's determination to make the amendment or correction as requested and notify all prior recipients of the change to the disputed records for which an accounting had been required; or

(2) Inform the requester of the specific reasons and legal authorities for the agency's refusal and the procedures established for him to request a review of that refusal.

(h) The amendment procedure is not intended to replace other existing procedures such as those for registering grievances or appealing performance appraisal reports. In such cases the requester will be apprised of the appropriate procedures for such actions.

(i) This part does not permit the alteration of evidence presented to courts, boards, or other official proceedings.

§ 326.13 Procedures to appeal denial of amendment.

(a) Any individual whose request for amendment or correction is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151-1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall act as secretary of the Appeals Panel. He shall:

(i) Consolidate the component responses and reasons for the initial denial.

(ii) Provide all supporting materials both furnished to and by the requester and the record-holding component.

(iii) Review the record.

(iv) Direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(v) Prepare the record and schedule the appeal for the next meeting of the Appeals Panel. The Appeals Panel shall recommend a finding to the Appeal Authority by a majority vote of those present at the meeting based on the written record and the Panel's deliberations. No personal appearances shall be permitted without the express permission of the Panel.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal who shall notify the individual of the determination in writing.

(5) The Appeal Authority will notify the PA Coordinator if the determination is that the record should be amended. The PA Coordinator will promptly advise the requester and the office holding the record to amend the record and to notify all prior recipients of the records for which an accounting was required of the change.

(6) If the determination upholds the initial denial, in whole or in part, the PA Coordinator shall inform the requester:

(i) Of the denial and the reason.

(ii) Of his right to file in NRO records within 60 calendar days a concise statement of the reasons for disputing the information contained in the record. If the requester elects to file a statement of disagreement, the PA Coordinator will be responsible for clearly noting any portion of the record that is disputed and for appending into the file the requester's statement as well as a copy of the NRO's letter to the requester denying the disputed information, if appropriate. The requester's statement and the NRO denial letter will be made available to anyone to whom the record is subsequently disclosed, and prior recipients of the disputed record will be provided a copy of both to the extent that an accounting of disclosures is maintained.

(iii) Of his right to judicial review in U.S. District Court.

(7) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

§ 326.14 Disclosure of records to person other than subject.

(a) Personal records contained in a Privacy Act system of records maintained by NRO shall not be disclosed by any means to any person or agency outside the NRO except with the written consent of the individual subject of the record, unless as provided in this part.

(b) Except for disclosure made to members of the NRO in connection with their official duties and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in NRO systems of records and of all disclosures of investigative information. Accounting entries will record the date, kind of information, purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made. Accounting records will be maintained for at least five years after the last disclosure or for the life of the record, whichever is longer. Subjects of NRO records will be given access to associated accounting records upon request except for disclosures made pursuant to § 326.4, or where an exemption has been properly claimed for the system of records.

§ 326.15 Fees.

Individuals requesting copies of their official personnel records are entitled to one free copy; a charge will be assessed for additional copies. There is a cost of $.15 per page. Fees will not be assessed if the cost is less than $30.00. Fees should be paid by check or postal money order payable to the Treasurer of the United States and forwarded to the Privacy Act Coordinator, NRO, at the time the copy of the record is delivered. In some instances, fees will be due in advance.

§ 326.16 Penalties.

Each request shall be treated as a certification by the requester that he is the individual named in the request. The Privacy Act provides criminal penalties for any person who knowingly and willfully requests or obtains any information concerning an individual under false pretenses.

§ 326.17 Exemptions.

(a) All systems of records maintained by the NRO shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(b) No system of records within the NRO shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption and the exemption rule for the system of records has been published as a final rule in the **Federal Register.**

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

Dated: January 6, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–661 Filed 1–18–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 5 and 13

RIN 1024–AC58

National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: In response to requests the NPS is extending the public comment period on this proposed rule published November 12, 1999 (64 FR 61563–61572) from January 11, 2000 to January 25, 2000.

DATES: Written comments will be accepted through January 25, 2000.

ADDRESSES: Address comments to: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Chief Ranger.

FOR FURTHER INFORMATION CONTACT: Ken Kehrer at the above address or by calling 907–683–2294.

SUPPLEMENTARY INFORMATION: The NPS extends the public comment period for the proposed rule—National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations. The comment period was to end on January 11, 2000 but is being extended by this announcement until January 25, 2000. All comments on the proposed rule must be received at Denali National Park headquarters by close of business that day. We are taking this action in response to comments received requesting additional time to review the proposed regulation.

Dated: January 11, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–1074 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–146–9934b; TN–156–9935b; FRL–6520–1]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Adoption of Rule Governing Any Credible Evidence

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 16, 1994, the Tennessee Department of Environment and Conservation submitted to EPA revisions to the Nashville-Davidson County Local Implementation Plan (LIP). These revisions consisted of the adoption of section 10.56.290 Measurement and Reporting of Emissions amendments in the Metropolitan/Nashville Code of Laws.

On May 3, 1995, the Tennessee Department of Environment and Conservation submitted to EPA revisions to the Tennessee State Implementation Plan (SIP). These revisions consisted of the adoption of Rule 1200–3–10–.04 Sampling, Recording and Reporting Required For Major Stationary Sources.

The adoptions of section 10.56.290 into the Nashville-Davidson County LIP and Rule 1200–3–10–.04 into the Tennessee SIP are being implemented to meet the requirements of credible evidence. These requirements were set forth in the May 23, 1994 SIP call letter. In the final rules section of this **Federal Register**, the EPA is approving the revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision

amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

DATES: To be considered, comments must be received by February 18, 2000.

ADDRESSES: Written comments on this action should be addressed to Randy Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference files TN–156–9934 and TN 146–9935. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Department of Environment and Conservation, 9th Floor L & C Annex, 401 Church St, Nashville, TN 37243–1531

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 26, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–963 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–74–1–9941b; FRL–6524–8]

Approval and Promulgation of Implementation Plans Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the Florida State Implementation Plan (SIP) submitted on December 26, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This source-specific revision amends the SIP to include a variance granted to the Harry S. Truman Animal Import Center (HSTAIC) for its incinerator facility located in Monroe County, Florida. The variance allows HSTAIC to operate under the particulate matter standard applicable to biological waste combustion facilities.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by February 18, 2000.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–61–2–9823. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 3, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–1087 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA184–0212; FRL–6526–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District, South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from automobile refinishing, coating and ink manufacturing and use of cutback asphalt.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA

action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 18, 2000.

ADDRESSES: Comments may be mailed to Andrew Steckel, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

South Coast Air Quality Management District, 21865 E. Copley, Diamond Bar, CA 91765

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX,75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP include: Bay Area Air Quality Management District (BAAQMD) Rule 8.45—Motor Vehicle and Mobile Equipment Coating Operation, South Coast Air Quality Management District (SCAQMD) Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operation, San Diego County Air Pollution Control District (SDCAPCD) Rule 67.19—Coatings and Printing Inks Manufacturing Operations, and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 425, Use of Cutback Asphalt. These rules were submitted by the California Air Resources Board (CARB) to EPA on August 1, 1997, February 16, 1999, October 18, 1996, and June 3, 1997 respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the San Francisco Bay Area, the South Coast Air Basin, San Diego County, and the North Central Coast Air Basin. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco Bay Area, the South Coast Air Basin, and the San Diego Area are all designated nonattainment and are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on August 1, 1997 (8.45), February 16, 1999 (1151), October 18, 1996 (67.19) and June 3, 1997 (425) including the rules being acted on in this document. This document addresses EPA's proposed action for BAAQMD Rule 8.45—Motor Vehicle and Mobile Equipment Coating Operations, SCAQMD Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, SDCAPCD Rule 67.19—Coatings and Printing Inks Manufacturing Operations and MCAPCD Rule 425—Use of Cutback Asphalt. BAAQMD amended Rule 8.45 on November 6, 1996, SCAQMD amended Rule 1151 on December 11, 1998, SDCAPCD amended Rule 67.19 on May 15, 1996 and MBUAPCD adopted Rule 425 on March 26, 1997. These submitted rules were found to be complete on May 6, 1997 (8.45), April 23, 1999 (1151), December 19, 1996 (67.19) and September 5, 1997 (425). pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V and are being proposed for approval into the SIP.

BAAQMD's Rule 8.45 and SCAQMD's Rule 1151 control emissions of VOCs from the refinishing of automobiles, SDCAPCD's Rule 67.19 controls the emissions of VOCs produced in the manufacturing process of coatings and printing inks, and MBUAPCD's Rule 425 controls VOCs from use of cutback asphalt. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions in nonattainment areas. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other

[1] Among other things, pre-amendment guidance includes those portions of the proposed post-1987 ozone and carbon monoxide policy concerning RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document'' (notice of availability published in the **Federal Register** on May 25, 1988); and existing control technique guidelines (CTGs).

Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 425 is entitled, Control of Volatile Organic Compounds from Use of Cutback Asphalt. EPA–450/2/77/037, December 1977. Rules 8.45, 1151, 67.19 control VOCs from source categories for which EPA has not issued a Control Techniques Guideline (CTG). Therefore these rules were evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, *Issues relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarifications to Appendix D of November 24, 1978 Federal Register: May 25,1988* (EPA's Blue Book) and other EPA policy including the EPA Region 9/CARB document entitled, *Guidance Document for Correcting VOC Deficiencies.* Additionally, Rule 67.19 was evaluated against the technical guidance document, entitled ''Control of VOC Emissions from Ink and Paint Manufacturing Processes''—EPA–450/3/92–013, April 1992, and compared for consistency with rules from other districts for the same source category. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On December 23, 1997, EPA approved into the SIP a version of Rule 8.45—Motor Vehicle and Mobile Equipment Coating Operations that had been adopted by BAAQMD on December 20, 1995. BAAQMD's submitted Rule 8.45 Motor Vehicle and Mobile Equipment Coating Operations includes the following significant changes from the current SIP:

- Section 231, Volatile Organic Compounds, was amended by adding acetone, parachlorobenzotrifluoride (PCBTF), and cyclic, branched, or linear, fullymethylated siloxanes (VMS) to the list of exempt compounds in conformance with EPA and CARB action.
- Section 601, ''Analysis of Samples'' was amended by adding BAAQMD method 41 to analyze samples containing PCBTF, and BAAQMD method 43 to analyze samples containing VMS.
- Section 602, ''Determination of Emissions'' was amended by adding the following sentence: For the purpose of determining abatement device efficiency, any acetone, PCBTF or VMS shall be included as a VOC.

On August 13, 1999, EPA approved into the SIP a version of Rule 1151—Motor Vehicles and Mobile Equipment Non-Assembly Line Coating Operations that had been adopted by SCAQMD on June 13, 1997. SCAQMD's submitted Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations includes the following significant changes from the current SIP:

- Effective December 12, 1998 and until April 1, 1999 the Group II multistage topcoat composite VOC limit was raised to 4.5 lbs/gal. The pre-December 12, 1998 limit of 3.5 lbs/gal limit was reinstated on April 1, 1999.
- A 10% usage limitation on a monthly basis was added for specialty coatings.
- Expanded the prohibition of sale clause.
- Added the requirement that manufacturers must offer for sale by January 1, 1999 clearcoats having VOC content of 2.1 lbs/gal or less.
- Added an exemption for topcoats applied to prototype motor vehicles.

There is currently no version of SDCAPCD's Rule 67.19—Coatings and Printing Inks Manufacturing Operations in the SIP. The submitted Rule includes the following provisions:

- Applicability section.
- Exemption for sources emitting less than 15 lbs/day.
- Sources emitting less than 50 tons/year are exempted from the requirements of emission control systems.
- Storage tanks of less than 550 gal capacity, or those used exclusively for epoxies or water based coatings are exempted from the requirement of submerged fill pipes.
- A definition section.
- Equipment and workmanship standards.
- Option to comply by using abatement equipment.
- Record keeping provisions, and
- Test methods.

Earlier versions of this rule were adopted on June 7, 1994, and March 7, 1995. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with the superceded versions.

On February 5, 1996, EPA approved into the SIP a version of Rule 425—Use of Cutback Asphalt that had been adopted by MBUAPCD on August 25, 1993. MBUAPCD's submitted Rule 425—Use of Cutback Asphalt includes the following significant changes from the current SIP:

- Use of the term ''petroleum solvent'' is now used consistently throughout the rule. Prior to this revision, the term organic solvents and petroleum solvents were used interchangeably leading to confusion in the implementation and enforcement of the rule. The rule has been revised to enhance clarity.
- An additional change was made to the ''effective date'' section. The rule as revised is now effective on the date of adoption.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Rule 8–45—Motor Vehicle and Mobile Equipment Coating Operations, SCAQMD Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, SDCAPCD Rule 67.19—Coatings and Printing Inks Manufacturing Operations, and MBUAPCD Rule 425—Use of Cutback Asphalt are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–1212 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN 116–1b; FRL–6522–2]

Approval and Promulgation of Implementation Plans; and Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a December 21, 1999, request from Indiana for redesignation of the carbon monoxide (CO) nonattainment areas in Lake and Marion Counties, Indiana to attainment of the CO national ambient air quality standards (NAAQS). The EPA is also proposing approval of the plans for maintaining the CO standard in the portions of these counties currently designated as not attaining the CO NAAQS. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Written comments must be received on or before February 18, 2000.

ADDRESSES: Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs

Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

This Supplementary Information section is organized as follows:

What action is EPA taking today?

Where can I find more information about this proposal and the corresponding direct final rule?

What action is EPA taking today?

In this action, we are proposing to approve a revision to the Indiana State Implementation Plan for carbon monoxide. The revision will redesignate Lake and Marion Counties, Indiana to attainment for CO. The revision will also approve CO maintenance plans for maintaining the CO standard in the portions of these counties currently designated as not attaining the CO national ambient air quality standards.

Where can I find more information about this proposal and the corresponding direct final rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: January 3, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–727 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6525–4]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by North Dakota. In the ''Rules'' section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action as not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a timely document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

EFFECTIVE DATE: We must receive your comments by February 18, 2000.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy North Dakota's application at the following addresses: NDDH from 9:00 AM to 4:00 PM, 1200 Missouri Ave, Bismarck, ND 58504–5264, contact: Curt Erickson, phone number (701) 328–5166 and EPA Region VIII, from 8:00 AM to 3:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules'' section of this **Federal Register**.

Dated: January 5, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–1069 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6525–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed deletion of the Renora, Inc., Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) proposes to delete the Renora, Inc., Superfund Site which is located in the Edison Township, Middlesex County, New Jersey from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended. The EPA and the New Jersey Department of Environmental Protection have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing this without prior proposal notice, because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no signifcant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by February 18, 2000.

ADDRESSES: Comments should be submitted to: Grisell V. Diaz-Cotto, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public

docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 AM to 5:00 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository: Edison Township Public Library, 340 Plainfield Avenue, Edison, New Jersey 08817, (732) 287–2298.

FOR FURTHER INFORMATION CONTACT: Ms. Diaz-Cotto may be contacted at the above address, by telephone at (212) 637–4430, by fax at (212) 637–4429 or via e-mail at DIAZ-COTTO.GRISELL@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final action which is located in the Rules section of this **Federal Register**. Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); 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: January 3, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–1088 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6525–1]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed deletion of the Katonah Municipal Well site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) proposes to delete the Katonah Municipal Well site (Site), which is located in the Town of Bedford, Westchester County, New York, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 *et seq*. EPA and the New York State Department of Environmental Conservation have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without prior proposal notice because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by February 18, 2000.

ADDRESSES: Comments should be submitted to Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available through the public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 AM to 5:00 PM, Monday through Friday.

Information on the Site is also available for viewing at the following information repository: Katonah Village Library, 28 Bedford Road, Katonah, New York 10536, (914) 232–3508.

FOR FURTHER INFORMATION CONTACT: Mr. Duda may be contacted at the above address, by telephone at (212) 637–4270, by FAX at (212) 637–3966 or via e-mail at *duda.damian@epa.gov*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); 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: January 3, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–1085 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 122799A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

DATES: The work session will be held on Monday, January 31, 2000. from 11:00 a.m. to 5:00 p.m.; on Tuesday, February 1, 2000, from 8:00 a.m. to 5:00 p.m.; and on Wednesday, February 2, 2000, from 8:00 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the National Marine Fisheries Service, Pacific Fisheries Environmental Laboratory, 1352 Lighthouse Avenue, Pacific Grove, CA, 831–648–8515.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council, 503–326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to draft sections of the proposed Fishery Management Plan for Highly Migratory Species (HMS) and related documents for highly migratory species fisheries off the West Coast.

Management measures that may be adopted in the FMP for HMS Fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to non-commercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative

management efforts with other regional fishery management councils with interests in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP, and its associated EIS, would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although non-emergency issues not contained in the HSMPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at 503–326–6352 at least 5 days prior to the meeting date.

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

Dated: January 12, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–1205 Filed 1–18–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 12
Wednesday, January 19, 2000

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 Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4, Practice Standards and Specifications #327, Conservation Cover; #329a, No Till; #329b, Mulch Till; #329c, Ridge Till; and #386, Field Border, to account for improved technology. These practices can be used in systems that treat highly erodible land.

DATE: Comments will be received for a 30-day period on January 19, 2000.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law of NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

January 4, 2000.

Leroy Brown,

State Conservationist.

[FR Doc. 00–1196 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Amendments to Bylaws

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of revised bylaws.

SUMMARY: The Board of Directors of the Rural Telephone Bank (Bank) adopted amendments on November 9, 1999, to the bylaws of the Bank. The bylaw amendments will allow Bank borrowers to convert their Class B stock earned as patronage refunds into Class C stock before full repayment of Bank debt.

EFFECTIVE DATE: This action was effective November 9, 1999.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

SUPPLEMENTARY INFORMATION: The amendments to the bylaws adopted by the Board allow for the conversion of a portion of the Class B stock received by a stockholder as patronage refund or purchased by the borrower, into Class C stock before the principal of the stockholder's loans from the Bank has been fully repaid. For example, if a borrower has repaid 50 percent of one of its notes, it would be eligible to convert 50 percent of the Class B stock issued to date, through patronage capital earned on that note, into Class C stock. In the past, all indebtedness to the Bank had to be fully repaid before borrowers could convert any of their Class B stock to Class C stock.

With regard, however, to Class B stock purchased by a borrower as a requirement for a loan, borrowers may convert such Class B stock related to a loan only upon payment in full of the note made in connection with the loan. The Board-approved policy that implements the bylaw amendments is set forth in Resolution No. 99–8B.

Article II, Capital Stock and Special Fund Equivalents, subsection 2.2(b) and Article VIII, Patronage Capital, subsection 8.2(b) of the bylaws were amended as follows:

1. The third sentence of subsection 2.2(b) is amended by inserting ''(1)'' between the words ''for'' and ''the'', by inserting ''all'' between the words ''of'' and ''amounts'' and adding the following to the end of the sentence:

''; and (2) for the conversion of a portion of the Class B stock, received by a stockholder as patronage refund or purchased by the borrower, into Class C stock before the principal of the stockholder's loans from the Bank has been fully repaid.''

2. Subsection 8.2(b) is amended by striking all of the section following the word ''addition'' and replacing it with the following:

''to the partial or full conversions authorized in section 2.2(b) hereof.''

The bylaws subsection 2.2(b) and subsection 8.2(b) as revised read as follows:

Article II—Capital Stock and Special Fund Equivalents

Subsection 2.2(b). ''Class B stock shall have a par value of one dollar ($1.00) per share, shall be issued only at par, shall be held only by the recipients of loans made under section 408 of the Act, and shall be voting stock. No dividends shall be payable on Class B stock, but the holders thereof shall be entitled to patronage refunds in Class B stock as hereinafter provided. Prior to dissolution or liquidation of the Bank, Class B stock may be redeemed and retired only after all shares of Class A stock shall have been redeemed and retired: Provided, however, That the Board may, under rules of general application adopted by it and upon agreement with the stockholder, provide for (1) the conversion of Class B stock into Class C stock upon payment of all amounts owned by a holder of Class B stock to the Bank and upon surrender of sufficient shares of Class B stock, supplemented by cash if necessary, to equal the par value of each share of Class C stock to be issued inasmuch as fractional shares of Class C stock shall not be issued; and (2) for the conversion of a portion of the Class B stock, received by a stockholder as a patronage refund or purchased by the borrower, into Class C stock before the principal of the stockholder's loans from the Bank has been fully repaid. Upon dissolution or liquidation of the Bank, holders of Class B stock shall be entitled to share

pro rata with the holder of Class A stock then outstanding in the surpluses and contingency reserves remaining after the payment of all of the Bank's liabilities and after retirement of all classes of stock at par as provided in section 411 of the Act. Class B stock shall not be transferable, either absolutely or by way of collateral, except in connection with the assumption by the transferee, with the approval of the Governor, of all or part of the transferor's loan from the Bank.''

Article VIII—Patronage Capital

Subsection 8.2(b). ''If, at any time after all Class A stock has been retired, the Board should determine that the Bank's financial condition will not be impaired thereby, it may establish procedures for the retirement of Class B stock in full or in part or its conversion to Class C stock in addition to the partial or full conversions authorized in section 2.2(b) hereof.''

Dated: January 12, 2000.

Christopher A. McLean,

Acting Governor, Rural Telephone Bank.

[FR Doc. 00–1219 Filed 1–18–00; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the dates of the next meeting, which will be open to the public.

DATES: The second meeting of the Committee is scheduled for February 9–11, 2000, beginning at 9 a.m. and ending at 5 p.m. each day.

ADDRESSES: The meeting will be held in the Dewitt C. Greer State Highway Building (Main Office), 125 East Eleventh Street, Austin, TX 78701.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/notices/prowacmtg.htm).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate with subcommittees of the Committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

The committee will meet on the dates and at the location announced in this notice. The meeting is open to the public. The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by January 28, 2000. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–1246 Filed 1–18–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Invention Promoters/Promotion Firms Complaints.

Agency Form Number: PTO/SB/XX.

OMB Approval Number: 0651–XXXX.

Type of Request: New collection.

Burden Hours: 50 hours per year.

Number of Respondents: 200 responses per year. The PTO expects to receive 100 complaints concerning invention promoters/promotion firms and 100 responses to such complaints.

Average Hours Per Response: The PTO estimates that it takes an average of 15 minutes (.25 hours) to gather the information, complete the complaint, and submit it to the PTO. The PTO estimates that it will take an invention promoter an average of 15 minutes (.25 hours) to gather the information, complete the response, and submit it to the PTO.

Needs and Uses: The Inventors' Rights Act of 1999 requires the PTO to publish complaints filed by independent inventors against invention promoters/promotion firms and publish any replies to such complaints. The Inventors' Rights Act requires the PTO to publish these complaints and replies, but it does not require the PTO to enforce the Act, to investigate the complaints, or to participate in any legal proceedings against the invention promoters/promotion firms. The PTO has developed a form that complainants may choose to use to submit their complaints. Use of this form, PTO/SB/XX Complaint Regarding Invention Promoter, is not mandatory; however, its use will ensure that all of the necessary information is provided, which in turn enables the PTO to make the complaint publicly available. At this time, there is no associated form for responses to the complaints. The public uses the complaint form to submit a complaint against an invention promoter/promotion firm to the PTO. In addition, this information collection enables the invention promoters/promotion firms to respond to such complaints. The PTO uses the complaint form to ensure that all of the necessary information is provided so that the complaints can be made publicly available. In addition, the PTO forwards the complaints to the invention promoter/promotion firm and makes sure that any responses to these complaints are also made publicly available.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, and farms.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Office of the Chief Information Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: January 12, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–1163 Filed 1–18–00; 8:45 am]

BILLING CODE: 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Manufacturers' Shipments, Inventories, and Orders (M3) Survey, Unfilled Orders Benchmark Survey.

Form Number(s): MA–300.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 5,000 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau presently conducts the Manufacturers' Shipments, Inventories, and Orders (M3) survey under Office of Management and Budget (OMB) control number 0607–0008. The M3 survey collects monthly data on shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are used widely and are valuable tools for analysts of business cycle conditions, including members of the Council of Economic Advisers, the Treasury Department, and the business community.

The monthly M3 estimates are based on a relatively small sample and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the entire manufacturing universe. The Annual Survey of Manufactures (OMB control number 0607–0449) provides annual benchmarks for the shipments and inventory data collected in this monthly survey. However, there is no annual benchmark for new and unfilled orders estimates. Because of the methodology used for the monthly indicator, any discrepancy between the indicator series and statistically derived measures can become exaggerated over time and the results can be misleading to policy makers. The last benchmark survey for unfilled orders estimates was for the year 1986. In addition to the long period between benchmark estimates, the conversion from the Standard Industrial Classification system to NAICS further exacerbates any discrepancy and makes the need for the benchmark survey more critical.

The proposed benchmark survey will collect value of unfilled orders at the end of 1999. Estimates of unfilled orders will be made for industries classified according to the new North American Industry Classification System (NAICS). These estimates will provide benchmark levels of unfilled orders by NAICS industries for the monthly M3 indicator series.

Affected Public: Businesses or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 12, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–1164 Filed 1–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 89–00008.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to FEXCORP, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to FEXCORP, Inc.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') [''5 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III [''the Regulations''] are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on June 12, 1989, to FEXCORP, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14(a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation. [Sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to FEXCORP, Inc., on June 7, 1999, a letter containing annual report questions with a reminder that its annual report was due on July 27, 1999. Additional reminder letters were sent on September 9, 1999, and on November 8, 1999. The Department has received no written response to any of these letters.

On January 11, 2000, and in accordance with Section 325.10 (c)[1] of the Regulations, a letter was sent by certified mail to notify FEXCORP, Inc., that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)[2] of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

January 12, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–1161 Filed 1–18–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011100C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (PFMC) Groundfish Management Team (GMT) will hold a working meeting which is open to the public.

DATES: The GMT working meeting will be begin Monday, February 7, 2000, at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. Tuesday, February 8 through Friday, February 11.

ADDRESSES: The meetings will be held at the Pacific Fishery Management Council office, Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: 503–326–6352.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to prepare reports and technical advice for the upcoming PFMC meeting and in support of PFMC decisions throughout the year. The GMT will discuss, receive reports, and/or prepare reports on the following topics during this working session: (1) GMT organization and work plan for 2000; (2) exempted fishing permits; (3) strategic plan; (4) estimation of rockfish bycatch rates in setnet and other open access fisheries; (5) review observer program amendment, if available; (6) preparation for harvest rate workshop; (7) review of 2000 management measures and preparation of plan amendment; (8) plan amendment for bycatch and other issues; (9) review proposal to allow use of open access gear to harvest limited entry trip limits; (10) other issues including marine reserves and habitat areas of particular concern.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 12, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–1206 Filed 1–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011300A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Fishing Rights of Indigenous People

Advisory Panel to discuss Council issues in relation to indigenous fishing rights in the Western Pacific Region.

DATES: The meeting will be held February 2–4, 2000, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Council office conference rooms, 1164 Bishop St., Suite 1400, Honolulu, Hawaii; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Advisory Panel will discuss and may make recommendations to the Council on the agenda items listed below. The order in which agenda items will be addressed is tentative.

A. Status of Advisory Panel recommendations from previous meeting

B. Status of the eligibility criteria for Community Development Projects and Community Demonstration Program

C. Report on the Draft Coral Reef Ecosystem Fishery Management Plan and preliminary Draft Environmental Impact Statement (EIS)

D. Discussion regarding Northwestern Hawaiian Islands fisheries:

a. Marine Mammal Commission concerns and recommendations

b. Monk Seal Recovery Team concerns and recommendations

c. Fish and Wildlife Service, NMFS, Hawaii Department of Land and Natural Resources concerns

E. Review of public scoping comments for draft EIS on the crustaceans Fishery Management Plan (FMP)

F. Review of public scoping comments for draft EIS on the bottomfish FMP

G. Workshops on green sea turtle take for cultural purposes

H. Pelagic amendment for shark management around Hawaii

I. Draft American Samoa area closure amendment

J. Magnuson-Stevens Fishery Conservation and Management Act reauthorization

K. Review the relationship between the indigenous peoples of the Western Pacific region and the United States

L. Review Ahupuaa method of management

M. Other business

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Dated: January 13, 2000.

Richard W. Surdi,

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

[FR Doc. 00–1207 Filed 1–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, HQ USAF Academy, Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 20, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840. Point of contact is Ms. Patricia Marinski, 719–333–3226.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address.

Title and Associated Form: USAF Academy Writing Sample, USAFA Form 0–878.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4,100.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Average Burden Per Response: 60 minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility.

If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–1197 Filed 1–18–00; 8:45 am]

BILLING CODE 5001–05–U

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 March 20, 2000.

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: January 13, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Federal Pell Grant Program Recipient Financial Management System (RFMS).

Frequency: On Occasion.

Affected Public:

Not-for-profit institutions; Individuals or households; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 3,950,083.

Burden Hours: 396,200.

Abstract: The Federal Pell Grant Program provides grants to eligible students based on financial need to meet the costs of postsecondary education. The new RFMS modernizes the Federal Pell Grant Program and institutions report data and request funds through RFMS.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO IMG Issues@ed.gov or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe Schubart@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. 00–1218 Filed 1–18–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.320A, 84.321A, and 84.322A]

Alaska Native Education Programs

AGENCY: Department of Education, Office of Elementary and Secondary Education—Alaska Native Education Programs.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

SUMMARY: The Secretary invites applications for new awards for FY 2000 under three direct grant programs for Alaska Natives, and announces deadline dates for receipt of applications under these programs.

Applications Available: January 19, 2000.

Deadline for Receipt of Applications: March 20, 2000.

Note: The Department must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Assistant Secretary for Elementary and Secondary Education has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: May 18, 2000.

Estimated Available Funds: Up to $11 million.

Note: The Department is conducting a single competition for projects under all three programs described in this notice. These funds will be allocated among the highest-quality applications received. Applicants must submit a separate application for each program for which they wish to apply.

Estimated Range of Awards: $50,000 to $750,000 per year.

Estimated Average Size of Awards: $366,667.

Estimated Number of Awards: 30.

Project Period for all Programs: Up to 36 months.

Note: The Department is not bound by any estimates in this notice. Funding estimates are for the first year of the project period only. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (34 CFR 75.253).

84.320A—Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program

Purpose of Program: To support projects that recognize and address the unique educational needs of Alaska Native students through consolidation, development, and implementation of educational plans and strategies to improve schooling for Alaska Natives, development of curricula, and the training and recruitment of teachers. This program is authorized under section 9304 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, or partnerships involving Alaska Native organizations.

Program Authority: 20 U.S.C. 7934.

84.321A—Alaska Native Home-Based Education For Preschool Children

Purpose of Program: To support home instruction programs for preschool Alaska Native children that develop parents as educators for their children and ensure the active involvement of parents in the education of their children from the earliest ages. This program is authorized under section 9305 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships involving Alaska Native organizations.

Program Authority: 20 U.S.C. 7935.

84.322A—Alaska Native Student Enrichment Programs

Purpose of Program: To support projects that provide enrichment programs and family support services for Alaska Native students from rural areas who are preparing to enter village high schools, so that they may excel in science and mathematics. This program is authorized by section 9306 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native educational organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships including Alaska Native organizations.

Program Authority: 20 U.S.C. 7936.

Selection Criteria: The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate

applications for the Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program; the Alaska Native Home-Based Education for Preschool Children Program; and the Alaska Native Student Enrichment Programs. The application package includes the selection criteria and the points assigned to each criterion.

Applicable Regulations: EDGAR in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86.

For Applications and Information Contact: Mrs. Lynn Thomas, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C124, Mail Stop 6140, Washington, DC 20202. Telephone: (202) 260–1541; FAX: (202) 205–5630. The e-mail address for Mrs. Thomas is: *Lynn Thomas@ 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.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov./nara/index.html

Dated: January 13, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–1165 Filed 1–18–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.141A–HEP and CFDA No. 84.149A–CAMP]

Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000 for the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP)

Purpose of Programs: The purpose of the HEP and CAMP programs is to provide grants to institutions of higher education (IHEs), or to private non-profit agencies working in cooperation with IHEs, to help migrant and seasonal farmworkers complete high school and succeed in postsecondary education.

Eligible Applicants—HEP and CAMP: IHEs or private non-profit agencies working in cooperation with IHEs.

Deadline for Transmittal of Applications: March 10, 2000.

Applications Available: January 13, 2000.

Deadline for Intergovernmental Review: May 10, 2000.

Available Funds: HEP FY 2000: $6,000,000.

Estimated Range of Awards: HEP $150,000–$475,000.

Estimated Average Size of Awards: HEP $375,000.

Estimated Number of Awards: HEP 16.

Available Funds: CAMP FY 1999: $3,000,000.

Estimated Range of Awards: CAMP $150,000–$400,000.

Estimated Average Size of Awards: CAMP $325,000.

Estimated Number of Awards: CAMP 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

The HEP program assists migrant and seasonal farmworkers to obtain a general education diploma (GED) and to be placed in postsecondary education or training, career positions, or the military. By locating the programs at IHEs, migrant and seasonal farmworkers also have opportunities to attend cultural events, academic programs, and other educational and cultural activities usually not available to them. The CAMP program assists migrant and seasonal farmworkers to successfully complete the first academic year of study in the college or university, and provides follow-up services to help students continue in postsecondary education.

The selection criteria used to review applications, as required by the program statute are included in the application package.

The Congress has appropriated a total of $15,000,000 for HEP and $7,000,000 for CAMP for FY 2000. The increases in the FY 2000 appropriations ($6,000,000 for HEP and $3,000,000 for CAMP) will be used to fund new applications.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension) Non-procurement and Governmentwide Requirements for Drug-Free Workplace Grants).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) 34 CFR Part 206 (Special Education Programs for Students Whose Families are Engaged in Migrant and Other Seasonal Farmwork.)

(c) The definitions of a migratory child, a migratory agricultural worker and a migratory fisher continued in 34 CFR 200.40 and the definitions of farmwork, migrant farmworker and seasonal farmworker contained in 20 CFR 633.1043.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the application or to obtain information on the program, call or write Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW, Room 3E227, FOB 6, Washington, DC 20202–6135. Telephone Number: (202) 260–1396. Inquiries may be sent by e-mail to mary suazo@ed.gov or by FAX at (202) 205–0089. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on

request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Authority: Program Authority: 20 U.S.C. 1070d–2.

Dated: January 13, 2000.

Michael Cohen,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 00–1166 Filed 1–18–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–164–A]

Application to Export Electric Energy; Constellation Power Source, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Constellation Power Source, Inc. (CPS) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 18, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On January 23, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CPS to transmit electric energy from the United States to Canada as a power marketer (Order No. EA–164) using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That authorization will expire on January 23, 2000.

On January 6, 2000, CPS filed an application with FE for renewal of the export authority contained in Order No. EA–164. CPS has requested that authorization be issued for a five-year term and that the international transmission facilities of Long Sault, Inc. be added to the list of authorized export points.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the CPS request to export should be clearly marked with Docket EA–164–A. Additional copies are to be filed directly with Randall D. Osteen, Attorney, Constellation Power Source, Inc., 111 Market Place, Suite 500, Baltimore, MD 21202.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–164. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–164 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'' from the Regulatory Info menu and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on January 12, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–1195 Filed 1–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: This notice announces a open teleconference meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the interim findings and recommendations of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force.

Note: Copies of the interim findings and recommendations of the National Ignition Facility Laser System Task Force may be obtained from the following internet address http://www.hr.doe.gov/seab/ or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

Name: Secretary of Energy Advisory Board.

EFFECTIVE DATE: Thursday, January 20, 2000, 1:30 pm—3 pm, Eastern Standard Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board

(AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department?s management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy. During the open teleconference meeting the Board will discuss the interim findings and recommendations of the National Ignition Facility (NIF) Laser System Task Force. The NIF Laser System Task Force, a subcommittee of the Secretary of Energy Advisory Board, was formed to provide independent external advice and recommendations to the Board on the options to complete the National Ignition Facility Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project.

On January 20, the Board will conduct a teleconference to discuss the findings and recommendations contained in the interim report of the NIF Laser System Task Force. The interim report of the NIF Task Force will address the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system.

Tentative Agenda

Thursday, January 20, 2000.

1:30 pm–1:40 pm—Welcome & Opening Remarks—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board
1:40 pm–2 pm—Overview of the National Ignition Facility Laser System Task Force's Interim Findings and Recommendations—Dr. John McTague, NIF Task Force Chairman
2:00 pm–2:30 pm—Public Comment Period
2:30 pm–3 pm—Board Review & Comment and Action—Mr. Andrew Athy, Chairman of the Secretary of Energy Advisory Board
3 pm—Adjourn

This tentative agenda is subject to change.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on January 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–1242 Filed 1–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP–241–001]

ANR Pipeline Company; Notice of Application

January 12, 2000.

Take notice that on January 10, 2000, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP–241–001 an Amendment to Application for a certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act and Section 385.215 of the Commission's regulations. By the amendment, ANR seeks to modify its original certificate application to seek authorization to construct and operate the facilities described therein in two phases. In Phase I, ANR proposes to install, by November 1, 2000, the two proposed 10,000 HP Compressor units at the Woodstock Compressor Station, which would provide a total of 109 Mdth per day of additional system capacity. In Phase II, ANR proposes that the remaining facilities for which ANR sought certification in its Application be constructed at a later time, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

ANR states the amendment is necessary because several events have occurred since the Application was filed which necessitate its request for phasing the construction of the these facilities. First, ANR states that the Application assumed that prior to the certification of the facilities in this docket, the Commission would have certificated ANR's SupplyLink project in Docket No. CP97–397–000. ANR states that, however, the SupplyLink facilities have not yet been certificated. Also, ANR states, since the time the Application was filed, one shipper has informed ANR that it will not need deliveries of gas until November 2001, and another has terminated its precedent agreement. As a result, there will be three shippers with total requirements of 59 Mdth per day on November 1, 2000, and a fourth who will require an additional 25 Mdth per day on November 1, 2001.

To serve these customers, ANR proposes to install, as Phase I of this project, the two proposed 10,000 HP Compressor units at the Woodstock Compressor Station. According to ANR, installation of these compressors will provide a total of 109 Mdth per day. ANR states that this capacity will permit it to serve November 1, 2000 shippers, and will allow it to meet its obligations to provide the additional 25 Mdth per day which one of the shippers will need on November 1, 2001. ANR states that the remainder of the capacity will afford ANR flexibility to meet near term demands for additional capacity into Wisconsin. However, with the phasing approval requested herein, ANR believes that certification of the remaining Phase II facilities can, at this juncture, be deferred pending further Commission action on the SupplyLink facilities.

ANR Pipeline Company has authorized the individual listed below to be its contact person for information regarding this application: Richard W. Porter, Assistant Vice President, ANR

Pipeline Company, 500 Renaissance Center, Detroit Michigan 48243, Tel. 313–496–2473, Fax. 313–496–5141, E-mail: richard.porter@coastalcorp.com.

Any person desiring to be heard or to make any protest with reference to said Application should on or before February 2, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant or filed by other intervernors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intevenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1177 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–161–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

January 12, 2000.

Take notice that on January 7, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 176, to be effective February 7, 2000.

CIG states that it provides swing service pursuant to Rate Schedule SS–1. In implementing this Rate Schedule, CIG has discovered an oversight. CIG states that as currently structured, the commodity rate for the swing service applies only to daily gas quantities allocated to a shipper's swing contract that exceed 5% of the daily total scheduled quantities at the pertinent delivery point. To provide more flexibility to shippers, CIG asks the Commission for permission to expand the safe harbor so that the commodity rate applies only to daily swing quantities that exceed the greater of 100 Dth or 5% of the daily total scheduled quantities at the pertinent delivery point.

CIG states that this revision will ensure that the swing service commodity rate is not imposed on small gas quantities. CIG states that to ensure that shippers get the immediate benefit of this expanded flexibility, it has posted a notice on its electronic bulletin board on November 5, 1999 that waives the pertinent provision of Rate Schedule SS–1 to implement the broader ''greater of'' standard.

CIG further states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1187 Filed 1–18–00;8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–160–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 7, 2000.

Take notice that on January 5, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of February 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST.

The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1186 Filed 1–18–00:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–005]

High Island Offshore System, LLC; Notice of Compliance Filing

January 12, 2000.

Take notice that on January 6, 2000, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 6, 1999:

First Revised Sheet No. 26
First Revised Sheet No. 201

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's December 14, 1999, Letter Order in this proceeding.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1184 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–011]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

January 12, 2000.

Take notice that on January 7, 2000, K N Interstate Gas Transmission Co. (KNI) moved into effect certain rates and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A, Third Revised Volume No. 1–B, First Revised Volume No. 1–C, and First Revised Volume No. 1–D as follows:

The following tariff sheets to be effective August 1, 1998:

Third Revised Volume No. 1–A

Fifth Sub Second Revised Sheet No. 4A
Substitute Second Revised Sheet No. 4B
Fifth Sub Second Revised Sheet No. 4C
Fifth Sub Fifth Revised Sheet No. 4D
Substitute Second Revised Sheet No. 4E

Third Revised Volume No. 1–B

Substitute First Revised Sheet No. 68
Substitute First Revised Sheet No. 69
Substitute First Revised Sheet No. 70
Substitute First Revised Sheet No. 71
Substitute First Revised Sheet No. 79
Substitute First Revised Sheet No. 80
Substitute First Revised Sheet No. 81
Substitute First Revised Sheet No. 82
Substitute First Revised Sheet No. 85
Substitute First Revised Sheet No. 86

First Revised Volume No. 1–C

Second Sub Tenth Revised Sheet No. 4

First Revised Volume No. 1–D

Substitute First Revised Sheet No. 66
Substitute First Revised Sheet No. 67
Substitute First Revised Sheet No. 68
Substitute First Revised Sheet No. 69
Substitute First Revised Sheet No. 70
Substitute First Revised Sheet No. 71

The following tariff sheets to be effective January 1, 1999:

Third Revised Volume No. 1–A

Fourth Sub Sixth Revised Sheet No. 4D

First Revised Volume No. 1–C

Second Sub Eleventh Revised Sheet No. 4

The following tariff sheets to be effective June 1, 1999:

Third Revised Volume No. 1–A

Third Sub Third Revised Sheet No. 4A
Third Sub Third Revised Sheet No. 4C
Third Sub Third Revised Sheet No. 4D

First Revised Volume No. 1–C

Third Sub Twelfth Revised Sheet No. 4

The following tariff sheets to be effective July 1, 1999:

Third Revised Volume No. 1–A

Substitute Eighth Revised Sheet No. 4D
Third Revised Sheet No. 4E

Third Revised Volume No. 1–B

Third Revised Sheet No. 24

First Revised Volume No. 1–C

Sub Thirteenth Revised Sheet No. 4

First Revised Volume No. 1–D

Third Revised Sheet No. 21

The following tariff sheets to be effective January 1, 2000:

Third Revised Volume No. 1–A

Second Sub Ninth Revised Sheet No. 4D
Substitute Tenth Revised Sheet No. 4D
Fourth Revised Sheet No. 4E
Second Revised Sheet No. 76
Original Sheet No. 76A

First Revised Volume No. 1–C

3rd Sub Fourteenth Revised Sheet No. 4

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to the Commission's Letter Order approving KNI's filed Offer of Settlement and Stipulation and Agreement issued on December 22, 1999, in this proceeding, 89 FERC ¶ 61,323 (1999).

KNI states that it has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties, as well as all parties on the restricted service list in Docket Nos. RP98–117, et al.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1183 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–151–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 12, 2000.

Take notice that on January 6, 2000, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective January 29, 2000:

Fourth Revised Sheet No. 292
Second Revised Sheet No. 299A

Northern states that the purpose of this filing is to correct the superseding tariff sheet reference. No changes have been made to Northern's tariff provisions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1185 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–WA]

Public Utility District No. 2 of Grant County; Notice of Public Utility District No. 2 of Grant County's Request to Use Alternative Procedures in Filing a License Application

January 12, 2000.

On December 15, 1999, the existing licensee, Public Utility District No. 2 of Grant County (Grant PUD), filed a request pursuant to use the Commission's alternative procedures in submitting an application for a new license for the existing Priest Rapids Hydroelectric Project No. 2114. The 1,994-megawatt hydroelectric project includes two dams, Priest Rapids Dam and Wanapum Dam, and two powerhouses. The project is located on the Columbia River, in the center of the state of Washington. Grant PUD has demonstrated that it has made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus likely exists that the use of the alternative procedures is appropriate in this case. Grant PUD has also submitted a communications protocol that was developed in consultation with interested entities.

The purpose of this notice is to invite comments on Grant PUD's request to use the alternative procedures, pursuant to section 4.34(i) of the Commission's regulations.[1] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here combines the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an Environmental Assessment (EA) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to improve the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater application, and to improve communication and cooperation among the participants.

Alternative Licensing Process and Priest Rapids Schedule

Grant PUD has submitted a proposed schedule for the process that leads to the filing of a new license application by October, 2003. Public scoping meetings to determine the scope of environmental analysis that will be completed to support the Commission's licensing decision would be held in the spring of 2000. Studies of environmental issues and alternatives developed during scoping would be conducted through 2002 (if needed), with a draft application and draft applicant-prepared environmental assessment (APEA) to be issued for comment in early 2003.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Grant PUD's proposal to use the alternative licensing procedures to file an application for the Priest Rapids Hydroelectric Project. The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedures,'' and include the project name and number (Priest Rapids Hydroelectric Project No. 2114).

For further information on this process, please contact Charles Hall of the Federal Energy Regulatory Commission at 202–219–2852 or E-mail charles.hall@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1188 Filed 1–18–00; 8:45am]

BILLING CODE 6717–01–M

[1] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–46–000, et al.]

Vermont Yankee Nuclear Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 11, 2000.

Take notice that the following filings have been made with the Commission:

1. Vermont Yankee Nuclear Power Corporation, Vermont Electric Power Company, Inc., AmerGen Vermont, L.L.C.

[Docket No. EC00–46–000]

Take notice that on January 6, 2000, Vermont Yankee Nuclear Power Corporation, Vermont Electric Power Company, Inc., and AmerGen Vermont, L.L.C., tendered for filing a joint application seeking authorization for the sale of jurisdictional facilities and authorization to assign certain contractual rights and obligations to a Special Purpose Entity subsidiary pursuant to Section 203 of the Federal Power Act.

Comment date: February 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Edgar Electric Cooperative d/b/a/, EnerStar Power Corporation, Tennessee Power Company, American Power Exchange, Inc.

[Docket No. ER98–2305–005] [Docket No. ER95–581–019] [Docket No. ER94–1578–021]

Take notice that on January 6, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

3. Baltimore Gas and Electric Company

[Docket No. ER00–1031–000]

Take notice that on January 6, 2000, Baltimore Gas and Electric Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: January 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas & Electric Company

[Docket Nos. ER00–658–000]

Take notice that on January 7, 2000, Pacific Gas & Electric Company (PG&E), pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 CFR Section 385.216, tendered for filing Notice of withdrawal of its Pro Forma Interconnection Policy and Agreements filed with the Commission on November 24, 1999. PG&E is also requesting that the above referenced docket be closed.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Power Exchange Corporation

[Docket No. ER00–951–000]

Take notice that on January 7, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing an amendment to its December 30, 1999 filing in the above-referenced docket.

The errata notice does not affect the proposed effective date for the proposed CTS rate schedule changes.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER00–1032–000]

Take notice that on January 7, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and West Texas Municipal Power Agency, which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on December 9, 1999.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–1033–000]

Take notice that on January 7, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy Louisiana, Inc., Entergy Gulf States, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Letter Agreement between Entergy Services, Inc. and Sam Rayburn Municipal Power Agency for the installation of the New Liberty Substation off of Entergy Service's Line No. 542 (138kV).

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER00–1034–000]

Take notice that on January 7, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Koch Energy Trading, Inc. (Koch Energy) for acceptance by the Commission.

The ISO states that this filing has been served on Koch Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective January 4, 2000.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Pool

[Docket No. ER00–1035–000]

Take notice that on January 7, 2000, the New England Power Pool Participants Committee submitted changes to Market Rules 6, 8 and 9. Additionally, NEPOOL has requested a waiver of the Commission's notice requirements to permit the revisions to Market Rules 6, 8 and 9 to become effective as of January 11, 2000.

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: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. DPL Energy, Inc.

[Docket No. ER00–1036–000]

Take notice that on January 7, 2000, DPL Energy, Inc. (DPL Energy), tendered for filing a service agreement establishing Dayton Power and Light Company (DP&L) as a customer under the terms of DPL Energy's market-based sales tariff.

DPL Energy requests an effective date of February 1, 2000 for the Service Agreement.

Copies of this filing were served upon DP&L and the Public Utilities Commission of Ohio.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Great Bay Power Corporation, Inc.

[Docket No. ER00–1037–000]

Take notice that on January 7, 2000, Great Bay Power Corporation (Great Bay), tendered for filing service agreements between Aquila Energy Marketing Corporation and Great Bay and between El Paso Power Services and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1998, in Docket No. ER98–3470–000.

The service agreements are proposed to be effective January 1, 2000.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Soyland Power Cooperative, Inc.

[Docket No. ER00–1038–000]

Take notice that on January 7, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements service contract with Clay Electric Cooperative, Inc., (Clay). Soyland states that Clay has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to Clay.

Soyland requests an effective date of January 7, 2000 for the notice of cancellation. Accordingly, Soyland requests waiver of the Commission's regulations. Soyland states that a copy of the filing has been served on Clay.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Soyland Power Cooperative, Inc.

[Docket No. ER00–1039–000]

Take notice that on January 7, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements service contract with Clinton County Electric Cooperative, Inc., (Clinton). Soyland states that Clinton has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to Clinton under this contract.

Soyland requests an effective date of January 7, 2000 for the notice of cancellation. Accordingly, Soyland requests waiver of the Commission's regulations.

Soyland states that a copy of the filing has been served on Clinton.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Soyland Power Cooperative, Inc.

[Docket No. ER00–1040–000]

Take notice that on January 7, 2000, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements service contract with Tri-County Electric Cooperative Inc. (Tri-County). Soyland states that Tri-County has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to Tri-County under this agreement.

Soyland requests an effective date of January 7, 2000 for the notice of cancellation. Accordingly, Soyland requests waiver of the Commission's regulations.

Soyland states that a copy of the filing has been served on Tri-County.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Soyland Power Cooperative, Inc.

[Docket No. ER00–1041–000]

Take notice that on January 7, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements service contract with Wayne-White Counties Electric Cooperative, Inc., (WWEC). Soyland states that WWEC has withdrawn from membership in Soyland, and Soyland will no longer provide all-requirements electric service to WWEC.

Soyland requests an effective date of January 7, 2000 for the notice of cancellation. Accordingly, Soyland requests waiver of the Commission's regulations.

Soyland states that a copy of the filing has been served on WWEC.

Comment date: January 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER00–1042–000]

Take notice that on January 4, 2000, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Duke Energy Trading and Marketing, L.L.C. (DETM) 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: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1043–000]

Take notice that on January 10, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Cargill-Alliant, LLC as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of December 11, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. New Century Services Inc.

Docket No. ER00–1045–000]

Take notice that on January 10, 2000, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Arkansas River power Authority (ARPA), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on November 22, 1999.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Calcasieu Power, LLC

[Docket No. ER00–1049–000]

Take notice that on January 10, 2000, Calcasieu Power, LLC, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to become effective as of the date specified by the Federal Energy Regulatory Commission.

Calcasieu Power, LLC intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of electric energy and capacity at agreed prices.

Comment date: February 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–1050–000]

Take notice that on January 10, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement between the Companies and LGE

Dispatch and Trading under the Companies Open Access Transmission Tariff.

Comment date: February 1, 2000, 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. 00–1155 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2474–004 New York]

Erie Boulevard Hydropower L.P.; Notice Extending Time To Comment on Draft Environmental Assessment

January 12, 2000.

The Federal Energy Regulatory Commission issued a Draft Environmental Assessment (DEA) on November 24, 1999, considering issuance of a new license for the Oswego River Hydroelectric Project, located on the Oswego River in Oswego County, New York, in accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897). In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal actions significantly affecting the quality of the human environment.

The Commission requested comments on the DEA within 45 days, or by January 8, 2000. Erie Boulevard Hydropower L.P., in its December 27, 1999 letter, requested an extension of time to complete its review of the DEA. In consideration of the holidays which fell during the review period, I am extending the DEA comment period until January 31, 2000.

Copies of the DEA will remain available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Anyone wishing to comment in writing on the DEA must do so no later than January 31, 2000. Comments should be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix on the first page the caption ''Oswego River Project No. 2474–004'' to all comments and letters.

For further information, please contact Charles T. Raabe at (202) 219–2811.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1180 Files 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–55–000]

Distrigas of Massachusetts Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Distrigas LNG Plant Modifications Project and Request for Comments on Environmental Issues

January 12, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed at Distrigas of Massachusetts Corporation's (DOMAC) liquefied natural gas terminal (LNG Plant) in Everett, Massachusetts.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

The proposed project would allow DOMAC to establish a mutually beneficial thermal energy exchange arrangement between its LNG Plant and the Island End Cogeneration Project (Power Project), a nonjurisdictional electric generating Facilities Siting Board (Siting Board) on October 8, 1998. DOMAC proposes to supply 66,000 MMBtu per day of regasified liquefied natural gas (LNG) to the Power Plant Project and to modify its existing vaporization facilities to use low-grade waste heat from the Power Project. Specifically, DOMAC requests Commission authorization to:

- Install a closed-loop hot and cold water thermal energy transfer system consisting of piping, a warm water storage tank, water-to-water heat exchangers, and five water pumps;
- Replace existing low, medium, and high pressure vaporizers with equivalent capacity shell-and-tube hot water heat exchangers compatible with the thermal energy transfer system;
- Perform minor LNG Plant modifications necessary to meter and connect the Power Project's fuel supply line to the LNG Plant; and
- Install a new utility water supply system to serve both the LNG Plant and the Power Project.

The general location of DOMAC's proposed project facilities is shown on the map attached as appendix 1.[2] Construction of the proposed facilities would occur completely on land owned by DOMAC or on the adjacent Power Project site.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public

[1] DOMAC's application in Docket No. CP00–55–000 was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local governments representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Vegetation and wildlife
- Water resources, fisheries, and wetlands
- Endangered and threatened species
- Public safety
- Cultural resources
- Land use
- Air quality and noise

We will also evaluate possible alternatives to the proposed project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by DOMAC. This preliminary list of issues may be changed based on your comments and our analysis.

- Noise quality may be affected by the addition of the new warm water circulating pumps.
- Soils (possibly contaminated) may be affected by minor ground disturbance from foundation construction. The proposed project area is part of a site that has been identified as a ''noticed site'' pursuant to the Massachusetts Contingency Plan. The former site owner, Boston Gas Company, is currently conducting environmental investigations to determine the need for soil remediation.

The Siting Board has reviewed environmental impacts associated with the Power Project and has approved construction of this facility. Therefore, the EA will not address impacts from this nonjurisdictional facility. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1.
- Reference Docket No. CP00–55–000.
- Mail your comments so that they will be received in Washington, DC on or before February 11, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1178 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Granting Limited Extension for Filing Comments, Final Terms and Conditions, Recommendations and Prescriptions

January 12, 2000.

Type of Application: New Major License.

Project Name & No.: Fifteen Mile Falls Project No. 2077–016.

Dated Filed: July 29, 1999.

Applicant: USGen New England, Inc.

Location: The project is located on the Connecticut River, in Grafton and Coos Counties, New Hampshire, and Caledonia and Essex Counties, Vermont.

Applicant Contact: Mr. Cleve Kapala, USGen New England, Inc., 46 Centerra Parkway, Lebanon, NH 03766.

FERC Contact: Any questions on this notice should be addressed to William Guey-Lee, E-mail address william.gueylee@ferc.fed.us, or telephone (202) 219–2808.

Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:

The Appalachian Mountain Club, Connecticut River Joint Commission, Connecticut River Watershed Council, Conservation Law Foundation, New Hampshire Rivers Council, Trout Unlimited Vermont Chapter, and Trout Unlimited New Hampshire Chapter (NGOs), collectively, have requested an extension to June 1, 2000, for filing comments, final terms and conditions, and recommendations and prescriptions. The NGOs state the extension should allow the collaborative team to complete development of several draft management plans (including the Fisheries Management Plan, Forest and Wildlife Management Plan, Threatened and Endangered Species Management Plan, and the Recreation Resource Assessment and Management Plan), and have this information available before commenting. The NGOs state that this would provide greater efficacy and benefit to the process. Therefore, an extension to June 1, 2000, is granted for filing comments, final terms and conditions, and recommendations and prescriptions, but however, is limited to the draft management plans stated above. The deadline for filing other comments, final terms and conditions, and recommendations and prescriptions is January 31, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St. 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, the intervenor must also serve a copy of the document on that resource agency.

j. *All filings must:* (1) Bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,'' or ''REPLY COMMENTS,'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing & Compliance, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1179 Filed 1–18–00, 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

January 12, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* 8282–015.

c. *Date Filed:* November 17, 1999.

d. *Applicant:* K & K Hydroelectric.

e. *Name of Project:* Steeles Mill.

f. *Location:* On Hitchcock Creek, In Richmond County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* 18 CFR 4.102.

h. *Applicant Contact:* Mr. Kenneth G. Smith, K & K Hydroelectric, 2260 Quail Drive, Graham, NC 27253, (910) 227–2536.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 291–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* February 28, 2000.

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.

Please include the project number (8282–015) on any comments or motions filed.

k. *Description of Surrender:* K & K Hydroelectric, a North Carolina corporation, requests to surrender the exemption for this constructed project for economic reasons.

l. *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. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1181 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. UL94–1—Maine]

FPL Energy Maine Hydro, LLC; Notice to Modify a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 12, 2000.

On April 23, 1998, the Federal Energy Regulatory Commission (Commission) issued a notice for the Upper and Middle Dams Storage Project (FERC No. UL 94–1) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Upper and Middle Dams Storage Project is located in the headwaters of the Androscoggin River, in Oxford and Franklin Counties, Maine. FPL Energy Maine Hydro, LLC is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a processing.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following addition is made to the restricted service list notice issued on April 23, 1998: Frank H. Dunlap, FPL Energy Maine Hydro, LLC, 100 Middle Street, Portland ME 04101.

The address for Mr. David Dominie has changed. Delete ''Central Maine Power Company, North Augusta Office Annex, 41 Anthony Avenue, Augusta, ME 04330'' and replace with ''EPRO, 41 Anthony Avenue, Augusta, ME 04330''.

The following are deleted from the restricted service list notice issued on April 23, 1998:

Jeffrey P. Musich, PE, Union Water Power Company, 150 Maine Street, Lewiston, ME 04243–1225.

R. Alec Giffen, Land & Water Associates, 9 Union Street, Hallowell, ME 04347.

Mona M. Janopaul, Trout Unlimited, 1500 Wilson Blvd, Arlington, VA 22209.

Sarah Verville, Esq., Central Maine Power Company, Edison Drive, Augusta, ME 04336.

Tom Sullivan, Gomez and Sullivan Engineers, 150 Concord State Road, Dunbarton, NH 03045.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list. Such a request must be filed with the David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and served on each person whose name appears on the official service list. If no such requests are filed, the modified restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–1182 Filed 1–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100153; FRL–6487–1]

Eastern Research Group Inc. and ICF Incorporated; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Eastern Research Group Inc. and its subcontractor, ICF Incorporated, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Eastern Research Group Inc. and its subcontractor, ICF Incorporated, have been awarded a contract to perform work for OPP, and access to this information will enable Eastern Research Group Inc. and its subcontractor, ICF Incorporated, to fulfill the obligations of the contract.

DATES: Eastern Research Group Inc. and its subcontractor, ICF Incorporated, will be given access to this information on or before January 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the **''Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. 68–W6–0022, Work Assignment No. 4–24, Eastern Research Group Inc. and its subcontractor, ICF Incorporated, will provide the EPA's Antimicrobial Division with technical support and studies review, in all areas of toxicology (e.g., acute, subchronic, and chronic toxicity) and ecological effects assessments and residue and product chemistry. Eastern Research Group Inc. and its subcontractor, ICF Incorporated, understand that the primary activities to be conducted under this work assignment will be the preparation of Data Evaluation Records (DER) of data and studies concerning the toxicological (Tasks 3.1 and 3.2) and ecological (Tasks 4.1 and 4.2) effects of pesticides, and literature searches on chemicals related to DERs as well as chemicals up for registration.

OPP has determined that access by Eastern Research Group Inc. and its subcontractor, ICF Incorporated, to

[1] 18 CFR 385.2010.

information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Eastern Research Group Inc. and its subcontractor, ICF Incorporated, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Eastern Research Group Inc. and its subcontractor, ICF Incorporated, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Eastern Research Group Inc. and its subcontractor, ICF Incorporated, until the requirements in this document have been fully satisfied. Records of information provided to Eastern Research Group Inc. and its subcontractor, ICF Incorporated, will be maintained by EPA Project Officers for this contract. All information supplied to Eastern Research Group Inc. and its subcontractor, ICF Incorporated, by EPA for use in connection with this contract will be returned to EPA when Eastern Research Group Inc. and its subcontractor, ICF Incorporated, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: January 5, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–1215 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100154; FRL–6487–2]

Lockheed Martin; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Lockheed Martin in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Lockheed Martin has been awarded multiple contracts to perform work for OPP, and access to this information will enable Lockheed Martin to fulfill the obligations of the contract.

DATES: Lockheed Martin will be given access to this information on or before January 24, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. 68–W7–0055, the contractor will extract data from pesticide registration forms. This project requires the integration of the DataCap Tool set and forms recognition capabilities into the existing imaging application. The new system will utilize DataCap Task Master and Paper keyboard software for design of the application for extracting data from the pesticide registration. Once the application has been designed, implemented, and tested, the Lockheed Martin Technical Image Technology Support Staff will be responsible for maintaining the application, inclusive of enhancements, updates, error correction and monitoring application for performance and ensuring that the application meets requirements defined by OPP.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involved work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Lockheed Martin, prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Lockheed Martin, is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Lockheed Martin until the requirements in this document have been fully satisfied. Records of information provided to Lockheed Martin will be maintained by EPA Project Officers for this contract. All information supplied to Lockheed Martin by EPA for use in connection with this contract will be returned to EPA when Lockheed Martin has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: January 6, 2000.

Joanne Martin,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–1216 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00621; FRL–6385–7]

Pesticides: Data Submitter Rights for Data Submitted in Support of Tolerance Actions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability for comment of a paper discussing options to enable the Agency to appropriately implement the new provisions contained in section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions.

DATES: Comments, identified by docket control number OPP–00621, must be received on or before March 20, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00621 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you submit data to EPA in support of establishing or maintaining tolerances for pesticides, or are a pesticide registrant or a person applying for pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). You may also be interested in commenting if you submit data to EPA in support of an exemption from a tolerance. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may obtain a copy of the options paper titled ''Data Submitter Rights for Data Submitted in Support of Tolerance Actions'' described in this notice by accessing this **Federal Register** notice using the **Federal Register**--Environmental Documents cite on the EPA's Internet and selecting ''Related Documents.'' Hard copies of the options paper are available by consulting with the person listed under ''FOR FURTHER INFORMATION CONTACT.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–00621. 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 Hwy., 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 through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00621 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 (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB 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 in this unit. 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00621. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential

will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is making available for comment an options paper on exclusive use and data compensation rights for data submitted to the Agency in support of tolerance and tolerance exemption actions. As part of the Food Quality Protection Act of 1996, Congress amended section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) addressing such rights. The Agency is currently evaluating how to implement this new provision and is seeking public comment. The options paper briefly discusses the new section 408(i) of the FFDCA and the Agency's practices regarding data compensation and exclusive use; the current compensation and exclusive use process the Agency implements under section 3 of the FIFRA, and presents three options for implementing the new provision. The options represent different interpretations focusing on who the data submitters may be. However, the Agency also seeks comments on other interpretations of section 408(i) and suggested procedures for implementing any option. Commenters are particularly encouraged to offer suggestions for workable procedures for their preferred options.

EPA will consider the comments received and develop a detailed proposal for implementing data rights under section 408(i) of FFDCA.

List of Subjects

Environmental protection, Pesticide tolerances, Data compensation.

Dated: January 5, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–1063 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30489; FRL–6485–1]

Pesticide Products; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30489, must be received on or before February 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30489 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., Washington, DC 20460 telephone number: (703) 308–9354 and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

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 under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30489. 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 (CM 2), 1921 Jefferson Davis Hwy., 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 through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30489 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 (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30489. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Application

EPA received application as follows to register pesticide product containing active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Product Containing Active Ingredient not Included in any Previously Registered Product

File Symbol: 69876–R: *Applicant:* Camas Technologies, Inc., PO Box 1357, Broomfield, Colorado 80038–1357. *Product name:* QWEL Fungicide. *Active Ingredient:* Macleaya Extract. *Proposed Classification/Use:* None. For foliar control of fungi on greenhouse ornamentals. *Type registration:* Conditional.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 5, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–1217 Filed 1–18–00; 8:45 am

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–912; FRL–6485–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–912, must be received on or before February 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–912 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing

Categories	NAICS	Examples of potentially affected entities
	32532	Pesticide manufacturing

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 under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–912. 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 (CM 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?

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1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM 2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB 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 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–912. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

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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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 11, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners.

EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Novartis Crop Protection, Inc.

PP 9F05070

EPA has received a pesticide petition (PP 9F05070) from Novartis Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Trifloxystrobin in or on the raw agricultural commodities almond nutmeats at 0.02 parts per million (ppm), almond hulls at 1.5 ppm, fruiting vegetables crop group at 0.7 ppm, hops - dried cones at 11 ppm, potato tubers at 0.02 ppm, sugarbeet roots at 0.05 ppm, sugarbeet tops at 2.5 ppm, sugarbeet dried pulp at 0.25 ppm, wheat grain at 0.05 ppm, wheat forage at 0.03 ppm, wheat hay at 0.2 ppm, wheat straw at 0.05 ppm, and wheat aspirated grain fractions at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of trifloxystrobin in plants (cucumbers, apples, wheat and peanuts) is well understood. Identified metabolic pathways are substantially similar in plants and animals (goat, rat and hen). Novartis proposes trifloxystrobin, per se, as the residue of concern for tolerance setting purposes.

2. *Analytical method*. Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities. The limit of detection (LOD) for each analyte of this method is 0.08 ng injected, and the limit of quantitation (LOQ) is 0.02 ppm. The method is based on crop specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection.

3. *Magnitude of residues — residue trials*. A residue program was performed for trifloxystrobin on a full geography of tomatoes and peppers as representative fruiting vegetable crops, potatoes as a representative crop of tuberous and corm vegetables, almonds, hops, wheat, and sugarbeets. A study was conducted on indicator crops to assay for secondary residues in rotational crops. Novartis also completed a three-level poultry study to determine the rate of transfer of residues of trifloxystrobin from residues in animal feed to poultry commodities.

i. *Acute toxicity*. Studies conducted with the technical material of trifloxystrobin:

- Rat acute oral toxicity study with a LD_{50} >5,000 mg/kg
- Mouse acute oral toxicity study with a LD_{50} >5,000 mg/kg
- Rabbit acute dermal toxicity study with a LD_{50} >2,000 mg/kg
- Rat acute dermal toxicity study with a LD_{50} >2,000 mg/kg
- Rat acute inhalation toxicity study with a LC_{50} >4.65 mg/L
- Rabbit eye irritation study showing slight irritation (Category III)
- Rabbit dermal irritation study showing slight irritation (Category IV)
- Guinea pig dermal sensitization study with the Buehler's method showing negative findings
- Guinea pig clem sal sensitization study with the Maximization method showing some positive findings

ii. *Genotoxicty*. No genotoxic activity is expected of trifloxystrobin under *in-vivo* or physiological conditions. The compound has been tested for its potential to induce gene mutation and chromosomal changes in five different test systems. The only positive finding was seen in the *in vitro* test system (Chinese hamster V79 cells) as a slight increase in mutant frequency at a very narrow range (250 – 278 µg/ml) of cytotoxic and precipitating concentrations (compound solubility in water was reported to be 0.61 µg/ml; precipitate was visually noted in culture medium at 150 µg/ml). The chemical was found to be non-mutagenic in the *in vivo* system or all other *in vitro* systems. Consequently, the limited gene mutation activity in the V79 cell line is considered a nonspecific effect under non-physiological *in vitro* conditions and not indicative of a real mutagenic hazard.

iii. *Reproductive and developmental toxicity*. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database on trifloxystrobin relative to pre- and post-natal effects for children is complete.

In assessing the potential for additional sensitivity of infants and children to residues of trifloxystrobin, Novartis considered data from teratogenicity studies in the rat and the rabbit and a 2–generation reproduction study in the rat. The teratogenicity studies are designed to evaluate adverse effects on the developing embryo as a result of chemical exposure during the period of organogenesis. Reproduction studies provide information on effects from chemical exposure on the reproductive capability of mating animals and systemic and developmental toxicity from *in utero* exposure.

In the rat teratology study, reductions in body weight gain and food consumption were observed in the dam at ≥ 100 mg/kg. No teratoganic effects or any other effects were seen on pregnancy or fetal parameters except for the increased incidence of enlarged thymus, which is a type of variation, at 1,000 mg/kg. The developmental no observed-adverse-effect level (NOAEL) was 100 mg/kg.

In the rabbit teratology study, body weight loss and dramatically reduced food consumption were observed in the dam at ≥ 250 mg/kg. No teratogenic effects or any other effects were seen on pregnancy or fetal parameters except for the increase in skeletal anomaly of fused sternebrae-3 and -4 at the top dose level of 500 mg/kg. This finding is regarded as a marginal effect on skeletal development that could have resulted from the 40- to 65% lower food intake during treatment at this dose level. The developmental NOAEL was 250 mg/kg.

In the 2–generation rat reproduction study, body weight gain and food consumption were decreased at > 750 ppm, especially in females during lactation. Consequently, the reduced pup weight gain during lactation (> 750 ppm) and the slight delay in eye opening (1,500 ppm) are judged to be a secondary effect of maternal toxicity. No other fetal effects or any reproductive changes were noted. The low developmental NOAEL, 50 ppm (5 mg/kg), seen in this study was probably due to the lack of intermediate dose levels between 50 and 750 ppm. Based on an evaluation of the dose-response relationship for pup weight at 750 ppm and 1,500 ppm, the NOAEL should have been nearly ten-fold higher if such a dose was available.

Based on all these teratology and reproduction studies, the lowest NOAEL for developmental toxicity is 5 mg/kg while the lowest NOAEL in the subchronic and chronic studies is 2.5

mg/kg/day (from the rat chronic study). Therefore, no additional sensitivity for infants and children to trifloxystrobin is suggested by the data base.

iv. *Subchronic toxicity*. In subchronic studies, several mortality related changes were reported for the top dose in dogs (500 mg/kg) and rats (800 mg/kg). At these dose levels, excessive toxicity has resulted in body weight loss and mortality with the associated and nonspecific changes in several organs (such as atrophy in the thymus, pancreas, bone marrow, lymph node, and spleen) which are not considered specific target organs for the test compound. In the dog, specific effects were limited to hepatocellular hypertrophy at 150 mg/kg and hyperplasia of the epithelium of the gall bladder at 500 mg/kg. Target organ effects in the rat were noted as hepatocellular hypertrophy (≥ 200 mg/kg) and the related liver weight increase (≥ 50 mg/kg). In the mouse, target organ effects included single cell necrosis (300 mg/kg) and hypertrophy (1,050 mg/kg) in the liver and extramedullary hematopoiesis (≥ 300 mg/kg) and hemosiderosis in the spleen (1,050 mg/kg).

In general, definitive target organ toxicity, mostly in the liver, was seen at high feeding levels of over 100 mg/kg for an extended treatment period. At the lowest observed adverse effect level, no serious toxicity was observed other than mostly non-specific effects including a reduction in body weight and food consumption or liver hypertrophy.

5. *Chronic toxicity*. The liver appears to be the major primary target organ based on the chronic studies conducted in mice, rats, and dogs. It was identified as a target organ in both the mouse and the dog studies with trifloxystrobin. However, no liver effect was seen in the chronic rat study which produced the lowest NOAEL of 2.5 mg/kg based on reduced body weight gain and food consumption seen at higher dose levels.

The compound did not cause any treatment-related increase in general tumor incidence, any elevated incidence of rare tumors, or shortened time to the development of palpable or rapidly lethal tumors in the 18–month mouse and the 24–month rat studies. Dosages in both studies were sufficient for identifying a cancer risk. In the absence of carcinogenicity, Novartis believes that a Reference Dose (RfD) approach is appropriate for quantitation of human risks.

6. *Animal metabolism*. Trifloxystrobin is moderately absorbed from the gastrointestinal tract of rats and is rapidly distributed. Subsequent to a single oral dose, the half life of elimination is about 2 days and excretion is primarily via bile. Trifloxystrobin is extensively metabolized by the rat into about 35 metabolites, but the primary actions are on the methyl ester (hydrolysis into an acid), the methoxyimino group (*O*-demethylation), and the methyl side chain (oxidation to a primary alcohol). Metabolism is dose dependent as it was almost complete at low doses but only about 60% complete at high doses.

In the goat, elimination of orally administered trifloxystrobin is primarily via the feces. The major residues were the parent compound and the acid metabolite (CGA–321113) plus its conjugates. In the hen, trifloxystrobin is found as the major compound in tissues and in the excreta, but hydroxylation of the trifluormethyl-phenyl moiety and other transformations, including methyl ester hydrolysis and demethylation of the methoxyimino group, are also seen. In conclusion, the major pathways of metabolism in the rat, goat, and hen are the same.

7. *Metabolite toxicology*. Metabolism of trifloxystrobin has been well characterized in plants, soil, and animals. In plants and soil, photolytically induced isomerization results in a few minor metabolites not seen in the rat; however, most of the applied materials remained as parent compound as shown in the apple and cucumber studies. All quantitatively major plant and/or soil metabolites were also seen in the rat. The toxicity of the major acid metabolite, CGA–321113 (formed by hydrolysis of the methyl ester), has been evaluated in cultured rat hepatocytes and found to be 20-times less cytotoxic than the parent compound. Additional toxicity studies were conducted for several minor metabolites seen uniquely in plants and/or soil. The studies indicate that these metabolites, including CGA–357261, CGA–373466, and NOA–414412, are not mutagenic to bacteria and are of low acute toxicity (LD_{50} > 2,000 mg/kg). In conclusion, the metabolism and toxicity profiles support the use of an analytical enforcement method that accounts for parent trifloxystrobin.

8. *Endocrine effects*. Trifloxystrobin does not belong to a class of chemicals known for having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and reproduction study in rats gave no indication that trifloxystrobin might have any effects on endocrine function related to development and reprodufftion. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

9. *Endocrine disruption*. CGA–279202 does not belong to a class of chemicals known for having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and reproduction study in rats gave no indication that CGA–279202 might have any effects on endocrine function related to development and reproduction. The subchronic and chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary Exposure*— i. *Food*. Dietary exposure was calculated using field trial residues generated at the maximum label rate and minimum preharvest interval. Chronic exposure was calculated by taking the mean value of the field trial values, and acute exposure was calculated by using the entire residue distribution in a Monte Carlo analysis. The resulting acute and chronic exposure estimates demonstrated negligible exposure. Using the chronic toxicological endpoint (rat feeding study), the sub-population with the highest predicted exposure was non-nursing infants (< 1 year old) with 1.3% of the reference dose. Acute exposure for the most exposed sub-population, non-nursing infants (< 1 year old), was 2.1% of the acute reference dose at the 99.9th pecentile. These results demonstrate a very large margin of safety for the use of trifloxystrobin on crops.

ii. *Drinking water exposure*— a. *estimated surface drinking water concentration*. The generic expected environmental concentration (GENEEC) estimated surface water concentrations for the proposed Flint and Compass uses contributed little to the overall exposure. These estimated concentrations were not adjusted for the estimated market share or percentage of use area. The two highest day–56 estimated environmetal concentration (EEC) values were 0.06 parts per billion (ppb) and 0.05 ppb provided by the Compass turf and ornamental uses, respectively. According to the EPA ''OPP's Interim Approach for Addressing Drinking Water Exposure,'' the average day–56 value is divided by three when correcting for overestimation of the GENEEC model. This was applied to the ornamental use and the resulting potential exposure via surface water was 0.05 ppb / 3 = 0.017 ppb. The EPA has accepted that the average day–56 EEC value is divided by six in the case when the product is applied to turf and accounts for the

effects of grass/turf in decreasing runoff (EPA, 1998, EPA–730–F–97–002, PB97–137806, page 15). This division by six was used to calculate the potential exposure via surface water from the Compass turf application, 0.06 ppb / 6 = 0.010 ppb. Therefore, the highest potential exposure to trifloxystrobin from surface water is from the Compass ornamental use, 0.017 ppb.

b. *Estimated ground water concentrations.* The screening concentration in ground water (SCI-GROW) estimated ground water concentrations for the proposed Flint and Compass uses also contributed little to the overall exposure. The estimated concentrations were not adjusted for the estimated market share or percentage of use area. In each use scenario, the concentration of trifloxystrobin in ground water was predicted to be below 1 part per trillion. The highest estimated concentration of trifloxystrobin in the ground water was 0.000587 ppb provided by the Compass turf use.

c. *Drinking water levels of concern—acute exposure.* The estimated maximum concentrations of trifloxystrobin in surface water at Peak Day–0 was 2.48 ppb (GENEEC) and 0.000587 ppb in ground water (SCI-GROW). The acute drinking water level of concentration (DWLOC) values were calculated and compared to these estimated water concentrations. Per EPA preference, the 10–day multiple dosing rat teratology study defined the acute NOAEL at 10 mg/kg/day.

From the acute dietary exposure analysis, the lowest Margin of Exposure (MOE) from the use of trifloxystrobin was 1,960 at the 99.9th percentile for the U.S. population and all population subgroups. This indicates a food exposure of less than 0.0051 mg/kg/day for all populations. Based on the EPA's ''Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments'' document (draft 12/2/97), acute drinking water levels of concern ($DWLOC_{acute}$) were calculated for trifloxystrobin. The lowest acceptable Margin of Exposure (MOE) for any pesticide is 100. This value was used in the DWLOC calculations as a conservative approach. Based on this analysis, trifloxystrobin estimated surface water (2.48 ppb) and ground water concentrations (0.000587 ppb) do not exceed the calculated acute DWLOC values (3,497, 3,496, 2,997, 997). Therefore, trifloxystrobin exposures would not exceed the exposure allowable by the risk cup.

d. *Chronic exposure.* The estimated maximum concentrations of trifloxystrobin in surface water at Day–56/3 was 0.017 ppb (GENEEC) and 0.000587 ppb in ground water (SCI-GROW). The chronic DWLOC values were calculated and compared to these estimated water concentrations. The chronic reference dose for trifloxystrobin is 0.025 mg/kg body wt/day, based upon the findings in the rat chronic toxicity study. From the chronic dietary exposure analysis, an exposure estimate of 0.000140 mg/kg body wt/day was determined for the U.S. population and > 0.00032 for all subgroups. Using this information, chronic drinking water levels of concern ($DWLOC_{chronic}$) were calculated for trifloxystrobin. The trifloxystrobin estimated ground water (0.000587 ppb) and surface water (0.017 ppb) concentrations do not exceed the calculated chronic DWLOC values (872, 870, 746, 247). Therefore, trifloxystrobin exposures would not exceed the exposure allowable by the risk cup.

2. *Non-dietary exposure.* Non-dietary exposure to trifloxystrobin is considered negligible as the chemical is intended primarily for commercial and agricultural use. Post-application re-entry exposure to homeowners from professional use on residential ornamentals is considered negligible. For workers handling this chemical, acceptable margins of exposure (in the range of thousands) have been obtained for both acute and chronic scenarios.

D. Cumulative Risk

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by trifloxystrobin would be cumulative with those of any other types of chemicals. Furthermore, the oximinoacetate is a new type of fungicide and no compound in this general chemical class currently has a significant market share. Consequently, Novartis is considering only the potential exposure to trifloxystrobin in its aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for trifloxystrobin, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that only 0.5% of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to trifloxystrobin residue.

2. *Infants and children.* Developmental toxicity, manifested as reduced weaning pup weight, enlarged thymus, or fused sternabrae, was observed in the teratology study and 2–generation rat reproduction studies at maternally toxic doses. All of these findings are judged to be non-specific, secondary effects of maternal toxicity. The lowest NOAEL for developmental toxicity was established in the rat reproduction study at 5 mg/kg, a level that is likely to be an overly low estimate (as a result of dose gap) but is still higher than the chronic NOAEL of 2.5 mg/kg on which the RfD is based.

Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of trifloxystrobin is only 2.1% for non-nursing infants (> l year old) (the most impacted sub-population). Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to trifloxystrobin residues.

F. International Tolerances

No Codex MRL's have been established for residues of trifloxystrobin. Flint has been registered on pome fruit in Switzerland, and Stratego (trifloxystrobin + propiconazole) has been registered on cereals in Switzerland.

[FR Doc. 00–1214 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6526–1]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act, Oronogo-Duenweg Mining Belt Superfund Site, Jasper County, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed prospective purchaser agreement associated with the Oronogo-Duenweg Mining Belt Superfund Site, located in Jasper County, Missouri, was executed by the Agency on December 29, 1999. The Site is part of an inactive lead and zinc mining area known as the Tri-State Mining District. The Site encompasses approximately 270 square miles, with large volumes of abandoned and uncontrolled mining wastes spread throughout the Site. The mining wastes at the Site contain elevated levels of lead, which is a hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1986 (''CERCLA''). The Prospective Purchaser Agreement would resolve certain potential EPA claims under CERCLA against the Missouri Highway Transportation Commission (''MHTC''), the prospective purchaser (''the purchaser'').

The settlement requires the purchaser to utilize large quantities of materials from past mining activities as fill, which would become part of the construction of the ''Rangeline Bypass.'' The purchaser must ensure that upon completion of construction, clean cover is in place over all mine materials. The purchaser will handle the mine material in accordance with a work plan that is designed to ensure that contamination is not spread during construction. The purchaser agrees to provide to EPA access to the property. EPA may at any time conduct an inspection of the property, including sampling, to ensure the work is being performed in accordance with the work plan.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement.

DATES: Written comments must be submitted on or before February 18, 2000.

ADDRESSES: Comments should reference the ''Oronogo-Duenweg Mining Belt Superfund Site'' and should be forwarded to D. Mark Doolan, Remedial Project Manager, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Venessa Cobbs (913) 551–7630.

FOR FURTHER INFORMATION CONTACT: David Cozad, Senior Associate Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7587.

Dated: January 4, 2000.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 00–1213 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6526–3]

Water Quality Criteria: Notice of Draft Ambient Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hatteras

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Draft Ambient Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hatteras.

SUMMARY: Pursuant to section 304(a)(1) of the Clean Water Act (CWA), the Environmental Protection Agency announces the availability of a draft document titled, Draft Ambient Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hatteras. The EPA is considering using the values presented in this document as its recommended national 304(a) criteria for dissolved oxygen in saltwater. These 304(a) criteria would provide recommended guidance values for States, Territories, and authorized Tribes to use in adopting water quality criteria to protect aquatic life from acute and chronic effects of low dissolved oxygen. Under the CWA, States, Territories, and Tribes are to adopt water quality criteria to protect designated uses. As the document is currently written, these water quality criteria would apply only to the Virginian Province (Cape Cod to Cape Hatteras), but with appropriate modifications, they may be applicable to other regions. While these criteria would constitute EPA's scientific recommendations regarding ambient concentrations of dissolved oxygen that protect saltwater aquatic life, these criteria are not regulations; thus they would not impose legally binding requirements on EPA, States, Territories, Tribes, or the public, and might not apply to a particular situation based upon the circumstances. State, Territories, and authorized Tribes retain the discretion to adopt, where appropriate, other scientifically defensible water quality standards that differ from these recommendations. EPA may change these 304(a) criteria in the future.

These draft criteria were under development prior to the Agency's revision and implementation of its current processes for notice of data availability and criteria development (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). As indicated in the December 10, 1998 FR document, the Agency believes it is important to provide the public with an opportunity to submit scientific information on draft criteria, even though we are not required to invite nor respond to specific issues. Therefore, EPA will review and consider significant scientific information submitted by the public that might not have otherwise been identified during development of these criteria, or in the external peer review. The external peer review comments and EPA's responses are available in the Water Docket. After review of the submitted significant scientific information, EPA will publish a revised document, or publish a document indicating its decision not to revise the document.

This draft document has been approved for publication by the Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

DATES: All significant scientific information must be submitted to the Agency within 45 days after publication of this document in the **Federal Register** under docket number W–99–22. The Administrative Record supporting this guidance document, including results of the peer review is available at the Water Docket, Room EB–57, Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 4:00 p.m. For access to docket materials call (202) 260–3027 for an appointment. A reasonable fee will be charged for photocopies. Any scientific information submitted should be adequately documented and contain enough supporting information to indicate that acceptable and scientifically defensible procedures were used and that the results are likely reliable.

ADDRESSES: Copies of the complete document, titled Draft Ambient Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hatteras can be obtained from EPA's Water Resource Center by phone at 202–260–7786, or by e-mail to *center.water-resources@epa.gov* or by conventional mail to EPA Water Resource Center, RC–

4100, 401 M Street SW, Washington, DC 20460. Alternatively, consult www.epa.gov/OST/standards/ for download availability.

An original and two copies of written significant scientific information should be submitted within 45 days after publication in the **Federal Register**, and addressed to W–99–22, Saltwater Dissolved Oxygen Criteria Clerk; Water Docket (MC–4101), U.S. EPA, 401 M Street SW, Washington, DC 20460. Issues may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to *OW–Docket@epamail.epa.gov.*

FOR FURTHER INFORMATION CONTACT: Erik L. Winchester, USEPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, 401 M Street, SW, Washington, DC 20460; or call (202) 260–6107; fax (202) 260–1036; or e-mail winchester.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Section 304(a)(2) of the CWA calls for information on the conditions necessary ''to restore and maintain biological integrity of all * * * waters, for the protection and propagation of shellfish, fish and wildlife, to allow recreational activities in and on the water, and to measure and classify water quality.'' The EPA has not previously issued saltwater criteria for dissolved oxygen (D.O.) because, until recently, the available effects information was insufficient. This draft document is the result of a research effort to produce sufficient information to support the development of saltwater D.O. criteria. The draft water quality criteria presented herein represent EPA's best estimates, based on the data available, of D.O. concentrations necessary to protect aquatic life and uses associated with aquatic life.

Overview of the Problem

EPA's Environmental Monitoring and Assessment Program (EMAP) for the estuaries in the Virginian Province (defined as Cape Cod to Cape Hatteras) has shown that 25% of the area of the Province is exposed to some degree to D.O. concentrations less than 5 mg/L. EMAP also has generated field observations that correlate many of the biologically degraded benthic areas with low D.O. in the lower water column. These two reports serve to emphasize that low D.O. (hypoxia) is a major concern within the Virginian Province. Hypoxia is defined in this document as the reduction of D.O. concentrations below air saturation. Even though hypoxia is a major concern, a strong technical basis for developing benchmarks for low D.O. effects has been lacking until recently.

In the Virginian Province, hypoxia is essentially a warm water phenomenon. In the southern portions of the Province, such as the Chesapeake Bay and its tributaries, reduced D.O. may occur any time between May and October; in the more northern coastal and estuarine waters, it may occur at any time from late June into September. Hypoxic events can occur on seasonal or diel (daily) time scales. Seasonal hypoxia often develops as a consequence of water column stratification, which prevents mixing of well oxygenated surface water with deeper water. Diel cycles of hypoxia often occur in non-stratified shallow habitats where nighttime respiration temporarily depletes D.O. Hypoxia may also persist more or less continuously over a season (with or without a cyclic component) or be episodic (*i.e.,* of irregular occurrence and indefinite duration). The fauna most at risk from hypoxic exposure in the Virginian Province are primarily summer inhabitants of subpycnocline (*i.e.,* bottom) waters.

Biological Effects of Low Dissolved Oxygen

Oxygen is essential in aerobic organisms for the electron transport system of mitochondria. Oxygen insufficiency at the mitochondria results in reduction in cellular energy and a subsequent loss of ion balance in cellular and circulatory fluids. If oxygen insufficiency persists, death will ultimately occur, although some aerobic animals also possess anaerobic metabolic pathways, which can delay lethality for short time periods (minutes to days). The animals most sensitive to hypoxia are those inhabiting well oxygenated environments.

Overview of the Protection Approach

The approach to determine D.O. criteria to protect saltwater animals within the Virginian Province takes into account both continuous (*i.e.,* persistent) and cyclic (*e.g.,* diel, tidal, or episodic) exposures to low D.O. The continuous situation considers exposure durations of 24 hours or greater. Criteria for cyclic situations would cover hypoxic exposures of less than 24 hours, but which may be repeated over a series of days. Both scenarios cover three areas of protection (summarized here, and explained in more detail in the document):

(1) Protection for juvenile and adult survival,

(2) Protection for chronic (growth) effects, and

(3) Protection for larval recruitment effects (estimated with a generic model).

The approach to derive these draft water quality criteria combines features of traditional water quality criteria with a new biological framework that integrates time (replacing the concept of an averaging period) and establishes separate protection limits for different life stages (*i.e.,* larvae versus juveniles and adults). Where practical, data were selected and analyzed in manners consistent with the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (hereafter referred to as the Guidelines).

With the three areas of protection in mind, the draft saltwater D.O. criteria segregate effects on juveniles and adults from those on larvae. The survival data on the sensitivity of the former are handled in a traditional Guidelines manner. The cumulative effects of low D.O. on larval recruitment to the juvenile life stage, on the other hand, would address survival effects on larvae. In the draft document the recommended approach for deriving D.O. criteria uses a mathematical model to evaluate the effect of D.O. conditions on larvae by tracking intensity and duration effects across the larval recruitment season. Protection for larvae of all species is provided by using data for a sensitive aquatic organism (larval stage of the Say mud crab, *Dyspanopeus sayi*). The model is used to generate a draft D.O. criterion for larval survival as a function of time.

For the reasons listed above, the recommended draft D.O. criteria approach deviates somewhat from EPA's traditional approach for toxic chemicals outlined in the Guidelines. However, where practical, data selection and analysis procedures are consistent with the Guidelines. Although most of the terminology and the calculation procedures are the same, knowledge of the Guidelines is useful for a more complete understanding of how these draft D.O. criteria are derived.

The draft juvenile/adult survival and the growth criteria would provide useful screening boundaries within which to judge the D.O. status of a given site. If the D.O. conditions are above the chronic growth criterion (4.8 mg/L), then this site would meet objectives for protection. If the D.O. conditions are below the juvenile/adult survival criterion (2.3 mg/L), then this site would not meet objectives for protection. When the D.O. conditions are between these two values, then the site would require evaluation, using the model, of duration and intensity of hypoxia to determine

suitability of habitat for the larval recruitment objective.

The draft D.O. criteria are based entirely on laboratory findings. However, field observations support the findings of laboratory studies. Field acute effects occurred in juvenile and adult animals at <2.0 mg/L, which would be predicted based on the <2.3 mg/L juvenile/adult criterion. In the field, behavioral effects generally occurred within the range where many of the laboratory sublethal effects occurred. However, an important limitation of using field observations to describe D.O. protection is the absence of field observations on the survival and growth of hypoxic sensitive larvae. This type of information is critical since two of the three goals for protection are derived from responses of larvae.

Implementation Overview

Implementation of draft D.O. criteria may be slightly different from that of chemical toxicants, but not for reasons associated with either biological effects or exposure. The primary reason that D.O. might be implemented differently from toxic compounds is because controlling the effects of low D.O. is not accomplished by directly regulating D.O. Rather, hypoxia is a symptom of a problem, not the direct problem. Thus dissolved oxygen would be regulated primarily through the control of nutrients (*e.g.,* nitrogen and phosphorus) and oxygen demanding wastes. As a stressor, D.O. also differs from most toxic compounds in that there can be a large natural component to the cause of hypoxic conditions in any given water body. Dissolved oxygen criteria may be appropriately used in a risk assessment framework. The draft criteria and management approach presented in this document could be used to compare D.O. conditions among areas and determine if D.O. conditions would be adequate to support aquatic life. Environmental managers could determine which sites need the most attention, and what is the spatial and temporal extent of hypoxic problems from one year to the next. Finally, environmental planners could use the draft approach to evaluate how conditions would improve under different management scenarios, helping them make better management decisions.

Limitations of the Document

The geographic scope of the draft criteria are limited to the Virginian Province of the Atlantic coast of the United States (*i.e.,* southern Cape Cod, MA, to Cape Hatteras, NC). The draft document provides the necessary information for environmental planners and regulators within the Virginian Province to address the question: are the D.O. conditions at a given site sufficient to protect coastal or estuarine aquatic life? The approach outlined in the draft document could be used to evaluate existing localized D.O. standards or management goals or establish new ones. The draft criteria do not address direct behavioral responses (*i.e.,* avoidance) or the ecological consequences of behavioral responses, such as increased or decreased predation rates or altered community structure, nor do they address the issue of spatial significance of a D.O. problem. In addition, as with all criteria, the draft criteria do not account for changes in sensitivity to low D.O. that accompany other stresses, such as high temperature, extremes of salinity, or toxicants. Chief among these concerns would be high temperature because high temperature and low D.O. often appear together. Low D.O. would be more lethal at water temperatures approaching the upper thermal limit for species. The limits provided in the draft document should be sufficient under most conditions where aquatic organisms are not otherwise unduly stressed.

The draft criteria for the Virginian Province may be over- or under-protective of aquatic life in other regions. However, the approach used to develop the draft criteria is considered to be applicable to other regions with appropriate regional modifications. Organism adaptations to lower oxygen requirements may have occurred in locations where oxygen concentrations have historically been reduced due to high temperatures, or in systems with non-anthropogenic high oxygen demand. Conversely, organisms in another region could be adapted to colder temperature and higher dissolved oxygen regimes than those covered in the document, and thus may have different sensitivity to dissolved oxygen concentrations. In addition, effects of hypoxia may vary latitudinally, or site-specifically, particularly as reproductive seasons determine exposure risks for sensitive early life stages. For these reasons, an environmental risk manager would be to carefully evaluate water quality and biological conditions within the specific location and decide if the Virginian Province criteria would apply or if region- or site-specific considerations would need to be made.

Endangered or Threatened Species Policy Recommendations

When a threatened or endangered species occurs at a site and sufficient data indicate that it is sensitive at concentrations below the recommended criteria, it would be appropriate to consider deriving a site-specific criterion.

Future Addendum and Applications

In addition to publishing this document, an addendum will be published in the near future that will specifically address implementation issues. In the current draft document, implementation issues are discussed in a more general manner, summarizing important issues that environmental managers should consider in adopting and implementation of D.O. water quality standards. The addendum will provide a more detailed discussion of implementation issues by using real world example data sets. Application of this guidance to marine waters outside the Virginian Province will also be discussed. As a component of the addendum, EPA will also publish a computer program that will allow Sates and other users to calculate D.O. criteria values for coastal and estuarine animals. The program will be based on the models discussed in the criteria document and will contain a graphic user interface. EPA anticipates publication of the Addendum and computer model to occur sometime in 2000.

EPA believes the approach used to develop the draft criteria can be applied, with minor modifications and regional specific data, to derive D.O. criteria for other coastal and estuarine regions of the United States. Therefore, in the future, EPA plans to prepare similar D.O. criteria for other provinces based on this approach. At such time, EPA will publish a Notice of Data Availability and formally request submission of data from parties interested in the development of D.O. criteria for other provinces.

Dated: January 10, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–1211 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–43]

Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000; Report No. AUC–99–31–A (Auction No. 31)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces the auction of licenses for Fixed, Mobile, and Broadcasting services in the 747–762 and 777–792 MHz bands (''Auction No. 31''), scheduled to commence on May 10, 2000 and seeks comment on a number of auction specific procedures. As discussed in greater detail herein, Auction No. 31 will consist of 12 licenses in the 747–762 and 777–792 MHz bands (''700 MHz band''). One 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) will be offered in each of six regions to be known as the 700 MHz band economic area groupings (''700 MHz band EAGs'').

DATES: Comments are due on or before January 24, 2000, and reply comments are due on or before January 31, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054. In addition to filing with the Office of the Secretary, one copy of each pleading must be delivered to each of the following locations:

(1) Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 12th Street, SW, Suite CY–A257, Washington, DC 20554;

(3) Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, Suite 4–A760, Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Howard Davenport, Auctions Attorney, or Craig Bomberger, Auctions Analyst, at (202) 418–0660; or Kathy Garland, Project Manager, at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released January 10, 2000. The complete text of the public notice, including Attachments A and B, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov.*

I. Introduction

1. By this public notice, the Wireless Telecommunications Bureau (''Bureau'') announces Auction No. 31, the auction of licenses for Fixed, Mobile, and Broadcasting services in the 747–762 and 777–792 MHz bands, scheduled to commence on May 10, 2000. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *First Report and Order,* FCC 00–5 (released January 7, 2000) (''*700 MHz First Report and Order''*). Auction No. 31 will consist of 12 licenses in the 747–762 and 777–792 MHz bands. One 20 megahertz license (consisting of paired 10 megahertz blocks) and one 10 megahertz license (consisting of paired 5 megahertz blocks) will be offered in each of six regions to be known as the 700 MHz band economic area groupings (700 MHz band EAGs).

2. The following table contains the Block / Frequency Band Limits Cross Reference List for each region in Auction No. 31:

747–762 AND 777–792 MHz ALLOCATIONS

License suffix	Frequencies
C	747—752, 777—782
D	752—762, 782—792

The Balanced Budget Act of 1997 requires the Commission to ''ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * * .'' Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, (*See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding, WT Docket No. 97–82, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997), 12 FCC Rcd 5686, 5697, ¶ 16 (1997) (''*Part 1 Order''*)) to seek comment on a variety of auction-specific procedures prior to the start of each auction. (*See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660–4685 MHz, WT Docket No. 97–82, ET Docket No. 94–32, *Third Report and Order and Second Further Notice of Proposed Rule Making,* 63 FR 770 (January 1, 1998), 13 FCC Rcd 374, 448, ¶124 (1998) (''*Part 1 Third Report and Order''*).We therefore seek comment on the following issues relating to Auction No. 31.

II. Auction Structure

A. Simultaneous Multiple Round Auction Design

3. We propose to award the licenses in a single, simultaneous multiple-round auction to allow bidders to take advantage of any synergies that exist among licenses. [1] We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

4. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned.[2] Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Second Report and Order,* 59 FR 22980 (May 4, 1994), 9 FCC Rcd 2348, 2378–79, ¶¶ 171–176 (1994). In this case, we have information available in the form of a congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related populations and proposed upfront payments, in Attachment A. We seek comment on this proposal.

5. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. The maximum eligibility will determine the licenses on which a bidder may bid in each round of the

[1] See 700 MHz First Report and Order at ¶¶ 31, 39.

[2] See Part 1 Order, 12 FCC Rcd at 5697–98, ¶ 16 (1997).

auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

6. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

7. We propose to divide the auction into three stages: Stage One, Stage Two and Stage Three, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately ten percent or below for three consecutive rounds of bidding in each stage. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

8. We propose that in each round of Stage One, a bidder desiring to maintain its current eligibility be required to be active on licenses encompassing at least 50 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by two. In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 80 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be set at current round activity. We seek comment on these proposals.

D. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

10. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

11. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

13. We propose that each bidder in Auction No. 31 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

14. For Auction No. 31, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. [3] In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

III. Bidding Procedures

F. Round Structure

15. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for auction No. 31. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

16. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

G. Reserve Price or Minimum Opening Bid

17. The Balanced Budget Act calls upon the Commission to prescribe

[3] See 47 CFR 1.2104(i).

methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.,* because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest.[4] Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.[5]

18. Normally, a reserve price is an absolute minimum price below, which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

19. In light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 31. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. See, *e.g.,* Auction of 800 MHz SMR Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices, DA 97–2147, *Order,* 62 FR 55251 (October 23, 1997), 12 FCC Rcd 16354 (1997); Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, *Public Notice,* 63 FR 35213 (June 29, 1998) 13 FCC Rcd 16445 (1998). A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

20. For Auction No. 31, we have information available in the form of a Congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related populations and proposed minimum opening bids, in Attachment A . We seek comment on this proposal.

21. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 747–762 and 777–792 MHz bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

H. Minimum Accepted Bids and Bid Increments

22. Once there is a, standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 31, we propose to use a smoothing methodology to calculate bid increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

23. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

24. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C*B_i) + ((1-C)*A_{i-1})$

I_{i+1} = smaller of ((1 + A_i) * N) and M

where, A_i= activity index for the current round (round i)

C = activity weight factor

B_i= number of bids in the current round (round i)

A_{i-1}= activity index from previous round (round i − 1), A_0; is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} = from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using exponential smoothing:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

The smaller of I_2 = (1 + 1) * 0.1 = 0.2 or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 2 using the percentage increment (I_2 from above)

0.2 *$1,000,000 = $200,000

iii. Minimum acceptable bid for round 2 = 1,200,000

Round 2 (3 new bids, high bid = 2,000,000)

i. Calculation of percentage increment for round 3 using exponential smoothing:

[4] See Balanced Budget Act, Section 3002(a). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104 (c) and (d).

[5] See Part 1 Third Report and Order, 13 FCC Rcd at 454455, ¶ 141 (1998).

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

The smaller of $I_3 = (1 + 2) * 0.1 = 0.3$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 3 using the percentage increment (I_3 from above)

0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3=2,400,000

Round 3 (1 new bid, high bid=2,400,000)

i. Calculation of percentage increment for round 4 using exponential smoothing:

$A_3 = (0.5 * 3) + (0.5 * 2) = 1.5$

The smaller of $I_4 = 1+1.5) *0.1=0.25$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 4 using the percentage increment (I_4 from above)

0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000

I. Information Regarding Bid Withdrawal and Bid Removal

a. General Bid Withdrawal Procedures

25. For Auction No. 31, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

26. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions.[6] We seek comment on these bid removal and bid withdrawal procedures.

27. In the *Part 1 Third Report and Order,* 63 FR 770 (January 1, 1998) the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.[7]

28. Applying this reasoning, we propose to limit each bidder in Auction No. 31 to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

1. Special 30 MHz Nationwide Bid Withdrawal Procedure

a. Nationwide Bidders

29. Additionally, for the licenses being offered in Auction No. 31, we recognize that there may be entities whose business plans are such that they may not wish to acquire any licenses if they are unable to aggregate them all. Our current rules are designed to facilitate the aggregation of licenses, and we believe they are adequate to facilitate the aggregation of all the 10 MHz or all 20 MHz licenses or any subset thereof. The bid withdrawal provisions of our part 1 rules could, however, potentially discourage bidders from attempting a 30 MHz nationwide aggregation in an auction where there are divergent business plans. This is because, were such an aggregation attempt ultimately to fail, a bidder might be left with a subset of licenses for which its bids exceeded the value it places on that subset absent the complete aggregation. The bidder would then be forced to withdraw any high bids it holds and pay a bid withdrawal payment, or perhaps retain licenses for which it cannot recoup the price paid. We therefore propose a nationwide bid withdrawal procedure for the 747–762 MHz and 777–792 MHz bands to limit the exposure of bidders seeking a 30 MHz nationwide aggregation.

30. Bidders may still aggregate licenses subject to our standard bid withdrawal provisions.[8] The following proposed procedure would be available, however, to limit the exposure associated with bid withdrawal for those seeking a 30 MHz nationwide aggregation, while still discouraging insincere bidding. Under this approach, an applicant would be required to declare on its short-form application whether it is seeking a 30 MHz nationwide aggregation and wishes to be subject to the nationwide bid withdrawal provisions. An applicant that chooses to be such a nationwide bidder would not be allowed to bid on anything other than all licenses comprising the 30 MHz nationwide aggregation, and must win either this nationwide aggregation or no licenses at all. (However, in any given round, the bidder would not be required to place new bids on any licenses for which it is the standing high bidder.) Thus, once such a nationwide bidder withdraws from a market, it must withdraw from all markets and will be ineligible to continue bidding for any licenses.

31. The bid withdrawal payment for a 30 MHz nationwide bidder that withdraws from the auction would be calculated as the difference between the sum of the withdrawn bids and the sum of the subsequent high bids on the withdrawn licenses. Calculating the payment this way may result in a payment that is lower than a payment calculated on a license-by-license basis. In addition, nationwide bid withdrawal payments would be limited to 5 percent of the aggregate withdrawn bids. The withdrawn licenses would be offered in the next round at the second highest bid price, which may be less than, or equal to, the amount of the withdrawn bid, without any bid increment. The FCC would serve as the ''place holder'' on the license until a new acceptable bid is submitted.

[6] See 47 CFR 1.2104(g); 1,2109.

[7] Part 1 Third Report and Order, 13 FCC Rcd at 460, ¶ 150.

[8] 47 CFR 1.2104(g).

b. Eligibility Restoration

32. If a 30 MHz nationwide bidder were to withdraw, eligibility and waivers for all other bidders would be restored to beginning auction levels, except for those nationwide bidders that have withdrawn from the auction by withdrawing their high bids. Without this restoration, few bidders would likely be eligible to bid on licenses withdrawn late in the auction. *See* Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94–32, *Second Report and Order,* 60 FR 40712 (August 9, 1995), 11 FCC Rcd 624, 652–53, ¶¶ 71–73 (1995). Finally, if the Bureau implements the bid withdrawal procedure outlined here, it will suspend the Part 1 bid withdrawal rule for those applicants that choose to become 30 MHz nationwide bidders. We seek comment on this proposal.

J. Stopping Rule

33. For Auction No. 31, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.''[9] A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

34. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

35. We propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

36. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–1251 Filed 1–18–00; 8:45 am]

BILLING CODE 6712–01–P

[9] 47 CFR 1.2104(e).

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the proposed extension of an existing information collection.

Title: Make Your Mark on the Floodplain-High Water Mark Form.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0268.

FEMA Form: 81–101.

Abstract. The Federal Emergency Management Agency (FEMA) has entered into a partnership with the U.S. Army Corps of Engineers (COE) in the Portland District to assist the Agency in providing floodplain management assistance at the most basic and needed level, that of local floodplain managers and the local communities. The joint efforts of FEMA and the COE continue to assure safe and sound developments near floodplains. The Make Your Mark on the Floodplain handout and accompanying High Water Mark Form is used to establish uniform and consistent methodologies for setting and recovering high water marks following a significant flood event. After a major flood, anyone who has high water marks on their property or who has observed flood marks on public property can use the form to record high water mark information, including location, measurements, and description of the marks read. The data will be used by FEMA in post-flood damage assessments. The data will define a frequency/damage relationship for the flooding event and provide calibration information for future analysis. The U. S. Army Corps of Engineers will assist FEMA in collecting and compiling high water mark data.

Affected Public: Individuals and households, business or other for profit, non-profit institutions, farms, and state, local or tribal government.

Number of Respondents: 7,500.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,500 hours.

Frequency of Response: On occasion (after each significant flood event).

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of

responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Carl L. Cook, Jr., Chief, Mitigation Programs Branch, Federal Emergency Management Agency, Region X, 130 228th Street S. W., Bothell, WA 98021–9796, (425) 487–4687 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information

Mike Bozzelli,

Acting Director,

Program Services Division, Operations Support Directorate.

[FR Doc. 00–1226 Filed 1–18–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1310–DR]

Kentucky; 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 Kentucky (FEMA–1310–DR), dated January 10, 2000, and related determinations.

EFFECTIVE DATE: January 10, 2000.

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 January 10, 2000, 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 Kentucky, resulting from tornadoes, severe storms, torrential rains and flash flooding on January 3–4, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

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, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation 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.

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 A. Scott Wells 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 Kentucky to have been affected adversely by this declared major disaster:

Crittenden Daviess and Webster Counties for Individual Assistance.

Crittenden and Daviess Counties for Public Assistance.

All counties within the Commonwealth of Kentucky 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. 00–1225 Filed 1–18–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire 33.33 percent of the voting shares of Unison Bancorp, Inc., Lenexa, Kansas, and thereby indirectly acquire Western National Bank, Lenexa, Kansas.

Board of Governors of the Federal Reserve System, January 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–1162 Filed 1–18–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 982 3560]

Bumble Bee Seafoods, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodies in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 10, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Donald D'Amato, Federal Trade Commission, Northeast Regional Office, 1 Bowling Green, Suite 319, New York, NY 10004.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 10, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Bumble Bee Seafoods, Inc. ('Bumble Bee'').

The proposed consent order has been placed on the public record for sixty (60) days for the receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Bumble Bee's making of a representation in the marketing and sale of canned tuna. Specifically, the face of the product label indicates that the purchaser will save seventy-five cents (75¢) on his next purchase of tuna, however, the reverse side of the label, which is affixed to the can and is not accessible until after purchase, indicates that the purchaase of five additional cans of tuna is required in order to save the seventy-five cents (75¢). The proposed complaint alleges that Bumble Bee has violated Section 5 of the Federal Trade Commission Act ('FTC Act'') by misrepresenting that purchasers of tuna affixed with the subject label can receive seventy-five cents (75¢) off their next purchase of a single can of tuna.

Part I of the proposed order prohibits Bumble Bee from misrepresenting the terms or conditions of any rebate offer and requires the company to disclose clearly and prominently and in close proximity to the offer the number of products that must be purchased in order to quality for any rebate offer. The order defines ''rebate'' to mean cash, merchandise, credit towards future purchases, or any other consideration offered to consumers who purchase products from the respondent, which is provided subsequent to purchase.

Part II A provides that Bumble Bee shall commence within ninety (90) days after the service of the order, a consumer tearpad coupon program that includes a national distribution of at least seven million, five hundred and eighty-six thousand, two hundred and eight (7,586,208) tearpad coupons at least five inches (5″) by two and one-half inches (2½″) in size that clearly and prominently offer seventy-five cents (75¢) off the purchase of 'any two (2) cans or multi-packs'' of Bumble Bee Solid White Albacore Tuna. Part II A further provides that these tearpad coupons shall be redeemable at the place of purchase, and have an expiration date of at least six (6) months after distribution. The proposed order refers to Bumble Bee's obligations set forth in Part II A as the ''Program.''

Part II B provides that Bumble Bee's total costs incurred by implementing the Program do not exceed two hundred thousand dollars ($200,00) ('Minimum Expenditure'') ninety (90) days after the expiration date on the tearpad coupon, Bumble Bee shall transfer electronically to the United States Treasury within ten (10) business days a dollar amount equal to the difference between the actual cost of the Program and the Minimum Expenditure.

Part III provides that Bumble Bee shall provide to the Commission: (a) Within ninety (90) days after the date of service of the order, a sworn affidavit certifying that it has implemented the Program set forth in Part II; and (b) within ninety (90) days of the expiration date on the Program's tearpad coupon, a sworn affidavit setting forth in detail the manner and form in which it has complied with Part II of the order, including but not limited to, a detailed report that specifies the costs of the Program.

Part IV of the proposed order contains record keeping requirements for materials related to representations covered by the proposed order. Part V of the proposed order requires distribution of a copy of the order to current and future officers and agents having responsibilities with respect to the subject matter of the proposed order. Part VI provides for Commission notification upon a change in the respondent and Part VII requires the respondent to keep and maintain all records demonstrating compliance with the terms and provisions of the order. Part VIII provides for the termination of the order after twenty (20) years under certain circumstances.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1189 Filed 1–18–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0298]

Fidelity National Financial, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATE: Comments must be received on or before February 11, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker, Michael Antalics or Daniel Silver, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574, 326–2821 or 326–3102.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 12, 2000), on the World Wide Web, at ''http://www.ftc.gov/ftc/formal.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order from Fidelity National Financial, Inc. (''FNF''), which is designed to remedy the anticompetitive effects arising from FNF's acquisition of the common stock of Chicago Title Corporation (''CT''). Under the terms of the agreement, FNF will be required to divest or sell copies of certain assets known as ''title plants'' in six California counties. Title plants are privately owned collections of records and/or indices that are used by abstractors, title insurers, title insurance agents, and others to determine ownership of and interests in real property in connection with the underwriting and issuance of title insurance policies and for other purposes.

The proposed Consent Order has been placed on the public record for 30 days so that the commission may receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On August 1, 1999, FNF entered into an agreement to acquire the common stock of CT for an amount valued at the time of entering into the acquisition agreement at approximately $1.2 billion. The proposed Complaint alleges that the acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in local markets for title information services in the following counties or local jurisdictions in the United States: San Luis Obispo County, California; Tehama County, California; Napa County, California; Merced County, California; Yolo County, California; and San Benito County, California.

Title plants are privately-owned collections of title information obtained from public records that can be used to conduct title searches or otherwise ascertain information concerning ownership of or interests in real property. Title plants typically contain summaries or copies of public records or documents (often in a format that is comparatively easy to store and readily retrievable), as well as indices to facilitate locating relevant records that pertain to a particular property. Title plants permit users to obtain real property ownership information with significantly greater speed and efficiency than by consulting the original public records, which may be located in a number of separate public offices (*e.g.,* offices of the county recorder, tax authorities, and state and federal courts), may be stored in an inconvenient form, and may be indexed in a fashion that makes it difficult to readily research a particular property. Because of the county-specific way in which title information is generated and collected and the highly local character of the real estate markets in which the title plant services are used, geographic markets for title information services are highly localized, consisting of the county or local jurisdiction embraced by the real property information contained in the title plant.

In each of the local jurisdictions named in the Complaint, the market for title information services is highly concentrated, and FNF and CT are direct competitors in the sale or provision of title information services. In each of the local jurisdictions named, there are no commercially reasonable substitutes for title information services. For a number of reasons, including the relatively large fixed costs associated with building and maintaining title plants, entry into the market for title information services in each of the local jurisdictions named is difficult or unlikely to occur at a sufficient scale to deter or counteract the effects of the acquisition. For these reasons, the Complaint alleges that in each of the name local jurisdictions the effects of the acquisition may be substantially to lessen competition by, among other things, eliminating direct actual competition between FNF and CT in title information services and increasing the likelihood of collusion or coordinated interaction among competing providers of title information services.

The Consent Order requires FNF to divest or sell copies of the pre-acquisition title plant interests of either FNF or CT in five of the identified local jurisdictions to a buyer or buyers approved by the Commission. The Order also requires FNF to divest the pre-acquisition interests of FNF or CT in a jointly owned title plant in San Luis Obispo County, California, or, alternatively, to relinquish any additional voting rights in the joint plant that FNF may have accrued post-

acquisition while obtaining a new owner of the joint plant. The specified relief is required to be completed within four months after the respondent signs the Consent Order agreement. In the period prior to divestiture, the respondent is required to maintain the viability and marketability of the properties, including updating the title plants in the same fashion as before the acquisition and maintaining in effect all user contracts and relationships.

The Consent Order includes a provision permitting the Commission to appoint a trustee to accomplish the divestitures, sales of copies, or obtaining new ownership if the specified relief is not accomplished by the respondent within the four-month period. The Consent Order also includes a requirement that for ten years the respondent provide the Commission with prior notice of future title plant acquisitions by the respondent in the counties where the specific actions are required if, at the time of any such acquisition, the respondent continues to have an interest in a title plant serving the county. A prior notice provision is appropriate in this matter because the small transaction size of most individual title plant acquisition is below the threshold of reportability under the Hart-Scott-Rodino Act (Clayton Act 7A, 15 U.S.C. 18a, as amended) and because there is a credible risk that the respondent will, but for an order to the contrary, engage in otherwise unreportable, anticompetitive mergers.[1]

The purpose of this analysis is to facilitate public comment on the proposed Consent Order, and it is not intended to constitute an official interpretation of the agreement and proposed Consent Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1192 Filed 1–18–00, 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3114]

Memtek Products, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 9, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Joel Winston, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3158 or 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 10, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent Memtek Products, Inc. (''Memtek'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Memtek repackages, advertises, labels and sells, among other products, ''Memorex'' brand computer diskettes, and blank audiotapes and videotapes. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of these products. The Commission's proposed complaint alleges that Memtek falsely represented that purchasers of its package of 100 computer diskettes would receive a $29.99 cash rebate within 12 weeks of Memtek's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to two months late. The complaint also alleges that Memtek falsely represented that purchasers of its blank audiotapes and videotapes would receive a $10 Best Buy Gift Check within 8 weeks of Memtek's receipt of purchasers' gift check requests. The $10 Gift Check could then be used at any Best Buy retail store to obtain $10 off the purchase of any pre-recorded videotape or music CD. The complaint alleges that in many instances purchasers received their $10 Gift Checks one to three months late.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving

[1] See Statement of FTC Policy Concerning Prior Approval and Prior Notice Provisions, 4 Trade Reg. Rep. (CCH) ¶13,241 (June 21, 1995).

reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time it specifies for delivery, or if no time is specified, within thirty days, unless it offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Part II of the proposed order requires respondent to maintain copies of all materials relied upon in making any representation covered by this order.

Part III of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part IV of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1190 Filed 1–18–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992–3242]

UMAX Technologies, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 9, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Joel Winston, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3158 or 326–3153.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 7231, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 10, 2000), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent UMAX Technologies, Inc. (''UMAX'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

UMAX advertises, labels and sells various types of computer scanners. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of computer scanners. The Commission's proposed complaint alleges that UMAX falsely represented that purchasers of its Astra 1220P scanner, for example, would receive a $30.00 cash rebate, and that purchasers of its Astra 1220S scanner, for example, would receive a $50.00 cash rebate, within 12 weeks of UMAX's receipt of purchaser's rebate requests. The complaint alleges that in many instances purchasers received their rebates one to five months late.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time it specifies for delivery, or if no time is specified, within thirty days, unless it offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Part II of the proposed order requires respondent to maintain copies of all

materials relied upon in making any representation covered by this order.

Part III of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part IV of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part VI of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–1191 Filed 1–18–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed project 1. Empowerment Zones and Enterprise Communities (EZ/EC) Health Improvement Survey—NEW—The Office of the Assistant Secretary for Planning and Evaluation is proposing a survey of directors of EZ/ECs to assess their capacity to engage in health improvement planning efforts. Recognizing that EZ/ECs represent some of the nation's most economically disadvantaged and ethnically diverse urban and rural areas, the survey project is designed to measure the level of interest, commitment and priority assigned to reducing health disparities in these localities. The results of the survey are expected to assist HHS in helping EZ/EC localities devise health planning programs that reflect both community needs and appropriate public health standards. Respondents: EZ/EC Directors—Reporting Burden Information—Number of Respondents: 136; Annual Frequency of Response: one time; Average Burden per Response: 20 minutes; Total Annual Burden: 45 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: January 7, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–1169 Filed 1–18–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–296]

Agency Information Collection Activities

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** issue of Monday, January 3, 2000, make the following correction:

Correction: In the **Federal Register** issue of Monday, January 3, 2000, Volume 65, Number 1; DOCID:fr03ja00–47, on page 136, the last sentence of the first paragraph under ''Use'', the phrase in parenthesis ''(they are attached as Exhibits 1–3 hereto)'' needs to be deleted. Also on page 136, in the second sentence of the second paragraph under ''Use'', the word ''attached'' needs to be deleted, and in the first sentence of the paragraph under ''Home Health Advance Beneficiary Notices'', the words ''Exhibits 1–3'' need to be deleted. The HHABNs are not attached to the **Federal Register** notice but can be obtained by accessing HCFA's web site address at (note correction to address) 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.

Dated: January 7, 2000.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–1198 Filed 1–18–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

Proposed Collection; Comment Request: National Institute of Diabetes and Digestive and Kidney Diseases Information Clearinghouse Customer Satisfaction Survey

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management (OMB) for review and approval.

Title: NIDDK Information Clearinghouses Customer Satisfaction Survey. NIDDK will conduct a survey to evaluate the efficiency and effectiveness of services provided NIDDK's three information clearinghouses; National Diabetes Information Clearinghouse, National Digestive Diseases Information Clearinghouse, National Kidney and Urologic Diseases Information Clearinghouse. The survey responds to Executive Order 12862, ''Setting Customer Service Standards,'' which requires agencies and departments to identify and survey their ''customers to determine the kind and quality of service they want and their level of satisfaction with existing service.'' *Frequency of Response;* On occasion. *Affected Public:* Individuals or households; clinics or doctor's offices. *Type of Respondents''* Physicians, nurses, patients, family.

Type of respondents	Number of respondents	Frequency of response	Estimated average response time	Estimated annual burden hours
Patients/Family	3,600	1.00	0.167	600
Phys. Asst.	7,200	1.00	0.167	1,200
Physicians	1,200	1.00	0.167	200
Totals	12,000	.....	.....	2,000

The annual reporting burden is as follows: Estimated Number of Respondents: 12,000; Estimated Number of Responses over Respondent: 1; Estimated Average Burden Hours Per Response: 0.1671; and Estimated Total Annual Burden Hours Requested: 2,000. The annualized cost to respondents is estimated at $39,000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to response, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Please address all comments concerning the proposed collection to Kathy Kranzfelder, Project Officer, NIDDK Information Clearinghouses, NIH, Building 31, Room 9A04, MSC2560, Bethesda, MD 20852. You may also submit comment and data by electronic mail (e-mail) at: *kranzfeldk@hq.niddk.nih.gov.*

Comments Due Date

Comments regarding this information are best assured or having their full effect if received on or before March 20, 2000.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Kathy Kranzfelder at 301–496–3583 or via e-mail at: *kranzfeldk@hq.niddk.nih.gov.*

L. Earl Laurence,

Deputy Director, NIDDK.

[FR Doc. 00–1153 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 8, 2000.

Open: 8:30 a.m. to 12 p.m.

Agenda: Report of the Director, technology transfer at NIH, and discussions of Fogarty International Center organization and planning.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Closed: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1146 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Non-Mammalian Organisms as Models for Anticancer Drug Discovery.

Date: February 2, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North-Conference Room F, 6130 Executive Blvd., Rockville, MD 20852.

Contact Person: Timothy C. Meeker, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1129 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, General Clinical Research Center.

Date: February 27–28, 2000.

Time: February 27, 2000, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rebecca A. Fuldner, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0809.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1132 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meetings.

The meetings will be open to the public as indicated below, with attendance imited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: February 810, 2000.

Open: February 8, 2000, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Closed: February 8, 2000, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DRPH, Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 208927965, 301–435–0806.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: February 15–16, 2000.

Open: February 15, 2000, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: The Bethesda Ramada, Ambassador One, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: February 15, 2000, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Bethesda Ramada, Ambassador One, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John D. Harding, Phd, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 208927965, (301) 435–0810.QP='oz'

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 16, 2000.

Open: 8:00 AM to 9:00 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, 301–435–0824.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 001133 Filed 11800; 8:45 am]

BILLING CODE 414001M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The messages will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Software for Managing Data from Data-Intensive Biomedical Instruments.

Date: February 2, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0813.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Science Education Partnership Award.

Date: February 3, 2000.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: February 3, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camille M. King, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0815.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: February 4, 2000.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rebecca A. Fuldner, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0809.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1134 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: February 10–11, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John C. Chah, PHD, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–402–4334, johnc@od.nih.gov.

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1136 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Subject; Notice of Meetings

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Research Centers in Minority Institutions Review Committee.

Date: February 7, 2000.

Open: 8 a.m. to 9 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C. William Angus, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0812.

Name of Committee: National Center for Research Resources Special Emphasis Panel Research Centers in Minority Institutions.

Date: February 8–9, 2000.

Time: February 8, 2000, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C. William Angus, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0812.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1137 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Environmental Health Sciences Council, Agenda Available: http//www.niehs.nih.gov/dert/c-agenda.htm.

Date: February 14–15, 2000.

Open: February 14, 2000, 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triable Park, NC.

Open: February 15, 2000, 8 a.m. to 9:30 p.m.

Agenda: Continuation of program policies.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triable Park, NC.

Closed: February 15, 2000, 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIEHS-Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triable Park, NC.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Proram Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1130 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: January 26, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd., DSR Conf. Rm., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1131 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: February 9, 2000.

Open: 8 a.m. to 11 a.m.

Agenda: Call to Order; Review of NIA's Minority Aging Programs Report; Working Group on Program; and Review of the Intramural Program—Laboratory of Neuroscience.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate the Intrumural program.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 12:45 p.m. to 2:45 p.m.

Agenda: Discussion of Peer Review Issues and Program Highlights

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: 3 p.m. to Adjournment.

Agenda: To review and evaluate applications.

Place: Natcher Building, Conference Room D. 45 Center Drive, Bethesda, MD 20892

Contact Person: Miriam F. Kelty, PHD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, (HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1138 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–D (J1).

Date: January 20, 2000.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 6AS37F, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Ann A. Hagan, PHD, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C (J4).

Date: January 25, 2000.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1139 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended ((5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 8–9, 2000.

Closed: February 8, 200, 1:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: February 9, 2000, 9:00 a.m. to Adjournment.

Agenda: This portion of the meeting will be open tobe public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1140 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 2–3, 2000.

Open: February 2, 2000, 8:30 a.m. to 12 p.m.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: February 3, 2000, 8:30 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: February 3, 2000, 9 a.m. to 12 p.m.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, PhD., Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic and Hematologic Diseases Subcommittee..

Date: February 2, 2000.

Open: 1:30 p.m. to 2:30 p.m.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7.

Closed: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7.

Contact Person: Walter S. Stolz, PhD., Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrine and Metabolic Diseases Subcommittee.

Date: February 2, 2000.

Open: 1:30 p.m. to 2:30 p.m.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, PhD., Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: February 2, 2000.

Open: 1:30 p.m. to 2:30 p.m.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9A51.

Closed: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference 9A51.

Contact Person: Walter S. Stolz, PhD., Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1141 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposal and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Telemedicin''.

Date: January 18, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, 301–435–1437.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1142 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 14, 2000.

Time: 12 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20982, (telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1143 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 26, 2000.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 5520 Wisconsin Ave, Chase Room, Chevy Chase, MD 20815.

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, (301) 443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1144 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 25–26, 2000.

Time: 8:30 am to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 11, 2000.

Laverne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1145 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 3–4, 2000.

Closed: February 3, 2000, 10:30 AM to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institute of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: February 4, 2000, 8:30 AM to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9609, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for

Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated January 6, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1148 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Cellular Senescence and Control of Cell Proliferation.

Date: February 4, 2000.

Time: 12:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William A. Kachadorian, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2c212, Bethesda, MD 20892, (301) 496-9666.

Name of Committee: National Institute of Aging Special Emphasis Panel, Nathan Shock Centers of Excellence in Basic Biology of Aging.

Date: February 21–23, 2000.

Time: 8:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496-9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging & Research, National Institutes of Health, HHS)

Dated: January 7, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 1149 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and infectious Diseases; Notice of Meeting: Chronic Fatigue Syndrome Coordinating Committee

In accordance with section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), the National Institute of Allergy and Infectious Disease (NIAID), National Institutes of Health (NIH) announces the following committee meeting.

Name: Chronic Fatigue Syndrome Coordinating Committee (CFSCC).

Time and Date: Tuesday, February 8, 2000, 9:00 a.m.–5 p.m.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to provide a photo ID and must know the subject and room number of the meeting in order to be admitted into the building. Visitors must use the Independence Avenue entrance.

Purpose: The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased Department of Health and Human Services (HHS) and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and education; and developing informed responses to constituency groups regarding HHS and SSA efforts and progress.

Matters To Be Discussed: A report on CDC's CFS Scientific Review; and report on NIH's CFS consultation. Agenda items are subject to change as priorities dictate.

Public Comments will be received at the meeting for a total of not more than 60 minutes. Persons wishing to make oral comments either in person or via a video should notify the contact person listed below no later than close of business on January 26, 2000. A lottery system will be utilized to select speakers only if the number of requests exceed the number of slots, and those selected through this process will be notified on January 26 or soon thereafter. If a selected individual is unable to deliver their testimony at the meeting or submit their video prior to the meeting, their testimony slot will be filed on a first come first served basis on the day of the meeting following an announcement soliciting substitutes by the Chair. Testimony presented to the Committee on the day of the meeting will become part of the public record. Due to the time available, public comments will be limited to five minutes per person. Copies of any written comments should be provided to the Executive Secretary at the meeting; in addition, please provide at least 50 copies for distribution to Committee members and attendees.

Contact Person for More Information: Louise Garnett, Program Coordinator, Division of Microbiology and Infectious Diseases, NIAID, NIH, 6700B Rockledge Drive, Room 3266, Bethesda, MD 20892, telephone 301–496–1884, fax 301–480–4528.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1150 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Open: 8:30 am to 12:00 pm.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, Phd, Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1151 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17, 2000.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 20, 2000.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MBC–2.

Date: January 24, 2000.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rona L. Hirschberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Pathology B Study Section.

Date: January 28–30, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Keystone Resort, Keystone, CO 80222., (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1135 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 18, 2000.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, (301) 435–1159, ameros@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1147 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 10, 2000.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. Mac Stitles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 5, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–1152 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment by the National Institutes of Health of Categorical Exclusions Under the National Environmental Policy Act

AGENCY: National Institutes of Health, DHHS.

ACTION: Notice of establishment by the NIH of categorical exclusions under the National Environmental Policy Act.

SUMMARY: The NIH is establishing procedures governing compliance with the National Environmental Policy Act of 1969 and the Council on Environmental Quality's implementing regulations. This notice lists the categories of actions taken by the NIH that normally do not require the preparation of either an environmental impact statement or an environmental assessment under the National Environmental Policy Act. This list has been prepared in accordance with the Council on Environmental Quality's regulations and with Chapter 30 of the Department of Health and Human Services (DHHS) General Administration Manual (GAM). These exclusions apply to all NIH organizations and activities.

DATES: These categorical exclusions are effective January 19, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph G. Hugo, P.E., Chief, Pollution Control Section, Division of Safety, Office of Research Services, National Institutes of Health, Building 13, Room 2W64, Bethesda, Maryland 20892. Telephone 301–496–7775, FAX 301–480–8056, E-mail Address: jgh@helix.nih.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In an August 20, 1999, **Federal Register** notice (64 FR 45558), the NIH published for comment the agency's proposed categorical exclusions for actions taken by the NIH that the agency has determined do not individually or cumulatively have a significant effect on the quality of the human environment. The NIH also submitted its proposed categorical exclusions to the Council on Environmental Quality (CEQ) for its review and comment. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.,* and CEQ's regulations implementing NEPA, 40 CFR Parts 1500–1508, mandate that agencies perform environmental reviews of their actions. CEQ's regulations also require that agencies establish procedures governing categories of actions that are normally excluded from NEPA review because they do not individually or cumulatively have a significant effect on the human environment. 40 CFR 1508.4.

After reviewing the types of actions that it takes, the NIH is providing notice of the actions that will normally be categorically excluded from further environmental review because individually and cumulatively they will not have a significant effect on the human environment. If a proposed action is included in one of the categories but extraordinary circumstances as described in section D of this notice apply, an environmental review will be performed.

II. Comments on the Proposed Categorical Exclusions

The NIH received one comment on its proposed categorical exclusions. CEQ did not provide any comments. A nonprofit animal advocacy group raised a concern with one of the NIH's proposed functional exclusions, which applied to, ''The identification, collection, testing, and distribution of substances and living organisms for research purposes.'' The commentator was concerned that the terms ''substances'' and ''living organisms'' are unacceptably vague and that this proposed exclusion could be read to exclude from environmental review the collection and distribution of animals. The comment cited an estimate by the United States Department of Agriculture/Animal Plant Health Inspection Service that 17 to 22 million animals are used in research each year and indicated that the action of collecting and distributing this many animals would have a cumulative effect on the human environment.

The NIH's intent in establishing this exclusion was primarily to exclude from NEPA review agency actions involving the collection and distribution of materials and reagents used in the research of human diseases or those which may contain unknown or unstudied constituents that could prove useful in the diagnosis and/or treatment of human disease(s). The NIH did not intend this exclusion to cover all actions involving animals. Consistent with the concerns about vagueness, the proposed categorical exclusion has been rewritten to clarify what actions it covers. The revised exclusion states: ''The identification, collection, testing, and distribution of chemicals, drugs, biologicals, plants or plant derivatives, microorganisms, and/or cell cultures for use in the research, diagnosis, and/or treatment of human diseases.'' This

exclusion is not intended to apply to the collection or distribution of animals for research purposes. Although the NIH has rewritten the exclusion in response to the comment to more clearly explain which actions it covers, the NIH believes that at least part of the commentator's concerns are based on a misunderstanding of NIH actions. The proposed exclusion, like all the proposed exclusions, would apply only to actions taken by the agency itself, not to actions taken by other Federal agencies or by any other party. Thus, the comment's reliance on an estimate of the total number of animals used in research each year by all researchers is misplaced. Also, the commentator was concerned that under the proposed exclusion, ''the NIH could exempt threatened and endangered species during all phases of research.'' The NIH recognizes that extraordinary circumstances may require an environmental review of an action otherwise within a categorical exclusion, and one of the extraordinary circumstances proposed and retained in this final list of categorical exclusions is an action's ''Possible impact on an endangered or threatened species.''

The complete and final list of NIH's categorical exclusions established under NEPA and CEQ's implementing regulations follows:

Contents

A. *General exclusions*
B. *Functional exclusions*
C. *Program exclusions*
D. *Extraordinary circumstances*

A. General Exclusions

Subject to a review for extraordinary circumstances, NIH will not perform an environmental review of actions excluded by regulation from NEPA review. NIH will also not perform an environmental review of actions categorically excluded from NEPA review in DHHS GAM Chapter 30.

B. Functional Exclusions

The following actions are normally excluded from NEPA review, subject to a review for extraordinary circumstances.

1. Routine administrative and management support, including budget and finance, planning, procurement of supplies and services, management and oversight of grants and other funding instruments, legal counsel, public affairs, program evaluation, travel, and human resources management.

2. Maintenance, including repairs necessary to ensure the operation of existing facilities, grounds maintenance, and the decontamination of laboratory or other space and equipment.

3. Acquisition of space by lease and modifications of leases, when the use of the space will comply with all applicable Federal, State, and local laws, including all environmental protection and zoning laws, and lease extensions and terminations.

4. Relocation of employees into existing Government-owned or Government-leased space.

5. Facility planning and design.

6. Construction, or construction pursuant to a lease, of 12,000 square feet or less of occupiable space.

7. Interior construction and renovation of NIH facilities.

8. The acquisition, sale, release, disposal, abandonment, closure, or transfer of real or personal property, provided that the action does not violate applicable Federal, State, or local laws, including historical preservation laws.

9. Acquisition of equipment and the repair or replacement of NIH-owned equipment.

10. Acquisition, installation, maintenance, and operation of utility and communications systems, data processing cables, and similar electronic equipment.

11. Packaging, storage, and disposal of hazardous substances, including low-level radioactive, medical, and chemical waste materials generated by intramural research activities, provided that the waste is packed, stored, and disposed of in compliance with all applicable Federal, State, and local laws.

12. The identification, collection, testing, and distribution of chemicals, drugs, biologicals, plants or plant derivatives, microorganisms, and/or cell cultures for use in the research, diagnosis, and/or treatment of human diseases.

13. Research and training activities that are conducted in NIH facilities: By or under the supervision of NIH employees; under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et seq.;* or in accordance with 45 CFR part 9.

14. The issuance of revocable licenses, use permits, and easements allowing outside parties to use NIH facilities.

15. Filing for, obtaining, licensing, enforcing, and protecting intellectual property rights arising from NIH-conducted or NIH-supported research or other activities.

16. Actions taken to comply with requirements of applicable legislation or regulations (*e.g.,* meet emissions requirements established pursuant to Clean Air Act).

17. The preparation and submission of proposals for legislation, or major recommendations or reports to Congress on proposals for legislation, that, based on reasonable judgment, will not establish or modify programs that will have a significant effect on the quality of the human environment.

18. The awarding, renewal, suspension, termination, or discontinuance of: Collaborative research agreements, including Cooperative Research and Development Agreements (CRADA) established under the Stevenson-Wydler Technology Innovation Act of 1980, as amended, 15 U.S.C. 3701 *et seq.;* contracts; cooperative agreements; grants; and interagency agreements entered into by the NIH pursuant to the Economy Act, 31 U.S.C. 1535. For those contracts, cooperative agreements, grants, and interagency agreements that involve construction of more than 12,000 square feet of occupiable space, recipients of NIH funds must certify that they are in compliance with all Federal, State, and local environmental laws and must, as prescribed by NIH, perform all environmental reviews required by NEPA, including preparing environmental assessments and, if necessary, environmental impact statements, and submit these documents to the NIH for review, approval and adoption.

19. All actions undertaken in preparing for and conducting litigation.

20. The collection, processing, retention, evaluation and dissemination, including publication, of data and other information, including the acquisition and management of resources necessary to carry out those functions.

21. Proposing and adopting guidelines.

22. Traffic management measures, including the installation and operation of traffic control and safety devices and actions designed to control or reduce the number of motor vehicles coming onto the NIH Bethesda campus.

23. Actions taken to respond to public health emergencies.

C. Program Exclusion

The DHHS procedures on environmental review of agency actions authorize the establishment of a categorical exclusion for programs within an agency that will not have a significant effect on the human environment. Actions taken by the following NIH organizations and their components are normally excluded from NEPA review, subject to a review for extraordinary circumstances. Actions taken by any successor organizations to those listed will also be categorically excluded. Actions taken by organizations of NIH not listed in this

category may be included in other categories of excluded actions.

1. Center for Information Technology.
2. Center for Scientific Review.
3. Fogarty International Center.
4. Office of Administration.
5. Office of Communications.
6. Office of Equal Opportunity.
7. Office of Education.
8. Office of Community Liaison.
9. Office of Loan Repayment and Scholarship.
10. Office of Human Resources Management.
11. Office of Financial Management.
12. Office of Technology Transfer.
13. Office of Program Coordination.
14. National Library of Medicine.

D. Extraordinary Circumstances

Consistent with CEQ's regulations, environmental review is required for all NIH actions involving extraordinary circumstances. Following are examples of extraordinary circumstances that may apply to specific NIH actions.

1. Greater scope or size than other actions included within a category.
2. A threatened violation of a Federal, State, or local law established for protection of the environment or for public health and safety.
3. Potential effects of the action are unique or highly uncertain.
4. Potential effect on a protected or ecologically sensitive area of land, like a wetland or floodplain.
5. Possible impact on property that is listed or eligible for listing on the National Register of Historic Places or that is otherwise of scientific, cultural, or historic importance or interest.
6. Possible impact on endangered or threatened species.
7. Use of especially hazardous substances or processes for which adequate and accepted controls and safeguards are unknown or not available.
8. Substantial and reasonable controversy exists about the environment effects of the action.

Dated: January 10, 2000.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 00–1128 Filed 1–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications; Notice of Extension of Comment Period

The Fish and Wildlife Service gives notice that the comment period is extended on the notice of receipt of applications for two applications submitted by International Animal Consulting Group, Inc. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). The applications, 018196 and 018197, are for conducting certain activities with marine mammals, specifically taking northern sea otters (*Enhydra lutris lutris*) from the wild in Alaska for export and public display at two Japanese aquariums. The extension will allow all interested parties to submit written comments. The Fish and Wildlife Service published a notice of receipt of the applications on Friday, December 17, 1999. The current comment period closes on January 16, 2000. Written comments may now be submitted until January 26, 2000, and should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

Dated: January 14, 2000.

Kristen Nelson,

Chief, Branch of Permits (Domestic), Office of Management Authority.

[FR Doc. 00–1328 Filed 1–14–00; 2:08 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1620–00–EL, WYW146744]

Intent To Prepare an Environmental Impact Statement on a Lease Application Received From Jacobs Ranch Coal Company

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement on a lease application received from Jacobs Ranch Coal Company for Federal coal in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) received a competitive coal lease application from Jacobs Ranch Coal Company (JRCC) on October 2, 1998, for a tract containing approximately 519 million tons of Federal coal and including approximately 4,821 acres in an area adjacent to the company's Jacobs Ranch Mine. This tract, which was assigned case number WYW146744, is called the North Jacobs Ranch tract. JRCC is a subsidiary of Kennecott Energy and Coal Company. The Jacobs Ranch Mine and North Jacobs Ranch tract are located in southern Campbell County, Wyoming. The tract was applied for as a maintenance tract lease-by-application (LBA) under the provisions of 43 CFR 3425.1. The Powder River Regional Coal Team (RCT) reviewed this lease application at public meetings held on February 23, 1999, in Billings, MT, and October 27, 1999, in Gillette, WY. The RCT recommended that the lease application be processed, pending resolution of the conflicts between proposed coal mining and existing and proposed oil and gas development (including coal bed methane) on the tract. BLM has determined that the requirements of NEPA would be best served by preparing an environmental impact statement (EIS) for this lease application.

BLM conducted scoping on the North Jacobs Ranch lease application, and on the pending Belle Ayr Federal coal lease application, in October 1999. A public scoping meeting was held at the Tower West Lodge in Gillette, WY, on October 19, 1999, at 7 p.m. During the scoping period, BLM received seven written comment letters. At the scoping meeting, presentations were made by the applicants for the North Jacobs Ranch and Belle Ayr Federal coal tracts and oral comments were received from six speakers.

DATES: The scoping period for this Federal coal lease application was held during October 1999, however, the public still has an opportunity to submit written comments on concerns or issues that the BLM should address in processing the North Jacobs Ranch lease application. Comments should be submitted by February 15, 2000, in order to be considered in the draft EIS.

ADDRESSES: Please address questions, comments or concerns to the BLM, Casper District Office, Attn: Nancy Doelger, 1701 East E Street, Casper, WY 82601, fax to 307–234–1525, or send e-mail comments to casper wymail@blm.gov., attn: Nancy Doelger.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address or phone 307–261–7600.

SUPPLEMENTARY INFORMATION: On October 2, 1998, JRCC filed coal lease application WYW146744, for the following lands in Campbell and County, Wyoming:

T. 44 N., R. 70 W., 6th PM, Wyoming
Section 26: Lots 9, 10;
Section 27: Lots 1 thru 16;
Section 28: Lots 1 thru 16;
Section 29: Lots 1 thru 16;
Section 30: Lots 5 thru 20;
Section 31: Lots 5 thru 20;

Section 32: Lots 1 thru 16;
Section 33: Lots 4, 5, 12, 13;
T. 44 N., R. 71 W., 6th PM, Wyoming
Section 25: Lots 1 thru 16.

The tract as applied for, which is referred to as the North Jacobs Ranch Tract, includes 4,821.19 acres, more or less, with an estimated 519 million tons of coal in place. As part of the coal leasing process, BLM will evaluate the tract configuration, and may decide to add or subtract Federal coal to avoid bypassing coal or to increase estimated fair market value.

The Jacobs Ranch Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality. The mine has an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 35 million tons of coal per year, and they have applied for an air quality permit to mine up to 55 million tons per year. According to the application filed for the North Jacobs Ranch LBA Tract, the maintenance tract would be mined to extend the life of the existing mine.

Using the LBA process, JRCC previously acquired maintenance coal lease WYW117924, containing approximately 1,709 acres and 147 million tons of minable coal adjacent to the Jacobs Ranch Mine, effective October 1, 1992.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the North Jacobs Ranch LBA tract is leased to the applicant, the new lease must be incorporated into the existing mining plans for the adjacent mine and the Secretary of the Interior must approve the revised mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised mining plan to the Secretary if the tract is leased.

Several issues related to this lease application were identified during the scoping held during the month of October 1999. The primary issue raised in both written and oral comments is the need for resolution of the conflicts between existing and proposed oil and gas development and proposed coal mining on the North Jacobs Ranch LBA tract. Other issues identified during the scoping process included the potential impacts to big game herds and hunting, the potential impacts to sage grouse, the size of the tract as applied for, the need for considering the cumulative impacts of this leasing decision, the validity and currency of the resource data to be used in analyzing the impacts, the impact on existing land uses, the potential impacts to sensitive and endangered species including prairie dogs and mountain plover, and the potential impacts on air and water quality. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this application, please address them in writing to the above address. Written comments should be received by February 15, 2000, in order to be fully considered in the draft EIS.

Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular business hours, 7:45 a.m.–4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: January 11, 2000.

Alan R. Pierson,

State Director.

[FR Doc. 00–1158 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–1430–ET; UTU–75392]

Notice of Proposed Withdrawal and Notice of Public Meetings; Utah (Amendment)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice amends previous notice from Volume 64, Number 241, page 70279–70282, dated December 16, 1999. In the previous notice the Bureau of Land Management proposed to withdraw 131,340 acres of public land to protect the scenic and recreational values of portions of the Colorado, Dolores, and Green river corridors in Southeastern Utah. The previous notice segregated the lands for up to 2 years from location and entry under the United States mining laws. This amendment deletes approximately 4,000 acres from the proposed withdrawal area. The subject 4,000 acres are located on the west side of the Green River in Desolation Canyon, Carbon County, and lie within an area already withdrawn as Naval Oil Shale Reserve 2. The public meeting in Moab will be held in the Grand County Courthouse, 125 E. Center Street, Moab, instead of the BLM Field Office.

DATES: Effective date is January 19, 2000.

ADDRESSES: Comments should be sent to the Moab Field Office Manager, 82 East Dogwood Avenue, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, (435) 259–2128.

SUPPLEMENTARY INFORMATION: The following described lands are deleted from the list of lands previously identified for withdrawal consideration.

Salt Lake Meridian

T. 12 S., R. 18 E.,
sec. 3, lots 3, 4, and 8, and SW¼SW¼;
sec. 4, lots 1 to 4, inclusive, and S½;
sec. 5, lots 1 to 8, inclusive, and 12, and W½SW¼;
sec. 6, E½SE¼;
sec. 7, E½ E½, SW¼ NE¼, and W½SE¼;
sec. 8, lots 1, 4, 5, 9, and 12 to 14, inclusive, W½ W½, and SE¼SW¼;
sec. 9, lots 1, 2, 6, 7, and 8, N½NE¼, and NW¼;
sec. 10, lots 1 to 4, and 7 to 10, inclusive, and SE¼NE¼;
sec. 11, lots 2, 3, and 6;
sec. 17, lots 3, 4, 7, 8, and 9, NW¼, N½SW¼, and SW¼SW¼;
sec. 18, E½E½;
sec. 19, lots 3 and 4, E½, and E½SW¼;
sec. 20, lots 2, 3, 6, and 7, and W½W½;
sec. 29, lots 2 and 3;
sec. 30, lots 1, 3 to 6, and 10 to 12, inclusive;
sec. 31, lot 5.
T. 13 S., R. 18 E.
sec. 6, lot 4.

Aggregates approximately 3,875.43 acres in Carbon County.

Dated: January 10, 2000.

William Stringer,

Acting Moab Field Office Manager.

[FR Doc. 00–1199 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–00–ET; WYW 149140]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA), Forest Service, has filed an application to withdraw 40.00 acres of National Forest System lands for 40 years for the protection of the Tie Hack Campground. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral leasing and to all other forms of disposition which may by law be made of National Forest System lands.

DATES: Comments and requests for a public meeting should be received on or before April 18, 2000.

ADDRESSES: Comments and meeting requests should be sent to the BLM, Wyoming State Director, P.O. Box 1828, Cheyenne, WY 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: On August 31, 1999, the USDA filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

Bighorn National Forest

T. 50 N., R. 84 W.,
sec. 26, NW¼NW¼NW¼;
sec. 27, NE¼NE¼NE¼.

The area described contains 40.00 acres, more or less, in Johnson County, Wyoming.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During the segregative period, the Forest Service will continue to permit uses within the statutory authorities pertinent to National Forest lands and subject to discretionary approval.

Dated: January 11, 2000.

Michael Madrid,

Acting Deputy State Director, Mineral & Lands Authorizations.

[FR Doc. 00–1159 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF INTERIOR

Minerals Management Service

Small Refiners Royalty-in-Kind Program

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability and sale of Government royalty oil to small refiners.

SUMMARY: This notice explains how small refiners may apply to participate in the sale of Federal royalty oil and the procedures under which subsequent contracts will be awarded.

DATES: All completed applications must be received by the close of business (4:00 p.m. Mountain Standard Time) on February 1, 2000. Applications received after this date will be rejected. The bid proposal, signed contracts, and the surety instrument must be received by close of business (4:00 p.m. Mountain Standard Time) on February 8, 2000. The sale will be held on February 9, 2000.

ADDRESSES: You may obtain an application to participate in the sale (Form MMS–4070, Application for the Purchase of Royalty Oil) directly from our web site *http://www.rmp.mms.gov/reportingservices/forms/forms.htm* or by writing to the Minerals Management Service, Royalty Management Program, Attention: Robert F. Prael, MS 3131, P.O. Box 5760, Denver, Colorado 80217–5760. You may also request an application by calling (303) 231–3217 or by e-mail to *Robert.Prael@mms.gov*.

Completed applications must be returned to the same address or sent by overnight mail or courier to Minerals Management Service, Royalty Management Program, Room A–212, Document Processing Section, Attention: Robert F. Prael, Building 85, Denver Federal Center, Denver, Colorado 80225. Completed applications can also be sent via facsimile to (303) 231–3219.

For confidentiality, please put your bid proposal in an envelope marked as ''confidential, to be opened only by Todd W. Leneau'' and enclose this envelope inside the envelope containing the signed contract and surety instrument. Please mail the bid proposal, signed contracts, and the surety instrument to: Minerals Management Service, Procurement Branch, Attention: Todd W. Leneau, MS 2730, PO Box 25165, Denver Federal Center, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Robert F. Prael, Chief, Royalty-in-Kind Section, at the above address, (303) 231-3217, FAX (303) 231–3219, or e-mail at *Robert.Prael@mms.gov*.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has determined that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil to eligible refiners. This notice provides procedures that applicants must follow to permit MMS to determine the applicants' eligibility to participate in the sale and general terms under which the contracts will be awarded.

This determination of need is based on the following facts:

(1) Small refiners who purchase crude oil in the Pacific and Gulf of Mexico regions have indicated to the MMS that they have concerns about the lack of stable access to the marketplace and the premium prices they frequently must pay to obtain desired feed stock;

(2) Small refiners continue to play a prominent role in providing military jet fuel to the Department of Defense. This supply of military jet fuel and the diversity in suppliers and locations combine to make the eligible refiner oil program an important contributor to national security;

(3) The U.S. Small Business Administration encourages program continuance in the interest of maintaining a competitive marketplace; and 4) Small refiners also provide valuable resources for several States and local governments.

Accordingly, the Secretary has elected to take royalty oil in kind from certain Federal leases in the Gulf of Mexico and

Pacific regions and offer such oil for sale to eligible refiners.

Improvements to the Small Refiner Royalty-in-Kind (RIK) Program

MMS is making several improvements in the small refiner program effective with this sale. These improvements are summarized below:

(1) Refiners will be reporting and paying based on their delivered volumes. In the past, the Royalty Management Program (RMP) billed refiners based on volumes reported by operators. This volume in many cases had no relationship to the volume delivered to the refiners. The difference between deliveries and billings created cash flow problems for refiners. Having the refiners pay for what they actually receive will eliminate this problem.

(2) Pricing will be established in the contract. This eliminates past problems when refiners were billed for retroactive price adjustments and had no means to recover the additional cost through their end users.

(3) We will monitor imbalances between the royalty barrels the Government is entitled to receive and the barrels actually received by the refiners.

(4) Administrative fee has been canceled. Because this sale will be a competitive bid sale, there is no need for an administrative fee.

(5) Deliveries of royalty oil will occur at market centers such as St. James, etc.

Eligibility Requirements

For purposes of this sale ''eligible refiners'' will be those refiners who meet the criteria for small refiners as defined in the U.S. Small Business Administration regulations at 13 CFR part 121 (<75,000 barrels per day refinery capacity and <1,500 employees). An eligible refiner may not sell royalty oil that it purchases under an RIK contract except for purposes of an exchange for other crude oil on a volume or equivalent value basis. Crude oil purchased under an RIK contract or received in exchange for such royalty oil must be processed into refined petroleum products in the eligible refiner's refinery.

We will not accept an application from an refiner who is not in operation during the 60-day period before the date of the royalty oil sale, unless such applicant certifies to MMS that it will begin operations by the first month in which oil becomes available under a royalty oil contract. Certification could be in the form of a notarized statement referencing a current permit to operate from the State or local environmental control agency. We will confirm the operating status of the applicant's refinery with the Department of Energy and/or the U.S. Small Business Administration as appropriate. We will terminate the royalty oil contract if operations do not begin by the first month in which oil becomes available. In addition, we will disallow multiple applications from two or more refiners who are affiliated through common ownership or control. Such refiners will be limited to one allotment in the allocation of royalty oil.

An otherwise eligible refiner will not be permitted to participate in the sale if, at the time of the sale, that refiner is in arrears on payments owed to MMS.

Application Procedures

Applications must be filed on Form MMS–4070, Application for the Purchase of Royalty Oil. The application must be complete and filed timely. Improperly completed or late applications will be rejected. We will reject any application from a refiner that does not meet eligibility criteria established in this notice.

Applicants are advised that the Federal Oil and Gas Royalty Management Act of 1982, as amended, 30 U.S.C. 1701, *et seq.*, provides civil and criminal penalties for false or inaccurate reporting. Applicants are also cautioned to provide adequate detail on each item in the application to preclude rejection of the application from further consideration. Any questions concerning the application should be directed to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. We will provide an information package to each applicant who has filed a timely application. This package will contain:

(1) Sale arrangements and procedures;

(2) The lease locations and approximate quantity and quality of royalty oil to be offered from each lease;

(3) A statement on the contract award processes, surety requirements, imbalance procedures;

(4) A copy of the Federal royalty oil contract; and

(5) A copy of the regulations governing royalty-in-kind sales.

Sale Information

Approximately 2,900 barrels per day for the Pacific region and 82,000 barrels per day for the Gulf of Mexico region of royalty oil from selected Federal leases will be offered for sale to qualified applicants.

Royalty oil will be sold based on a competitive bidding process. The bid proposal will be based on formulas representing spot market prices with premiums added or deductions subtracted. Royalty oil will be sold in lease bundles representing groups of leases, oil types, and Facility Measurement Points. Refiners will be required to select the entire bundle.

The highest bidder, exceeding or meeting minimum bid, will be notified by phone or e-mail and provided a list of properties from which to choose. After the highest bidder selects their properties, the list of remaining properties will be provided to the next highest bidder. This process is continued until all the oil is selected or the minimum bid threshold is met. The sale will be a competitive bidding process, whereby a minimum bid, for each oil type, near spot market prices will be established. If the minimum bid price is not met, MMS will have the option to negotiate prices with the highest bidder.

In the event that an applicant who has participated in the allocation process does not execute its contract, or in the event substantial quantities of royalty oil sold in this eligible lease sale are subsequently turned back to MMS, we may reallocate such oil. However, only those refiners who hold ongoing contracts from this sale will be allowed to participate in any reallocation, and then only if they continue to meet eligibility requirements as set forth in this notice and 30 CFR part 208 (1999).

Questions or additional information on the allocation and reallocation procedures should be directed to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Surety Requirements

Applicants for royalty oil will be required to provide a surety instrument with their bid package. This surety instrument must be an MMS-specified surety such as a bond, irrevocable letter of credit, etc. The amount of the surety instrument must equal the value of 30 days of production that the refiner is bidding on. Once the contract is awarded, the surety must be increased to an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period. The increased surety must be received by March 24, 2000. All sureties must be in a form acceptable to MMS and must include any MMS-specified requirements to adequately protect the Government's interests. Sureties for unsuccessful bidders will be immediately returned to the financial institution. Upon termination of deliveries under the contract, MMS will reduce the amount of the surety in amounts proportionate to payments

made by the refiner to fulfill payment obligations.

If the refiner provides a bond or a certificate of deposit as the surety, it must be effective for the entire term of the contract plus a 6-month reconciliation period. If the refiner furnishes a letter of credit as the surety, it must be effective for a 6-month period beginning the first day the royalty oil contract is effective, with a clause providing for automatic renewal for a new 6-month period. The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date but must notify MMS of its intent not to renew at least 30 days before the anniversary date. We may grant the purchaser 45 days to obtain a new surety. If no replacement surety is provided, we will terminate the contract effective at least 6 months before the expiration date of the letter of credit.

Financial institutions that furnish bonds must be listed in the Department of the Treasury's Circular 570. Those institutions that propose to furnish letters of credit and certificates of deposit must be chartered in the United States and must be acceptable to MMS.

Contract Terms

The royalty oil contracts will be effective April 1, 2000, and will have a 6-month term with an automatic evergreen clause that renews the contract for another 6-month term subject to a 90-day termination notice by either the refiner or MMS.

Successful applicants who are awarded royalty oil contracts must process that royalty oil, or oil obtained in exchange for the royalty oil, in their refineries and may not resell it. If a refiner exchanges royalty oil for other crude oil to process in its refinery, it must provide full information to MMS, including a copy of the exchange agreement within 30 days of the exchange agreement's effective date.

Authority

These actions are taken according to the provisions of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 to 1356 as amended, the Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. 1331 *et. seq.,* and regulations at 30 CFR part 208.

Dated: January 12, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management

[FR Doc. 00–1104 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan/ Environmental Impact Statement, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of Intent to prepare an Oil and Gas Management Plan/ Environmental Impact Statement for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument.

SUMMARY: In accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Oil and Gas Management Plan/Environmental Impact Statement for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Hutchinson, Moore and Potter Counties, Texas, and is initiating the scoping process for this document. This statement will be approved by the Intermountain Regional Director, National Park Service. The Bureau of Reclamation and Canadian River Municipal Water Authority are cooperating agencies.

The Oil and Gas Management Plan/ Environmental Impact Statement is needed to address the issues of how the National Park Service can protect its resources and values, ensure public safety, and minimize conflicts with visitors and park management while recognizing the rights of private mineral owners to develop their oil and gas resources. In the Oil and Gas Management Plan/Environmental Impact Statement and its accompanying public involvement process, the National Park Service will formulate and evaluate the environmental impacts of a reasonable range of alternatives that will provide protection for resources and values at Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument while allowing for exploration and development of the private mineral estate. Distinct management issues include identifying which park resources and values are most sensitive to oil and gas exploration and development disturbance, defining impact mitigation requirements to protect such resources and values, establishing reasonable performance standards and providing pertinent information to oil and gas owners and operators that will facilitate operations planning.

Public Information and Comments

A public scoping newsletter will be mailed in January 2000, to invite public participation in the scoping process and to describe the planning process. The general public and affected or interested parties are encouraged to provide comments and suggestions, and to identify issues and other reasonable alternatives that should be addressed in the Oil and Gas Management Plan/ Environmental Impact Statement.

An Open House meeting will be held on February 9, 2000, at park headquarters in Fritch, Texas. The public and affected or interested parties may request additional meetings in other Texas cities. These requests should be made no later than January 28, 2000, to EIS Team Leader Linda Dansby or Paul Eubank at Lake Meredith National Recreation Area/ Alibates Flint Quarries National Monument, at the addresses or telephone numbers provided below.

If you wish to comment, you may submit your comments by mailing them to the post office addresses provided below by March 14, 2000. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decisionmaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the decisionmaking record a respondent's identify, 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 of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: If you would like to submit comments, be placed on the mailing list, or request a meeting in your city, please contact Linda Dansby, EIS Team Leader, P.O. Box 728, Santa Fe, New Mexico 87504, 505/988–6095; or Paul Eubank, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument at 806–857–3151, or P.O. Box 1460, Fritch, Texas 79036.

Dated: January 12, 2000.

John C. Benjamin,

Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument.

[FR Doc. 00–1245 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft National Park Service Management Policies

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is proposing to update the policies that guide the management of the national park system. The policies are being updated to keep pace with changes in laws, regulations, socio-economic factors and technology, and with new understandings of the natural and cultural resources that the NPS is responsible for protecting within the national parks. Public comment is invited for a 60-day period, which closes March 20, 2000.

DATES: Written comments will be accepted until March 20, 2000.

ADDRESSES: Draft Management Policies is available on the Internet at http://www.nps.gov/refdesk/policies.html. Hard copies may be reviewed in the Department of the Interior library (at the C Street entrance of the Main Interior Building); at all units of the national park system; and at NPS regional offices in Philadelphia, PA; Washington, DC; Atlanta, GA; Denver, CO; Omaha, NE; San Francisco, CA; and Anchorage, AK. Requests for single copies of the draft, and written comments, should be sent to Bernard Fagan, National Park Service, Office of Policy, Room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bernard Fagan at (202) 208–7456.

SUPPLEMENTARY INFORMATION: The NPS has completed a comprehensive review and revision of the policies that currently guide the management of the national park system. The policies are compiled in a book called Management Policies, last published in 1988. Park superintendents, planners, and other NPS employees use management policies as a reference source when making decisions that will affect units of the national park system. The policies are being updated to keep pace with changes in laws, regulations, socio-economic factors and technology, and with new understandings about the natural and cultural resources that the NPS is responsible for protecting within the national parks. Some of the policies (*e.g.,* those dealing with planning, wilderness preservation, and wildland fire management) in the 1988 Management Policies have been updated more recently by means of ''Director's Orders,'' which have been issued following a public notice and comment period.

Management Policies includes the National Park Service's interpretation of the key legislation that underlies the policies, and chapters that address: Park planning; park protection; interpretation and education; use of the parks; park facilities; commercial visitor services; and the management of natural resources, cultural resources, and wilderness.

The NPS hereby invites comments on the draft policies from any and all who may be interested. Comments will be accepted during a 60-day period which ends March 20, 2000. Comments should be specific as to how a policy might be changed or strengthened.

All comments will be reviewed, and appropriate suggestions will be incorporated into the revised final version of Management Policies. The final document will be available to the public via the Internet and in printed form. A notice of availability of the final document, and an explanation of how comments were addressed, will appear in the **Federal Register**.

Dated: January 13, 2000.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. 00–1243 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 8, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 3, 2000.

Beth Boland,

Acting Keeper of the National Register.

Arkansas

Pope County
Fair View School (Public Schools in the Ozarks MPS), 2367 Mill Creek Rd., Russellville, 00000030

California

Humboldt County
Prairie Creek Fish Hatchery, Milepost 124.83 on US 101, N of Orick, Orick, 00000034
Riverside County
Lake Norconian Club, Jct. of Fifth and Western Ave., Norco, 00000033

Idaho

Twin Falls County
Twin Falls Downtown Historic District, Roughly bounded by 2 Ave. N, 2 St. E, 2 St. W, 2 St. S, 3 Ave. S, 3 St. W., Twin Falls, 00000035

Kansas

Douglas County
Vinland Grange Hall, Jct. of Oak and Main Sts., Vinland, 00000037
Jewell County
Francis, O.W., House, Rte. 1, Burr Oak, 00000036

Louisiana

West Feliciana Parish
Star Hill Post Office and Store, 4630 US 61, St. Francisville, 00000038

Maryland

Baltimore Independent city
Market Center, 24 blks surrounding the jct. of Howard and Lexington Sts., Baltimore, 00000040

Massachusetts

Worcester County
Corcoran School, 40 Walnut St., Clinton, 00000039

Michigan

St. Clair County
Seventh Street—Black River Bridge (Highway Bridges of Michigan MPS), Seventh St. over Black R., Port Huron, 00000045
St. Joseph County
M–86—Prairie River Bridge (Highway Bridges of Michigan MPS), M–86 over Prairie R., Nottawa, 00000044
Wayne County
East River Road—North Hickory Canal Bridge (Highway Bridges of Michigan MPS), E. River Rd. over N. Hickory Canal, Grosse Ile,

00000042
Parke Lane Road—Thorofare Canal Bridge (Highway Bridges of Michigan MPS), Parke Lane Rd. over Thorofare Ch., Grosse Ile, 00000043
US 12 Bridges (Highway Bridges of Michigan MPS), US 12 over I–94 and westbound I–94 ramp, Dearborn, 00000041

Montana

Gallatin County
Bartlett, Jack, House, 8 W. Harrison, Bozeman, 00000046
Missoula County
Simons Block (Missoula MPS), 314 N. Higgins Ave., Missoula, 00000047

New York

Cayuga County
Centreport Aqueduct 2462 NY 31, Weedsport, 00000051
Delaware County
Lordville Presbyterian Church (Upper Delaware Valley, New York and Pennsylvania, MPS), Lordville Rd., Lordville, 00000052
Ravina (Upper Delaware Valley, New York and Pennsylvania, MPS), Bouchouxville, Lordville, 00000048
Oswego County
Chancellor (tugboat), Oswego R., Fulton, 00000050
Northrup—Gilbert House, 25 Church St., Phoenix, 00000049
Sullivan County
Hankins District No. One Schoolhouse (Upper Delaware Valley, New York and Pennsylvania, MPS), Sullivan Cty Rd. 132, Hankins, 00000054
Narrowsburg Methodist Church (Upper Delaware Valley, New York and Pennsylvania, MPS), Lake St., Narrowsburg, 00000053

Oregon

Multnomah County
Bishopcroft of the Episcopal Diocese of Oregon, 1832 SW Elm St., Portland, 00000061

Pennsylvania

Bradford County
Spalding Memorial Library—Tioga Point Museum, 724 S. Main St., Athens, 00000059
Delaware County
Morton, Morton, House, Jct. of Muckinipates and Darby Creeks, Norwood, 00000055
Lancaster County
Manheim Borough Historic District, Roughly bounded by Colebrook, Laurel, Fuller Dr., And Fulton Sts., Manheim Borough, 00000058
Lawrence County
North Hill Historic District, Roughly Delaware, Neshannock, Hill Crest and Fairmont Aves., and Crescent, Falls, Beaver, Jefferson and Mercer Sts., New Castle, 00000056
Montgomery County
Muhlenberg, Henry Melchoir, House, 201 W. Main St., Trappe, 00000060
York County
Pleasureville Historic District, Roughly along N. Sherman St. bet. Cherry Ln. and Park View Rd., Springettsbury, 00000057

Vermont

Franklin County
District No. 2 School (Educational Resources of Vermont MPS), 2442 Polly Hubbard Rd., Georgia, 00000063
Orleans County
Lakeview Inn, 295 Breezy Ave., Greensboro, 00000062

Virginia

Charlotte County
Westview, 1672 Terrell Rd., Brocknel, 00000067
Chesapeake Independent city
Old Portlock School #5, 3815 Bainbridge Blvd., Chesapeake, 00000066
Henrico County
Reynolds Metals Company International Headquarters, 6601 W. Broad St., Richmond, 00000064
Norfolk Independent city
James Blair Junior High School, 730 Spotswood Ave., Norfolk, 00000068
Smyth County
Downtown Chilhowie Historic District, Main St. S. Whitetop Rd. and Lee Hwy., Chilhowie, 00000065

A Request of Removal has been made for the following resources:

Pennsylvania

Allegheny County
Linden Grove, Grove Rd. at Library Rd. and Willow Ave. Castle Shannon, 87001970
Cumberland County
Sterrett-Hassinger House, Three Squares Hollow Rd., Newville, 83002234

[FR Doc. 00–1244 Filed 1–18–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Ecosystem Restoration Program Interim Science Board Meeting; Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Meetings.

SUMMARY: The CALFED Ecosystem Restoration Program's Interim Science Board will meet to discuss the FY 2001 Implementation Plan for the Ecosystem Restoration Program. The Bay-Delta Advisory Council's (BDCA) Ecosystem Roundtable will meet to discuss the FY2001 Implementation Plan, revisions to the proposal solicitation package, CVPIA integration and other issues. These meetings are open to the public. Interested persons may make oral statements to the Interim Science Board or to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The CALFED Ecosystem Restoration Program Interim Science Board meeting will be held from 1:00 p.m. to 4:30 p.m. on Wednesday, February 2, 2000. The Ecosystem Roundtable meeting will be held from 9:30 a.m. to 3:30 p.m. on Wednesday, February 9, 2000.

ADDRESSES: The CALFED Ecosystem Restoration Program Interim Science Board will meet at the Sacramento Convention Center, 1400 J Street, Rooms 104 and 105, Sacramento, CA 95814. The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For information on either meeting contact Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stablize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent

is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has etablished a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

January 11, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–1160 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 21, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–278–280 and 347–348 (Review)(Malleable Cast Iron Pipe Fittings from Brazil, Japan, Korea, Taiwan, and Thailand)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 3, 2000.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued January 12, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–1324 Filed 1–14–00; 1:13 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; notice of intent to operate a freight forwarding facility.

The Department of Justice, Office of Drug Enforcement Administration, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 28, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, if applicable, or additional information, please contact Patricia Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Notice of Intent to Operate a Freight Forwarding Facility.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Abstract: The collection of this information is necessary to maintain a closed system of distribution of controlled substances by requiring notification from DEA registrants of their intention to operate a freight forwarding facility through which sealed, packaged controlled substances in unmarked shipping containers are, in the course of delivery to customers, transferred or stored for less than 24 hours. The notice details the registered locations that will utilize the facility, the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, and the security and record keeping procedures that will be employed. The notice must also detail what state licensing requirements apply to the facility and the registrant's actions to comply with any such requirements. Persons providing such notice and operating within the regulations will not be required to obtain a separate DEA registration for the facility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 50 respondents. 50 responses per year × 2 hours per response = 100 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: January 12, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–1154 Filed 1–18–00; 8:45 am]

BILLING CODE 4410–09–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The 1999 Annual Performance Reviews Committee of the Legal Services Corporation's Board of Directors will meet on January 24, 2000 via tele-conference. The meeting will begin at 12:00 p.m. and continue until conclusion of the Committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE, Room 11026, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Closed. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on report to the Board of Directors on the annual evaluations of the President and the Inspector General for FY 1999.
3. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: January 14, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 00–1325 Filed 1–14–00; 1:19 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–004)]

NASA Advisory Council, Aero-Space Technology Advisory Committee, Rotorcraft Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Rotorcraft Subcommittee meeting.

DATES: Tuesday, March 7, 2000, 8:00 a.m. to 5:00 p.m.; Wednesday, March 8, 2000, 8:00 a.m. to 2:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Zabor, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–2890.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Rotorcraft Base Program
—Rotorcraft Safety Program
—Rotorcraft Subcommittee Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: January 12, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–1248 Filed 1–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–005)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting.

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Tuesday, February 29, 2000, 8:30 a.m. to 5:45 p.m.; Wednesday, March 1, 2000, 8:00 a.m. to 5:30 p.m; Thursday, March 2, 2000, 8:15 a.m. to 12:15 p.m.

ADDRESSES: NASA Headquarters, Conference Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program Status/FY2001 Budget Proposal
—OSS Strategic Plan
—Report from Planetary Protection Task Force
—Report from Technology Readiness Task Force
—Astrobiology Program
—Theme Status Reports
—Technology Program Report
—Reports from Subcommittees
—Research Program Report

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 12, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–1249 Filed 1–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–003)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, February 10, 2000, 1:00 p.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW, Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne E. Hilding, ASAP Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1455.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be the National Space Transportation System, International Space Station, Aeronautical Operations, and Workforce Issues.

The Aerospace Safety Advisory Panel is currently chaired by Richard D. Blomberg, Deputy Chairman, and is composed of 8 members and 7 consultants. The meeting will be open to the public up to the capacity of the room (approximately 60 persons including members of the Panel).

Dated: January 12, 2000.

Matthew M. Crouch,

NASA Advisory Committee Management Officer.

[FR Doc. 00–1247 Filed 1–18–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

The National Credit Union Administration Board determined that its business required the deletion of an additional item from the previously announced closed meeting (**Federal Register**, Vol. 65, No. 7, page 1647, Tuesday, January 11, 2000) scheduled for Thursday, January 13, 2000.

5. One (1) Personnel Action. Closed pursuant to exemptions (2), (5), (6), (7) and (9) (B).

The Board voted two-to-one, Board Member Dollar voting no, that agency business required that this item be deleted from the closed agenda and that no earlier announcement of this change was possible.

The National Credit Union Administration Board had announced also, that its business required the deletion of the following item from the previously announced closed meeting.

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

The Board voted unanimously that agency business required that the item be deleted from the closed agenda and that no earlier announcement of that change was possible.

The previously announced items were:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

2. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

3. Administrative Actions under part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

4. Administrative Action under part 703 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).

5. One (1) Personnel Action. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Allan Meltzer,

Acting Secretary of the Board.

[FR Doc. 00–1399 Filed 1–14–00; 3:52 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: March 1–2, 2000; 8 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Rooms 360 and 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Janice M. Jenkins, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biomedical Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen York,

Committee Management Officer.

[FR Doc. 00–1235 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: February 28–March 1, 2000; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 330, 370, 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contract Person: Dr. Gary Poehlein, Division Director, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1370.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY 2000 Committee of Visitors (COV) Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1240 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer-Communications Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Computer-Communications Research (1192).

Date/Time: January 24, 25, 26, and 28; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 365, 380, 360, 370, and 360 Arlington, VA., 22230.

Type of Meeting: Closed.

Contract Person: Kamal Abdali, Program Director, Numeric, Symbolic & Geometric Computation (NSG), CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (703) 306–1912.

Minutes: May be obtained from the contract person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSG proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Office.

[FR Doc. 00–1233 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: January 24–25, 2000, 8:30 AM to 5:00 PM.

Place: Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Rajinder P. Khosla, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted in response to the program announcement (NSF 99–2).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1236 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.'≤

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date & Time: February 17, 2000; 8:30 AM–5:00 PM.

*Place:*Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Persons: Dr. James W. Mink, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning future directions of the NSF programs in the areas of the Tether-Free World and Wireless Technology. The goal is to stimulate fundamental research that will enable broader application of the emerging tether-free environment.

Agenda: To review the current state of the art to establish base line discussions and to develop fundamental research objectives that will greatly expand wireless technology into a seamless environment for broad based data transmission, sensing and control systems applications.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1239 Filed 1–18–00; 8:45 am]

BILLING CODE 7255–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).

Date/Time: February 1–4, 2000 8:30 am–5:00 pm.

Place: The River Inn Hotel, 924 25th Street, N.W., Washington, D.C. 20037.

Type of Meeting: Closed.

Contact Person: Dr. Ephraim Glinert, Acting Division Director National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1926.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information and Data Management Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1232 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and intelligent Systems(#1200).

Dates of Meetings and Locations

February 7–8, 2000—National Science Foundation, Arlington, VA.

February 10–11, 2000—Hyatt Regency, San Francisco, CA.

February 10–11, 2000—Hyatt Rosemont, Chicago, IL.

Type of Meeting: Closed.

Contract Persons: Michael Lesk and Richard Hilderbrandt, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1930.

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research (ITR) proposals submitted to the Information Technology Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 1238 Filed 1–18–00; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panels in Materials Research (1203).

Dates/Time: 14 February, 18 February, 21–22 February 25 February 2000; 8:00 am–5:00 pm.

Place: National Science Foundation; 4201 Wilson Blvd. Arlington, Va; Room 1060.

Type of Meetings: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Ceramics Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1836.

Minutes: May be obtained from the contact person listed above.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for Ceramic Program awards.

Reason for Closing: The activity being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the activity. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–1237 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting

Name: Advisory Panel for Physiology and Ethology (1160).

Date/Time: February 14–15, 2000, 8:30 a.m.–5:00 p.m.

Place: NSF, Room 330, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Persons: Dr. Zoe Eppley, Program Director, Ecological & Evolutionary Physiology, and Dr. John Byers, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: February 15th, 2000; 2:30 p.m. to 3:30 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. James L. Edwards, Deputy Assistant Director, Directorate for Biological Sciences.

Closed Session: February 14th, 2000, 8:30 a.m.–6:00 p.m.; February 15th, 2000, 8:30 a.m. to 2:30 p.m., and 3:30 p.m. to 5:00 p.m. To review and evaluate the Ecological & Evolutionary Physiology & Animal Behavior DDIG proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–1234 Filed 1–18–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al., Millstone Nuclear Power Station, Unit 3; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving certain indirect transfers and a direct transfer of Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3 (MP3), to the extent held by Montaup Electric Company (Montaup), one of 14 joint owners of MP3. The direct transfer would be to New England Power Company (NEP), and the indirect transfers would be to New England Electric System (NEES) and the National Grid Group, plc. The Commission is also considering amending the license for administrative purposes to reflect the proposed direct transfer. MP3 is located in Waterford, Connecticut.

According to an application filed by Montaup, holder of a 4% ownership interest in MP3, and NEP, currently a 12.2% owner of MP3, for approval of the indirect and direct transfers, on February 1, 1999, NEES entered into an Agreement and Plan of Merger and Consent Agreement (Merger Agreement) with Eastern Utilities Associates (EUA), a Massachusetts business trust, which is the indirect parent of Montaup. Under the Merger Agreement, certain transactions will occur which will ultimately result in the indirect transfer of Montaup's interest in MP3's Facility Operating License No. NPF–49 to NEES and the direct transfer of that interest to NEP, a subsidiary of NEES. In addition, by virtue of a separate merger agreement between NEES and the National Grid Group, plc, there would be an indirect transfer of Montaup's MP3 license to the National Grid Group, plc. Northeast Nuclear Energy Company (NNECO), the sole licensed operator of the facility, would remain as the managing agent for the joint owners of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of MP3.

The application does not propose a change in the rights, obligations, or interests of the other joint owners of MP3. In addition, no physical changes to MP3 or operational changes are being proposed.

The proposed amendment, submitted by NNECO on behalf of NEP, would remove references to Montaup in the license and change the number of license holders as stated in the license from 14 to 13. NEP is currently referenced in the license as a licensee, given its existing ownership interest in MP3, and therefore, would not need to be added to the license. These changes are necessary to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. An application for approval of an indirect license transfer will be approved if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the indirect transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 7, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Edward Berlin, Esq., Kenneth G. Jaffe, Esq., and Scott P. Klurfeld, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW., Suite 300, Washington, DC 20007–5116, attorneys for New England Power Company; Thomas G. Dignan, Jr., Esq., Ropes & Gray, One International Place, Boston, Massachusetts, 02110–2624, attorney for Montaup Electric Company; Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, 107 Selden Street, Berlin, Connecticut, 06037, attorney for Northeast Nuclear Energy Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 17, 2000 persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 15, 1999, as supplemented July 20, September 3, and November 29, 1999, submitted under cover of letters dated June 15, July 20, September 3, and November 29, 1999, respectively, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site, *http://www.nrc.gov.*

Dated at Rockville, Maryland this 12th day of January 2000.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1172 Filed 1–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE, the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California.

The proposed amendments would revise the SONGS, Units 2 and 3,

Technical Specification (TS) relating to the Auxiliary Feedwater (AFW) System. Specifically, the licensee proposed to revise TS 3.7.5 to add a note that states: ''The steam driven AFW pump is OPERABLE when running and controlled manually to support plant start-ups, plant shut-downs, and AFW pump and valve testing.''

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Probabilistic analyses have been performed in support of declaring P140 operable when the pump is manually actuated and operating.

The results show that, considering P–140 to be in test for an entire year, the core damage risk of a Main Steam Line Break/Feedwater Line Break (MSLB/FWLB) slightly increases (4.3E–8/yr) while the risk due to other initiating events decreases (3E–7/yr). The net core damage impact of P–140 in test for an entire year is a Core Damage Frequency (CDF) decrease of 2E–7/yr. Having P140 operating instead of being in standby increases its reliability. This increased reliability reduces the risk due to other initiating events, such as loss of main feedwater, medium and small Loss of Coolant Accidents (LOCAs), Steam Generator Tube Rupture (SGTR), and Loss of Offsite Power (LOP), which require Auxiliary Feedwater (AFW) and which occur with much greater frequency than MSLB/FWLB. With the overall CDF reduction a result of considering P140 being in a test configuration for an entire year, the actual cumulative risk incurred is the weighted fraction that P140 is in the test configuration over a year period. Based on past experience, the pump is running in manual approximately 500 minutes/year, which results in an annual net cumulative CDF reduction on the order of 2E–10/yr due to running P140 in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not involve a plant hardware modification or allow the operation of any plant equipment in any way other than originally designed. This change only affects the administrative tracking of the turbine-driven AFW pump when the steam driven AFW pump is operating in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

Pump history shows the pump is run approximately 500 minutes per year. In all cases except for the one postulated scenario of the Main Steam Isolation Signal followed by an Emergency Feedwater Actuation Signal the turbine-driven AFW pump is not susceptible to being tripped. Also, this postulated scenario does not affect the capability of the motor-driven AFW pumps.

Even though there is a small increase in the CDF from the AFW steam driven pump operating in manual mode based on the possibility of a MSLB/FWLB, also considering other initiating events results in an annual net cumulative CDF reduction on the order of 2E–10/yr due to P140 running in the manual mode.

Therefore, the operation of the facility in accordance with this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 17, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 2, 1998, as supplemented December 13, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of January 2000.

For the Nuclear Regulatory Commission.

L. Raghavan,

Senior Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation

[FR Doc. 00–1174 Filed 1–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–10 and NPF–15 issued to Southern California Edison Company (SCE, the licensee) for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California.

The proposed amendments would revise the SONGS, Units 2 and 3, Technical Specification (TS) related to the containment isolation valves. Specifically, the licensee proposed a revision to TS 3.6.3 to extend the completion times for Section D.1 and D.2 valves from 4 hours to the applicable limiting condition for operation time pertaining to the engineered safety feature system in which the valve is installed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed note in Conditions E and F of Technical Specification (TS) 3.6.3 allows additional time during on-line maintenance and/or surveillance testing (*e.g.,* motor-operated valve actuator testing) for D.1 and D.2 containment isolation valves. This proposed Completion Time (CT) extension of up to the CT of the Engineered Safety Feature (ESF) systems in which these valves are installed is consistent with the CT for these valves prior to the issuance of San Onofre Unit 2 Amendment No. 119 and Unit 3 Amendment No. 108, which were issued in response to Proposed Change Number (PCN) 430, of the existing TSs.

PCN–430 was a request to revise TS 3.6.3 to add the requirements of Actions E.2 and F.2 based on the results of a Probabilistic Risk Assessment (PRA) which established specific limits on the length of time D1.1 and D.2 valves may be placed in their ESFAS actuated positions. The results of the PRA concluded that these time limits would not result in a significant increase in the risk of either core damage frequency or significant radioactive release frequency. The results of the PRA also concluded that the existing CT (the CT for the ESF system in which these valves are installed) for Actions E.1 and F.1 should be maintained in TS 3.6.3.

The probability of an accident and the consequences of an accident are not affected since no physical change is made and the Safety Analysis remains unaffected. Therefore, operation of the facility in accordance with this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not influence the possibility of a new or different kind of accident from any previously evaluated because no physical change is made and the Safety Analysis is not affected. Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is unaffected since this proposed change is consistent with the CTs in the TSs governing the system in which these valves are installed. Therefore, this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 17, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific

sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated April 11, 1996, as supplemented April 6, 1998, March 22, and July 29, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of January 2000.

For the Nuclear Regulatory Commission.

L. Raghavan,

Senior Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–1175 Filed 1–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1014]

Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72

By letter dated November 15, 1999, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). Holtec, located in Marlton, New Jersey, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to fabricate four HI–STORM 100 overpacks, and one HI–TRAC 100 transfer cask prior to receipt of the Certificate of Compliance (CoC) for the HI–STORM 100 cask system. The HI–STORM 100 overpack and the HI–TRAC 100 transfer cask are basic components of the HI–STORM 100 system, a cask system designed for the dry storage and transportation of spent nuclear fuel. The HI–STORM 100 cask system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by Commonwealth Edison Company (ComEd) at the Dresden Nuclear Power Station, Units 2 and 3 (Dresden), located in Morris, Illinois.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated October 26, 1995, as supplemented, and pursuant to 10 CFR Part 72, Holtec submitted an application to the NRC for a CoC for the HI–STORM 100 cask system. This application is currently under consideration by the NRC staff. The applicant is seeking Commission approval to fabricate four HI–STORM 100 overpacks and one HI–STORM 100 transfer cask prior to the Commission's issuance of a CoC for the HI–STORM 100 cask system. The HI–STORM 100 cask system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by ComEd at Dresden in Morris, Illinois. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that ''Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model.'' The proposed action before the Commission is whether to approve fabrication, including material procurement, and whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action

Holtec requested the exemption to 10 CFR 72.234(c) to ensure the availability of overpacks so that ComEd can maintain full core off-load capability at Dresden. Dresden will lose full core off-load capability in the fall of 2001. Dresden requests the delivery of the four HI–STORM 100 overpacks and one HI–TRAC 100 transfer cask by November 20, 2001. Holtec states that to meet this schedule, fabrication must begin by February 15, 2000.

The HI–STORM 100 cask system application, dated October 26, 1995, is under consideration by the Commission. It is anticipated that, if approved, the HISTORM–100 cask system CoC may be issued by July 2000. The proposed fabrication exemption will not authorize use of any Holtec overpack to store spent fuel. That will occur only when, and if, a CoC is issued. An NRC approval of the fabrication exemption request should not be construed as an NRC commitment to favorably consider any Holtec application for a CoC. Holtec will bear the risk of all activities conducted under the exemption, including the risk that the four HI–STORM 100 overpacks and one HI–TRAC 100 transfer cask that Holtec plans to construct may not be usable because they may not meet specifications or conditions placed in a CoC that the NRC may ultimately approve.

Environmental Impacts of the Proposed Action

Regarding the fabrication exemption, the Environmental Assessment for the final rule, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites' (55 FR 29181 (1990)), considered the potential environmental impacts of overpacks which are used to store spent nuclear fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the overpacks, but would only permit fabrication. There are no radiological environmental impacts from fabrication since overpack fabrication does not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to overpack fabrication. Each HI–STORM 100 overpack weighs approximately 100 tons and is constructed of metal and concrete. The HI–TRAC 100 transfer cask weighs approximately 125 tons and is made of structural steel and lead. The amount of materials required to fabricate these components is expected to have very little impact on the associated industry. Fabrication of the metal components would be at a metal fabrication facility, while fabrication of the concrete overpacks would be partially fabricated at the same metal fabrication facility, with only the concrete pours being done at Dresden. The metal and concrete used in the fabrication of these components is insignificant compared to the amount of metal and concrete fabrication performed annually in the United States. If the components are not usable, the components could be disposed of or recycled. The amount of metal and concrete disposed of is insignificant compared to the amount of metal and concrete that is disposed of annually in the United States. Based upon this information, the fabrication of these components will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be to deny approval of the exemption and, therefore, not allow fabrication until a CoC is issued. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered and that the applicant has a legitimate need to fabricate the components prior to certification and is willing to assume the risk that any fabricated components may not be approved or may require modification, the Commission concludes that the preferred alternative is to grant the exemption from the prohibition on fabrication prior to receipt of a CoC.

Agencies and Persons Consulted

Mr. F. Niziolek, Reactor Safety Section Head, Illinois Department of Nuclear Safety, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that Holtec may fabricate four HI–STORM 100 overpacks and one HI–TRAC–100 transfer cask prior to issuance of a CoC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed on November 15, 1999. For further details with respect to this action, see the application for CoC for the HI–STORM 100 cask system, dated October 26, 1995. On July 30, 1999, a preliminary Safety Evaluation Report and a proposed CoC for the HI–STORM 100 cask system were issued by the NRC staff to initiate the rulemaking process. The exemption request and CoC application are docketed under 10 CFR Part 72, Docket 72–1014. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 10th day of January 2000.P='02'≤

For the Nuclear Regulatory Commission.

E. William Brach,

Director Spent Fuel Project, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–1173 Filed 1–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to develop Phenomena Identification and Ranking Tables (PIRTs). PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing a postulated BWR accident wherein power oscillations occur, the reactor fails to scram, and the oscillations then reach sufficient magnitude that fuel failure may occur before the emergency operating procedures are able to terminate the oscillations and shut the reactor down.

DATES: February 8–10, 2000, 8:30 am–5:30 pm.

ADDRESSES: Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at www.nrc.gov/RES/meetings.html by February 1, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

Dated at Rockville, Maryland, this 10th day of January 2000.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–1176 Filed 1–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.P='02'≤

DATES: Weeks of January 17, 24, 31, and February 7, 2000.P='02'≤

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.P='02'≤

STATUS: Public and Closed.P='02'≤

MATTERS TO BE CONSIDERED:

Week of January 17

Wednesday, January 19

8:30 a.m.—Discussion of Intragovernmental Issues (Closed—Ex. 9)
9:30 a.m.—Discussion of Management Issues (Closed-Ex. 2 & 6)

Thursday, January 20

9:55 a.m.—Affirmation Session (Public Meeting) (if needed)
10:00 a.m.—Briefing on Status of CIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

Friday, January 21

9:00 a.m.—Briefing on Native American, State of Nevada, and Affected Units of Local Governments Representatives Responses to DOE's Draft Environmental Impact Statement (EIS) for a Proposed HLW Geologic Repository (Public Meeting)

Week of January 24 Tentative

Tuesday, January 25

9:00 a.m.—Briefing on NRC Staff's Response to DOE's Draft Environmental Impact Statement (EIS) for a Proposed HLW Geologic Repository (Public Meeting)

Wednesday, January 26

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)
10:00 a.m.—Briefing on Status of NMSS Programs, Performance, and Plans (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

Week of January 31–Tentative

There are no meetings scheduled for the Week of January 31.

Week of February 7—Tentative

Wednesday, February 9

10:00 a.m.—Briefing on Status of Research Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting)

Thursday, February 10

9:25 a.m.—Affirmation Session (Public Meeting) (if needed)
9:30 a.m.—Briefing on Status of CFO Programs, Performance, and Plans (Public Meeting)

Friday, February 11

9:30 a.m.—Briefing on Status of Spent Fuel Projects (Public Meeting)

The schedule for commission meetings is subject to change on short notice. to verify the status of meetings call (recording) (301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on January 10, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Management Issues (Closed—Ex. 2)'' be held on January 10, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 14, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–1339 Filed 1–14–00; 2:16 pm]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations.

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Employer's Deemed Service Month Questionnaire; OMB 3220–0156

Section 3(i) of the Railroad Retirement Act (RRA), as amended by Pub. L. 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR part 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employers Deemed Service Month Questionnaire, to obtain service and compensation information from railroad employers needed to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

No changes are proposed to Form GL–99. The completion time for Form GL–99 is estimated at 2 minutes per response. The RRB estimates that approximately 4,000 response are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer,

[FR Doc. 00–1203 Filed 1–18–00; 8:45am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data

collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments Are Invited On

(a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Nonresident Questionnaire; OMB 3220–0145

Under Public Laws 98–21 and 98–76, benefits under the Railroad Retirement Act payable to annuitants living outside the United States may be subject to taxation under United States income tax laws.

Whether the social security equivalent and non-social security equivalent portions of Tier I, Tier II, vested dual benefit, or supplemental annuity payments are subject to tax withholding, and whether the same or different rates are applied to each payment, depends on a beneficiary's citizenship and legal residence status, and whether exemption under a tax treaty between the United States and the country in which the beneficiary is a legal resident has been claimed. To effect the required tax withholding, the Railroad Retirement Board (RRB) needs to know a nonresidents citizenship and legal residence status.

To secure the required information, the RRB–1001, Nonresident Questionnaire, as a supplement to an application as part of the initial application process, and as an independent vehicle for obtaining the needed information when an annuitant's residence or tax treaty status changes. Completion is voluntary. One response is requested of each respondent.

The RRB estimates that 1,500 Form RRB–1001's are completed annually. The completion time for Form RRB–1001 is estimated at 30 minutes. No change are proposed to Form RRB–1001.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–1204 Filed 1–18–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995. (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* 3/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 550

(8) *Total annual responses:* 2,200.

(9) *Total annual reporting hours:* 917.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Wendy Taylor (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–1202 Filed 1–18–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42328; File No. SR–OPRA–00–01]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 7, 2000, the Options Price Reporting Authority (''OPRA'') [2] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending January 30, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.,* Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond January 30, 2000 will be the subject of a separate filing under the same Rule.

approval to the proposed Plan amendment through January 30, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending January 30, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,000 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 870 messages per second

Chicago Board Options Exchange: 1,200 messages per second

Pacific Exchange: 525 messages per second

Philadelphia Stock Exchange: 405 messages per second [4]

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[5] Accordingly, as part of that Program, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed upon the capacity allocation that is proposed in this filing. Because this allocation is based upon an assumed maximum processor capacity of 3,000 messages per second, which the processor advises is a realistic number, OPRA believes that it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information. To retain sufficient flexibility to deal with changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until January 30, 2000, unless OPRA decides that the proposed allocation or some revised allocation should be continued beyond that date.[6]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[7] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[8] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–00–01 and should be submitted by February 9, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the first quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may

[4] Due to its cut-over to a TCP/IP system, which is scheduled to occur in the coming days, the PHLX anticipates requiring additional messages per second. To evaluate whether there should be any future adjustments to the proposed allocations, on January 24 and 25, 2000, PHLX will be permitted to input up to 500 messages per second.

[5] *See* Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters (''September 1999 Order'').

[6] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra.*

[7] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[8] 17 CFR 240.11Aa3–2(c)(4).

[9] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

occur between now and January 30, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the day of publication in the **Federal Register**. The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The Commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, the granting accelerated approval of the proposed Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[11] that the proposed Plan amendment (SR–OPRA–00–010 is approved on an accelerated basis through January 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–1170 File 1–18–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–2.

[12] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42329; File No. SR–CHX–99–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Restating and Amending Membership Dues and Fees Schedule

January 11, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 1999, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to restate and amend its membership dues and fees schedule (''Schedule'') to better organize and define the charges included in the Schedule; delete references to obsolete charges and confirm specific charges rebilled to members and member firms; and continue, through March 1, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the Exchange's after-hours trading session (''E-Session''). The text of the proposed rule change is available upon request from the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change restates and amends the Schedule. The proposal primarily reorganizes individual items by grouping them under more descriptive and more appropriate headings, and changes descriptions to better define the charges assessed or rebilled by the Exchange. The proposed changes to the Schedule also delete references to obsolete charges and identify specific charges rebilled to members and member firms by the Exchange. Finally, the proposal includes provisions to eliminate, through March 1, 2000, order processing, transaction and floor broker fees for transactions that occur during the E-Session.[4] This last portion of the proposal is designed to allow CHX members to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] The Commission approved, on a pilot basis, the implementation of the Exchange's E-Session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999), (SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m., Central Time, Monday through Friday. The E-Session is approved to continue through March 1, 2000.

[5] According to the Exchange, the vast majority of the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either NASDAQ/NMS issues or issues within the S&P 500. Waiving fees on the very few remaining securities and on floor broker transactions in all securities simplifies the Exchange's fee-related communications with its members.

[6] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–29, and should be submitted by February 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secrtary.

[FR Doc. 00–1171 Filed 1–18–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A)(ii)

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, February 6, 2000, from 9 am to 4 pm at the Le Richelieu Hotel, New Orleans, Louisiana to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone number (202) 205–6817.

Kris Swedin,

Chief of Staff.

[FR Doc. 00–1231 Filed 1–18–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2000–6782]

Notice of Request for Clearance of a New Information Collection: Adequacy of Truck Parking Facilities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to approve a new information collection related to the research project ''Adequacy of Truck Parking Facilities.'' This information collection will be in the form of a survey to collect information from drivers of commercial motor vehicles carrying property.

DATES: Comments must be submitted on or before March 20, 2000.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Kate Woerheide, Project Manager, (202) 366–5884, kathryn.woerheide@fhwa.dot.gov, Federal Highway Administration, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, Virginia 22101. Office hours are from 8:30 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Adequacy of Truck Parking Facilities.

Background: In 1996 research conducted by the former FHWA Office of Motor Carrier Research and Standards and reported in Commercial Driver Rest & Parking Requirements; Making Space for Safety (Publication No. FHWA-MC–96–0010), considerable gains were made in understanding how truck drivers use public rest areas and privately-owned truck stops. The research methodology concentrated on analyzing data at public rest areas and privately-owned truck stops on the Interstate System by inventorying parking capacity and restrictions in the 48 contiguous states, direct observation of the actual use of truck parking at facilities along a medium-density trucking corridor, and in consultation with truck drivers, motor carriers, and truck stop operators. Subsequent research in this area has been mandated by Congress (Section 4027 of TEA–21) to determine the location and quantity of parking spaces at public rest areas and private truck stops along the National Highway System. The Congressional mandate specifies that current and projected truck parking shortages be assessed. In order to accurately assess shortage, it is necessary to go beyond a simple count of parking spaces available across the country. Shortages must be estimated by measuring the parking supply in light of regional, driver-preference, and other influencing factors.

Whereas truck parking supply, demand, and shortages were assessed on the Interstate Highway System in the 1996 Study, there is a need to (1) extend this assessment to the National Highway System and (2) develop a better understanding of driver-related factors that affect truck rest stop demand. To determine where drivers need truck parking, a better understanding of drivers' parking-related requirements and decision strategies is needed.

To measure truck driver parking needs and preferences, this study will employ a nationwide survey of truck drivers. The survey will help to determine: (1) How truck drivers plan

for and address their parking needs; (2) how truck drivers select when, where, and at which facility they park (including public vs. private stops); and, (3) what truck drivers think of the adequacy of current parking facilities.

Approach: The survey instrument will be developed with input from several commercial vehicle industry segments. The industry segments represented during survey development will include safety stakeholders, trade associations, and carrier companies. Survey development will include a thorough search of related survey efforts, including, but not limited to, other commercial vehicle driver surveys. Survey items will reflect parking-related factors identified through literature reviews, as well as parking-related factors and concerns raised in discussions with representatives from the various industry segments. The survey will contain primarily fixed-response items. The items will address driver demographics, trip-planning, factors influencing parking decisions, and drivers' assessment of the adequacy of current commercial vehicle parking. Where appropriate, drivers will be asked these questions for both current and typical hauls. The demographic information will help determine whether different types of drivers have different parking needs.

The survey will be distributed to truck drivers at selected truck stops and rest areas across the United States. Randomly sampling drivers at parking facilities along U.S. trucking corridors will ensure that all drivers who use such parking facilities have an equal chance of being included in the study. To increase sample size, mail-out surveys may also be used.

Respondents: There will be 2,000 randomly selected truck drivers who will be requested to respond to the planned survey.

Estimated Burden Hours: The average burden per response is 15 minutes. This includes the time needed for reviewing the survey instructions, completing the appropriate survey instrument, reviewing the collection of information, and returning the information to the research team. The estimated total annual burden to survey respondents is 500 hours. The survey is a one-time survey.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Authority: TEA–21, Section 4027; 49 CFR 1.48.

Issued on: January 13, 2000.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 00–1194 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5507; Notice 2]

Decision that Nonconforming 1990–1999 Nissan GTS and GTR Passenger Cars Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1990–1999 Nissan GTS and GTR passenger cars are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 1990–1999 Nissan GTS and GTR Passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: The decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors of Baltimore, Maryland (Registered Importer No. R–90–006) petitioned NHTSA to decide whether 1990–1999 Nissan GTS and GTR Passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket Number NHTSA–99–5507 on April 16, 1999 (64 FR 18963) to afford an opportunity for public comment.

As stated in the notice, the petitioner claimed that 1990–1999 Nissan GTS and GTR passenger cars have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence . . .*

(based on comparison of components to those on comparable U.S.-certified models, such as the Nissan 300ZX Turbo), 103 *Defrosting and Defogging Systems* (based on engineering analysis and comparison of components to those on comparable U.S.-certified models, such as the Nissan 300ZX and 300ZX Turbo), 104 *Windshield Wiping and Washing Systems* (based on engineering analysis and comparison of components to those on comparable U.S.-certified models, such as the Nissan 240SX, 300ZX, 300ZX Turbo, and Maxima), 105 *Hydraulic Brake Systems* (based on engineering analysis and comparison of components to those on comparable U.S.-certified models, such as the Nissan 300ZX and Maxima), 106 *Brake Hoses* (based on comparison of components to those on comparable U.S.-certified models and on visual inspection of certification markings), 109 *New Pneumatic Tires* (based on visual inspection of certification markings), 113 *Hood Latch Systems* (based on comparison of components to those on comparable U.S.-certified models, such as the Nissan 300 ZX Turbo), 116 *Brake Fluids* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on engineering analysis and comparison of components to those on comparable U.S.-certified models, such as the Nissan 300ZX Turbo, which also utilize dual return springs, either of which is capable of closing the throttle when the other is disconnected), 202 *Head Restraints* (based on results of dynamic tests conducted for petitioner by MGA Research Corporation to establish vehicles' compliance with Standards 208 and 301), 203 *Impact Protection for the Driver from the Steering Control System* (based on results of dynamic tests conducted for petitioner by MGA Research Corporation to establish vehicles' compliance with Standard 208), 204 *Steering Control Rearward Displacement* (based on results of dynamic tests conducted for petitioner by MGA Research Corporation to establish vehicles' compliance with Standard 208), 205 *Glazing Materials* (based on comparison of components to those on comparable U.S.-certified models and on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on results of dynamic tests conducted for petitioner by MGA Research Corporation to establish vehicles' compliance with Standards 208 and 301, in which forces exerted far exceed those specified in Standard 206), 209 *Seat Belt Assemblies* (based on comparison of components to those on comparable U.S.-certified models and on visual inspection of certification markings), 216 *Roof Crush Resistance* (based on comparison of roof structure to that of comparable U.S. certified models, such as the Nissan 300 ZX, and on engineering analysis), 219 *Windshield Zone Intrusion* (based on test data), and 302 *Flammability of Interior Materials* (based on comparison of components to those on comparable U.S.-certified models).

Petitioner also stated that based on engineering analysis the 1990–1999 Nissan GTS and GTR passenger cars comply with the Bumper Standard found at 49 CFR part 581. The petitioner observed that the bumpers are of a customary plastic/nylon design impregnated with body color and that they are mounted with high energy absorption components.

The petitioner also contended that 1990–1999 Nissan GTS and GTR passenger cars are capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour. Petitioner stated that it is also silk screening its own custom faces to meet the standard. Petitioner further stated that the remaining controls and displays are identical to those found on comparable U.S.-certified models, such as the Nissan 300ZX.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model rear sidemarker lights and reflectors; (c) installation of a high mounted stop lamp, if the vehicle is not already so equipped. The petitioner asserts that the tail lamp assemblies meet the standard in all respects.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard. Petitioner stated that the rims that are equipped on the vehicle have DOT certification markings and are identical to those found on comparable U.S.-certified models, such as the Nissan 300ZX Turbo.

Standard No. 111 *Rearview Mirrors*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a U.S.-model warning buzzer in the steering lock electrical circuit on all models and installation of a U.S.-model seatbelt warning system on 1990–1993 models. Petitioner stated that the components installed on GTS models will be identical to those found on the Nissan Maxima, and the components installed on GTR models will be identical to those found on the Nissan 300ZX Turbo.

Standard No. 118 *Power-Operated Window Systems*: installation of a relay (identical to that found on the Nissan 300ZX) in the power window system of 1990–1993 models so that the window transport is inoperative when the ignition is switched off. Petitioner stated that 1994–1999 models are already equipped with this component.

On May 12, 1999, under 49 CFR part 512, NHTSA's Office of Chief Counsel granted J.K.'s request for confidential treatment of structural drawings submitted with the petition to demonstrate the capability of the vehicles to be conformed to Standard Nos. 201, 207, 208, 210, 214, and 301, but denied J.K.'s request for confidential treatment of test data submitted with the petition that confirmed the vehicles' conformity with the standards. The material for which confidentiality was denied has been placed in the public docket, together with a copy of the petition.

Standard No. 201 *Occupant Protection in Interior Impact:* The petitioner stated that compliance with Standard 201 was demonstrated in dynamic tests conducted for the petitioner by MGA Research Corporation to establish the vehicles' compliance with Standards 208 and 301. These tests were conducted after the petitioner had made structural modifications to the dash area of the vehicles.

Standard No. 207 *Seating Systems:* The petitioner stated that compliance with Standard 207 was demonstrated in dynamic tests conducted for the petitioner by MGA Research Corporation to establish the vehicles' compliance with Standards 208 and 301. These tests were conducted after the petitioner had made structural modifications to the seat frames.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the driver's side airbag on 1990–1993 models, and the driver's and passenger's side airbags on 1994–1999 models with components manufactured to petitioner's specifications based on the results of static and dynamic tests conducted by MGA Research Corporation. These tests were conducted after petitioner had made certain structural modifications to the vehicle; (b) installation of an airbag warning label on each sun visor. Petitioner stated that the vehicle is

equipped with a seatbelt warning lamp and buzzer that are identical to components found on comparable U.S.-certified models. The petitioner also stated that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at all front and rear designated seating positions.

Standard No. 210 *Seat Belt Assembly Anchorages:* The petitioner stated that compliance with Standard 207 was demonstrated in dynamic tests conducted for the petitioner by MGA Research Corporation to establish the vehicles' compliance with Standards 208 and 301. These tests were conducted after structural modifications at seat belt assembly anchorage points. That are depicted in structural drawings that were granted confidentiality by NHTSA's Office of Chief Counsel under 49 CFR part 512.

Standard No. 212 *Windshield Retention:* application of adhesives to the windshield's edges.

Standard No. 214 *Side Impact Protection:* The petitioner stated that compliance with Standard 214 was demonstrated in dynamic tests on both sides of the vehicle conducted for the petitioner by MGA Research Corporation. These tests were conducted after certain structural modifications to the vehicle. The petitioner observed that no doors opened on impact in the course of these tests.

Standard No. 301 *Fuel System Integrity:* The petitioner stated that compliance with Standard 301 was demonstrated in dynamic tests conducted for the petitioner by MGA Research Corporation. These tests were made after fuel system modifications made in conjunction with those necessary to meet Environmental Protection Agency (EPA) requirements.

The petitioner additionally stated that a vehicle identification number (VIN) plate must be attached to the left windshield post and a reference and certification label must be added in the left front door post area to meet 49 CFR part 565.

No comments were received in response to the notice of petition. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–17 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1990–1999 Nissan GTS and GTR Passenger cars are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 12, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–1125 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6685; Notice 1]

General Motors Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 1999 Chevrolet vehicles are not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance and defect (represented by the failures to meet Part 567) are inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The purpose of FMVSS No. 120 is to provide safe operation of vehicles by ensuring that those vehicles are equipped with tires of appropriate size and load rating; and rims of appropriate size and type designation. Paragraph S5.2 of FMVSS No. 120 requires that each rim or, at the option of the manufacturer in the case of a single-piece wheel, the wheel disc be marked with specific information, including a designation which indicates the source of the rim's published nominal dimensions, and the rim size designation, and in case of multipiece rims, the rim designation. For example: 20 x 5.50, or 20 x 5.5.

Between March 1, 1999, and March 13, 1999, GM produced 11,522 Blazers and S–10 trucks that may contain wheels that are missing the width designation in the rim marking on the back side of the wheel. GM's wheel supplier, Reynolds-Rualca, Venezuela, produced 3,721 wheels that had an error in the rim size designation. Instead of the correct rim size designation of ''15x7,'' these wheels have a rim size designation of ''15x7''. The error occurred when one the wheel casting molds was refurbished. Of the 3,721 mis-marked wheels produced, a maximum of mis-designated 1,658 wheels were installed on the Chevrolet vehicles. The rim markings other than the rim width designation were not affected by the refurbishing error, and the remainder of the rim marking information, including rim diameter, is correct on all of the 1,658 wheels.

GM supports its application for inconsequential noncompliance by stating the following:

1. ''The tire and rim of the affected wheels are properly matched, and are appropriate for the load-carrying characteristics of these vehicles. The lack of complete marking has no effect on the performance of the tire/rim combination of the subject vehicles.''

2. ''These vehicles have a placard on the left front door that contains the correct and complete tire and rim sizes installed on these vehicles. The placard on the subject vehicles shows rim size completely and correctly as 15x7J.''

3. ''The owner's manual provided with these vehicles contains a section 'Buying New Tires.' The text of this section advises the customer that they should look at the Certification/Tire Label to find out what kind and size of tires they need. It goes on to tell them that they should get new tires with the same Tire Performance Criteria Specification (TPC Spec) that the vehicle came with, and that they can find the TPC number on each tire's sidewall. Finally it advises them that if they were to replace the tires with those not having the TPC Spec number found on the original equipment tires, they should make sure that the tires they choose are the same size, load range, speed rating and construction type as the original tires. Nowhere are customers told to look at the wheel to determine the appropriate tire.''

4. ''General Motors believes that very few of these wheels will ever have to be replaced over the life of the vehicle. Nevertheless, the owner's manual provided with these vehicles contains a section 'Wheel Replacement.' This section states that each new wheel should have the same load-carrying, diameter, width, offset and be mounted in the same way as the one it replaces. It also advises customers that their dealer will know the kind of wheel they need. The wheels at issue here are not marked with an incorrect width. Rather, they have no width marking. Therefore a dealer would not be mislead by a width marking on the wheel, but would look at the placard if they were not aware of the exact width.''

5. ''If a customer needs to replace a tire or a wheel, he/she is likely to go to a tire/wheel store, or a vehicle dealer. The skilled personnel at any of these places know how to determine the correct tire or wheel size that they are replacing. For the tire replacement, it is highly probable that they will first look at the tire sidewall to determine the replacement tire size. They also know that the information exists on the placard and may look at the placard. For the wheel replacement, they may look at the tire placard or at the wheel itself to determine the replacement size. The subject wheels do not give incorrect information, however the information is incomplete. Since the information on the wheel is incomplete, the person looking at it will look elsewhere to find the missing information prior to selecting replacement wheel or tire size. For the correct tire selection, rim diameter is of primary importance, and the tire diameter must be the same as the rim diameter. The information on the subject wheels does contain the correct rim diameter, *i.e.*, 15.''

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 18, 2000.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 13, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–1227 Filed 1–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33824]

Great Salt Lake and Southern Railroad, L.L.C.—Construction and Operation—In Tooele County, UT

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of application and request for public comments.

SUMMARY: Great Salt Lake and Southern Railroad Company, L.L.C., has filed an application under 49 U.S.C. 10901(a) for authority to construct and operate one of the two following rail projects: (1) A rail line approximately 32 miles in length between Low, UT, and a facility to be constructed in the Skull Valley, UT, for the interim storage of spent nuclear fuel; or (2) A run-around track and sidings at a point approximately 1.8 miles west of Timpie, UT, where applicant would locate an intermodal transfer point for the transfer of spent nuclear fuel shipping casks from railcars onto trucks for highway movement to the storage facility. The Board will entertain comments and replies on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: Comments are due on February 9, 2000. Replies are due February 14, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33824 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: George W. Mayo, Jr., Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On January 5, 2000, Great Salt Lake and Southern Railroad Company, L.L.C. (GSLS), a noncarrier, filed an application under 49 U.S.C. 10901(a) for authority to construct and operate one of the two following rail projects: (1) A rail line approximately 32 miles in length (and associated sidings) between Low, UT, and a facility which applicant's parent, Private Fuel Storage L.L.C. (PFS), proposes to construct in the south-central portion of Skull Valley, UT, for the interim storage of spent nuclear fuel (SNF); or (2) A run-around track and sidings at a point approximately 1.8 miles west of Timpie, UT, where applicant would locate an intermodal transfer point for the transfer of SNF shipping casks from arriving railcars onto heavy haul trucks for highway movement to the storage facility. Although GSLS has not finally determined which of the two rail projects it will ultimately pursue, it prefers the direct rail option because it will permit efficiencies associated with rail-only movements.

Environmental review of the application under the National Environmental Policy Act of 1969 and related environmental laws is currently ongoing by the Board's Section of Environmental Analysis (SEA). The Board is engaged in this environmental review in the capacity of a cooperating agency, where the Nuclear Regulatory Commission (NRC) is the lead agency for environmental review. According to applicant, NRC undertook this lead responsibility in connection with the June 1997 license application filed by PFS seeking NRC authority to construct and operate the SNF storage facility. The Bureau of Land Management and the Bureau of Indian Affairs of the United States Department of the Interior are also participating in the environmental review as cooperating agencies. Because a third-party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. *See* 49 CFR 1105.10(d).

GSLS indicates that substantially all of the traffic to be transported to the storage facility will be SNF originating at various commercial nuclear power electric generating plants throughout the United States. The total design capacity of the PFS facility will be 4,000 canisters of SNF. GSLS states that, although the United States Department of Energy (DOE) has the statutory responsibility to develop a geologic repository program for SNF by January 31, 1998, DOE is not likely to implement such a program for another decade. Applicant states that, accordingly, the nuclear power industry

has no alternative but to build and operate its own storage facility where SNF can be stored for an interim period of up to 40 years, while DOE pursues its permanent disposal obligation.

Written comments (an original and 10 copies) on the application to construct and operate the above-described rail lines must be filed with the Board not later than February 9, 2000. Comments must contain the basis for the party's position either in support or opposition, and must contain the name and address of the commenting party. Applicant must be concurrently served with a copy of each comment. Any replies (an original and 10 copies) by applicant to written comments must be filed with the Board not later than February 14, 2000.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

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

Decided: January 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings

Vernon A. Williams,

Secretary.

[FR Doc. 00–1229 Filed 1–18–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 8¼ Percent Treasury Bonds of 2000–5

January 14, 2000, Washington, D.C.

Public notice is hereby given that all outstanding 8¼ percent Treasury Bonds of 200–5 (CUSIP No. 912810 BU 1) dated May 15, 1975, due May 15, 2005, are hereby called for redemption at par on May 15, 2000, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 3000 dated March 4, 1973, as amended (31 CFR part 306), and on the Bureau of the Public Debt's website, www.publicdebt.treas.gov.

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury-Direct accounts, will be made automatically on May 15, 2000.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 00–1107 Filed 1–14–00; 11:00 am]

BILLING CODE 4810–40–M

Federal Register

Wednesday,
January 19, 2000

Part II

Environmental Protection Agency

40 CFR Parts 136 and 445
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 445

[FRL–6503–5]

RIN 2040–AC23

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule represents the culmination of the Agency's effort to develop Clean Water Act (CWA) national effluent limitations guidelines and pretreatment standards for wastewater discharges from certain landfills. The final regulation establishes technology-based effluent limitations for wastewater discharges associated with the operation and maintenance of new and existing hazardous and non-hazardous landfill facilities regulated, respectively, under Subtitle C and Subtitle D of the Resource Conservation and Recovery Act (RCRA). Sources of landfill wastewater include, but are not limited to, landfill leachate and gas collection condensate. Today's final rule does not establish pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (POTW) from the operation of new and existing landfills regulated under Subtitle C or Subtitle D of RCRA.

The rule does not apply to wastewater discharges from ''captive'' landfills—those landfills associated with other industrial or commercial activities, in most circumstances. For example, it does not apply to captive landfills that only receive wastes generated by the industrial operation directly associated with the landfill. In addition, the rule does not apply to captive landfills that receive both wastes generated by the industrial operation directly associated with the landfill as well as other wastes, so long as the other wastes are similar in nature to the wastes generated by the industrial operation directly associated with the landfill. Further, the regulation does not apply to wastewater discharges associated with treatment of contaminated ground water from hazardous and non-hazardous landfills.

The final effluent limitations guidelines will benefit the environment by removing 900,000 pounds of pollutants per year at an estimated annualized cost of $7.6 million.

DATES: This regulation shall become effective February 18, 2000.

ADDRESSES: For additional technical information write to Mr. Michael C. Ebner, Engineering and Analysis Division (4303), U.S. EPA, 401 M Street S.W., Washington, D.C. 20460 or send E-mail to: *ebner.michael@epa.gov* or call at (202)260–5397. For additional economic information contact Mr. William Anderson at the address above or send E-mail to: *anderson.william@epa.gov* or call (202) 260–5131.

The complete record (excluding confidential business information) for this Clean Water Act rulemaking is available for review at EPA's Water Docket, Room EB57; 401 M Street, SW, Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. The record for this rulemaking has been established under docket number W–97–17, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional technical information call Mr. Michael Ebner at (202) 260–5397. For additional information on the economic impact analyses contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION:

Judicial Review

In accordance with 40 CFR 23.2, this rule will be considered promulgated for purposes of judicial review at 1:00 p.m. Eastern time on February 2, 2000. Under section 509(b)(1) of the Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered final for purposes of judicial review. Under section 509(b)(2) of the Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewater to surface waters of the U.S., unless the landfills are directly associated with other industrial or commercial facilities.
State, municipal or tribal Government.	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewater to surface waters of the U.S., unless the landfills are directly associated with other industrial or commercial facilities.
Federal Government	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewater to surface waters of the U.S., unless the landfills are directly associated with other industrial or commercial facilities.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 445.1 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Compliance Dates

The compliance date for NSPS is the date the new source commences discharging. Compliance deadline for BPT, BCT, and BAT for a facility is immediately upon issuance or reissuance of the National Pollutant Discharge Elimination System (NPDES) permit.

Supporting Documentation

Several major documents further describe the technical and economic basis for the regulations promulgated today. These include:

1. ''Development Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source

Category'' (EPA 821–R–99–019). Hereafter referred to as the Technical Development Document, it presents EPA's technical conclusions concerning the rule. EPA describes, among other things, the data collection activities in support of the rule, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. ''Economic Analysis for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category'' (EPA 821–B–99–005).

3. ''Statistical Support Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category'' (EPA 821–B–99–007).

4. ''Environmental Assessment for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category'' (EPA 821–B–99–006).

EPA made drafts of these documents available for comment at proposal and revised the materials where warranted in response to the comments. EPA did not submit the documents for peer review because the Agency concluded that additional review was not required because the scientific and technical methodologies being used are not significantly different from those used in the development of past effluent guidelines.

How to Obtain Supporting Documents:

The Technical and Economic Development Documents can be obtained through EPA's website on the Internet, located at www.epa.gov/OST/guide/2lndfls. All of the supporting documents are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, D.C., 20460; telephone (202) 260–7786 for the voice mail publication request.

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I. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C.1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local pretreatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

In the regulations for an industry category, EPA defines BPT effluent limits for conventional, priority,[1] and

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the ''classical'' pollutants (*e.g.,* TSS, pH, BOD_5). However, nothing on the face of the statute explicitly restricted BPT limitations to such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for point sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority pollutants under the guidelines program. BPT

Continued

nonconventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristic. Where existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may require a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Sec. 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (*i.e.,* conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic discharges. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards (''effluent guidelines'') and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Hazardous Waste Treatment Industry.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC et al.* v. *Reilly,* Civ. No. 89–2980 (D.D.C.)). Under the terms of the consent decree in that case, as amended, EPA agreed, among other things, to propose effluent guidelines for the ''Landfills and Industrial Waste Combusters'' category by November 1997 and final action by November 1999. Although the Consent Decree lists ''Landfills and Industrial Waste Combusters'' as a single entry, EPA is publishing separate regulations for Industrial Waste Combusters and for Landfills.

C. Brief History of Landfills Industry and Proposed Guidelines

The growth of the landfills industry is a direct result of the Resource Conservation and Recovery Act (RCRA) and subsequent EPA and State regulations that establish the conditions under which solid waste may be disposed. The implementation of the increased control measures required by RCRA has had a number of ancillary effects on the landfill industry. On the one hand, it has forced many landfills to close because they lacked adequate on-site controls to protect against migration of hazardous constituents

guidelines continue to include limitations to address all pollutants.

from the landfill, and it was not economical to upgrade the landfill facility. As a result, a large number of landfills, especially facilities serving small populations, have closed rather than incur the significant expense of upgrading.

Conversely, large landfill operations have taken advantage of economies of scale by serving wide geographic areas and accepting an increasing portion of the nation's solid waste. For example, responses to EPA's Waste Treatment Industry Survey indicated that 75 percent of the nation's municipal solid waste is deposited in large landfills representing only 25 percent of the landfill population.

EPA has identified several trends in the waste disposal industry that may increase the quantity of leachate produced by landfills. More stringent RCRA regulation and the restrictions on the management of wastes have increased the amount of waste disposed at landfills as well as the number of facilities choosing to send wastes off-site to commercial facilities in lieu of pursuing on-site management options. This will increase treated leachate discharges from the nation's landfills, thus potentially putting at risk the integrity of the nation's waters. Further, as a result of the increased number of leachate collection systems, the volume of leachate requiring treatment and disposal has greatly increased.

On February 6, 1998, EPA proposed Clean Water Act (CWA) national effluent limitations guidelines and pretreatment standards for wastewater discharges from landfill facilities regulated under Subtitle C or Subtitle D of the Resource Conservation and Recovery Act (RCRA). 63 FR 6425.

The proposed regulation divided the landfills industry into two subcategories: (1) RCRA Subtitle C Hazardous Waste Landfill Subcategory, and (2) RCRA Subtitle D Non-Hazardous Waste Landfill Subcategory. For the RCRA Subtitle C subcategory, EPA proposed BPT, BAT, BCT, and NSPS concentration-based limitations for 15 pollutants: BOD_5, TSS, ammonia, arsenic (total), chromium (total), zinc (total), alpha-terpineol, aniline, benzene, benzoic acid, naphthalene, p-cresol, phenol, pyridine, and toluene; EPA also proposed limitations for pH. For PSES and PSNS for the hazardous waste landfill subcategory, EPA proposed pretreatment standards for six pollutants: ammonia, alpha-terpineol, aniline, benzoic acid, p-cresol, and toluene.

For the RCRA Subtitle D subcategory, EPA proposed BPT, BAT, BCT, and NSPS concentration-based limitations for nine parameters. These were BOD_5, TSS, ammonia, zinc (total), alpha-terpineol, benzoic acid, p-cresol, phenol, toluene; EPA also proposed limitations for pH. EPA did not propose PSES or PSNS for the RCRA Subtitle D subcategory.

As proposed, the guidelines would not apply to wastewater discharges from captive landfills located at industrial facilities under certain conditions. The guidelines did not apply if the industrial facility commingled landfill process wastewater with non-landfill process wastewater for treatment, provided that the landfill received only waste generated on-site or waste generated from a similar activity at another facility under the same corporate structure. Further, the proposed regulation did not apply to wastewater discharges associated with treatment of contaminated ground water from hazardous and non-hazardous landfills.

EPA solicited public comment on the proposed rule; the comment period was open from February 6 to May 7, 1998. Section [X] describes the major comments on the proposed rule and EPA's responses. The public record includes a comment summary and response document for this rulemaking.

III. The Final Landfills Effluent Limitations Guidelines and Standards

This section discusses the applicability of the final rule, the landfill wastewater flows subject to the rule, regulatory options considered, and the rationale for the selected technology options.

A. Overview of Final Rule

Today EPA is promulgating technology-based effluent limitations for wastewater discharges to navigable waters associated with the operation of new and existing hazardous and non-hazardous landfill facilities regulated under Subtitle C or Subtitle D of the Resource Conservation and Recovery Act (RCRA). EPA decided to promulgate effluent limitation guidelines using the same subcategorization approach outlined in the proposal. For the RCRA Subtitle C subcategory, EPA is promulgating BPT, BAT, BCT, and NSPS (BPT/BCT/BAT/NSPS) limitations for fourteen parameters. These are BOD_5, TSS, ammonia, arsenic (total), chromium (total), zinc (total), alpha-terpineol, aniline, benzoic acid, naphthalene, p-cresol, phenol, pyridine, and pH. For the RCRA Subtitle D subcategory, EPA is promulgating BPT/BCT/BAT/NSPS limitations for nine parameters. These are BOD_5, TSS, ammonia, zinc (total), alpha-terpineol, benzoic acid, p-cresol, phenol, and pH. Chapter 7 of the Technical Development Document describes in detail EPA's selection of pollutants to regulate. The final rule does not establish PSES or PSNS for either subcategory.

B. Applicability and Scope of the Final Rule

Today's final effluent limitations guidelines and standards cover pollutants in wastewater discharges associated only with the operation and maintenance of those landfills regulated under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).[2] The rule applies to wastewater generated at active landfills subject to Subtitle C of RCRA and Subtitle C landfills that closed after November 19, 1980, the effective date of 40 CFR Part 265. The guidelines do not apply to discharges of landfill wastewater associated with hazardous landfills that went into a permanently inactive status (*i.e.,* they were not receiving any more waste) before the effective date of 40 CFR Part 265. Similarly, the rule applies to wastewater generated at active landfills subject to Subtitle D of RCRA and Subtitle D landfills that closed after October 15, 1979, the effective date of 40 CFR Part 257. The guidelines do not apply to discharges of landfill wastewater associated with non-hazardous landfills that went into a permanently inactive status (*i.e.,* they were not receiving any more waste) before the effective date of 40 CFR Part 257.

Furthermore, this rule does not apply to wastewater discharges associated with the operation and maintenance of land application or treatment units, surface impoundments, underground injection wells, waste piles, salt dome or bed formations, underground mines, caves or corrective action units.[3] Additionally, this guideline does not apply to waste transfer stations, or any wastewater not directly attributed to the operation and maintenance of Subtitle C or Subtitle D landfill units. Consequently, wastewater such as that generated in off-site washing of vehicles used in landfill operations is not within the scope of this guideline.

[2] EPA's Subtitle C and Subtitle D regulations define ''landfill''. *See* 40 CFR 257.2, 258.2 (''municipal solid waste landfill'') and 260.10. Permitted Subtitle C landfills are authorized to accept hazardous wastes as defined in 40 CFR Part 261. Subtitle D landfills are authorized to receive municipal, commercial or industrial waste that is not hazardous (as well as hazardous waste excluded from regulation under Subtitle C).

[3] These terms are defined at 40 CFR 257.2 and 260.10.

1. Captive Landfills

In developing the proposed guidelines, an important question EPA addressed was how to treat landfill leachate generated at a landfill that is associated with an industrial or commercial operation—so-called ''captive'' landfills. Currently, in the case of wastewater sources that are not subject to effluent limitations guidelines and standards, NPDES permit writers must impose limitations on discharges of these wastewater sources that are developed on a case-by-case, best professional judgment (BPJ) basis. Similarly, an indirect discharger may not introduce any pollutants to a POTW from these sources that will pass through or interfere with the POTW's operations. Generally, each POTW is required to develop a pretreatment program and enforce the prohibition on pass through and interference through specific local limits.

EPA initially considered development of effluent guidelines to address any landfill discharging directly to surface waters of the United States or introducing pollutants into a POTW. Consequently, EPA's technical evaluation for the proposal included an assessment of virtually all landfill facilities which collect wastewater as a result of landfilling operations. EPA proposed to exclude wastewater discharges from captive landfills located at industrial facilities in specific circumstances. In the proposal, a captive landfill would not have been subject to the guidelines (1) if it commingled landfill process wastewater with non-landfill process wastewater for treatment, and (2) the landfill received only waste generated on-site or waste generated from a similar activity at another facility under the same corporate structure.

EPA now determined that these requirements are too restrictive and therefore the Agency has decided not to include captive landfills within the scope of this guideline except in a limited number of circumstances. The Agency wants to stress, however, that the effect of today's decisions is not to allow these wastewater sources to escape treatment. Landfill wastewater at captive facilities is and will remain subject to treatment and controls on its discharge. The CWA requires wastewater discharges to meet technology-based effluent limitations on the discharge whether the mechanism for imposing these limitations is EPA-established national effluent limitations guidelines or a permit writer's imposition on a case-by-case basis of BPJ limitations. In like manner, in order to prevent pass through or interference, indirect dischargers must limit their introduction of pollutants to a POTW whether EPA has established national categorical pretreatment standards for the discharge or a POTW has established local limits.

The following describes the applicability of the final rule to captive landfills. The final rule does not apply to discharges of landfill wastewater from captive landfills so long as one or more of the following conditions are met:

—The captive landfill is operated in conjunction with other industrial or commercial operations, and it only receives wastes generated by the industrial or commercial operation directly associated with the landfill.

—The landfill is operated in conjunction with other industrial or commercial operations and it receives both wastes generated by the industrial or commercial operation directly associated with the landfill as well as other wastes and the other wastes received for landfill disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the receiving facility directly associated with the landfill.

—The landfill is operated in conjunction with other industrial or commercial operations and it receives wastes generated by the industrial or commercial operation directly associated with the landfill as well as other wastes and the other wastes are similar in nature to the wastes generated by the industrial or commercial operation directly associated with the landfill.

—The landfill is operated in conjunction with a Centralized Waste Treatment (CWT) facility subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for treatment. If a CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills, then the landfill discharge is subject to this part.

—The landfill is operated in conjunction with other industrial or commercial operations, and it receives wastes from public service activities (as defined in Appendix A) and the landfill does not receive a fee or other remuneration for the disposal service.

For the final rule, EPA has modified the proposal to remove the requirement that a facility must commingle its wastewater from a captive landfill with the facility's non-landfill process wastewater for treatment in order not to be subject to the landfills effluent guideline, in most circumstances. For the reasons described in detail below, EPA did not remove the commingling requirement for CWTs. In addition, EPA also changed the conditions under which captive landfills may accept off-site wastes and not be subject to this guideline.

In the proposal, EPA stated that the commingling requirement ensures that wastewater from captive landfills will undergo adequate treatment (treatment that is comparable to the level of treatment that would be required by the landfills effluent guideline) prior to discharge. EPA determined that the commingling of landfill wastewater with industrial wastewater for treatment was an unnecessary requirement to impose in nationally applicable regulations for the reasons discussed below. Permit writers are establishing appropriate limits on these discharges by either applying the effluent limitations guidelines applicable to the associated industrial activity to the discharge or developing other BPJ limitations. EPA recommends that permit writers use this guideline when developing these BPJ limitations.

From the information developed by the Agency for this rulemaking and confirmed by comments on the proposal, EPA has concluded that landfill wastewater generated by captive landfills operated in conjunction with and receiving the bulk of their waste from an industrial or commercial operation will have a similar pollutant profile to the wastewater generated in the industrial or commercial operation. EPA has further concluded that the wastewater generated by landfill operations at most of the captive facilities are already subject to effluent guidelines. In the circumstances in which the wastewater is not expressly subject to effluent guidelines, EPA has determined that permit writers generally impose BPJ limitations on the discharge of landfill wastewater that are similar to the limitations applicable to the discharge of industrial process wastewater whether commingled or not. EPA has compared the wastewater treatment technologies employed at many of the industrial facilities operating landfills in conjunction with the industrial or commercial operations to the treatment technologies that EPA used as the basis for the BPT/BAT limits in this effluent guideline. The Agency's review of such situations shows that the landfill wastewater receives treatment that is comparable or better than the level of treatment that would be required by the landfills effluent guideline.

Consequently, EPA has decided to eliminate the requirement of commingling as a condition for a captive landfill not to be subject to landfill limitations and standards (except in the case of CWTs). EPA has concluded that landfill wastewater at captive landfills is now and will continue to receive adequate treatment because the landfill wastewater generally must meet the same effluent limitations that would have been required had the waste streams been commingled. In cases where the permit writer is establishing BPJ limitations for the discharge of captive landfill wastewater that is not commingled for treatment, the permit writer should look at the effluent guidelines applicable to the associated industrial operation and the effluent guidelines being promulgated today for potential guidance in setting those limitations.

Because of the nature of most CWTs, EPA determined that the reasons that generally supported exclusion of other captive landfills would not apply in the case of CWTs. As explained above, EPA concluded that a captive landfill which only received wastes generated in an industrial or commercial operation directly associated with the landfill or similar wastes would generate a leachate with a similar pollutant profile to the other wastewater streams produced at the industrial operation. In such circumstances, the data reviewed by EPA showed that the landfill wastewater and other industrial wastewater are generally commingled for treatment and subject to the same discharge limitations. In these circumstances, it was appropriate not to subject the landfill wastestream to this guideline.

Because a CWT, by its very nature, may generate a wide array of different solid wastes for landfill disposal, it may generate a leachate that varies significantly from other streams being treated at the CWT at the time the leachate is collected. Therefore, EPA concluded that the basis for the exclusion—the similarity in wastewater—would not necessarily apply in the case of CWTs. EPA decided that, in order to ensure that the CWT landfill wastewater is treated adequately, that the landfill wastewater from a CWT landfill should be commingled with other CWT wastewater for treatment.

Based on comments received, the Agency also determined that the requirement in the proposal that solid wastes deposited in the captive landfill must either be generated on-site or from an off-site facility under the same corporate structure was too restrictive and could often prohibit a company from safely and properly disposing of solid wastes accepted from tolling, remediation, product stewardship, and public service activities.

In the proposal, EPA narrowly limited the universe of captive landfills that fall outside the scope of this rule to captive landfills that only accepted wastes from on-site or from off-site facilities under the same corporate structure. The reason for this was essentially to ensure that the captive landfills were only accepting wastes that would be similar to those wastes generated on-site. This in turn would provide some degree of assurance that the leachate generated from these wastes would be compatible with the on-site industrial wastewater treatment. However, from the comments submitted on this issue, EPA determined this waste acceptance criterion for the captive exclusion was too restrictive. Those commenting on this issue identified several waste acceptance practices that are commonly used by captive landfills that would not meet the proposed exclusion criteria but are consistent with EPA's objective that landfill leachate receive treatment compatible with its expected constituents. Many of these current waste disposal practices are activities that EPA encourages, and therefore EPA has revised the exclusion criteria pertaining to waste acceptance for captive/intracompany landfills in order to accommodate these disposal practices.

Specifically, several commenters requested that EPA broaden the criteria for determining those captive landfills that fall outside the scope of this rule to include waste acceptance from tolling and contract manufacturers, product stewardship, company partnerships, and remediation activities. EPA concluded that waste disposal at captive landfills from these types of activities will, in most cases, result in leachate that will be adequately controlled through the implementation of categorical or BPJ limitations at the facility. However, EPA remains concerned that there are circumstances in which inter-company waste products deposited in the landfill may result in contaminants in the leachate that may not be compatible with the existing industrial wastewater treatment system or may not be covered adequately by the existing industrial effluent guideline. Therefore, one of the alternative conditions for the revised applicability provisions of the guideline described above for captive landfills provides that waste accepted at the captive landfill must be of a similar nature to the wastes generated at the operation with the associated landfill. Thus, the permitting authority must determine that wastes accepted for disposal at a captive landfill are of a similar nature to the waste generated at the facility directly associated with the captive landfill. Factors that the permit writer should consider in determining whether a waste is similar are described at Section [VIII].

In addition, commenters also requested that EPA include the acceptance of wastes for disposal as a public service as a category of landfill practices that qualify for the captive exclusion. EPA agrees and has included such a provision. EPA applauds the efforts of manufacturing facilities who provide members of their communities with a cost effective and environmentally safe means for disposing of their solid waste. Therefore, in the final rule, EPA determined that this rule shall not apply to those landfills operated in conjunction with other industrial or commercial operations which receive other wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service. EPA's decision not to subject captive landfills that accept off-site wastes for disposal as a public service is not inconsistent with its decision generally to condition non-applicability on the similarity of wastes accepted for disposal. Based on its review of data collected for this guideline and comments received, EPA concluded that the quantity of wastes accepted for disposal as a public service would not in any measurable way affect the pollutant profile of the leachate generated by the landfill even if dissimilar. Of course, these wastewater flows still remain subject to treatment to achieve BPJ permit limits reflecting the landfill contribution to the facility discharge.

The Agency has determined that whether captive landfills accepting wastes from off-site or from a company not within the same corporate structure on a non-commercial basis should be subject to the landfills effluent guideline should hinge on the ability of the captive landfill to handle the waste in an appropriate manner. Therefore, the Agency concluded that waste acceptance criterion for determining those captive landfills that fall outside the scope of this rule should be based on the similarity of the waste accepted for disposal from another facility to the waste generated by the industrial or commercial operation directly associated with the landfill. In the case of captive landfills treating similar

wastes, the permit writer should base permit limits on limitations for the guideline to which the industrial or commercial operation is subject or establish BPJ limitations. Again, the permit writer, if developing BPJ limitations, should consider today's guidelines as guidance in this effort.

2. Landfill Wastewater—The wastewater covered by the rule includes leachate, gas collection condensate, drained free liquids, laboratory-derived wastewater, contaminated storm water and contact washwater from truck exteriors and surface areas which have come in direct contact with solid waste at the landfill facility. However, ground water and wastewater from recovery pumping well operations which have been contaminated by a landfill and are collected and discharged are excluded from this guideline and covered by BPJ limitations. This section later discusses the exclusion from the rule for contaminated ground water flows and Section [VIII] of today's final rule addresses implementation issues associated with contaminated ground water. The wastewater associated with the landfills industry is described below.

a. Leachate, as defined in 40 CFR 258.2, is liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Over time the potential for certain pollutants to move into the wider environment increases. As water passes through the landfill, it may ''leach'' pollutants from the disposed waste moving them deeper into the soil. This presents a potential hazard to public health and the environment through ground water contamination and other means. One measure used to prevent the movement of toxic and hazardous waste constituents from a landfill is a landfill liner operated in conjunction with a leachate collection system. Leachate is typically collected from a liner system placed at the bottom of the landfill. Leachate also may be collected through the use of slurry walls, trenches or other containment systems. The leachate generated varies from site to site based on a number of factors including: the types of waste accepted; operating practices (including shedding, daily cover and capping); the depth of fill; compaction of wastes; annual precipitation; and landfill age. Landfill leachate accounts for over 95 percent of the wastewater covered by this rule.

b. Gas Collection Condensate is liquid which has condensed in a gas collection system during the extraction of gas from the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill and must be removed to avoid hazardous, explosive conditions. In gas collection systems, gases containing high concentrations of water vapor condense in traps staged throughout the gas collection network. The gas condensate may contain volatile, semi-volatile, and metal compounds and usually accounts for a relatively small percentage of flow from a landfill.

c. Drained Free Liquids are aqueous wastes drained from waste containers (e.g. drums, trucks) or wastewater resulting from waste stabilization prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater. Wastewater generated from these waste processing activities is collected and usually combined with other landfill generated wastewater for treatment at the wastewater treatment plant.

d. Truck/Equipment Washwater is generated during either truck or equipment washes at landfills. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant wastewater is collected for treatment. In addition, it is common practice for many facilities to wash the wheels, body, and undercarriage of trucks used to deliver the waste to the open landfill face upon leaving the landfill. On-site wastewater treatment equipment and storage tanks are also periodically cleaned.

e. Laboratory-Derived Wastewater is generated from on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

f. Contaminated storm water is storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or wastewater that is subject to the limitations and standards. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to) the open face of an active landfill with exposed waste (no cover added), the areas around wastewater treatment operations, trucks, equipment or machinery that has been in direct contact with the waste, and waste dumping areas.

g. Non-contaminated storm water includes storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or wastewater that are subject to the limitations and standards. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

EPA received extensive comments on its proposal to include contaminated storm water as a regulated waste stream under the landfills effluent guidelines. Several commenters stated that contaminated storm water (storm water that comes into contact with solid waste at the landfill site) should not be subject to the landfills effluent limitations guidelines because this is already covered by the Final National Pollutant Discharge Elimination System Storm Water Multi-sector General Permit (MSGP) for Industrial Activities (60 FR 50803).

The Storm Water Pollution Prevention Plan (SWPPP) required by the storm water MSGP or an authorized State's equivalent general permit requires landfill facilities to identify all of the sources of storm water contamination at the landfill and then implement measures and controls (such as good housekeeping for materials storage, sediment and erosion controls—particularly from intermediate and final covers) in an effort to prevent storm water contamination. EPA believes that the storm water MSGP (or an authorized State's equivalent general permit) adequately controls pollutants from storm water runoff from covered areas of the landfill.

Covered areas of the landfill include the following: capped, final cover, intermediate cover, and daily cover areas. The Agency believes that the SWPPP and the monitoring requirements in the storm water MSGP provide adequate controls for reducing the level of pollutants in storm water from these areas of landfills.

EPA recognizes that there may be some incidental contact with wastes when storm water flows over a daily or intermediate cover. However, EPA concluded that such contact will not lead to any meaningful ''contamination'' of the storm water so long as the landfill complies with the requirements of the storm water MSGP or an authorized State's equivalent general permit. For example, the Best Management Practices (BMPs) outlined in Table L–1 and L–2 of the storm water MSGP (60 FR 50940) and the monitoring requirements in Table L–5 and L–6 for TSS and total recoverable iron (60 FR 50943) provide adequate controls for the pollutants that would most likely be associated with runoff from covered areas of non-hazardous landfills.

Similarly, for hazardous landfills, BMPs and monitoring requirements outlined in Table K–2 (60 FR 50935) and Table K–3 (60 FR 50936), respectively, also require controls for pollutants associated with runoff from covered areas of a landfill. In EPA's

view, BMPs provide a fair degree of control of these pollutants and the monitoring requirements of the MSGP provide a tool for evaluating the effectiveness of the pollution prevention plan.

As part of the Agency's continuing effort to improve its environmental and pollution control programs, EPA has concluded that, although the MSGP provides some control for contaminated storm water runoff, the landfills effluent limitations guidelines provide a more comprehensive level of control for storm water runoff that has come in direct contact with solid waste, waste handling and treatment areas, or wastewater flows that are controlled under this rule. Although the storm water MSGP considered circumstances in which untreated leachate may be incidently commingled with storm water, the Agency explicitly acknowledged in the MSGP that insufficient data were available to establish numeric limits for storm water that might be contaminated based on best available technology for municipal solid waste landfills (MSWLFs) (60 FR 50942), non-hazardous industrial landfills (60 FR 50943), and hazardous landfills (60 FR 50935).

However, EPA has now concluded that the data collected in support of the landfills effluent limitations guidelines provide the basis for establishing appropriate numeric limitations for contaminated storm water. EPA specifically noted in the preamble for the storm water MSGP that it was developing these guidelines and that where the guidelines applied to discharges, facilities must comply with them. (60 FR 50942). In addition, EPA intends to propose a reissuance of the storm water MSGP which would include the promulgated landfills effluent limitations for contaminated storm water (as defined by these guidelines).

EPA fully explains its rationale for including contaminated storm water as a regulated wastewater for the landfills effluent guideline in the Comment Response document found in the Landfills Public Record.

h. Contaminated ground water is water below the land surface in the zone of saturation which has been contaminated by landfill leachate. For the final rule, EPA has not included within the scope of regulated flows ground water which has been contaminated by a landfill and is collected and discharged. The reasons for this decision are as follows.

During development of the rule, EPA considered whether it should also include contaminated ground water flows within the scope of this guideline. Historically, many landfill operations have caused the contamination of local ground water, mostly as a result of leakage from unlined landfill units in operation prior to the minimum technology standards for landfills established by RCRA Subtitle C and D regulations. Subsequently, State and Federal action under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) has required facilities to clean up contaminated ground water. In many cases this has resulted in the collection, treatment and discharge of treated ground water to surface waters. In addition, in the case of RCRA Subtitle C hazardous waste landfills and municipal solid waste landfills (MSWLFs), applicable regulatory standards require ground water monitoring and post-closure care and, in the event of ground water contamination, corrective action measures. These requirements may also result in treatment of contaminated ground water by such landfill facilities.

EPA evaluated flows, pollutant concentrations, treatment in place, and current treatment standards for discharges of contaminated ground water from landfills. From this evaluation, EPA concluded that pollutants in contaminated ground water flows are often very dilute or are treated to very low levels prior to discharge. EPA concluded that, whether as a result of corrective action measures taken pursuant to RCRA authority or State action to clean up contaminated landfill sites, landfill discharges of treated contaminated ground water are being adequately controlled. Consequently, further regulation under this rule would be redundant and unnecessary.

EPA is aware that there are landfill facilities that collect and treat both landfill leachate and contaminated ground water flows. In the case of such facilities, EPA has concluded that decisions regarding the appropriate discharge limits should be left to the judgment of the permit writer. As indicated above, contaminated ground water may be very dilute or may have characteristics similar in nature to leachate. In cases where the ground water is very dilute the Agency is concerned that contaminated ground water may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment and/or discharge of the ground water flows or develop BPT/BAT limits based on a flow-weighted building block approach in order to prevent dilution of the regulated leachate flows. However, in cases where the ground water may exhibit characteristics similar to leachate, commingled treatment is appropriate because it is more cost effective and environmentally beneficial than separate treatment. EPA recommends that the permit writer consider the characteristics of the contaminated ground water before making a determination if commingling ground water and leachate for treatment is appropriate. See Section [VIII].

i. Recovering Pumping Wells wastewater is generated as a result of the various ancillary operations associated with ground water pumping operations. These operations include construction and development, well maintenance, and well sampling (*i.e.,* purge water). The wastewater will have very similar characteristics to contaminated ground water. Therefore, for the same reasons that EPA did not include contaminated ground water as a regulated wastewater, these regulations do not apply to wastewater from recovering pumping well operations.

C. Subcategorization

EPA proposed to divide the landfills point source category into two subcategories and to develop different limitations and standards for RCRA Subtitle C landfills and RCRA Subtitle D landfills. After reviewing comments on the subcategorization approach, EPA decided to promulgate effluent limitations guidelines using the same subcategorization approach outlined in the proposed rule.

For today's final rule, EPA decided that a single set of effluent limitations were not appropriate for the landfills industry and thus EPA developed different limitations for subcategories within the industry. In reaching its decision that subcategorization is required, EPA considered various factors. In developing effluent limitation guidelines, the Clean Water Act (CWA) requires EPA to assess a number of factors, including manufacturing processes, products, the size and age of a site, water use, and wastewater characteristics. The landfills industry is not typical of many other industries regulated under the CWA. Therefore, EPA looked at additional factors specifically tailored to the characteristics of landfill operations in deciding what limitations were appropriate for landfills. The factors considered for subcategorization included RCRA classification, types of wastes received, wastewater characteristics, facility size, age, ownership status, location, economic impacts, treatment technology

employed, energy requirements, and non-water quality environmental impacts. Based on an evaluation of these factors, EPA determined that there was a notable distinction between wastewater associated with Subtitle C landfills and that from Subtitle D landfills. A wider range of toxic organic pollutants and higher concentration of metals were found at the Subtitle C landfills. Thus, the most significant differences observed in wastewater characteristics at landfills are directly related to the wastes received at the landfill, which, in turn, is most obviously linked to the landfill's RCRA status. Therefore, EPA concluded that the most appropriate basis for subcategorization is by landfill classification under RCRA.

Additionally, the Agency believes that this subcategorization approach has the virtue of being easiest to implement because it follows the same classification previously established under RCRA and currently in use (and widely understood) by permit writers and regulated entities. The Agency believes that any subcategorization at odds with existing RCRA classification approaches would potentially create unnecessary confusion to the regulated community.

Subpart A of 40 CFR Part 445, ''RCRA Subtitle C Hazardous Waste Landfill Subcategory,'' applies to wastewater discharges from a solid waste disposal facility subject to the criteria in 40 CFR Part 264 Subpart N—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and 40 CFR Part 265 Subpart N—Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Hazardous waste landfills are subject to requirements outlined in 40 CFR Parts 264 and 265 that include the requirement to maintain a leachate collection and removal systems during the active life and post-closure period of the landfill. For a discussion of these criteria, see the preamble to the proposed landfill guideline at 63 FR 6426, 6430–31. (February 6, 1998).

Subpart B of 40 CFR Part 445, ''RCRA Subtitle D Non-Hazardous Waste Landfill Subcategory,'' applies to wastewater discharges from all landfills classified as RCRA Subtitle D non-hazardous landfills subject to either of the criteria established in 40 CFR Parts 257 (Criteria for Classification of Solid Waste Disposal Facilities and Practices) or 258 (Criteria for Municipal Solid Waste Landfills). For a discussion of these criteria, see the preamble to the proposed landfill guideline at 63 FR 6426, 6431–32. (February 6, 1998).

EPA received a number of comments requesting that EPA further subdivide Subtitle D landfill facilities according to the specific type of waste received. These commenters claimed that the differences in wastewater characteristics between municipal solid waste landfills and monofills warranted further subcategorization. In addition, a group representing utility ash monofills suggested EPA develop separate limitations for such landfills. The group asserted that the organic content in ash monofill wastewater was so low that it would not sustain biological treatment, which EPA used as the basis for BPT, BCT, BAT and NSPS limitations. EPA did consider subcategorizing the Non-Hazardous subcategory further but chose not to based on several factors explained in detail in Section [X]. EPA decided to include monofills in the Non-Hazardous subcategory and concluded that, based on the available raw wastewater data, such facilities can meet the BPT/BAT limitations using technologies that are available at costs no greater than those technologies EPA evaluated (and determined to be economically achievable) for the universe of Subtitle D facilities.

D. Profile of the Landfills Industry

At proposal, EPA stated that there were approximately 11,000 landfill facilities located throughout the country in 1992. EPA has determined that the vast majority of these facilities either closed prior to the enactment of Subtitle C or Subtitle D regulations or do not generate wastewater covered by this regulation. Based on survey responses, EPA believes that the final guidelines will affect 143 facilities.

In the case of landfills subject to regulation under Subtitle D, EPA projects that there are 143 stand-alone landfill facilities that discharge in-scope wastewater directly to receiving streams. EPA estimates that there are 756 stand-alone Subtitle D landfill facilities that collect in-scope wastewater but discharge indirectly to a POTW. These facilities will not be affected by this final rule because EPA is not establishing pretreatment standards for non-hazardous, Subtitle D landfills. EPA determined that these discharges did not generally pass through or interfere with POTW operations so as to require national pretreatment standards. There are an additional 338 Subtitle D facilities that collect in-scope wastewater but do not discharge to surface waters or to POTWs and are also not affected by today's rule. These facilities dispose of their wastewater by hauling off-site to a centralized waste treatment facility, evaporation, recirculation back to the landfill, or land application.

With respect to landfills subject to regulation under Subtitle C, EPA estimates that there are no hazardous stand-alone landfill facilities discharging directly to surface waters. It is possible, however, that EPA's data collection efforts did not identify an existing, stand-alone direct discharging hazardous landfill facility or that an indirect (or zero discharging), stand-alone hazardous landfill facility may become a direct discharger. Consequently, EPA is establishing effluent limitations for direct discharging hazardous landfills. EPA estimates that there are six stand-alone hazardous landfill facilities that discharge indirectly to POTWs. In response to comments on the proposal, EPA decided not to establish pretreatment standards for hazardous Subtitle C landfills again because it decided national standards were not required. EPA estimates that there are 139 hazardous landfills which collect in-scope wastewater but do not discharge wastewater to surface waters or to a POTW. Methods of wastewater disposal include hauling wastewater off-site to a centralized waste treatment facility, underground injection, and solidification. Additionally, EPA estimates that there are more than 150 industrial facilities which contain landfills but would be excluded from this regulation as a result of the factors discussed at Section [III.B].

E. Technology Basis for Final Rule

This section explains how EPA selected the technologies that form the basis for effluent limitations and standards being promulgated today for the Hazardous Landfill and Non-Hazardous Landfill subcategories. For both the proposed and final rule, EPA developed information to evaluate the performance of various systems for treating landfill wastewater. EPA's database consisted of daily effluent data collected from the Detailed Monitoring Questionnaire and EPA's Wastewater Sampling Program. (EPA's data gathering efforts are explained in detail in the preamble to the proposal at 63 FR 6433–35.)

EPA has revised the database since the proposal for a number of reasons. First, the regulatory status for some landfills in the database has changed. EPA excluded from the analysis landfills that were no longer considered in the scope of the rule (for example, some captive landfills). Second, some landfills in the database have changed discharge status. EPA had inadvertently included two landfill facilities as direct

dischargers in the analyses for the proposal when the facilities were actually indirect dischargers. Third, in the loadings reduction analysis for the proposed rule, EPA included removals of volatile organic compounds associated with biological treatment. However, for the final rule, EPA determined that removals of volatile organic compounds should not be included because the biological and chemical treatment options being considered did not provide treatment for the volatile compounds. Fourth, for the final rule, EPA also revised the long-term averages for several pollutants to reflect more accurately the pollutant removals achieved by the technology options. The Agency based these revisions on re-analysis of the dataset used for proposal.

The effluent limitations EPA is establishing today are based on well-designed, well-operated systems. EPA based the final limitations on treatment achieved by landfill facilities employing the selected technologies. A landfill operator may, however, use any wastewater treatment technology and/or waste management practices to meet the numerical wastewater discharge limitations.

1. Best Practicable Control Technology Currently Available (BPT)

In today's rulemaking, EPA is establishing BPT effluent limitations for the two discharge subcategories for the Landfills Point Source Category. The BPT effluent limitations promulgated today will control identified conventional, priority, and nonconventional pollutants when discharged from landfill facilities. For further discussion of the basis for the limitations, technologies selected, and the factors EPA considered in its decision, see the Technical Development Document and the preamble to the proposed rule at 63 FR 6441.

a. BPT Options Considered and Selected for the RCRA Subtitle D Landfills Subcategory. The BPT options analyzed for today's final rule are identical to those evaluated for the proposal. In the Agency's engineering assessment, EPA first considered three technologies commonly in use by landfills and other industries as options for BPT. These technology options were chemical precipitation, biological treatment, and multimedia filtration.

For its evaluation of chemical precipitation, EPA collected raw wastewater and treated effluent data from several non-hazardous landfills employing this treatment. Based on this data, EPA removed chemical precipitation from further consideration as a BPT treatment option. While chemical precipitation is an effective treatment technology for the removal of metals, non-hazardous landfills typically have low concentrations of metals in treatment system influent wastewater. Observed metals concentrations were typically not found at levels that would inhibit biological treatment or that would be effectively removed by a chemical precipitation unit. Therefore, EPA considered only the following two options for BPT.

- Option I—Biological Treatment. EPA first assessed the pollutant removal performance of biological treatment. EPA selected this as Option I due to its effectiveness in removing the large organic loads commonly associated with leachate. BPT Option I consists of aerated equalization followed by biological treatment. EPA included various types of biological treatment such as activated sludge, aerated lagoons, and anaerobic and aerobic biological towers or fixed film reactors in calculating limits for this option. The Agency based the costs for Option I on the cost of aerated equalization followed by an extended aeration activated sludge system and clarification, including sludge dewatering. Approximately 30 percent of the direct discharging municipal solid waste landfills employed some form of biological treatment, and 13 percent had a combination of equalization and biological treatment.
- Option II—Biological Treatment and Multimedia Filtration. The second technology option considered for BPT treatment of non-hazardous landfill wastewater was aerated equalization and biological treatment as described in Option I, followed by multimedia filtration. Approximately 10 percent of the direct discharging municipal solid waste facilities used the technology described in Option II.

EPA is promulgating BPT effluent limitations for the Non-Hazardous Landfills subcategory based on Option II because of the demonstrated ability of biological treatment systems in controlling organic pollutants and the effectiveness of multimedia filtration in removing TSS. EPA is maintaining its decision at proposal to base BPT on Option II level of control. EPA's decision to base BPT limitations on Option II treatment reflects primarily two factors: (1) The degree of effluent reductions attainable and (2) the total cost of the treatment technologies in relation to the effluent reductions achieved.

No basis could be found for developing different BPT limitations based on age, size, process or other engineering factors. EPA responds to comments regarding the development of separate BPT limitations for monofills and BPT limitations based on the age of the landfill at Section [X].

EPA has selected Option II based on the comparison of the two options in terms of total costs of achieving the effluent reductions, pounds of pollutant removals, economic impacts, and general environmental effects of the reduced pollutant discharges. BPT Option II removed 142,000 more pounds of conventional pollutants than Option I. EPA estimated that Option I would have cost approximately $7.30 million per year (1998$, after-tax) while EPA estimated that Option II will cost only slightly more—$7.64 million per year (1998$, after-tax).

Finally, EPA also looked at the costs of all options to determine the economic impact that today's rule would have on the landfill industry. EPA's assessment showed that under either option there were significant economic impacts on only two facilities. Further discussion on the economic impact analysis can be found in Section [V] of today's notice.

EPA is today promulgating effluent limitations for the following pollutants under BPT for direct discharging non-hazardous landfills: BOD_5, TSS, pH, ammonia, alpha terpineol, benzoic acid, p-cresol, phenol, and zinc (total).

b. BPT Technology Options Considered and Selected for the RCRA Subtitle C Landfill Subcategory. EPA's survey of the hazardous landfills industry identified no in-scope landfill facilities that discharge directly to surface water. All of the hazardous landfills within the scope of today's rule are either indirect or zero/alternative dischargers. EPA consequently could not evaluate any treatment systems in place at direct discharging hazardous landfills for establishing BPT effluent limitations. Therefore, EPA relied on information and data from widely available treatment technologies in use at hazardous landfill facilities discharging indirectly and at non-hazardous landfills discharging directly—so-called ''technology transfer.'' EPA concluded that the technology in place at some indirect hazardous landfills is appropriate to use as the basis for regulation of direct dischargers because the pollutant profile of the leachate generated at hazardous waste landfills discharging directly would be similar in character to that from indirect discharge hazardous waste landfills.

For the final rule, EPA considered the following three potential technology options for establishing BPT effluent

limitations for the Hazardous Landfill subcategory:

- Option I—Aerated equalization followed by chemical precipitation with primary clarification and multimedia filtration.
- Option II—Aerated equalization followed by chemical precipitation with primary clarification, biological treatment with secondary clarification and multimedia filtration.
- Option III—Zero or alternative discharge.

EPA evaluated the same treatment options for establishing limitations that it had evaluated at proposal. As previously noted, in developing the proposed limitations, EPA relied, in part, on data from non-hazardous direct dischargers employing well-operated treatment systems. In the case of the proposed TSS limitations, EPA relied on data from two facilities that followed chemical precipitation and biological treatment with multimedia filtration. While the proposal did not specifically discuss filtration as a final treatment step, the Development Document for the proposal fully explained the treatment system, including multimedia filtration, in place at the two facilities used to develop the proposed TSS limitation.

EPA evaluated chemical precipitation as a treatment technology because of metals concentrations typically found in hazardous landfill leachate and the efficient metals removals achieved through chemical precipitation. EPA also evaluated biological treatment as an appropriate technology because of its ability to remove organic loads present in the leachate. The Agency also considered multimedia filtration to be an appropriate technology for consideration. In the first two options listed above, multimedia filters are effective in removing TSS that might remain after primary or secondary clarification. Finally, EPA considered a zero or alternative discharge option as a potential BPT requirement because a significant segment of the industry is currently not discharging wastewater to surface waters or to POTWs. The zero or alternative disposal option would require facilities to dispose of their wastewater in a manner that would not result in wastewater discharge to a surface water or a POTW.

EPA eliminated Option I from consideration because it did not control organic pollutants effectively. As was the case in the proposal, EPA also decided to eliminate Option III because, for the industry as a whole, zero or alternative discharge options are either not viable or the cost is wholly disproportionate to the pollutant reduction benefits and thus it is not ''practicable.'' Methods of achieving zero or alternative discharge currently in use by hazardous landfills are deep well injection, solidification, and contract hauling of wastewater to a Centralized Waste Treatment (CWT) facility or to a landfill wastewater treatment facility. Thirty seven facilities are estimated to inject landfill wastewater underground on-site; 103 facilities send their wastewater to a CWT or landfill treatment system; and one facility solidifies wastewater.

The commenters' submissions support EPA's decision to reject zero or alternative discharge as the technology basis for BPT (or BAT) limitations for hazardous landfills. While EPA supports the use of zero or alternative discharges particularly where it does not result in media transfer of pollutants, many of the available zero discharge options have identifiable shortcomings such as transfer of waste residuals to another media or the availability of an alternative disposal option only in certain geographic locations.

For example, one demonstrated alternative disposal option for large wastewater flows is underground injection. However, this is not considered a practically available option on a nationwide basis because it is not allowed in many geographic regions of the country where landfills may be located. These restrictions may preclude underground injection at a given landfill. In such circumstances, landfills would need to resort to contract hauling to a Centralized Waste Treatment (CWT) facility. Unless the CWT itself were a zero discharge facility, the ultimate result would be treatment and discharge to surface waters or a POTW following waste treatment that may be no more effective than that which could have been provided on-site. This might result in substantial transportation costs for the landfill and associated non-water quality, environmental impacts (e.g., truck emissions) resulting in no net reduction in the discharge of pollutants. EPA's survey demonstrated that only landfills with relatively low flows (under 500 gallons per day) currently contract haul their wastewater to a CWT. The costs of contract hauling are directly proportional to the volume of wastewater and distance over which it must be transported, generally making it excessively costly to send large wastewater flows to a CWT, particularly if it is not located nearby.

EPA evaluated the cost of requiring all hazardous landfills to achieve zero or alternative discharge status. For the purposes of costing, EPA assumed that a facility would have to contract haul wastewater off-site because it may be impossible to pursue other zero or alternative discharge options. EPA concluded that the cost of contract hauling off-site for high flow facilities was unreasonably high and disproportionate to the removals potentially achieved. In addition, EPA concluded that the wastewater shipped to a CWT will typically receive treatment equivalent to that promulgated today, and that zero/alternative discharge requirements would result in additional costs to discharge without greater removals for hazardous landfill wastewater.

Based on the characteristics of hazardous landfill leachate and on an evaluation of appropriate technology options, the Agency selected Option II (aerated equalization followed by chemical precipitation and biological treatment with secondary clarification followed by multimedia filtration) as BPT technology for the Hazardous subcategory. EPA's decision to base BPT limitations on Option II treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the treatment technologies in relation to the effluent reductions achieved.

Although EPA did not identify any existing hazardous landfill facilities that discharged directly to surface waters, EPA estimated the cost of treatment and pollutant removal for a medium-sized facility. EPA estimates that for a facility with a wastewater flow of 25,000 gallons per day, the selected technology option would result in the removal of over 200,000 pounds of pollutants at an annualized cost of $192,400. EPA has determined that the selected technology option costs are reasonable in light of the projected pollutant removals. Because EPA did not identify any existing hazardous landfill facilities that discharged directly to surface waters, EPA's compliance costs for BPT for this subcategory are zero.

As previously noted, EPA relied on data from both hazardous and non-hazardous facilities to develop the limitations for this subcategory. Because there are currently no hazardous landfills discharging directly, EPA used data from indirectly discharging facilities to develop the limitations.

EPA identified three Subtitle C landfills that discharge to POTWs. The wastewater flow from one of the three facilities was very small (less than 1,000 g.p.d.) and consisted of only gas collection condensate and required only minimal treatment (neutralization using ammonia) prior to discharge to the POTW. Consequently, EPA did not consider this facility as appropriate for

establishing BPT limitations. The two remaining facilities both had treatment systems in place that achieved very good pollutant reductions. The treatment at one facility consisted of equalization and chemical precipitation followed by activated sludge biological treatment with secondary clarification. The second facility utilized equalization followed by three ''sequencing batch reactor'' biological treatment units operated in parallel. The treatment systems in place at these indirect hazardous facilities achieved low effluent concentrations with average removals of 88 to 98 percent of organic toxic pollutants, and 55 to 80 percent of metal pollutants. Thus, EPA concluded that it should use both facilities in the development of the Hazardous subcategory BPT limitations for nonconventional and toxic pollutants.

However, for the ammonia, BOD_5, and TSS limitations, EPA concluded that establishing BPT limits based solely on two indirect discharging treatment systems was not appropriate because indirect dischargers often do not operate their treatment systems to achieve optimal control of these pollutants. In the case of BOD_5 and TSS, POTWs do not often establish local standards because the POTWs install treatment designed specifically to treat these pollutants. In the case of ammonia, some POTWs do not establish standards because they have installed advanced treatment for ammonia control. Other POTWs may establish ammonia standards based on local water quality concerns. EPA supplemented the Hazardous subcategory data for these three pollutants with data from non-hazardous landfill facilities. For BOD_5, EPA used data from both of the Hazardous subcategory BPT facilities and the Non-Hazardous subcategory BPT facilities to calculate the limitations. Because neither of the Hazardous subcategory BPT facilities used a multimedia filter (which is part of the selected BPT Option), EPA based the TSS limitation on the two Non-Hazardous subcategory BPT facilities that employed multimedia filtration.

In the case of ammonia, EPA concluded that it was not appropriate to establish limits using the performance of only indirect discharging facilities because only one of these facilities in the Hazardous subcategory demonstrated good ammonia control. Many POTWs with advanced or tertiary treatment units for nutrient control may not establish stringent local limits for ammonia. Therefore, basing ammonia limits only on indirect discharging landfills may not appropriately reflect the effluent discharge concentration of ammonia achieved by well-operated direct discharging landfills. Since EPA considered only one indirectly discharging hazardous facility to be a good performer for the treatment of ammonia, EPA chose to supplement the hazardous data for this facility with data from two non-hazardous BPT facilities, one of which was a direct discharger.

2. Best Conventional Pollutant Control Technology (BCT)

In today's rule, EPA is establishing BCT effluent limitations guidelines equivalent to the BPT guidelines for the conventional pollutants for both subcategories. (For an explanation of how EPA determines BCT, see the preamble to the proposed rule at 63 FR 6442.) In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than selected for BPT, and whether those technologies are cost-reasonable according to EPA's test. In each subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than selected for BPT that are also cost-reasonable, and accordingly EPA is promulgating BCT effluent limitations equal to the BPT effluent limitations guidelines.

3. Best Available Technology Economically Achievable (BAT)

EPA today is establishing BAT effluent limitations for both subcategories in the Landfills Category based on the same technologies selected for BPT. The BAT effluent limitations promulgated today would control identified priority and nonconventional pollutants discharged from facilities. EPA finds that the selected technology options are economically achievable. EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry.

a. Rationale for Setting BAT Equivalent to BPT for the Non-Hazardous Landfill Subcategory. EPA evaluated reverse osmosis technology as a potential option for establishing BAT effluent limits more stringent than BPT for the control of toxic pollutants. The Agency selected reverse osmosis for evaluation because of its effective control of a wide variety of toxic pollutants in addition to controlling conventional and nonconventional parameters.

EPA evaluated BAT treatment options as an increment to the baseline treatment technology used to develop BPT limits. Therefore, the BAT Option III consisted of BPT Option II (biological treatment followed by multimedia filtration) followed by a single stage reverse osmosis unit.

After an assessment of costs and pollutant reductions associated with reverse osmosis, EPA has concluded that it should not establish BAT limits based on more stringent treatment technology than the BPT technology. EPA concluded that a biological system followed by multimedia filtration would remove the majority of toxic pollutants, leaving the single-stage reverse osmosis to treat the very low levels of pollutants that remained. In the Agency's analysis, BPT removed 170,000 pounds of toxic pollutants per year whereas BAT Option III (BPT followed by single-stage reverse osmosis) removed 172,000 pounds of toxic pollutants per year. As stated in the proposal, EPA's economic assessment showed that BAT Option III had significantly higher annual compliance costs than the other options evaluated and resulted in six additional facilities experiencing moderate economic impacts. (63 FR 6451).

In addition, establishment of BAT Option III would not result in effluent limitations significantly more stringent than those established under BPT, which is currently achieving very low long-term average (LTA) effluent concentrations. Therefore, the Agency questioned whether the small additional removal of pounds of toxic pollutants achieved by BAT Option III justified the large incremental cost for the reverse osmosis treatment system. It should be noted that reverse osmosis was much more effective at removing the often high quantities of dissolved metals such as iron, manganese and aluminum. These pollutants, however, are added to the wastewater in treatment chemicals to promote more effective precipitation and are not regulated. For this reason, EPA does not include them in the calculation of pounds of toxic pollutants and does not take credit for their subsequent removal .

Several commenters on the proposal supported EPA's decision to reject reverse osmosis as the selected technology option. While EPA rejected reverse osmosis as the basis for BAT limitations because it was very expensive and achieved very little additional removal of pollutant, other technical factors also supported this decision. EPA agrees with the commenters that there may be additional site-specific costs associated with the operation of reverse osmosis systems at landfills that it could not directly factor into its cost analysis. EPA found that it was difficult to evaluate potential operating and concentrate

disposal problems and the associated potential increase in the cost of operating a reverse osmosis system at a landfill. The fact that reverse osmosis is a technology that concentrates rather than destroys pollutants is an important consideration. These concentrates still need to be treated and disposed, and, as noted by one commenter, some states may not allow them to be recycled back into the landfill. Further, recirculation may inhibit rather than stimulate anaerobic decomposition of the landfilled wastes. While the sludges generated by chemical precipitation and biological treatment require minimal treatment prior to disposal, reverse osmosis concentrates may require additional costly treatment steps prior to final disposal.

b. Rationale for Setting BAT Equivalent to BPT for the Hazardous Landfill Subcategory. As stated in the BPT analysis, EPA's survey of the hazardous landfills industry identified no in-scope respondents which were classified as direct dischargers. All of the hazardous landfills in the EPA survey were indirect or zero or alternative dischargers. Therefore, the Agency based BPT limitations on technology transfer and treatment systems in place for indirect dischargers in the Hazardous subcategory and on treatment systems in place for BPT facilities in the Non-Hazardous subcategory. In EPA's engineering assessment of possible BAT technologies for direct discharging hazardous facilities, EPA evaluated the same three potential technology options it had evaluated when it was developing BPT limitations for the Hazardous Landfill subcategory. EPA determined that it should establish BAT limits based on the same technology evaluated for BPT limits. The Agency finds that the selected technology is economically achievable. EPA has identified no other technologies that would represent BAT level of control for this industry.

As explained in the BPT analysis, EPA eliminated Option I (equalization, chemical precipitation, and multimedia filtration) from consideration because it did not control organic pollutants effectively. In addition, EPA concluded that zero or alternative discharge is not an available alternative treatment technology for this industry. As explained above, zero or alternative discharge is not broadly applicable to landfills or may result in the transfer of waste residuals to other media.

4. New Source Performance Standards (NSPS)

a. Introduction. As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA, in establishing NSPS, to consider the best demonstrated process changes, in-plant controls, operating methods, and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

b. Rationale for Setting NSPS Equivalent to BPT/BCT/BAT for Both Subcategories. Today, EPA is establishing New Source Performance Standards (NSPS) that would control the same conventional, priority, and nonconventional pollutants regulated by the BPT/BCT/BAT effluent limitations guidelines. The conventional treatment technologies used to control pollutants at existing facilities are fully applicable to new facilities. Furthermore, EPA has not identified any other technologies or combinations of technologies that are demonstrated for new sources that are different from those used to establish BPT/BCT/BAT for existing sources. In the proposed rule, EPA solicited comments and data on other technologies that may be appropriate for the treatment of landfill leachate from new sources. One commenter urged EPA to consider reverse osmosis as an appropriate technology for the treatment of leachate. While EPA acknowledges that reverse osmosis can treat landfill leachate to levels equivalent to and even lower than the BAT limitations promulgated today, EPA concluded that the reverse osmosis treatment system and the BAT treatment system achieved essentially the same removals because reverse osmosis did not remove significantly more pounds of toxic pollutants than the treatment option selected as BAT. Moreover, as previously explained, there may be potential operating and disposal problems associated with a reverse osmosis system. Therefore, EPA concluded that it should adopt NSPS limitations that are identical to those in each subcategory for BPT/BCT/BAT.

5. Pretreatment Standards For Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for pollutants that are not susceptible to treatment by POTWs or which would interfere with the operation of POTWs. After a thorough analysis of indirect discharging landfills in the EPA database, EPA has decided not to establish PSES for either subcategory in the Landfills Point Source Category. For the proposal, EPA proposed *not* to establish pretreatment standards for indirectly discharging landfills in the Non-Hazardous subcategory. However, for the Hazardous subcategory, EPA proposed effluent limitations and pretreatment standards for six pollutants. In response to its proposal, EPA received a number of comments supporting the decision not to propose pretreatment standards for Subtitle D landfills. In addition, a number of commenters suggested that EPA should also reconsider whether Subtitle C landfills require national categorical pretreatment standards. As a result of these comments, EPA took a second look at its data and determined that pretreatment standards were not necessary for the Landfills Point Source Category.

For both subcategories, EPA looked at a number of factors in deciding whether a pollutant was not susceptible to treatment at a POTW or would interfere with POTW operations—the predicate to establishment of pretreatment standards. First, EPA assessed the pollutant removals achieved at POTWs relative to those achieved by landfills using BAT treatment systems. Second, EPA estimated the quantity of pollutants likely to be discharged to receiving waters after POTW removals. Third, EPA studied whether any of the pollutants introduced to POTWs by landfills interfered with or were otherwise incompatible with POTW operations. EPA, in some cases, also looked at the costs and other economic impacts of pretreatment standards and the effluent reduction benefits in light of treatment systems currently in-place at POTWs. The result of EPA's evaluation showed that POTWs could adequately treat discharges of landfill pollutants. Therefore, EPA is not establishing pretreatment standards for either subcategory in this point source category.

As noted above, among the factors EPA considers before establishing pretreatment standards is whether the pollutants discharged by an industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. One of the tools traditionally used by EPA in evaluating whether pollutants pass through a POTW, is a comparison of the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. In most cases, EPA has concluded that a

pollutant passes through the POTW when the median percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the median percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant. For a full explanation of how EPA performs its removal analysis, see Chapter 7 of the Technical Development Document.

In developing the final guidelines, EPA has made a number of modifications to its calculations of pollutant removal used to compare POTW operations with BAT treatment. These changes are explained in greater detail in this preamble as well as the Technical Development Document and EPA responses to individual comments received on the proposal. For example, the primary source of POTW percent removal data used for removal comparisons is an EPA document, ''Fate of Priority Pollutants in Publicly Owned Treatment Works'' (EPA 440/1–82/303) commonly referred to as the ''50–POTW Study''. The 50–POTW Study presents data on 50 well-operated POTWs with secondary treatment in removing toxic pollutants. For its removal comparison for this guideline, EPA eliminated influent values that were close to the detection limit, thereby minimizing the possibility that low POTW removals might simply reflect low influent concentrations instead of being a true measure of treatment effectiveness.

After revising the database, EPA calculated POTW-specific percent removals for each pollutant based on its average influent and average effluent values. The POTW percent removal used for each pollutant for the comparison is the median value of all the POTW-specific percent removals for that pollutant. EPA then compared the median POTW percent removal to the median percent removal for the BAT option treatment technology in order to determine pass through.

a. Rationale for Not Promulgating PSES for the Non-Hazardous Landfill Subcategory. The Agency today is not establishing pretreatment standards for existing sources (PSES) for the Non-hazardous Landfill Subcategory. The Agency decided not to establish PSES for this subcategory after an assessment of the effect of landfill leachate on receiving POTWs and the cost of pretreatment standards.

EPA looked at three measures of effects on POTWs: biological inhibition levels, contamination of POTW biosolids and a comparison of BAT and POTW removals. For the proposed rule, following procedures outlined above, the removal comparison suggested that one pollutant, ammonia, would pass through in the Non-Hazardous subcategory. However, EPA concluded that ammonia was susceptible to treatment and did not interfere with POTW operations. Therefore, the Agency did not propose to establish national pretreatment standards for ammonia.

Following the proposal, EPA reviewed the data available in the proposed record for both the POTW percent removal calculations and the BAT percent removal calculations and made a number of adjustments. For the proposal, EPA calculated the BAT percent removals using data from well-operated biological treatment facilities in EPA's database. However, some of these facilities did not pass the editing criteria for selection as a BPT/BAT facility. For the revised removal comparison, EPA calculated percent removals using data from only those seven facilities that passed the BPT/BAT editing criteria. In addition, in the proposal, EPA inadvertently neglected to use selected BAT facilities in the calculation of percent removals for several pollutants even though the data for the facility passed the editing criteria.

The result of this revised comparison of removal for the Non-Hazardous subcategory suggested that BAT removal would be greater than POTW removal for four pollutants: ammonia, benzoic acid, p-cresol, and phenol. However, as explained below, EPA concluded that these pollutants do not pass through or interfere with POTW operations on a national basis and therefore has not established national categorical pretreatment regulations for these pollutants. Moreover, as discussed later in this section, EPA notes that adoption of PSES would result in the removal of only a small quantity of pollutants, approximately 14 toxic pound equivalents per facility per year. Such a reduction is low relative to that seen in other categorical pretreatment standards promulgated by EPA. (See 64 FR 45077).

(i.) Pretreatment Standards for Ammonia. EPA has decided not to establish ammonia pretreatment standards for several reasons. First, while EPA's removal comparison suggests that ammonia in landfill leachate is not as amenable to POTW treatment as to pretreatment, in reality, EPA has concluded that ammonia is susceptible to POTW treatment on a national basis. Further, landfill discharges will not result in POTW upsets or interfere with POTW operations. The record indicates that POTWs are not currently experiencing any difficulty in adequately treating ammonia discharges from Subtitle D landfills. No POTWs commenting on the proposal cited any persistent POTW upsets associated with landfill leachate discharges. Finally, EPA has determined that pretreatment standards for ammonia for landfill indirect dischargers would be extremely costly. In these circumstances, EPA has concluded that ammonia is susceptible to treatment by POTWs and national pretreatment standards are not required.

Ammonia Removals. In the case of ammonia, the median BAT percent removal for the landfills industry is 99 percent compared to the median POTW percent removal which is 39 percent. [4] This comparison suggests that ammonia is not susceptible to treatment at a POTW and passes through. However, as discussed below, most subtitle D landfills discharging to POTWs are discharging small quantities of leachate with an ammonia concentration comparable to that observed in raw sewage.

EPA's data show that over 75 percent of indirectly discharging landfills discharge fewer than 10 pounds of ammonia per day at a concentration similar to that observed in raw sewage. Because many POTWs are designed and operated to treat ammonia (and other pollutants) in raw sewage, a POTW will adequately control landfill discharges of ammonia so long as the ammonia loadings to a POTW did not significantly differ from that typically observed. In those circumstances, ammonia will not pass through such POTWs.

Moreover, some POTWs have installed additional treatment to control ammonia. The data on POTW removal used for EPA's comparison does not reflect this fact. POTWs that have installed additional ammonia treatment (or modified existing treatment) typically achieve removals in excess of 95 percent—much higher than the 39 percent removal observed for the POTWs in the comparison analysis. Thus, ammonia does not pass through POTWs with nitrification even in cases where significant loadings of ammonia are discharged to a POTW.

In these circumstances, EPA has concluded ammonia at levels discharged by Subtitle D landfills is generally susceptible to POTW treatment. Therefore, EPA concluded that ammonia limits are best established

[4] For the proposed rule, EPA calculated the POTW percent removal for ammonia to be 60 percent. However, upon applying the revised data editing procedures to the 50–POTW Study, EPA has now determined that ammonia POTW percent removal is 39 percent.

by local POTWs based on site specific conditions in accordance with the POTW's design treatment capacity and existing mass loadings.

Upset and Interference. EPA also assessed the ammonia concentrations and loads received by POTWs from Subtitle D leachate discharges to evaluate potential upsets or interference with POTW treatment systems. EPA concluded that national pretreatment standards were not required to prevent interference with POTW operations.

In terms of landfill leachate ammonia concentrations discharged to POTWs, only one of the Subtitle D landfill facilities in EPA's database is currently discharging (*i.e.* after treatment, if treatment is in place) wastewater to a POTW which contains more than 105 mg/L of ammonia. The remainder of the indirect discharging Subtitle D landfills discharged an average concentration of 37 mg/L of ammonia to POTWs, with one-half of the facilities discharging less than 32 mg/L. Typical ammonia concentrations in raw domestic sewage range from 12 to 50 mg/L (''Operation of Municipal Wastewater Treatment Plants: Manual of Practice, Volume II,'' Water Pollution Control Federation).

The one facility in EPA's database that was discharging more than 105 mg/L of ammonia to a POTW was discharging 1,018 mg/L of ammonia to a 114 MGD POTW which currently has ammonia control (nitrification) in place. EPA also received influent ammonia data from several POTWs that commented on the proposed rule. The average ammonia influent concentration to POTWs ranged from 14 mg/L to 35 mg/L with an average concentration of 17 mg/L. Therefore, with the exception of the one outlier, the average concentration of ammonia in leachate discharged to POTWs (37 mg/L) noted in EPA's data closely parallels POTW experience (35 mg/L). However, it should be noted that the upper ranges of leachate concentrations were higher than the upper ranges observed in domestic sewage. Nevertheless, in most instances, observed ammonia discharge levels to POTWs fall within a POTW's treatment capabilities. Thus, EPA determined that the vast majority of Subtitle D landfills are discharging ammonia to POTWs at levels comparable to that which POTWs in the ordinary course of operations receive and treat in raw domestic sewage.

No POTWs commenting on the proposal cited any specific incidents where POTW acceptance of landfill leachate containing high levels of ammonia caused persistent upsets at the POTW. The data are consistent with that supplied by commenters and further supported EPA's understanding prior to the proposal of no documented persistent problems at POTWs due to ammonia concentrations in landfill leachate.

EPA also analyzed the effects that ammonia concentrations found in landfill leachate can have on the biological treatment systems at POTWs. In this analysis, EPA compared the concentrations of ammonia found in leachate with the activated sludge biological minimum threshold toxicity value (or inhibition value). With respect to ammonia, the inhibition value for activated sludge systems is 480 mg/L (Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program, Volume 1. EPA, November 1987). The average raw wastewater concentration of ammonia found in Subtitle D landfills in EPA's database was 199 mg/L for direct, indirect and zero dischargers. In addition, all of the average and median ammonia concentration values observed in the data submitted to EPA in comments were below the activated sludge inhibition value. EPA has consequently determined that ammonia does not represent a threat to biological treatment systems that would require establishment of pretreatment standards.

Effect on Receiving Streams. Subsequent to the proposal, EPA evaluated total wastewater flows and loads of ammonia to receiving streams associated with non-hazardous landfill indirect dischargers (an estimated 756 facilities). EPA estimated that the non-hazardous landfill industry discharges 2.7 million pounds per year of ammonia to POTWs, which results in 1.6 million pounds per year being discharged to receiving streams, assuming that the POTWs have secondary treatment achieving 39 percent removal but do not have additional treatment for ammonia control. However, as mentioned above, EPA is aware that many POTWs have installed additional treatment specifically for the control of ammonia and typically achieve removals in excess of 95 percent. A review of EPA's 1996 Clean Water Needs Survey and its Permit Compliance System database indicates that approximately 20 percent of the POTWs in the U.S. employ some sort of ammonia control. Over 75 percent of the Subtitle D landfills in EPA's database discharge less than 10 pounds per day to the POTW (3,500 pounds/year), which results in discharging less than six pounds per day (2,100 pounds/year) to receiving streams, again assuming secondary treatment only and no additional POTW ammonia controls. In light of existing ammonia control in place at POTWs, actual discharges to receiving streams are likely to be even smaller.

Cost of Pretreatment Standards. EPA has evaluated the economic costs of ammonia pretreatment standards. EPA's economic assessment of these options demonstrated very high removal costs with low associated pollutant removals. Given the high cost, EPA concluded that it is not appropriate to establish national pretreatment standards to address the limited circumstances in which POTW removal might not match BAT removal performance.

EPA evaluated the costs of pretreatment standards in terms of the toxic pound equivalents. Pounds-equivalent is a term used to describe a pound of pollutant weighted by its toxicity relative to copper. These weights are known as toxic weighting factors. The Agency calculates pounds-equivalents by multiplying the pounds of a pollutant discharged from a landfill by the toxic weighting factor for that pollutant. The use of pounds-equivalent reflects the fact that some pollutants are more toxic than others.

The first treatment option that EPA evaluated for pretreatment of ammonia from non-hazardous landfills is biological treatment. EPA evaluated PSES Option I equivalent to BPT/BAT Option I, which was equalization plus biological treatment. (EPA did not evaluate a multimedia filter for PSES because the levels of TSS in landfill leachate will be adequately controlled by a POTW.) This option had a total annualized cost of $34.6 million (1998 dollars). Biological treatment removed 10,650 pound-equivalents annually, or an average of 14 pound equivalents per facility per year. This represents a cost of removal of $1,900/lb-equivalents (1981 dollars) and represents the cost of removing all of the pound-equivalents removed, not just ammonia. If EPA took credit only for the pound-equivalents of ammonia removed, the annual removal cost for this option is $7,100/lb-equivalents (1981 dollars). Moreover, these calculations are based on the assumption that POTWs will only remove 39 percent of the ammonia discharged to it. If POTWs remove more ammonia than that assumed, then the cost of each pound of pollutant removed by the industrial user raises. Given the installation of additional ammonia controls at many POTWs, actual ammonia removal by POTWs will be greater than assumed.

The second technology option EPA evaluated for the control of ammonia is ammonia stripping with appropriate air pollution controls. However, according

to EPA's survey of the landfills industry, only two percent of survey respondents use this technology for the treatment of landfill leachate. In addition, air or steam stripping is more commonly used for treatment of wastewater containing concentrations of ammonia that are several orders of magnitude greater than those typically found in landfill wastewater. Therefore, EPA concluded that biological treatment systems are more appropriate for the treatment of the ammonia concentrations found in landfill leachate. In addition, air stripping for ammonia removal generally requires warm climates, and therefore this may not be a viable treatment option for all landfills located in the United States. In these circumstances, effluent levels associated with air stripping may not be attainable in all cases and thus not broadly available in the landfill industry. In addition, the air stripping option for the treatment of ammonia has an estimated annualized cost of $15.1 million (1998 dollars, pre-tax costs). The cost-effectiveness for this option is also high, $4,400/lb-equivalents (1981 dollars).

As explained above, EPA concluded that the vast majority of POTWs experience no difficulty in treating the ammonia loads received from landfill indirect dischargers and that as a result there is generally no pass through of ammonia from landfill leachate on a national basis. Moreover, the cost of pretreatment is not warranted by the limited circumstances where pretreatment *would* result in reduced ammonia to surface water. But there are POTWs without additional controls for ammonia that may not be equipped to handle landfill leachate ammonia discharges. Consequently, in the proposal, EPA requested comments on requiring ammonia pretreatment standards for those landfills discharging to POTWs that do not have ammonia controls in place. Several commenters supported no pretreatment standard because of their conclusion that ammonia loads from landfills made up an insignificant amount of the total ammonia loads discharged to POTWs. Others favored pretreatment standards because of smaller POTWs that do not employ nutrient removal systems. EPA, however, is not convinced that national ammonia pretreatment standards are warranted even where landfills are discharging to POTWs without ammonia controls given the high cost of pretreatment and current ammonia concentrations in landfill leachate discharged to POTWs that are generally consistent with values observed in raw sewage. Special ammonia situations are best addressed by the local POTW based on site specific conditions in accordance with the POTW's design treatment capacity and existing mass loadings.

All of these factors discussed above confirm EPA's decision not to establish national ammonia pretreatment standards. EPA has concluded that landfills typically discharge wastewater to POTWs containing ammonia concentrations that can be adequately treated by POTWs. Further, in cases where ammonia loading rates are at levels which may be of concern or where ammonia discharges are a water quality concern, POTWs retain the ability to establish local limits on ammonia.

(ii.) Pretreatment Standards for Benzoic Acid— Benzoic Acid Pass-through Analysis. As stated above, for the proposal, benzoic acid was not one of the pollutants EPA determined would pass through. However, after the proposal, EPA reviewed the BAT facilities and the representative POTW facilities used for the removal comparison and determined that it had not used the appropriate editing rules. As a result of these revisions, the comparison showed that the median percent removal for benzoic acid at the landfills BAT facilities was 99 percent compared to the median POTW percent removal which was determined to be 81 percent. Because the 50–POTW database does not contain information on the percent removal of benzoic acid, EPA used the National Risk Management Research Laboratory database (formerly known as the Risk Reduction Engineering Laboratory (RREL) database) to estimate the percent removal. (For more information on EPA's use of the RREL database, see Chapter 7 of the Technical Development Document.)

Despite the difference in the BAT and POTW percent removals, further analysis of the data showed that both systems were achieving the same level of treatment of benzoic acid. That is, both the RREL database facilities representing POTWs and the landfills BAT facilities were treating benzoic acid down to non-detect levels (50 μg/L). Therefore, the smaller percent removal achieved by facilities in the RREL database (used to represent the POTW percent removal) is a function of lower influent concentrations at those facilities and is not necessarily indicative of inferior treatment at POTWs. EPA concluded that benzoic acid in these circumstances is susceptible to treatment at the POTW and does not pass through.

Benzoic acid loads discharged to POTWs. In addition, EPA also evaluated the total flows and loads of benzoic acid discharged from non-hazardous landfills to POTWs. EPA compared the current discharge loads to the loads that would be anticipated after the implementation of pretreatment standards. As was explained above, EPA evaluated Option I (biological treatment) as the appropriate treatment technology and has analyzed the costs and benefits of pretreatment standards for the Non-Hazardous subcategory for this option. According to EPA's estimates, non-hazardous landfills currently discharge approximately 4,700 pounds of benzoic acid to POTWs per year resulting in an annual discharge of 900 pounds to receiving streams. PSES Option I (biological treatment) would reduce this annual discharge to receiving streams to 400 pounds per year. The average non-hazardous facility discharges only 6.4 pounds of benzoic acid annually (less than 0.02 pounds per day), and the median discharge is only 1.9 pounds per year. Furthermore, benzoic acid has a toxic weighting factor of only 0.0003. Therefore, for the entire indirect discharging non-hazardous landfills population (approximately 756 facilities), Option I would only remove an additional 0.16 pound-equivalents per year.

As a result of the above analysis, EPA determined that national pretreatment standards for benzoic acid are not necessary because benzoic acid is susceptible to treatment by POTWs. POTWs and landfill BAT facilities both treat benzoic acid down to non-detect levels. In addition, EPA determined that the pounds of benzoic acid currently being discharged by landfills are compatible with POTW treatment and that pretreatment standards would result in little further reduction of benzoic acid.

(iii.) Pretreatment Standards for p-cresol—p-Cresol Pass-through Analysis. Like benzoic acid, p-cresol also did not pass-through POTWs according to EPA's pass-through analysis at proposal. However, the result of its revised removal comparison showed some difference in removal. The landfills median BAT percent removal for p-cresol is 99 percent, while the estimated median POTW percent removal is 68 percent. (Again, because the 50–POTW database does not contain percent removal data for p-cresol, EPA used the RREL database to determine POTW removal.)

p-Cresol concentrations and loads discharged to POTWs. EPA also analyzed the flows and loads of p-cresol being discharged from non-hazardous

landfills to POTWs. According to EPA's estimates, non-hazardous landfills currently discharge approximately 2,730 pounds of p-cresol to POTWs per year resulting in an annual discharge of 870 pounds to receiving streams. PSES Option I (biological treatment) would reduce this discharge to receiving streams to 130 pounds/year. Furthermore, p-cresol has a toxic weighting factor of only 0.0024. Therefore, the implementation of Option I results in an additional reduction of only 3.0 pound-equivalents per year across the entire Subtitle D indirect discharge population. On average, non-hazardous landfill facilities discharge only 3.4 pounds of p-cresol annually (or 0.01 pounds per day), and the median discharge load is only 0.7 pounds per year.

Based on the data shown above, EPA concluded that the implementation of pretreatment standards for p-cresol would result in only minimal reductions in the pounds of p-cresol discharged to surface waters. In addition, p-cresol is found in non-hazardous landfill leachate at concentrations which will not cause upsets at POTWs nor should POTWs have difficulty effectively treating such concentrations. The median raw wastewater concentration for p-cresol at municipal landfills is 75 µg/L. This concentration is well below the Universal Treatment Standard (UTS) of 770 µg/L established for F039 wastes (multi-source leachate) in 40 CFR 268.48.[5]

(iv.) Pretreatment Standards for Phenol. Although phenol appeared to pass through, EPA decided not to establish pretreatment standards for phenol based on the fact that phenol is highly biodegradable and is treated by POTWs to the same degree as the landfill direct dischargers. Furthermore, the Agency concluded that the differences in influent concentrations caused the apparent difference in removal performance between landfill direct dischargers and POTWs. As a result, the performance across the landfills direct dischargers showed higher removals than the performance at the POTWs.

In EPA's landfills database, raw wastewater concentrations of phenol at the BAT facilities in the Non-Hazardous subcategory were much higher than the influent concentrations at the POTWs used in the determination of the POTW percent removal. The average influent concentrations for phenol for the three non-hazardous BAT facilities used in the pass-through analysis ranged from 350 µg/L to 5,120 µg/L. All three of the facilities treated phenol down to the analytical minimum level (10 µg/L), corresponding to a median percent removal of 97.5 percent. For POTW performance, EPA used a total of eight POTWs in the analysis for POTW percent removal of phenol. The average influent concentration for phenol at these eight POTWs was 387 µg/L, and six of the eight effluent values were below the analytical minimum level and therefore assigned values of 10 µg/L. Thus, the average percent removal for the POTWs was 95.3 percent. In this case, EPA concluded that the differences in removals for POTWs (95.3 percent) and BAT facilities (97.5 percent) is an artifact of the differing influent concentrations and does not necessarily reflect a real difference in treatment performance. Therefore, EPA concluded that phenol is treated to essentially the same level by direct dischargers and POTWs and, therefore, does not pass through.

c. Technology Options Considered for PSES for Hazardous Landfill Subcategory. In the proposed rule, EPA proposed pretreatment standards for six pollutants that EPA determined to pass through in the Hazardous subcategory. However, after reviewing the comments received and re-evaluating the pollutant loads in the Hazardous subcategory, EPA has decided not to establish national pretreatment standards for Subtitle C landfills.

As previously explained, EPA establishes pretreatment standards for pollutants that are not susceptible to treatment at a POTW or for pollutants that may interfere with POTW operations. As explained at Part 1.b. of this section, for the Hazardous subcategory, EPA identified only three Subtitle C landfills, all of them indirect dischargers. EPA used data from two of these hazardous landfills to develop the BPT/BAT limitations for toxic pollutants because these landfills were using the treatment systems for their leachate that EPA determined was the BPT/BAT treatment technology.

EPA also performed an analysis for this subcategory in order to compare POTW removals with BAT treatment systems. As was the case for the Non-Hazardous subcategory, EPA revised the pass-through analysis data editing procedures after the proposal and as a result EPA's removal results have changed. The result of the revised comparison show BAT removals greater than POTW removals for the following eight pollutants: ammonia, alpha-terpineol, aniline, benzoic acid, naphthalene, p-cresol, phenol, and pyridine. For its removal comparison for ammonia, EPA compared the nation-wide median percentage of ammonia removed by well-operated POTWs to the percentage of ammonia removed by BAT treatment systems from both the Hazardous and Non-Hazardous subcategories. (For the reasons explained at Part 1.b of this section, in the case of ammonia, EPA supplemented the Hazardous subcategory data with data from non-hazardous landfill facilities.) For all other toxic pollutants, in determining whether a pollutant would pass through a POTW, the Agency compared the nation-wide median percentage of a pollutant removed by well-operated POTWs with secondary treatment to the percentage of a pollutant removed by BAT treatment systems from only the Hazardous subcategory. For the proposal, EPA proposed pretreatment standards that were equivalent to the BPT/BAT limitations for the pollutants that passed through. EPA has reconsidered its decision that it should promulgate national pretreatment standards for hazardous landfills. The reasons for this decision are explained in more detail below.

Two of the indirect discharging landfills have treatment technology in place that EPA considers to be BAT, and currently discharge very low concentrations of pollutants to their local POTWs. The third and only other indirectly discharging Subtitle C landfill for which EPA has data discharged less than 1,000 gal/day of landfill gas collection condensate to a POTW. In addition to the low wastewater flow at this landfill, the facility has relatively low raw wastewater pollutant concentrations and employs neutralization with ammonia followed by settling prior to discharge to the POTW.

Several commenters on the proposal questioned EPA's rationale for developing ammonia pretreatment standards for the Hazardous subcategory while not establishing ammonia pretreatment standards for the Non-Hazardous subcategory. EPA's database indicate that the median raw wastewater ammonia concentration for hazardous landfills is 268 mg/L as compared to the raw wastewater ammonia concentration for Subtitle D landfills which is 199 mg/L.[6] EPA has current information on

[5] EPA bases UTS on the Best Demonstrated Available Treatment Technology (BDAT) for each listed hazardous waste. BDAT represents the treatment technology that EPA concludes is the most effective for treating a particular waste that is also readily available to generators and treaters.

(iv.) Pretreatment Standards for Phenol.

[6] In the comments received on the proposal, some commenters referred to the Hazardous subcategory median ammonia raw wastewater concentration

ammonia concentration in wastewater discharges for two of the three Subtitle C landfills in EPA's database. One of the landfills employs biological treatment and discharges an average of 4.9 mg/L of ammonia to the POTW. The other landfill employs chemical precipitation prior to biological treatment and discharges ammonia at an average concentration of 156 mg/L. This discharge level presents no apparent problem to the receiving POTW. According to discussions with this facility and the POTW, the POTW has not set local pretreatment standards for ammonia for this landfill, and the POTW does not perform nitrification nor is there an ammonia limit in the POTW's NPDES permit. Since 1995, the POTW has seen the ammonia concentration at its headworks increase from 13 mg/L to 20 mg/L and has experienced some upsets at the POTW. However, the POTW explained that it was unsure whether the upsets are a result of the increased ammonia concentrations or due to some other constituent in the wastewater. In addition, the POTW is not sure if the landfill leachate discharge is contributing at all to the upsets. As was the case in the Non-hazardous subcategory, EPA concluded that national pretreatment standards for ammonia are not warranted by the small quantity of ammonia being discharged to POTWs from landfills in this subcategory and due to the site specific water quality and POTW nitrification issues associated with ammonia.

Although the removal comparison suggests that phenol may pass through, EPA decided not to establish pretreatment standards for it because it is highly biodegradable and is, in fact, treated by POTWs to the same degree as the landfill direct dischargers. The Agency concluded that any apparent difference in removals in the removal comparison is an artifact of differing influent concentrations rather than any difference in performance between landfill direct dischargers and POTWs.

In EPA's landfills database, raw wastewater concentrations of phenol at the two BAT facilities in the Hazardous subcategory were much higher than the influent concentrations at the POTWs used in the determination of the POTW percent removal. The average influent concentrations for phenol for the two hazardous BAT facilities used in the pass-through analysis ranged from 5,120 μg/L to 98,500 μg/L, and the average effluent concentrations ranged from 10 μg/L to 814 μg/L corresponding to an average percent removal of 99.8 percent. For POTW performance, EPA used a total of eight POTWs in the analysis for POTW percent removal of phenol. The average influent concentration for phenol at these eight POTWs was 387 μg/L, and six of the eight effluent values were below the analytical minimum level and therefore assigned values of 10 μg/L. Thus, the average percent removal for the POTWs was 95.3 percent, and therefore EPA determined that the pollutant passed through. In this case, EPA concluded that the pass-through determination is an artifact of the differing influent concentrations and does not necessarily reflect a real difference in removals. Therefore, EPA concluded that phenol is treated to essentially the same level by direct dischargers and POTWs and, therefore, does not pass through.

Further review of the comparison for alpha-terpineol, aniline, benzoic acid, naphthalene, and pyridine under the revised analysis showed that all of these pollutants were treated down to non-detect levels in both the landfill's BAT treatment option and in the RREL facilities representing POTWs. That is, both BAT facilities and POTWs achieve the same level of treatment for these pollutants, and the differences in removal once again were simply a function of smaller influent concentrations at facilities representing POTWs. (Alpha-terpineol and benzoic acid are compounds for which a high removal efficiency would be expected at a POTW due to their relatively high biodegradability.) Therefore, the Agency determined that, not only are the current pollutant loads not a problem for POTWs, but also all of these pollutants are present in concentrations that are treated down to non-detect levels in a well-operated POTW. Thus, given the small loadings and low concentrations of these pollutants, EPA concluded that these five pollutants are susceptible to treatment at the POTW and do not pass through.

Furthermore, EPA has concluded that while the removal comparison suggests that two pollutants, naphthalene and aniline, may not be susceptible to POTW treatment, in fact, they will receive equivalent treatment. First, the median untreated wastewater concentration observed in EPA's data collection effort for these pollutants is less than the Universal Treatment Standards (UTS) EPA has developed for these pollutants in F039 wastes (multi-source leachate) in 40 CFR 268.48. The UTS for naphthalene is 0.059 mg/L which is slightly greater than the median concentration found in hazardous landfills (0.049 mg/L). The UTS standard for aniline is 0.81 mg/L while the median concentration in hazardous landfills is 0.237 mg/L. Second, aniline and naphthalene (as well as p-cresol and pyridine) will be removed from wastewater through attachment to the biosolids in the POTW's biological treatment system and then undergo subsequent biodegradation while entrained in the biosolids.

In addition, as noted above, the revised comparison shows a lower POTW removal for p-cresol than that achieved by BAT treatment. However, as was the case in the Non-Hazardous subcategory, EPA has concluded that the concentrations of p-cresol and the associated loadings discharged to POTWs from landfills in the Hazardous subcategory would be insignificant compared to the total loads received at the POTW. The median Subtitle C raw wastewater concentration for p-cresol is 144 μg/L (this includes only Subtitle C landfills and not the CERCLA data included in the median on page 6–44 of the Proposed Landfills Development Document) which is less than the UTS developed for p-cresol in F039 wastes which is 770 μg/L (40 CFR 268.48).

Therefore, based on the small quantity of pollutants involved and low pollutant concentrations discharged from landfills in the Hazardous subcategory, EPA concluded that national pretreatment standards for landfills in the Hazardous subcategory are unnecessary. In addition, EPA concluded that local limits are adequately controlling wastewater discharges from Subtitle C landfills.

6. Pretreatment Standards for New Sources (PSNS)

a. Introduction. Section 307 of the Act requires EPA to promulgate both pretreatment standards for new sources (PSNS) and new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies including: process changes, in-facility controls, and end-of-pipe treatment technologies.

b. Rationale for Setting PSNS Equivalent to PSES for Both Subcategories. In today's rule, EPA has

referred to in Table 6–8 on page 6–44 of the Proposed Landfills Development Document (EPA–821–R–97–022). This table lists the median ammonia raw wastewater concentration of 8.6 mg/L. However, this median concentration included numerous CERCLA facilities with discharges that consisted primarily of ground water. After proposal, EPA recalculated the median ammonia raw wastewater concentration for the Hazardous subcategory using only data from Subtitle C landfills in EPA's database. This results in a median raw wastewater ammonia concentration of 268 mg/L.

decided not to establish pretreatment standards for new sources for both subcategories for many of the same reasons that EPA did not establish PSES limits. As stated in the PSES discussions above, EPA concluded that the typical concentrations of pollutants in landfill leachate are not at levels that will cause problems for POTWs. In addition, EPA determined that the relatively small wastewater flows from landfills coupled with the concentrations of pollutants typically found results in a small pollutant loading rate discharged to POTWs from landfills. Finally, in site-specific cases where a particular pollutant may be found at concentrations that are of concern to the POTW, EPA concluded that local pretreatment standards are the most appropriate means for controlling such discharges.

F. Development of Effluent Limitations

EPA based the final effluent limitations in today's notice on widely-recognized statistical procedures for calculating long-term averages and variability factors. The following presents a summary of the statistical methodology used in the calculation of effluent limitations.

EPA bases effluent limitations for each subcategory on a combination of long-term average effluent values and variability factors that account for variation in day-to-day treatment performance within a treatment plant. The long-term averages are average effluent concentrations that have been achieved by well-operated treatment systems using the processes described in the following section (Treatment Systems Selected for Basis of Regulation). The variability factors are the results of a calculation of the ratio of a high effluent value that would be expected to occur only rarely relative to long-term average effluent values. The purpose of the variability factor is to allow for normal variation in effluent concentrations. A facility that designs and operates its treatment system to achieve a long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

EPA developed the variability factors and long-term averages from a data base composed of individual measurements on treated effluent. The Agency uses a combination of EPA sampling data and industry supplied data. While EPA sampling data reflect the performance of a system over a five day period, industry supplied data (collected through the Detailed Monitoring Questionnaire) reflect up to three years worth of monitoring data. EPA used a combination of EPA and industry supplied data whenever possible in order to better account for the variability of leachate over time. For further information on the calculation of effluent limitations, see Chapter 11 of the Technical Development Document.

G. Treatment Systems Selected for Basis of Regulation

1. Non-Hazardous Subcategory BPT Facility Selection

There were 46 in-scope landfill facilities in the EPA database that employed various forms of biological treatment considered for BPT/BAT for the Non-Hazardous subcategory. EPA evaluated these facilities selected as potential BPT/BAT candidates to determine the performance across the various types of biological treatment systems. In order to determine the best performers for biological treatment EPA established a number of criteria. The first criterion used in the selection of the best facilities was effective treatment of BOD_5. Under this criterion, there were several reasons why a facility might be eliminated from the selection of BPT/BAT facilities. First, EPA required that both influent and effluent BOD_5 data be available so that the Agency could evaluate the effectiveness of the biological treatment system at the facility. In addition, EPA eliminated those facilities whose BOD_5 influent data were less than 100 mg/L because EPA did not consider the wastewater at these facilities to be representative of the landfills population as a whole. Because EPA based BPT/BAT limitations on the effectiveness of biological treatment, the Agency eliminated facilities that used additional forms of treatment (other than biological treatment) for BOD_5 removal. The final requirement for BPT/BAT selection in the Non-Hazardous landfill subcategory was that the biological treatment system at the facility had to achieve a BOD_5 effluent concentration less than 50 mg/L. EPA determined that facilities not able to maintain an effluent concentration below 50 mg/L were not operating their biological systems effectively.

After applying the criteria above, EPA identified seven facilities that met all of the BPT/BAT criteria. These seven facilities employed various types of biological treatment systems including activated sludge, a sequencing batch reactor, aerobic and anaerobic biological towers or fixed film, and aerated ponds or lagoons. Most of the facilities employed equalization tanks in addition to the biological treatment while several facilities also employed chemical precipitation and neutralization in their treatment systems. Clarification or sedimentation stages followed the biological treatment systems. EPA used data from all seven facilities employing well-operated biological treatment systems to calculate the effluent limitations for BOD_5. (For those BPT facilities that employed both chemical precipitation as well as biological treatment, EPA determined that the biological treatment systems, and not the chemical precipitation systems, were removing the BOD_5 from the landfill wastewater. Therefore, EPA used these facilities for the calculation of BOD_5 limitations.) The average influent BOD_5 concentrations to these seven treatment systems ranged from 150 mg/L to 7,600 mg/L, and as mentioned above, all of the average effluent concentrations for these seven facilities were below 50 mg/L.

EPA used the data from the seven facilities identified as having good biological treatment systems to calculate the limits for additional pollutant parameters, including alpha terpineol, ammonia, benzoic acid, p-cresol, phenol, and zinc. Because one facility employed air stripping, EPA did not use its data for determining the limit for ammonia. In addition, EPA did not use facilities that operated chemical precipitation systems in addition to biological treatment for the calculation of the zinc limitation. Many of the facilities selected as BPT/BAT did not provide data for all the pollutants identified for regulation by EPA. In these cases, EPA based the effluent limitations on the BPT/BAT facilities for which data were available.

While the BOD_5 edits discussed above ensure good biological treatment and a basic level of TSS removal, treatment facilities meeting this level may not necessarily be operated for optimal control of TSS. To ensure that the effluent limitation developed for TSS reflects proper control, EPA established additional editing criteria for TSS. The primary factor in addition to achieving the BOD_5 criteria cited above was that the facility had to employ technology sufficient to ensure adequate control of TSS, that is, a sand or multimedia filtration system. The Agency eliminated facilities that used additional forms of treatment (other than a sand or multimedia filter) for TSS removal. The second factor EPA considered was whether the treatment system achieved an effluent TSS concentration less than or equal to 100 mg/L. EPA selected treatment facilities meeting these criteria as the average best existing performers for TSS. Two of the seven

BPT/BAT facilities employed a sand or multimedia filtration system and achieved an effluent TSS concentration far less than 100 mg/L. EPA used the TSS effluent data from these two facilities to calculate the TSS limitation for the Non-Hazardous subcategory.

2. Hazardous Subcategory BPT/BAT Facility Selection

As previously noted, EPA's statistical analysis of the facility identification and survey data suggests that there are no Subtitle C landfill facilities that discharge directly to navigable water and six that discharge to POTWs. However, EPA has specifically identified only three Subtitle C landfills that discharge to POTWs. EPA is transferring data from these facilities to establish BPT/BAT limitations. The wastewater flow from one of the three facilities was very small (less than 1,000 gallons per day) and consisted of only gas collection condensate and required only minimal treatment (neutralization using ammonia) prior to discharge to the POTW. Consequently, EPA did not consider this facility as appropriate for establishing BPT/BAT limitations. The two remaining facilities both had treatment systems in place that achieved very good pollutant reductions. The treatment at one facility consisted of equalization and chemical precipitation followed by activated sludge biological treatment. The second facility utilized equalization followed by three sequencing batch reactor biological treatment units operated in parallel. The treatment systems in place at these indirect hazardous facilities achieved low effluent concentrations with average removals of 88 to 98 percent of organic toxic pollutants, and 55 to 80 percent of metal pollutants. Thus, EPA concluded that it should use both facilities in the development of the Hazardous subcategory BPT/BAT limitations for nonconventional and toxic pollutants.

However, for the ammonia, BOD_5, and TSS limitations, EPA concluded that establishing BPT/BAT limits based solely on two indirect discharging treatment systems was not appropriate because indirect dischargers often do not operate their treatment systems to achieve optimal control of these pollutants. In the case of BOD_5 and TSS, POTWs do not establish local standards because the POTWs install treatment designed specifically to treat these pollutants. In the case of ammonia, some POTWs do not establish standards because they have installed advanced treatment for ammonia control. Other POTWs may establish ammonia standards based on local water quality concerns. EPA supplemented the Hazardous subcategory data for these three pollutants with data from non-hazardous landfill facilities. For BOD_5, EPA used data from both of the Hazardous subcategory BPT/BAT facilities and the Non-Hazardous subcategory BPT/BAT facilities to calculate the limitations. Because neither of the Hazardous subcategory BPT/BAT facilities used a multimedia filter, EPA based the TSS limitation on the two Non-Hazardous subcategory BPT/BAT facilities that employed multimedia filtration.

In the case of ammonia, EPA concluded that it was not appropriate to establish limits using the performance of only indirect discharging facilities because only one of these facilities in the Hazardous subcategory demonstrated good ammonia control. Many POTWs with advanced or tertiary treatment units for nutrient control may not establish stringent local limits for ammonia. Therefore, basing ammonia limits only on indirect discharging landfills may not appropriately reflect the effluent discharge concentration of ammonia achieved by well-operated direct discharging landfills. Since only one indirect discharging hazardous BPT/BAT facility achieved BPT/BAT ammonia removals, EPA chose to supplement the hazardous data with data from two non-hazardous BPT/BAT facilities, one of which was a direct discharger.

IV. Assessment of Costs and Impacts

A. Methodology for Estimating Costs and Pollutant Reductions Achieved by Treatment Technologies

The methodology EPA used for the final rule for estimating costs and pollutant reductions achieved by the various treatment technologies is the same as the methodology used by EPA for the proposal. However, there are differences in the estimated costs and pollutant reductions from the proposed rule. These differences are a result of several revisions EPA made when reviewing the costs and loads reductions after proposal. These changes are explained in detail in the Technical Development Document at Chapter 9.

The Agency calculated pollutant reductions for each of the questionnaire recipients that would potentially be subject to this rule and then modeled the national population by using statistically calculated survey weights. EPA estimated pollutant reductions by taking the difference in the current performance of the landfill industry and the expected performance after installation of the treatment technology. The Agency estimated pollutant reductions for each pollutant of interest at each questionnaire facility. EPA determined the current performance discharge concentrations from data supplied by the facility, or in cases where the facility did not supply current wastewater discharge data for a particular pollutant, the Agency based the current discharge concentration on data supplied from similar treatment systems at similar landfills. EPA determined the discharge concentrations expected to be achieved for a particular technology option from EPA sampling data or from industry supplied data at facilities selected as the best performers.

B. Costs of Compliance

The Agency has estimated the cost for landfill facilities to achieve the effluent limitations promulgated today. Table IV.B–1 summarizes the estimated costs and the Technical Development Document discusses them in more detail. All of the cost estimates in this section are expressed in terms of 1998 dollars.

The only costs associated with this final rule are for direct discharging landfills in the Non-Hazardous subcategory. EPA did not identify any commercial hazardous landfills in the United States that discharged directly to surface waters, and thus, the Agency did not estimate any costs of compliance for direct dischargers from hazardous landfills. In addition, there are no costs associated with PSES for either subcategory because the Agency is not establishing PSES for the Landfills Point Source Category.

TABLE IV. B–1.—CAPITAL AND ANNUAL COSTS OF BPT

[In millions of 1998 dollars]

Subcategory	Number of facilities	Capital costs	Annual O&M costs
Non-Hazardous Direct Dischargers (BPT)	143	18.87	6.50
Hazardous Direct Dischargers (BPT)	0	0	0

C. Pollutant Reductions

The Agency estimated pollutant reductions for landfill facilities achieving each of the effluent limitations promulgated today. Table IV.C–1 summarizes the estimated reductions and the document ''Environmental Assessment of Final Effluent Limitations and Standards for the Landfills Category'' discusses them in more detail.

All of the pollutant reductions realized by this regulation are a result of the effluent limitations promulgated for direct dischargers in the Non-Hazardous subcategory. EPA did not identify any commercial hazardous landfills in the United States that discharged directly to surface waters, and thus, the Agency did not evaluate pollutant reductions for direct dischargers from hazardous landfills.

Furthermore, there are no pollutant reductions associated with PSES for either subcategory because the Agency is not establishing PSES limitations for the Landfills Point Source Category.

TABLE IV.C–1.—POLLUTANT REDUCTIONS ACHIEVED BY IMPLEMENTING BPT

Subbcategory	Number of facilities	Conventional pollutant removals (pounds)	Toxic pollutant removals (pounds)
Non-Hazardous Direct Dischargers (BPT)	143	600,000	323,150
Hazardous Direct Dischargers (BPT)	0	0	0

V. Economic Analysis

A. Introduction and Overview

This section summarizes EPA's analysis of the economic impacts of the final regulation. EPA describes the economic impact assessment in detail in the ''Economic Analysis for the Final Effluent Limitations Guidelines and Standards for the Landfills Category'' (hereafter ''EA''). The EA estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts) and financial impacts short of closure (moderate impacts) for privately-owned landfill facilities. For publicly-owned landfill facilities, the report estimates financial impacts short of closure. The report also includes an analysis of the effects of the regulation on new landfill facilities and an assessment of the impacts on small businesses and other small entities.

EPA estimated the economic impacts of final regulatory options in each subcategory for BPT and NSPS. The technical evaluation and description of each option and the rationale for selecting the final option is discussed in Section [III] of today's notice. EPA has based its BPT/BCT/BAT limitations for the Non-Hazardous subcategory on technology Option II, which EPA estimates will have a total annualized cost of $ 7.64 million (1998$). (For privately-owned facilities, EPA evaluated costs in terms of after-tax costs.) Table V. A–1 summarizes the costs associated with the Option II.

TABLE V. A–1.—TOTAL COSTS OF SELECTED REGULATORY OPTION

[In millions of 1998 dollars]

Selected option for the non-hazardous landfill subcategory	Total capital costs	Total O & M costs	Post-tax total annualized costs
Option II	18.87	6.50	7.64

B. Summary of Economic Impacts

1. Cost Reasonableness and Economic Impacts of BPT

As discussed above in Section [II.A], in establishing BPT limitations, EPA considers the cost of the limitations in relation to the effluent reduction benefits achieved. EPA compares these costs and benefits by first calculating pre-tax total annualized costs and total removals of TSS and BOD_5 in pounds. EPA then compares the ratio of the costs to the removals for an option to the range of ratios in previous regulations to gauge the option's relative cost. Table V.B–1 presents the results of the cost and removal comparison. In the Non-Hazardous subcategory, Option II has a ratio of $ 14 per pound. Option II is within the historical bounds of BPT cost comparisons.

TABLE V. B–1.—BPT COST REASONABLENESS ANALYSIS

Selected option for the non-hazardous landfill subcategory	Pre-tax total annualized costs (million 1998$)	Removals (lbs)	Average cost reasonableness (1998 $/lb)
II	8.57	598,579	14

EPA is promulgating BPT limitations based on Option II for both privately- and publicly-owned facilities. The impact analysis for Option II projects two facility closures as a result of compliance. The EA projects no additional economic impacts beyond these two severe impacts. The direct job losses associated with the projected closures are 20 Full Time Equivalent (FTE) positions. Table V.B–2 summarizes the economic impacts for BPT.

TABLE V. B–2.—ECONOMIC IMPACTS OF BPT

Selected option for the non-hazardous landfill subcategory	Post-tax total annualized costs (mil 1998$)	Severe impacts	Moderate impacts	Direct employment losses (FTEs)
Option II	7.64	2	0	20

2. Economic Analysis of Final NSPS limitations

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT for the Non-Hazardous and Hazardous subcategories. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. EPA has determined that BPT/BCT/BAT limitations are economically achievable and, therefore, NSPS limitations will not present a barrier to entry for new facilities.

3. Firm Level Impacts

Firms differ from facilities in that firms are business entities or companies, which may operate at several physical locations. Facilities are individual establishments defined by their physical location, whether or not they constitute an independent business entity on their own. Some of the surveyed facilities are single-facility firms. In these cases, the firm-level impact depends only on the facility-level impact. In other cases, though, facilities are owned by multi-facility firms, so that the impact on the parent firm depends not only on that facility, but also on the impacts on and characteristics of other facilities owned by the same firm.

In this analysis, the test for significant adverse impacts on firms is whether firm-level compliance costs exceed five percent of firm revenues. Using this criterion, EPA finds no significant adverse impacts on affected firms and therefore determines that the effluent guideline will not impose unreasonable economic burdens on firms that own in-scope landfills.

4. Community Impacts

EPA assesses community impacts by estimating the expected change in employment in communities with landfills that are affected by the final regulation. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

EPA projects that the final regulation will result in two post-compliance closures, with the direct loss of 20 Full-Time Equivalent (FTE) positions. EPA estimates secondary employment impacts based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries.

The EA projects an estimated community impact of between 49 and 89 FTE losses as the result of the final rule. The direct and secondary job losses are not expected to be significant in terms of employment impacts to affected counties. EPA estimates that the regulation will result in employment gains of an additional 79 FTEs as a result of the operation of control equipment associated with treatment systems at landfill facilities.

5. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the effluent limitations guidelines. International trade in landfill services for the disposal of hazardous and nonhazardous wastes is virtually nonexistent.

VI. Water Quality Analysis and Environmental Benefits

A. Introduction

EPA evaluated the environmental benefits of controlling priority and nonconventional pollutant discharges to surface waters and publicly-owned treatment works (POTWs). Pollutant discharges into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and may adversely impact human health through the consumption of contaminated fish and water. Furthermore, pollutant discharges to a POTW may interfere with POTW operations by inhibiting biological treatment or by contaminating POTW biosolids.

Many pollutants commonly found in landfill wastewater have one or more toxic effects (*e.g.,* the pollutant may be a human health carcinogen or toxic to either some human system or to aquatic life). In addition, several of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency's analysis focused on the effects of toxic pollutants but did not evaluate the effects of two conventional

pollutants and five nonconventional pollutants. The pollutants not assessed included total suspended solids (TSS), five-day biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), total dissolved solids (TDS), total organic carbon (TOC), hexane extractable material, and total phenolic compounds. Although the Agency is not able to monetize the benefits associated with reductions of non-toxic parameters, discharges of these parameters may have adverse effects on human health and the environment. For example, suspended particulate matter may degrade habitat by reducing light penetration and thus primary productivity and can alter benthic spawning grounds and feeding habitats by accumulation in streambeds. High COD and BOD_5 discharges may deplete oxygen levels, which can result in mortality or other adverse effects on fish.

B. Methodology Used for Estimating Water Quality Impacts and Benefits

A report prepared for this rule, ''Environmental Assessment of the Final Effluent Guidelines for the Landfill Category,'' presents the Agency's analyses of these environmental and human health risk concerns and of the water quality-related benefits resulting from the final effluent guidelines. This assessment both qualitatively and quantitatively evaluates the potential: (1) Ecological benefits; (2) human health benefits; and (3) economic productivity benefits of controlling discharges from direct discharging non-hazardous landfills based on site-specific analyses of current conditions and the conditions that would be achieved by compliance with the limitations being established today. EPA estimates in-stream pollutant concentrations from direct discharges using stream dilution modeling, and from these models, EPA estimates the potential impacts and benefits of the final rule.

EPA projects ecological benefits by comparing the steady-state in-stream pollutant concentrations, predicted after complete immediate mixing with no loss from the system, to EPA published water quality criteria guidance. Or, for those chemicals for which EPA has not published water quality criteria, EPA compares the steady-state in-stream pollutant concentrations to documented toxic effect levels (*i.e.,* lowest reported or estimated toxic concentration). In performing these analyses, EPA used guidance documents published by EPA that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value. EPA used the findings from the analysis of reduced occurrence of pollutant concentrations in excess of both aquatic life and human health criteria or toxic effect levels to assess improvements in recreational fishing habitats and, in turn, to estimate, if applicable, a monetary value for enhanced recreational fishing opportunities. EPA expects such benefits to manifest as increases in the value of the fishing experience per day fished or the number of days anglers subsequently choose to fish the cleaner waterways. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life, such as increased assimilation capacity of the receiving stream, improvements in taste and odor, or improvements to other recreational activities such as swimming and wildlife observation.

EPA projects human health benefits by: (1) comparing estimated in-stream concentrations to health-based water quality toxic effect levels or EPA published water quality criteria; and (2) estimating the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish or drinking water. EPA estimates upper-bound individual cancer risks, population risks, and non-cancer hazards (systemic) using modeled in-stream pollutant concentrations and standard EPA assumptions regarding ingestion of fish and drinking water. The Agency then used the modeled pollutant concentrations in fish and drinking water to estimate cancer risk and non-cancer hazards (systemic) among the general population, sport anglers and their families, and subsistence anglers and their families.

Due to the hydrophobic nature of one chlorinated dibenzo-p-dioxin (CDD) congener and one chlorinated dibenzofuran (CDF) congener being evaluated, EPA projected human health benefits for these pollutants by using the Office of Research and Development's Dioxin Reassessment Evaluation (DRE) model to estimate the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish. The DRE model estimates fish tissue concentrations of the CDD/CDF congeners by calculating the equilibrium between the pollutants in fish tissue and those adsorbed to the organic fraction of sediments suspended in the water column. EPA did not establish effluent limitations for the dioxins and furans that it detected at hazardous and non-hazardous landfills. EPA discusses the reasons for not establishing limitations for these congeners in the preamble to the proposed rule (63 FR 6438–6439) and in Chapter 6 of the Final Technical Development Document.

Of these health benefit measures, the Agency is able to monetize only the reduction in carcinogenic risk using estimated willingness-to-pay values for avoiding premature mortality. The values used in this analysis are based on a range of values from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life. In 1998 dollars, these values range from $2.5 to $13.1 million per statistical life saved.

EPA evaluated the potential aquatic life and human health impacts of direct wastewater discharges on receiving stream water quality at current levels of treatment and at final BAT treatment levels. EPA performed this analysis for a representative sample set of 37 direct non-hazardous landfills discharging 26 pollutants to 35 receiving streams. EPA extrapolated the results to 143 non-hazardous landfills discharging 26 pollutants to 139 receiving streams. EPA based this extrapolation on the same statistical methodology used for estimated costs, loads, and economic impacts.

C. Estimated National Water Quality Impacts and Results

The Agency estimates that the final regulation will reduce loadings of priority and nonconventional pollutants into receiving streams by 39 percent. The model also indicates that excursions of acute aquatic life criteria or toxic effect levels due to one pollutant in two receiving streams will be eliminated at BAT discharge levels. EPA estimates that the final regulation will reduce excursions of chronic aquatic life criteria or toxic effect levels due to the discharge of ammonia in two receiving streams. EPA projects that a total of 36 excursions in 34 receiving streams at current conditions would be reduced to 34 excursions in 34 streams. Since the final rule would not reduce the estimated number of stream reaches with excursions, EPA estimates there would be no increase in value of recreational fishing to anglers based on the baseline value of the fishery and the estimated incremental benefit values associated with freeing the fishery from contaminants.

EPA modeled cancer cases and systemic health effects resulting from the ingestion of fish and drinking water contaminated by non-hazardous landfill

wastewater. EPA estimates that current wastewater discharges from landfills result in far less than one (0.003) annual cancer case per year for all populations evaluated. Final treatment options would reduce this value to 0.002 annual cancer cases per year, which would result in negligible monetized benefits ($2,100 to $11,000 per year). EPA projects systemic health effects from one pollutant (disulfoton) in two receiving streams at both current and final BAT discharge levels affecting a total population of 643 subsistence anglers and their families.

EPA's survey of hazardous landfills in the United States indicated that there were no in-scope respondents which were classified as direct dischargers. Therefore, the Agency did not evaluate potential aquatic life and human health impacts of direct wastewater discharges from hazardous landfills.

VII. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

The primary source of air pollution from landfills is due to the microbial breakdown of organic wastes from within the landfill. Landfills are known to be major sources of greenhouse gas emissions such as methane and carbon dioxide. These emissions are now regulated under the Clean Air Act as a result of the ''Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' promulgated by EPA on March 12, 1996. (61 FR 9905). Many municipal solid waste landfills are required to collect and combust the gases generated in the landfill. Wastewater collected from within the landfill contains organic compounds which include volatile organic compounds (VOC) and hazardous air pollutants (HAP). This wastewater must be collected, treated and stored in units which are often open to the atmosphere and may result in the volatilization of certain compounds. The regulations promulgated today are based on the performance of an aerated biological system. Wastewater aeration may increase the volatilization of certain organic compounds, a potential environmental concern. However, indications are that the potential increase in air emissions due to this regulation will be minimal. VOCs in hazardous waste landfill leachate are being steadily minimized due to the RCRA land disposal restriction rules, which typically require aggressive destructive treatment of organics in hazardous wastes before the waste can be landfilled (see 40 CFR 268.40 and 268.48).[7] VOC levels in historic landfill leachate (from both hazardous and non-hazardous waste landfills dating from the 1930s to the mid-1990s) are also at levels which are low enough as not to call into question EPA's determination to base these rules on the performance of aerated biological systems. Tables 6–9, 6–10, and 6–13 in Technical Development Document show the concentrations of VOCs found in landfill wastewater.

Furthermore, EPA's Office of Air and Radiation is currently evaluating the air emissions from wastewater generated at municipal solid waste landfills, and intends to take today's rule into account in determining whether further controls under section 112 of the Clean Air Act (which requires technology-based standards for hazardous air pollutants emitted by major sources of emissions of those pollutants) are justified. (Preliminary indications are that hazardous air pollutant emissions from aeration would be a minor fraction of those from other landfill emission sources such as landfill gas emissions.)

In addition, EPA is addressing emissions of VOCs from industrial wastewater through a Control Techniques Guideline (CTG) under Section 110 of the Clean Air Act. In September, 1992, EPA published a draft document entitled ''Control of Volatile Organic Compound Emissions from Industrial Wastewater'' (EPA–453/0–93–056). This document addresses various industries, including the hazardous waste treatment, storage, and disposal industry, and outlines emissions expected from their wastewater treatment systems and methods for controlling them.

B. Solid Waste Generation

Solid waste will be generated due to a number of the treatment technologies selected as BPT/BAT for this regulation. These wastes include sludge from biological treatment systems and chemical precipitation systems. Solids from treatment processes are typically dewatered and disposed in the on-site landfill. Therefore, the increased amount of sludge created due to this regulation will be negligible in comparison with the daily volumes of waste processed and disposed of in a typical landfill.

C. Energy Requirements

EPA estimates that the attainment of these standards will increase energy consumption by a very small increment over present industry use. The selected treatment technologies are not energy-intensive, and the projected increase in energy consumption is primarily due to the incorporation of components such as power pumps, mixers, blowers, power lighting and controls. The costs associated with these energy costs are included in EPA's estimated operating costs for compliance with the final rule.

VIII. Regulatory Implementation

The purpose of this section is to provide assistance and direction to permit writers to aid in their implementation of this regulation. This section also discusses the relationship of upset and bypass provisions, variances and modifications, and analytical methods to the final limitations.

A. Implementation of Limitations and Standards

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the landfills industry must include the effluent limitations for the appropriate subcategory. Permit writers should be aware that EPA has proposed revisions to 40 CFR Part 122 and is currently addressing public comments on its proposal. One of several aspects of the proposal which could be particularly relevant to the development of NPDES permits for the Landfills Point Source Category is the proposed revisions of Section 122.44(a). In EPA's current thinking, the revisions would require that permits have limitations for all applicable guideline-listed pollutants but allows for the waiver of sampling requirements for guideline-listed pollutants on a case-by-case basis if the

[7] There are certain exceptions to these treatment requirements for hazardous wastewater which is disposed in surface impoundments. RCRA section 3005 (j) (11). However, if this wastewater contains VOCs above a designated concentration level, then the impoundments are subject to rules requiring control of the resulting air emissions. 40 CFR 264.1085 and 263.1086.

discharger can certify that the pollutant is not present in the discharge or present in only background levels from intake water with no increase due to the activities of the discharger. EPA anticipates that new sources and new dischargers will not be eligible for this waiver on their first permit term, and monitoring can be re-established through a minor modification if the discharger expands or changes its process. Further, the permittee will not need to reapply for the waiver each permit term, but only needs to notify the permit writer of any modifications that have taken place over the course of the permit term and, if necessary, monitoring can be reestablished through a minor modification.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41 (m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and nonconventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitation or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and nonconventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC,* 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of an FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The pretreatment regulation incorporates a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request modification of a permit be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modifications are described in 40 CFR 122.63.

D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United

States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations for this regulation to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants) the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

E. Implementation for Facilities With Landfills in Multiple Subcategories

According to the ''1992 Waste Treatment Industry: Landfills Questionnaire,'' there are several facilities which operate both Subtitle C hazardous landfills and Subtitle D non-hazardous landfills on-site. Generally, for determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Thus, the normal practice would be to develop flow-weighted limitations for the combined Subtitle C and Subtitle D wastestreams, a flow-weighted combination of the BAT limits for the Landfills Category. However, EPA's RCRA regulations require management of mixtures of hazardous and non-hazardous waste under RCRA hazardous waste regulations. Consequently, a commingled flow of hazardous and nonhazardous waste is a hazardous waste. Therefore, if a facility commingles wastewater from a Subtitle C hazardous landfill and a Subtitle D non-hazardous landfill for treatment, then the effluent from that facility is subject to the limitations promulgated today for the Hazardous subcategory.

F. Implementation for Contaminated Ground Water Flows and Wastewater From Recovering Pumping Wells

As discussed in Section [III], ground water flows and wastewater flows from recovering pumping wells (which have very similar characteristics to contaminated ground water) are not subject to the effluent limits established in today's rule. These terms are defined in Section [III] of this preamble. According to the ''1992 Waste Treatment Industry: Landfills Questionnaire,'' there are a number of facilities which collect contaminated ground water in addition to flows regulated under this rule, and many facilities commingle these flows for treatment. In the Agency's analysis of contaminated ground water at landfills, EPA found that contaminated ground water may be very dilute or may have characteristics similar in nature to leachate. Due to this site-to-site variability, the Agency is not able to determine how the guidelines should be implemented for commingled flows of ground water and regulated wastewater.

In the case of such facilities, EPA believes that decisions regarding the appropriate discharge limits should be left to the judgment of the permit writer. As indicated by data collected through the questionnaires and EPA sampling, ground water characteristics are often site-specific and may contain very few contaminants or may, conversely, exhibit characteristics similar in nature to leachate.

In cases where the ground water is very dilute the Agency is concerned that contaminated ground water may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment of the flows, or develop BPJ limits based on a flow-weighted building block approach, in order to prevent dilution of the regulated leachate flows. However, in cases where the ground water may exhibit characteristics similar to leachate, commingled treatment may be appropriate, cost effective and environmentally beneficial. EPA recommends that the permit writer consider the characteristics of the contaminated ground water before making a determination if commingling ground water and leachate for treatment is appropriate. EPA recommends that the permit writer refer to the leachate characteristics data in Chapter 6 of the Technical Development Document in order to determine whether contaminated ground water at a landfill has characteristics similar to leachate.

G. Implementation for Subtitle D Landfills Which Received Newly Listed Hazardous Wastes in the Past

There are situations where a Subtitle D landfill received wastes that, at the time, were not classified as hazardous, but since disposal of the waste, EPA now classifies that type of waste as hazardous. In these situations, leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been very clear in the past on the applicability of hazardous waste listings to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. 53 FR 31147 (August 17, 1988). EPA also has a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes (which meet the listing description) disposed before a listing effective date. *Id.* EPA's interpretations were upheld by the Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management, Inc.* v. *EPA,* 869 F.2d 1526, 1536–37 (D.C. Cir. 1989). (These points are restated here to provide context. EPA is not reconsidering or in any other way reopening these principles for comment or review.)

This does not mean that landfills holding wastes which are now listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting the listing description, including residues such as leachate and gas collection condensate which are derived from such wastes and are actively managed (*i.e.,* collected for discharge), do become subject to Subtitle C regulation. 53 FR 31149. Thus, in these types of situations, a non-hazardous Subtitle D landfill will produce a leachate that is subject to Subtitle C regulation. In many cases, however, as discussed at 64 FR 6807, no significant regulatory consequences under RCRA result from leachate management.

As discussed at Section [III] above, EPA established two different sets of effluent limitations for the landfills point source category based on the RCRA classification of the landfill, and not the RCRA classification of the leachate. Therefore, according to the subcategorization scheme adopted by EPA in today's rule, a hazardous, Subtitle C leachate generated from a

non-hazardous, Subtitle D landfill is subject to the effluent limitations for the Non-Hazardous subcategory. EPA concluded that such an approach was appropriate because EPA's Non-Hazardous subcategory landfill database reflects those facilities that may, as a result of future RCRA hazardous waste listings, generate a hazardous leachate in the future. However, due to both pollutant-specific and site-specific factors in these types of situations, EPA determined that the local permit writer may need to require monitoring of pollutants in addition to those required by this rule for the Non-Hazardous subcategory in order to ensure appropriate treatment of the hazardous, Subtitle C leachate.

EPA does not believe that these types of situations are very common, and therefore EPA concluded that the determination of effluent limitations for additional pollutant parameters will have only a minimal impact on the permit writer. Since the majority of Subtitle D landfills discharge indirectly to POTWs, and since EPA did not establish pretreatment standards for either non-hazardous or hazardous landfills, the local control authority will not need to make the determination in these cases.

EPA recommends that the permit writer refer to the leachate characteristics data in Chapter 6 of the Technical Development Document in order to determine whether the leachate resembles Subtitle C or Subtitle D leachate and whether monitoring requirements in addition to those for the Non-Hazardous subcategory are necessary.

H. Implementation for Superfund Response Actions at Landfills

This section addresses compliance with the landfills effluent limitations promulgated today when CERCLA response action is taken at a landfill. In cases where a Subtitle C or Subtitle D landfill is also subject to response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, also known as Superfund, it is possible that the landfills effluent guideline may be an applicable or relevant and appropriate requirement (ARAR) for the Superfund site.

CERCLA directed EPA to identify abandoned or uncontrolled hazardous waste sites and to clean up the worst of these sites. The Agency carries out these responsibilities through the Superfund response process, according to procedures outlined in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). Section 121(d)(1) of CERCLA as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA) requires that on-site remedial actions must attain (or waive), at completion of the action, federal or more stringent state applicable or relevant and appropriate (ARARs) environmental law. The 1990 National Contingency Plan (NCP) requires compliance with ARARs during remedial actions as well as at completion and compels attainment of ARARs during removal actions whenever practicable. See 40 CFR 300.415(j) and 300.435(b)(2). Therefore, CWA limitations, such as those promulgated today, may be applicable or relevant and appropriate to hazardous substances discharged on-site into surface water from a Superfund site.

CWA requirements are intimately connected to CERCLA as all 126 CWA priority toxic pollutants are CERCLA hazardous substances (CERCLA Section 101(14)). EPA thus has the authority under Superfund to respond to releases of priority toxic pollutants. EPA also must adhere to or waive ''applicable'' or ''relevant and appropriate'' CWA standards during on-site response actions.

''Applicable'' requirements are those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under federal or timely identified state law that specifically address a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstance at a Superfund site (40 CFR 300.5). Basically, to be applicable, a requirement must directly and fully address a CERCLA activity. For example, the Hazardous subcategory landfill effluent limitations could be considered applicable for a CERCLA landfill that collects and discharges landfill leachate (or other wastewater regulated by the landfills guideline) on-site to a surface water. Because the landfill effluent guidelines did not establish pretreatment standards, today's rule would not be ''applicable'' for a CERCLA landfill discharging indirectly to a POTW. Determining which standards will be applicable to a Superfund response is similar to determining the applicability of any law or regulation to any chemical, action, or location. The lead or support agency must examine federal and state statutes and regulations to identify those which directly govern response activities.

CERCLA, in addition to incorporating ''applicable'' environmental laws and regulations into the response process, requires compliance with (or waiver of) other ''relevant and appropriate'' standards. A requirement which is not applicable may be relevant and appropriate if it addresses problems or pertains to circumstances similar to those encountered at a Superfund site. ''Relevant and Appropriate'' requirements are those cleanup standards, standards of control, or other substantive environmental provisions that while not applicable address sufficiently similar situations or problems to those encountered at a Superfund site such that their use is well-suited to the particular site. 40 CFR 300.5 and 300.400(g)(2). A requirement may be ''relevant'' in that it covers situations similar to that at the site, but may not be ''appropriate'' to apply for various reasons and, therefore, not well-suited to the site.

The types of legal requirements applying to Superfund responses will differ to some extent depending upon whether the activity in question takes place on site or off site. In the case of CERCLA actions, a direct discharge of Superfund wastewater would be considered on site if the receiving water body is in the area of contamination or is in very close proximity to the site and necessary for implementation of the response action (even if the water body flows off site). ''CERCLA Compliance with Other Laws Manual'' Chapter 3, ''Guidance for Compliance with Clean Water Act Requirements,'' (EPA, August 8, 1988).

For response actions that are on-site, the site must comply with or waive both ''applicable'' as well as ''relevant and appropriate requirements.'' However, EPA does not need to comply with procedural environmental requirements on site. In addition, CERCLA Section 121(e)(2) states that no Federal, State or local permit (*e.g.,* a permit for a direct discharge to surface waters) is required for the portion of any removal or remedial action conducted entirely on-site. Therefore, Superfund sites are not required to obtain permits for on-site actions. For off site actions, a CERCLA response generally must comply only with all applicable law.

Therefore, administrative NPDES standards, such as the permit and certification requirements required by today's rule, are applicable to CERCLA discharges to off-site surface water. Because only surface water that is within or in very close proximity to an area of contamination is considered on site, most CERCLA response actions will trigger administrative NPDES standards.

Also see ''CERCLA Compliance with Other Laws Manual'' at p. 1–65 (EPA,

August 8, 1988); Final NCP, 59 FR 47416 (Sept. 15, 1994).

I. Implementation for TSCA Landfills

Concern over the toxicity and persistence in the environment of Polychlorinated Biphenyls (PCBs) led Congress in 1976 to enact § 6(e) of the Toxic Substances Control Act (TSCA) that included among other things, prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Thus, TSCA legislated true ''cradle to grave'' (*i.e.,* from manufacture to disposal) management of PCBs in the United States. Today's guidelines do not apply to landfills that are only permitted under TSCA as Chemical Waste Landfills. Rather, it applies only to those landfills subject to the requirements under Subtitle C or Subtitle D of RCRA. However, landfills that are subject to Subtitle C or D of RCRA and are also permitted under TSCA will be subject to the landfills effluent limitations guidelines promulgated today. In fact, at least one of the landfills sampled by EPA (and selected as BAT) for the Hazardous subcategory, is a Chemical Waste Landfill permitted under TSCA and is also a Subtitle C landfill under RCRA.

J. Implementation for Landfills Located at Centralized Waste Treatment Facilities

EPA is in the process of developing guidelines for Centralized Waste Treatment (CWT) facilities which will be promulgated next year. As previously explained at Section [III], this part does not apply to landfills operated in conjunction with CWT facilities that will be subject to 40 CFR Part 437 (when issued) so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills.

For example, under current thinking, following promulgation of the CWT guidelines, a landfill treatment system that accepts wastewater from a non-landfill source for treatment would be a CWT and subject to the CWT guidelines and standards to be codified at 40 CFR Part 437. However, a landfill treatment system that only accepted wastewater for treatment generated off-site from off-site landfills would be subject to the landfill guidelines.

K. Determination of Similar Wastes for Captive Landfill Facilities

As discussed at Section [III] above, the Agency concluded that discharges from captive landfills should not be subject to the guidelines if the captive landfills only accepted waste for disposal from another facility that was similar to the waste generated by the industrial or commercial operation directly associated with the landfill. This section offers guidance to permit writers for determining whether a solid waste received for disposal in a captive landfill is similar to those wastes generated by the facility directly associated with the landfill.

According to EPA's database, many of the industrial or commercial facilities that operate captive landfills are subject to effluent limitations guidelines in 40 CFR Subchapter N. For the most part, facilities subject to a particular industrial category effluent guideline produce similar types of wastes. Therefore, EPA decided that this rule does not apply to landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the waste-receiving facility.

However, there are cases where a captive landfill is directly associated with an industrial or commercial operation that is not subject to an effluent guideline. Or, a facility, subject to an effluent guideline, may operate a landfill in conjunction with industrial or commercial operations, but may also accept other wastes from facilities that are not subject to the same effluent guideline or not subject to an effluent guideline at all. In these cases, the permit writer must determine whether the other wastes received for disposal are of similar nature to the wastes generated by the industrial or commercial operation directly associated with the landfill. In cases where the permit writer determines that the other waste accepted by the captive landfill is not similar to the waste generated by the industrial or commercial activity directly associated with the landfill, then the landfill wastewater will be subject to the landfills effluent limitations. However, if the permit writer determines that the wastes are similar, then the wastewater from the captive landfill should be subject to the same categorical effluent guideline (or BPJ limitations) as the industrial or commercial facility.

A permit writer should consider the following factors in deciding whether other wastes received by a captive landfill are similar to those wastes generated by the industrial or commercial operation directly associated with the landfill:

1. Are the other wastes received from facilities that are subject to the same provisions in 40 CFR Subchapter N as the facility directly associated with the captive landfill?

If so, then the landfills effluent guidelines do not apply to this captive landfill. If not, then the permit writer should consider the other factors listed below.

2. Are the other wastes received from facilities that are part of the same effluent guidelines ''grouping'' as described in Chapter 2 of the Landfills Technical Development Document?

If so, it is likely that the wastes are similar and the landfills effluent guidelines do not apply. In the Landfills Technical Development Document, EPA grouped the industrial categories under Subchapter N into six groups: Organics, Metals, Inorganics and Non-metals, Pesticides, Explosives, and Asbestos. It is likely that industries within the same industrial effluent guideline ''grouping'' will generate similar types of constituents in the solid wastes, and the leachate resulting from the disposal of these wastes will be controlled adequately by the effluent limitation for the industrial or commercial facility directly associated with the captive landfill. However, this may not always be the case, and therefore EPA left to the local control authority the determination of whether the landfills effluent guideline should apply to a captive landfill that accepts wastes from other facilities that are not subject to the same provisions in 40 CFR Subchapter N. The local permitting authority will determine whether a captive landfill which accepts wastes from other industrial activities apart from those directly associated with the landfill is subject to today's guidelines based on the similarity of the other wastes and the likelihood that these wastes will result in leachate that is compatible with the wastewater treatment technology used to treat the landfill leachate.

3. In the case of hazardous captive landfills, do the other wastes being received have the same hazardous waste codes as those generated at the facility directly associated with the landfill?

If so, it is possible that the wastes are similar. However, this may not always be the case, and therefore EPA left to the local control authority the determination of whether the landfills effluent guideline should apply to a captive landfill that accepts wastes from other facilities that are not subject to the same provisions in 40 CFR Subchapter N.

4. Is a significant portion of the waste deposited in the landfill from the industrial or commercial operation that

is directly associated with the captive landfill?

The control authority should analyze the number of customers and the amount of the off-site or inter-company waste deposited relative to the quantity of on-site or intracompany waste placed in the captive landfill. Again, the main reason for the exclusion for captive landfills is that their leachate should resemble the industrial wastewater of the operation directly associated with the landfill, and therefore, the landfill leachate will be adequately controlled by the applicable industrial effluent guidelines. However, this logic is only applicable when the bulk of the waste placed in the landfill is of similar content to that being produced by the industrial facility directly associated with the landfill. Therefore, when applying the captive exclusion, the control authority should analyze the volume and characteristics of waste received from inter-company waste transfers in determining whether the leachate generated by the captive landfill will have similar characteristics to the industrial wastewater generated by the company owning the landfill.

5. Is the facility that is directly associated with the captive landfill deriving revenues from waste disposal at the landfill?

In developing the exclusion for captive landfills, EPA's intent was to exclude those non-commercial landfills that are directly associated with an industrial or commercial operation and whose leachate is currently being adequately addressed by the facility's categorical or BPJ limitations. EPA believes that where revenues are being derived from the collection of fees for solid waste disposal at a captive landfill, the facility is accepting wastes on a commercial basis—wastes that may well be dissimilar to that being disposed of at the landfill. The captive exception is premised on the fact that in most cases leachate from a landfill associated with an industrial operation will resemble the industrial process wastewater generated by the industrial operation, and therefore, the landfill leachate will be adequately controlled by the applicable industrial effluent guidelines or BPJ limitations. However, this is a reasonable assumption only in circumstances where the waste placed in the landfill is of similar content to that being produced by the industrial operation directly associated with the landfill. It is likely that a commercial landfill may accept significant volumes of waste that are not similar to the wastes generated by the industrial operation directly associated with the landfill.

6. Is the industrial or commercial facility directly associated with the captive landfill accepting wastes for disposal as part of public service activities?

If so, and the facility does not receive a fee or other remuneration for the disposal service, the captive landfill is not subject to this rule. EPA defines public service activities in Appendix A of this preamble.

L. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. These methods are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some nonconventional pollutants. The five conventional pollutants are defined at 40 CFR 401.16. Table I–B at 40 CFR 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 ''Priority Pollutants.'' This list of Priority Pollutants is shown, for example, at 40 CFR Part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants. Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from Landfills, unless specified otherwise by the permitting authority.

The final rule establishes limitations for BOD_5, TSS, pH, ammonia, arsenic (total), chromium (total), zinc (total), alpha terpineol, aniline, benzoic acid, p-cresol, phenol, naphthalene, and pyridine. Except for aniline, benzoic acid, p-cresol, and pyridine, there are methods specified for these pollutants at 40 CFR 136.3. Although these four pollutants are not directly covered in the list of approved methods, EPA has successfully used Methods 625 and 1625 to measure these semivolatile pollutants. EPA has collected analytical data for these four pollutants and for other pollutants of interest in the wastewater program using Methods 625 and 1625. One of the pollutants, alpha terpineol, is currently an analyte in Method 1625 but not in Method 625. EPA has also collected data for alpha terpineol using Method 625 to provide greater flexibility in the selection of an analytical method for monitoring discharges. As part of today's final rule, EPA is amending 40 CFR Part 136.3, Appendix A, to add attachments to EPA Methods 625 and 1625 with method performance criteria for additional pollutants, including the pollutants of concern for Landfills. The modified versions of Methods 625 and 1625 will allow the analysis of all semivolatile organic pollutants in today's final rule.

EPA proposed to amend Methods 625 and 1625 to include additional pollutants as part of the Centralized Waste Treatment proposal last year (64 FR 2345). Since then, EPA has gathered data on additional analytes. The attachments to Methods 625 and 1625 consist of text, performance data, and quality control (QC) acceptance criteria for the additional analytes. This information will allow a laboratory to practice the methods with the additional analytes as an integral part. The QC acceptance criteria for the additional analytes were determined in single-laboratory studies. The collected data are summarized in a report in the docket for today's rulemaking.

IX. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that has annual revenues less than $6 million (*i.e.,* the definition for SIC 4953, Refuse Systems); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA prepared a detailed assessment of the impacts of today's rule on small entities. This assessment is included in the ''Economic Analysis of Effluent Limitations Guidelines and Standards for the Landfill Category,'' which is summarized in Section [V], above, and is part of the Record for today's rule. Today's rule establishes requirements applicable to landfill facilities owned by both small businesses and small governmental jurisdictions. We determined that, of the 138 facilities expected to incur costs, only 39 facilities are small entities. Of these two are privately owned and 37 are government owned. The projected costs for these entities are low—in all cases less than one percent of revenues. Further, EPA projects that only two facilities owned by small entities will incur economic impacts such as facility closure. Further, EPA's assessment project no economic impacts, such as plant closure, for these small entities, Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Agency considered various technology options in establishing a basis for today's effluent limitations. The Agency's analysis specifically included economic impacts to the regulated community. While complying with the statute, EPA also reduced regulatory impacts by selecting economically achievable and cost-reasonable options.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 18, 2000.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not 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 one year. EPA has estimated total annualized costs of the rule as $ 7.64 million (1998$, post-tax). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA determined that no small governments are significantly affected by this rule as discussed in Part B. of this section. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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

significantly or uniquely affect their communities.''

Today's Rule does not significantly or uniquely affect the communities of Indian tribal governments because EPA determined that no communities of Indian tribal governments are affected by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. The rule establishes effluent limitations imposing requirements that apply to landfills when they discharge wastewater. The rule does not apply directly to States and applies to localities only when they operate a municipal landfill that discharges wastewater. The rule will only affect States when they are administering CWA permitting programs. The final rule, at most, imposes minimal administrative costs on States if the States have an authorized NPDES programs. (These States must incorporate the new limitations in new and reissued NPDES permits). Similarly, local governments operating directly discharging landfills will not experience substantial cost. The cost of complying with this guideline will not be significantly greater than current costs of meeting existing NPDES permit limits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, under Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Pub L. No. 104–113 Sec. 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decided not to use available and applicable voluntary consensus standards.

Today's final rule requires dischargers to monitor for 3 metals, 7 organic pollutants, BOD_5, TSS, ammonia and pH. EPA performed a search of the technical literature to identify any applicable analytical test methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's final guideline. EPA's search revealed that there are consensus standards for many of the analytes already specified in 40 CFR Part 136.3. Pollutants in today's rule with consensus methods already specified in 40 CFR Part 136.3 include the metals, BOD_5, TSS, ammonia, pH, phenol, and naphthalene. Pollutants without consensus methods include alpha terpineol, aniline, pyridine, p-cresol, and benzoic acid. EPA did not identify applicable consensus methods for these five pollutants. EPA may promulgate consensus methods for these pollutants in a future rulemaking if such methods become available.

I. Executive Order 13045 and Protecting Children's Health

The Executive Order ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that is determined to be (1) ''economically significant'' as defined under Executive Order 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 Executive Order 12866.

X. Summary of Proposal Comments and Responses

The following section describes the major comments on the proposed rule, and EPA's responses. The public record includes a full comment summary and response document for this rulemaking.

Forty-eight commenters provided detailed comments on the February 6, 1998 proposal. In all, the comments dealt with 32 separate aspects of the proposal. The following responds to the most significant of the comments.

Comment: EPA's selection of biological treatment as BPT/BAT for all non-hazardous landfills is inappropriate because the technology is not effective at utility ash monofills whose leachate does not contain sufficient biologically degradable organic material to sustain a biological treatment system.

Response: EPA agrees that there are certain landfill facilities in the Non-Hazardous subcategory, such as utility ash monofills, that would have difficulty operating biological treatment systems due to the low organic content of the wastewater. In these circumstances, such facilities may need to install different treatment systems to ensure compliance with the promulgated limits. However, one of the several ash monofill facilities sampled by EPA currently meets these limitations and therefore will not need to install any additional treatment technologies in order to comply with the landfills rule.

For the final rule, EPA re-evaluated available technology for reducing pollutant discharges from landfills with low organic content wastewater. EPA's data on ash monofills showed that two regulated pollutants (ammonia and phenol) could be found at concentrations which do not meet the BPT/BAT limitations. In addition, because various metals may be expected to be present in ash monofill

wastewater, EPA also considered the treatment of zinc (the only metal for which EPA promulgated a limitation for the Non-Hazardous subcategory) in evaluating the treatment technologies for monofills with low organic content.

EPA concluded that breakpoint chlorination would likely be the most practicable and economic alternative technology for the removal of ammonia at non-hazardous facilities that cannot sustain or chose not to install biological treatment. For landfill facilities that require removal of both phenol and zinc, EPA evaluated granular activated carbon as a non-biological alternative treatment technology. EPA also looked at the cost of these alternate treatment technologies to meet the final limits. For the final rule, EPA costed two ash monofill facilities for treatment of ammonia, phenol, and zinc using a combination of breakpoint chlorination and granular activated carbon. Based on this assessment, EPA has concluded that there are viable alternative technologies available to facilities with low BOD_5, such as ash monofills, to treat ammonia, phenol, and zinc that are comparable to those biological treatment systems found to be economically achievable for the landfill industry generally. These treatment systems may be installed at costs comparable to those for biological treatment. In these circumstances, EPA has concluded that it should not develop separate limitations for utility ash monofills.

Comment: Several commenters suggested that EPA further develop its database to assess adequately the influence of age-related changes on the concentrations and quality of pollutants in Subtitle D landfill leachate.

Response: EPA considered whether age-related changes in leachate concentrations of pollutants necessitate different discharge limits for different age classes of landfills. Several considerations lead to the conclusion that age-related limits are not appropriate.

First, a facility's wastewater treatment system typically receives and commingles leachate from several landfills or cells of different ages. The Agency has not observed any facility which has found it advantageous or necessary to treat age-related leachates separately. The Agency did, however, sample two landfill facilities that had only one cell. One of the facilities had been receiving wastes for nine years in its landfill cell, while the other facility had only been receiving waste for one year. EPA compared the raw wastewater concentrations of the constituents in these two cells and found the concentrations to be very similar. In addition, most of the constituents in both cells were close to the median raw wastewater concentration for the Non-Hazardous subcategory. Second, based on responses to the questionnaire, discussions with landfill operators and historical data, EPA understands that leachate pollutant concentrations appear to change substantially over the first two to five years of operation but then change only slowly thereafter.

These two observations imply that treatment systems must be designed to accommodate the full range of concentrations expected in influent wastewater. EPA concluded that the BPT/BAT/NSPS treatment technologies are able to treat the variations in landfill wastewater likely to occur due to age-related changes. EPA has taken into account the ability of treatment systems to accommodate age-related changes in leachate concentrations, as well as short-term fluctuations by promulgating effluent limitations which reflect the variability observed in monitoring data spanning up to three years.

Additionally, EPA addressed age-related effects on treatment technologies, costs, and pollutant loads by utilizing data collected from a variety of landfills in various stages of age and operation (e.g., closed, inactive, active). EPA sampled landfills of various ages and stages of operation (active, inactive, closed), lined and unlined, and concluded that the landfill database used to develop the effluent limitations represents leachate typically found at Subtitle D landfills. In addition, EPA received comments from several commenters stating that the leachate characterization data presented in the proposal was consistent with their own monitoring data.

In response to comments, EPA evaluated the data from non-hazardous landfill facilities of different ages to compare general raw leachate characteristics. When EPA compared landfills of various ages from EPA's landfill effluent guidelines database, it was difficult to pinpoint any particular trends (i.e. organic pollutant concentrations decrease significantly with age). The absence of any particular trend associated with pollutant concentrations across landfill facilities of various ages may be due to the fact that most of the older landfill facilities in EPA's database have newer landfill cells whose leachate is commingled for treatment with the leachate from the older landfill cells. For example, a landfill facility that may have opened prior to 1980 may have landfill cells that opened since 1991 which contribute a large portion of the leachate flow. EPA acknowledges that age-related changes in landfill leachate characteristics would be expected from individual landfill cells. Most of the older landfill cells have lower concentrations of BOD_5, COD, and most organic pollutants indicating a smaller amount of degradable compounds from the aged waste.[8] In addition, aged leachates contain high levels of chemically reduced compounds, such as ammonia, and high chlorides because of the anaerobic environment of the landfill. These trends tend to be true for individual landfill cells. However, when looking at a landfill facility as a whole (where a facility commingles leachates from several cells of various ages for treatment), the landfills effluent guidelines database does not fully support such a trend. In EPA's data collection efforts, EPA did not identify any landfill facilities that treated leachate from different aged cells separately. Based on the fact that landfill facilities commingle leachate from cells of various ages for treatment, EPA concluded that its leachate effluent database appropriately represents the landfills industry covered by this guideline, and that the pollutant concentrations found at landfill facilities of various ages did not vary significantly as to warrant different treatment technologies for landfills of different ages. As mentioned above, the Agency sampled raw wastewater at two landfill cells of different ages and found the concentrations of constituents to be very similar. EPA concluded that neither the age nor the size of the landfill facility will directly affect the treatability of the landfill wastewater. For the non-hazardous landfills, the most pertinent factors for establishing the limitations are costs of treatment and the level of effluent reductions obtainable.

Comment: EPA's sampling data may not be a true reflection of Subtitle D leachates as a result of the time at which EPA collected its sampling data. Between the years of 1992 and 1995, when most of EPA's data collection activities were underway, most of the lined Subtitle D landfills had only recently begun accepting waste. As a result, EPA's data reflect relatively new landfills that tend to have less concentrated leachate since it usually takes 9–15 months after opening a new cell before the leachate begins to strengthen. In addition, EPA's sampling included leachate being collected from unlined landfills that could be diluted by the influence of ground water and, therefore, was not representative of

[8] Eckenfelder, Welsey. *Industrial Pollution Control,* New York: McGraw-Hill, 1989.

more concentrated leachates found in lined Subtitle D landfills.

Response: EPA disagrees with the commenters' conclusions. EPA sampled landfills of various ages and stages of operation (active, inactive, closed), lined and unlined, and is confident that the landfill database represents leachate typically found at Subtitle D landfills. A number of commenters also share this view. These commenters stated that the leachate characterization data presented in the proposal was consistent with the results of their own monitoring.

EPA characterized wastewater from non-hazardous landfills based on data from several different sources including industry responses to EPA's detailed questionnaires, monitoring reports, industry supplied data, and data from landfills sampled by EPA. Several non-hazardous landfill facilities responding to the ''Waste Treatment Industry Questionnaire Phase II: Landfills, Part I, Technical Information, 1994'' (Detailed Questionnaire) began accepting waste prior to 1931. The majority of the landfill facilities responding to the questionnaire, however, began receiving wastes after 1971. Only sixteen of the 204 non-hazardous landfills in EPA's Detailed Questionnaire database began accepting waste as recently as 1992. Therefore, EPA has concluded that landfill facilities of all ages were well represented in EPA's Detailed Questionnaire database.

In addition, EPA sampling episodes comprised a large portion of the wastewater characterization data for Subtitle D landfills. EPA sampled twelve different non-hazardous landfill facilities during a two year period from 1993 to 1995. The period of years in which the landfills sampled by EPA began accepting wastes ranged from 1962 to 1994.

Grouping the sampled facilities according to the year the facility began accepting waste and by regulatory history, there are four pre-1980 landfill facilities (before 1980 Section 3001 of RCRA); one landfill facility that falls in the 1980 to 1983 range (before the 1984 Hazardous and Solid Waste Amendment to RCRA); five landfill facilities that fall in the 1984 to 1988 range (before Land Disposal Restrictions (LDR)); and three landfill facilities that are post-1988 (after LDR). EPA sampled only one ''new'' landfill facility. It opened in 1994 and EPA sampled the following year. All other landfill facilities sampled by EPA were between four years and 32 years of age at the time of sampling. EPA agrees with the commenter that relatively new landfill facilities tend to have less concentrated leachates. However, EPA combined the data from the one new facility sampled with characterization data from 12 other landfill facilities that have an average age of 13 years. In addition, for the most part, these other landfill facilities commingled leachates from cells of differing ages and stages of operation. The Agency did not identify any landfill facilities which found it advantageous or necessary to treat leachates from landfill cells of different ages separately. Most landfill leachates sampled by EPA were composite samples of several cells. Therefore, EPA concluded that the landfills sampled and the resulting data in the EPA database adequately represent Subtitle D leachates.

The commenters also claim that during the years EPA collected data, most lined landfill cells were just being constructed or had just begun operating. Although this may be true, all of the landfills (and cells) chosen by EPA for sampling were lined, with the exception of one facility and one landfill at another facility. EPA specifically selected lined landfills with leachate collection systems for sampling visits because these facilities would be more likely to employ advanced leachate treatment, and facilities with advanced treatment were under consideration as BAT. Even though federal regulations for Subtitle D landfills are fairly recent, several states were already implementing requirements similar to the current Subtitle D regulations prior to the enactment of the federal regulations. Therefore landfills in many states (e.g., CA, NY, NJ, and PA) incorporated lining and leachate collection systems in advance of federal requirements.

Another commenter also stated that leachate from unlined landfills may be diluted by ground water, and therefore, would not be representative of more concentrated leachates found in lined Subtitle D landfills. EPA collected leachate data from only two unlined landfills out of the 13 sampled. EPA has determined that the leachate from one of the unlined landfills sampled by EPA was unlikely to be diluted by ground water because the leachate is collected by two gravity flow sumps located well above the water table. The other unlined landfill sampled by EPA is also unlikely to be diluted by ground water since the collection system is located 12 feet above the water table. In addition, this facility commingled the leachate collected from the unlined landfill with the leachate from the lined landfill at the facility. In these circumstances, EPA determined that these data adequately represent the concentrations of leachate found at Subtitle D landfills.

Comment: EPA should further subcategorize the Subtitle D landfills because it is not appropriate to have the same effluent limitations for both municipal solid waste landfills and non-municipal solid waste landfills (or monofills).

Response: EPA decided to include non-municipal solid waste landfills (including monofills) in the same Non-Hazardous subcategory as municipal solid waste landfills and concluded that, based on the available raw wastewater data, such facilities can meet the BPT/BAT limitations using available technologies. EPA did consider subcategorizing the Non-Hazardous subcategory further but chose not to be based on several factors.

EPA did not choose to further subcategorize Subtitle D landfill facilities because the leachate characteristics from monofills, ashfills, construction and demolition landfills, sludge landfills, and non-municipal solid waste co-disposal sites were comparable to the leachate characteristics from municipal solid waste landfills. EPA found that the pollutants present in dedicated monofills were a subset of those pollutants found at municipal solid waste landfills, at comparable concentrations, with many parameters found at lower concentrations than typically found at municipal solid waste landfills, as shown in Table 5–3 in the Technical Development Document.

EPA evaluated data from monofills in the EPA database and from commenters submitting monofill data, as presented in Chapter 5 in the Development Document, and determined that there are differences in wastewater characteristics between different types of monofills. Most of these differences result from the fact that not all monofills accept the same types of waste. The greatest difference observed was between monofills that accept organic wastes and those that do not. EPA concluded that monofills that accepted wastes containing organic material could meet the promulgated limitations using biological treatment and, therefore, were similar enough to other landfills in the subcategory to warrant inclusion. For those monofills that do not accept organic wastes, EPA found that many of the facilities could meet the subcategory limitations without treatment, and for those that could not, alternative technologies were available at cost no greater than those technologies EPA evaluated (and determined) to be economically achievable for the subcategory as a whole. EPA included the costs associated with these alternate

technologies in the final cost impact analysis.

As a result of its study of the various types of monofills, EPA determined that a single subcategory for all monofills would still not address the situation where a certain class of constituents is regulated even though not all types of monofills contain those constituents (e.g., a utility ash monofill with low raw wastewater BOD_5 concentrations would still be in the same subcategory as a sludge monofill which may contain moderate levels of BOD_5). Therefore, EPA would need to establish a separate subcategory for each type of monofill to address the differences among monofills. Rather than develop multiple monofill subcategories, EPA decided that because the types of pollutants and concentrations of pollutants found at monofills were, for the most part, equivalent to or less than those found at municipal solid waste landfills, a single subcategory would be appropriate for Subtitle D landfills.

Comment: One commenter, a wastewater treatment technology vendor, submitted two sets of comments concerning EPA's evaluation of BAT Option III (reverse osmosis following biological treatment). The commenter disagreed with the BAT Option III stating that the Pall Rochem Disc Tube™ technology does not require biological pretreatment.

Response: EPA agrees that the Pall Rochem Disc Tube™ technology may effectively treat landfill leachate without prior biological treatment. EPA sampled the Rochem unit at a landfill that did not employ biological treatment and the Rochem unit was very effective at treating the landfill leachate. The data from EPA sampling is contained in the regulatory record for this rule.

However, EPA disagrees with the commenter that the methodology used to evaluate BAT was incorrect. As discussed in the preamble to the proposed rule (63 FR 6443), EPA evaluated BAT treatment options as an increment to the baseline treatment technology used to develop BPT limits. Therefore, the BAT Option III consisted of BPT Option II (biological treatment followed by multimedia filtration) followed by a single stage reverse osmosis unit. For the analysis, EPA concluded that a biological system followed by multimedia filtration would already remove the majority of toxic pollutants, leaving the single-stage reverse osmosis to treat the very low levels of pollutants that remained. Additionally, EPA concluded that the limits under BAT would not be significantly more stringent than BPT because the BPT technology was already treating most pollutants to very low levels.

Additionally, the selection of the BAT treatment options took into consideration the fact that many of the existing direct discharging landfills already employed some sort of biological treatment system. While EPA acknowledges that the referenced Disc Tube™ reverse osmosis technology does not require pretreatment using biological treatment, EPA concluded that it was more cost effective to upgrade existing biological treatment systems than to add on a reverse osmosis system (or to replace the existing biological system with a reverse osmosis system). EPA determined it has reasonably evaluated and rejected reverse osmosis treatment as a BAT option. However, the regulation, of course, does not require the installation of a particular technology, only that the discharger comply with the limitations. Therefore, if a discharger determines that reverse osmosis will achieve the effluent limitations established in this rule, then the discharger is free to install a reverse osmosis treatment system to treat its landfill wastewater.

Comment: One commenter questioned how a facility will achieve such low zinc limits using biological treatment without employing a metals removal technology. The commenter also stated that zinc levels in landfills typically tend to be in the range of 2 to 7 mg/L.

Response: EPA disagrees with the commenter's claim. The record supports EPA's determination that the promulgated zinc limitations levels can be achieved through well-operated biological treatment systems without metals removal technology. In establishing zinc limits for the Non-Hazardous subcategory, EPA used zinc data from three of the seven BPT/BAT facilities for the Non-Hazardous subcategory. EPA did not use the data from the other four BPT/BAT facilities because all four employed chemical precipitation in addition to biological treatment, and chemical precipitation was not part of the selected BPT/BAT option. All three of the facilities used to calculate the zinc limitations operated a biological treatment system. Because one of these three facilities supplied two separate sets of data, EPA used four data sources from the three BPT/BAT facilities to calculate the limitations for zinc. The average raw wastewater zinc concentrations for these four data sets ranged from 0.31 mg/L to 0.995 mg/L with average effluent concentrations ranging from 0.05 mg/L to 0.21 mg/L. The percent removals of zinc for these BPT/BAT facilities ranged from 58 percent to 94 percent.

Since the proposed rule, EPA has recalculated the final zinc effluent limitations for the Non-Hazardous subcategory using the effluent data discussed above from the four data sources along with variability factors developed for zinc discharges from these landfills. EPA calculated a zinc monthly average limit of 0.11 mg/L and a daily maximum limit of 0.20 mg/L. (EPA explains the statistical methods used to develop these limitations more thoroughly in the Statistical Support Document for Final Effluent Limitations Guidelines and Standards for the Landfills Point Source Category and in Chapter 11 of the final Technical Development Document.)

The commenter expressed concern about the ability of biological treatment systems to achieve the zinc removals EPA had proposed for landfills without metals removal technology. The commenter stated that landfill concentrations of zinc are normally in the 2 mg/L to 7 mg/L range. However, the raw wastewater data submitted by the commenter did not support that claim. The commenter submitted zinc raw wastewater data from three Subtitle D landfills with concentrations of 0.065 mg/L and 0.569 mg/L for one landfill, and 0.165 mg/L and 0.59 mg/L for the other two landfills. These concentrations are consistent with the raw wastewater zinc concentrations at the BPT/BAT facilities that EPA used for the calculation of the effluent limitations for zinc. EPA has concluded that concentrations such as those submitted by the commenter are representative of concentrations typically found in Subtitle D landfill leachate. According to EPA's database, EPA determined that the mean raw wastewater concentration of zinc in Non-Hazardous subcategory was 1.2 mg/L and 75 percent of Subtitle D facilities in the database had zinc concentrations below 0.27 mg/L. Therefore, the EPA Landfills database does not reflect the commenter's claim that zinc levels at non-hazardous landfills typically range from 2 mg/L to 7 mg/L.

In addition, all of the influent zinc concentrations at the BPT/BAT facilities used to develop the non-hazardous BAT limitations for zinc were above the 75th percentile concentration of 0.27 mg/L, and one influent zinc concentration is above the 90th percentile concentration of 0.93 mg/L. Therefore, since the BPT/BAT facilities used in the calculation of the zinc limitations had zinc raw wastewater concentrations above 75 percent of other landfills in the Non-Hazardous subcategory, EPA concluded that the BPT/BAT technology will adequately treat zinc concentrations

found in raw waste loads at Subtitle D landfills. Additional information supporting EPA's determination is provided in the Comment Response Document and in Chapter 11 of the Technical Development Document.

While EPA acknowledges that if an individual non-hazardous landfill has higher zinc raw leachate concentrations than observed for virtually all of the landfills EPA sampled that the facility may not achieve the BPT/BAT discharge limitations for zinc using biological treatment and multi-media filtration alone. EPA's data show, however, that virtually all of non-hazardous landfills have raw leachate zinc concentrations that would be amenable to these two technologies. In fact, the one facility in EPA's database that had an average raw wastewater zinc concentration of 32 mg/L already has chemical precipitation in place. EPA determined that all other facilities in the database had raw wastewater zinc concentrations that could be treated adequately by a biological treatment system. While they are not designed to remove zinc, EPA has found that biological treatment systems achieve incidental removals of zinc through sorption into the biomass. It should be noted, that although EPA developed the non-hazardous landfills effluent limitations based on the performance of biological treatment followed by filtration, EPA does not require the use of the BPT/BAT technology to treat landfill wastewater. Landfill facilities have the freedom to choose any technology available to meet the promulgated effluent limitations.

Comment: One commenter, a manufacturer of insulation and fiberglass products, stated that monofills do not have the same leachate characteristics as municipal solid waste landfills. The commenter points out that parameters such as alpha terpineol, benzoic acid, p-cresol, and toluene would not normally be anticipated in the leachate from their monofill wastes and, therefore, should be excluded from the monitoring protocol.

Response: EPA agrees with the commenter that there will be cases where a monofill (*i.e.,* lime, construction and demolition, fly ash, etc.) will not have the same leachate characteristics as municipal solid waste landfills. EPA concluded there was sufficient similarity across these landfills so that subcategorization (and development of separate limitations) was not warranted as explained earlier in this section. EPA's permitting regulations require permit applications to supply the permit writer with information on a wide variety of pollutants which the permit writer must evaluate for possible limits in addition to guideline limitations. However, all federally regulated pollutants are required to be monitored, and the permitting authority may not alter the list of pollutants regulated as established under federal guidelines, except to require the monitoring of additional pollutants in specified circumstances. At a minimum, the final list of pollutants to be monitored must include all pollutants listed in the effluent limitations guidelines. The permit authority, however, can vary the monitoring frequency of the regulated pollutants, but must require no fewer than once per year for direct discharging facilities.

In addition, as explained in Section [III], EPA has decided not to set limitations for toluene. See Section [VIII] for information regarding proposed changes to the monitoring requirements under NPDES permits.

Appendix A: Definitions, Acronyms, and Abbreviations

Agency: The U.S. Environmental Protection Agency.

BAT: The best available technology economically achievable, applicable to effluent limitations to be achieved by July 1, 1984, for industrial discharges to surface waters, as defined by Sec. 304(b)(2)(B) of the CWA.

BCT: The best conventional pollutant control technology, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by Sec. 304(b)(4) of the CWA.

BPT: The best practicable control technology currently available, applicable to effluent limitations to be achieved by July 1, 1977, for industrial discharges to surface waters, as defined by Sec. 304(b)(1) of the CWA.

Clean Water Act (CWA): The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Clean Water Act (CWA) Section 308 Questionnaire: A questionnaire sent to facilities under the authority of Section 308 of the CWA, which requests information to be used in the development of national effluent guidelines and standards.

Closed: A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Commercial Facility: A facility that treats, disposes, or recycles/recovers the wastes of other facilities not under the same ownership as this facility. Commercial operations are usually made available for a fee or other remuneration. Commercial waste treatment, disposal, or recycling/recovery does not have to be the primary activity at a facility for an operation or unit to be considered ''commercial''.

Contaminated Ground Water: Water below the land surface in the zone of saturation which has been contaminated by landfill leachate. Contaminated ground water occurs at landfills without liners or at facilities that have released contaminants from a liner system. Ground water may also become contaminated if the water table rises to a point where it infiltrates the landfill or the leachate collection system.

Contaminated Storm Water: Storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or wastewater that is subject to the limitations and standards. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

Conventional Pollutants: Constituents of wastewater as determined by Sec. 304(a)(4) of the CWA, including pollutants classified as biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

Deep Well Injection: Disposal of wastewater into a deep well such that a porous, permeable formation of a larger area and thickness is available at sufficient depth to ensure continued, permanent storage.

Detailed Monitoring Questionnaire (DMQ): Questionnaires sent to collect monitoring data from 27 selected landfill facilities based on responses to the Section 308 Questionnaire.

Direct Discharger: A facility that discharges or may discharge treated or untreated wastewater into waters of the United States.

Drained Free Liquids: Aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater.

Effluent Limitation: Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

Existing Source: Any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the proposed regulations prescribing a standard of performance under Sec. 306 of the CWA.

Facility: All contiguous property owned, operated, leased or under the control of the same person or entity.

Gas Condensate: A liquid which has condensed in the landfill gas collection system during the extraction of gas from within the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill, and must be removed to avoid hazardous conditions.

Ground Water: The body of water that is retained in the saturated zone which tends to move by hydraulic gradient to lower levels.

Hazardous Waste: Any waste, including wastewater, defined as hazardous under RCRA (40 CFR 261.3).

Inactive: A facility or portion thereof that is currently not treating, disposing, or recycling/recovering wastes.

Indirect Discharger: A facility that discharges or may discharge wastewater into a publicly-owned treatment works (POTW).

Landfill: An area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave.

Landfill Generated Wastewater: Wastewater generated by landfill activities and collected for treatment, discharge or reuse, include: leachate, contaminated ground water, storm water runoff, landfill gas condensate, truck/equipment washwater, drained free liquids, floor washings, and wastewater from recovering pumping wells.

Leachate: Leachate is a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Leachate is typically collected from a liner system above which waste is placed for disposal. Leachate may also be collected through the use of slurry walls, trenches or other containment systems.

Leachate Collection System: The purpose of a leachate collection system is to collect leachate for treatment or alternative disposal and to reduce the depths of leachate buildup or level of saturation over the low permeability liner.

Liner: The liner is a low permeability material or combination of materials placed at the base of a landfill to reduce the discharge to the underlying or surrounding hydrogeologic environment. The liner is designed as a barrier to intercept leachate and to direct it to a leachate collection.

Long-Term Average (LTA): For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs are used in developing the limitations and standards in the landfill regulation.

National Pollutant Discharge Elimination System (NPDES) Permit: A permit to discharge wastewater into waters of the United States issued under the National Pollutant Discharge Elimination system, authorized by Section 402 of the CWA.

New Source: As defined in 40 CFR 122.2, 122.29, and 403.3(k), a new source is any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced (1) for purposes of compliance with New Source Performance Standards (NSPS) established under CWA section 306, after the promulgation of today's standards; or (2) for the purposes of compliance with Pretreatment Standards for New Sources (PSNS), after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Nonconventional Pollutants: Pollutants that are neither conventional pollutants listed at 40 CFR Part 401.16 nor priority pollutants listed in Appendix A of 40 CFR Part 423.

Non-Contaminated Storm Water: Storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or wastewater that is subject to the limitations and standards. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

Non-Hazardous Subcategory: For the purposes of this report, Non-Hazardous Subcategory refers to all landfills regulated under Subtitle D of RCRA.

Non-Water Quality Environmental Impact: Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy usage.

NSPS: New Sources Performance Standards, applicable to new sources of direct dischargers whose construction is begun after the promulgation of effluent standards under CWA section 306.

OCPSF: Organic chemicals, plastics, and synthetic fibers manufacturing point source category. (40 CFR Part 414).

Off-Site: Outside the boundaries of a facility.

On-Site: The same or geographically contiguous property, which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same company or locality but connected by a right-of-way, which it controls, and to which the public does not have access, is also considered on-site property.

Pass Through: A pollutant is determined to ''pass through'' POTWs when the nationwide median percentage removed by well-operated POTWs achieving secondary treatment is less than the percentage removed by the industry's direct dischargers that are using the BAT technology.

Point Source: Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged.

Pollutants of Interest (POIs): Pollutants commonly found in landfill generated wastewater. For the purposes of this rulemaking, a POI is a pollutant that is detected three or more times above a treatable level at a landfill, and must be present at more than one facility.

Priority Pollutant: One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined in Section 307 of the CWA and listed in Appendix A of 40 CFR Part 423. The priority pollutants are specified in the NRDC settlement agreement (Natural Resources *Defense Council et al.* v. *Train,* 8 E.R.C. 2120 [D.D.C. 1976], modified 12 E.R.C. 1833 [D.D.C. 1979]).

PSES: Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS: Pretreatment standards for new sources of indirect discharges, applicable to new sources whose construction has begun after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Public Service: The provision of landfill waste disposal services to individual members of the general public, publicly-owned organizations (schools, universities, government agencies, municipalities) and not-for-profit organizations for which the landfill does not receive a fee or other remuneration.

Publicly Owned Treatment Works (POTW): Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment (40 CFR 122.2).

RCRA: The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. Section 6901 *et seq.*), which regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous wastes.

Subtitle C Landfill: A landfill permitted to accept hazardous wastes under Sections 3001 and 3019 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 260 through 272.

Subtitle D Landfill: A landfill permitted to accept only non-hazardous wastes under Sections 4001 through 4010 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 257 and 258.

Surface Impoundment: A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), used to temporarily or permanently treat, store, or dispose of waste, usually in the liquid form. Surface impoundments do not include areas constructed to hold containers of wastes. Other common names for surface impoundments include ponds, pits, lagoons, finishing ponds, settling ponds, surge ponds, seepage ponds, and clarification ponds.

Toxic Pollutants: Pollutants declared ''toxic'' under Section 307(a)(1) of the Clean Water Act.

Truck/Equipment Washwater: Wastewater generated during either truck or equipment washes at the landfill. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant washwaters are collected for treatment.

Variability Factor: The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

Zero Discharge: No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are alternative discharge or disposal of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects

40 CFR Part 136

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 445

Environmental protection, Waste treatment and disposal, Water pollution control.

November 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 136—TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

Appendix A [Amended]

2. Appendix A to Part 136 is amended to add text at the end of Method 625 as an attachment and to add text at the end of Method 1625 as an attachment, reading as follows:

Appendix A To Part 136—Methods For Organic Chemical Analysis of Municipal and Industrial Wastewater

* * * * *

Method 625—Base/Neutrals and Acids

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Attachment 1 to Method 625

Introduction

To support measurement of several semivolatile pollutants, EPA has developed this attachment to EPA Method 625 [1]. EPA Method 625 (the Method) involves sample extraction with methylene chloride followed by analysis of the extract using either packed or capillary column gas chromatography/mass spectrometry (GC/MS). This attachment addresses the addition of the semivolatile pollutants listed in Tables 1 and 2, to all applicable standard, stock, and spiking solutions utilized for the determination of semivolatile organic compounds by EPA Method 625.

1.0 EPA METHOD 625 MODIFICATION SUMMARY

The additional semivolatile organic compounds listed in Tables 1 and 2 are added to all applicable calibration, spiking, and other solutions utilized in the determination of base/neutral and acid compounds by EPA Method 625. The instrument is to be calibrated with these compounds, using a capillary column, and all procedures and quality control tests stated in the Method must be performed.

2.0 SECTION MODIFICATIONS

Note: All section and figure numbers in this Attachment reference section and figure numbers in EPA Method 625 unless noted otherwise. Sections not listed here remain unchanged.

Section 6.7 The stock standard solutions described in this section are modified such that the analytes in Tables 1 and 2 of this attachment are required in addition to those specified in the Method.

Section 7.2 The calibration standards described in this section are modified to include the analytes in Tables 1 and 2 of this attachment.

Section 8.2 The precision and accuracy requirements are modified to include the analytes listed in Tables 1 and 2 of this attachment. Additional performance criteria are supplied in Table 5 of this attachment.

Section 8.3 The matrix spike is modified to include the analytes listed in Tables 1 and 2 of this attachment.

Section 8.4 The QC check standard is modified to include the analytes listed in Tables 1 and 2 of this attachment. Additional performance criteria are supplied in Table 5 of this attachment.

Section 16.0 Additional method performance information is supplied with this attachment.

TABLE 1.—BASE/NEUTRAL EXTRACTABLES

Parameter	CAS No.
Acetophenone	98–86–2
Alpha-terpineol	98–55–5
Aniline	62–53–3
Carbazole	86–74–8
2,3-Dichloroaniline	608–27–5
o-Cresol	95–48–7
n-Decane	124–18–5
n-Docosane	629–97–0
n-Dodecane	112–40–3
n-Eicosane	112–95–8
n-Hexadecane	544–76–3
n-Octadecane	593–45–36
n-Tetradecane	629–59–4
Pyridine	110–86–1
1-Methylphenanthrene	832–69–9

CAS = Chemical Abstracts Registry

TABLE 2.—ACID EXTRACTABLES

Parameter	CAS No.
benzoic acid	65–85–0
p-cresol	106–44–5

CAS = Chemical Abstracts Registry

TABLE 3.—CHROMATOGRAPHIC CONDITIONS,[1] METHOD DETECTION LIMITS (MDLS), AND CHARACTERISTIC M/Z'S FOR BASE/NEUTRAL EXTRACTABLES

Analyte	Retention time (min) [2]	MDL (µg/L)	Characteristic m/z's electron impact		
			Primary	Secondary	Secondary
Pyridine	4.93	4.6	79	52	51
N-Nitrosodimethylamine	4.95	.....	42	74	44
Aniline	10.82	3.3	93	66	65
Bis(2-chloroethyl)ether	10.94	.....	93	63	95
n-Decane	11.11	5.0	57	.....	.....
1,3-Dichlorobenzene	11.47	.....	146	148	113
1,4-Dichlorobenzene	11.62	.....	146	148	113
1,2-Dichlorobenzene	12.17	.....	146	148	113
o-Cresol	12.48	4.7	108	107	79
Bis(2-chloroisopropyl)ether	12.51	.....	45	77	79
Acetophenone	12.88	3.4	105	77	51
N-Nitrosodi-n-propylamine	12.97	.....	130	42	101
Hexachloroethane	13.08	.....	117	201	199
Nitrobenzene	13.40	.....	77	123	65
Isophorone	14.11	.....	82	95	138

[1] EPA Method 625: Base/Neutrals and Acids, 40 CFR Part 136, Appendix A.

TABLE 3.—CHROMATOGRAPHIC CONDITIONS,[1] METHOD DETECTION LIMITS (MDLS), AND CHARACTERISTIC M/Z'S FOR BASE/NEUTRAL EXTRACTABLES—Continued

Analyte	Retention time (min)[2]	MDL (μg/L)	Characteristic m/z's electron impact		
			Primary	Secondary	Secondary
Bis(2-chloroethoxy)methane	14.82	.....	93	95	123
1,2,4-Trichlorobenzene	15.37	.....	180	182	145
n-Dodecane	15.45	3.0	57	.....	.....
Alpha-terpineol	15.55	5.0	59	.....	.....
Naphthalene	15.56	.....	128	129	127
Hexachlorobutadiene	16.12	.....	225	223	227
Hexachlorocyclopentadiene	18.47	.....	237	235	272
2,3-dichloroaniline	18.82	2.5	161	163	90
n-tetradecane	19.21	1.7	57	.....	.....
2-Chloronaphthalene	19.35	.....	162	164	127
Dimethyl phthalate	20.48	.....	163	194	164
Acenaphthylene	20.69	.....	152	151	153
2,6-Dinitrotoluene	20.73	.....	165	89	121
Acenaphthene	21.30	.....	154	153	152
2,4-Dinitrotoluene	22.00	.....	165	63	182
n-hexadecane	22.49	3.0	55	.....	.....
Diethylphthalate	22.74	.....	149	177	150
4-Chlorophenyl phenyl ether	22.90	.....	204	206	141
Fluorene	22.92	.....	166	165	167
N-Nitrosodiphenylamine	23.35	.....	169	168	167
4-Bromophenyl phenyl ether	24.44	.....	248	250	141
Hexachlorobenzene	24.93	.....	284	142	249
n-octadecane	25.39	2.0	57	.....	.....
Phenanthrene	25.98	.....	178	179	176
Anthracene	26.12	.....	178	179	176
Carbazole	26.66	4.0	167	.....	.....
Dibutyl phthalate	27.84	.....	149	150	104
1-methylphenanthrene	27.94	2.7	192	191	165
n-eicosane	27.99	3.0	55	.....	.....
Fluoranthene	29.82	.....	202	101	100
Benzidine	30.26	.....	184	92	185
n-docosane	30.43	2.0	57	.....	.....
Pyrene	30.56	.....	202	101	100
Butyl benzyl phthalate	32.63	.....	149	91	206
3,3′-Dichlorobenzidine	34.28	.....	252	254	126
Benzo(a)anthracene	34.33	.....	228	229	226
Bis(2-ethylhexyl)phthalate	34.36	.....	149	167	279
Chrysene	34.44	.....	228	226	229
Di-n-octyl-phthalate	36.17	.....	149	.....	.....
Benzo(b)fluoranthene	37.90	.....	252	253	125
Benzo(k)fluoranthene	37.97	.....	252	253	125
Benzo(a)pyrene	39.17	.....	252	253	125
Dibenzo(a,h)anthracene	44.91	.....	278	139	279
Indeno(1,2,3-c,d)pyrene	45.01	.....	276	138	277
Benzo(ghi)perylene	46.56	.....	276	138	277

[1] The data presented in this table were obtained under the following conditions:
Column—30+/−5 meters×0.25+/−.02 mm i.d., 94% methyl, 5% phenyl, 1% vinyl, bonded phase fused silica capillary column (DB–5).
Temperature program—Five minutes at 30 °C; 30–280 °C at 8 °C per minute; isothermal at 280 °C until benzo(ghi)perylene elutes.
Gas velocity—30+/−5 cm/sec at 30 °C.
[2] Retention times are from Method 1625, Revision C, using a capillary column, and are intended to be consistent for all analytes in Tables 4 and 5 of this attachment.

TABLE 4.—CHROMATOGRAPHIC CONDITIONS, [1] METHOD DETECTION LIMITS (MDLS), AND CHARACTERISTIC M/Z'S FOR ACID EXTRACTABLES

Analyte	Retention time[2] (min)	MDL (μg/L)	Characteristic m/z's electron impact		
			Primary	Secondary	Secondary
Phenol	10.76	.....	94	65	66
2-Chlorophenol	11.08	.....	128	64	130
p-Cresol	12.92	7.8	108	107	77
2-Nitrophenol	14.38	.....	139	65	109
2,4-Dimethylphenol	14.54	.....	122	107	121
Benzoic acid	14.85	3.0	105	122	77
2,4-Dichlorophenol	15.12	.....	162	164	98
4-Chloro-3-methylphenol	16.83	.....	142	107	144

TABLE 4.—CHROMATOGRAPHIC CONDITIONS, [1] METHOD DETECTION LIMITS (MDLS), AND CHARACTERISTIC M/Z'S FOR ACID EXTRACTABLES—Continued

Analyte	Retention time [2] (min)	MDL (µg/L)	Characteristic m/z's electron impact		
			Primary	Secondary	Secondary
2,4,6-Trichlorophenol	18.80	.....	196	198	200
2,4-Dinitrophenol	21.51	.....	184	63	154
4-Nitrophenol	21.77	.....	65	139	109
2-Methyl-4,6-dinitrophenol	22.83	.....	198	182	77
Pentachlorophenol	25.52	.....	266	264	268

[1] The data presented in this table were obtained under the following conditions:
Column—30 +/−5 meters × 0.25 +/−.02 mm i.d., 94% methyl, 5% phenyl, 1% vinyl silicone bonded phase fused silica capillary column (DB–5).
Temperature program—Five minutes at 30 °C; 30–280 °C at 8 °C per minute; isothermal at 280 °C until benzo(ghi)perylene elutes.
Gas velocity—30+/−5 cm/sec at 30 °C.
[2] Retention times are from EPA Method 1625, Revision C, using a capillary column, and are intended to be consistent for all analytes in Tables 3 and 4 of this attachment.

TABLE 5.—QC ACCEPTANCE CRITERIA

Analyte	Test conclusion (µg/L)	Limits for s (µg/L)	Range for X (µg/L)	Range for P, P_s (%)
Acetophenone	100	51	23–254	61–144
Alpha-terpineol	100	47	46–163	58–156
Aniline	100	71	15–278	46–134
Carbazole	100	17	79–111	73–131
2,3-Dichloroaniline	100	13	40–160	68–134
o-Cresol	100	23	30–146	55–126
Benzoic acid	100	24	ns-ns	ns-ns
p-Cresol	100	22	11–617	76–107
n-Decane	100	70	D–651	D-ns
n-Docosane	100	10	52–155	49–163
n-Dodecane	100	36	13–103	10–359
n-Eicosane	100	28	57–133	72–117
n-Hexadecane	100	37	44–135	69–105
n-Octadecane	100	10	52–147	65–123
n-Tetradecane	100	8	75–100	47–113
Pyridine	100	ns	7–392	33–158
1-Methylphenanthrene	100	16	39–240	60–161

s=Standard deviation for four recovery measurements, in µg/L (Section 8.2)
X=Average recovery for four recovery measurements in µg/L (Section 8.2)
P,P_s=Percent recovery measured (Section 8.3, Section 8.4)
D=Detected; result must be greater than zero.
ns=no specification; limit is outside the range that can be measured reliably.

* * * * *

Method 1625—Revision B—Semivolatile Organic Compounds by Isotope Dilution GC/MS

* * * * *

Attachment 1 to Method 1625

Introduction

To support measurement of several semivolatile pollutants, EPA has developed this attachment to EPA Method 1625B.[1] EPA Method 1625B (the Method) employs sample extraction with methylene chloride followed by analysis of the extract using capillary column gas chromatography-mass spectrometry (GC/MS). This attachment addresses the addition of the semivolatile pollutants listed in Tables 1 and 2 to all applicable standard, stock, and spiking solutions utilized for the determination of semivolatile organic compounds by EPA Method 1625B.

1.0 EPA METHOD 1625 REVISION B MODIFICATION SUMMARY

The additional semivolatile organic compounds listed in Tables 1 and 2 are added to all applicable calibration, spiking, and other solutions utilized in the determination of semivolatile compounds by EPA Method 1625. The instrument is to be calibrated with these compounds, and all procedures and quality control tests described in the Method must be performed.

2.0 SECTION MODIFICATIONS

Note: All section and figure numbers in this Attachment reference section and figure numbers in EPA Method 1625 Revision B unless noted otherwise. Sections not listed here remain unchanged.

Section 6.7 The stock standard solutions described in this section are modified such that the analytes in Tables 1 and 2 of this attachment are required in addition to those specified in the Method.

Section 6.8 The labeled compound spiking solution in this section is modified to include the labeled compounds listed in Tables 5 and 6 of this attachment.

Section 6.9 The secondary standard is modified to include the additional analytes listed in Tables 1 and 2 of this attachment.

Section 6.12 The solutions for obtaining authentic mass spectra are to include all additional analytes listed in Tables 1 and 2 of this attachment.

Section 6.13 The calibration solutions are modified to include the analytes listed in Tables 1 and 2 and the labeled compounds listed in Tables 5 and 6 of this attachment.

Section 6.14 The precision and recovery standard is modified to include the analytes listed in Tables 1 and 2 and the

[1] EPA Method 1625 Revision B, Semivolatile Organic Compounds by Isotope Dilution GC/MS, 40 CFR Part 136, Appendix A.

labeled compounds listed in Tables 5 and 6 of this attachment.

Section 6.15 The solutions containing the additional analytes listed in Tables 1 and 2 of this attachment are to be analyzed for stability.

Section 7.2.1 This section is modified to include the analytes listed in Tables 1 and 2 and the labeled compounds listed in Tables 5 and 6 of this attachment.

Section 7.4.5 This section is modified to include the analytes listed in Tables 1 and 2 and the labeled compounds listed in Tables 5 and 6 in the calibration.

Section 8.2 The initial precision and recovery (IPR) requirements are modified to include the analytes listed in Tables 1 and 2 and the labeled compounds listed in Tables 5 and 6 of this attachment. Additional IPR performance criteria are supplied in Table 7 of this attachment.

Section 8.3 The labeled compounds listed in Tables 3 and 4 of this attachment are to be included in the method performance tests. Additional method performance criteria are supplied in Table 7 of this attachment.

Section 8.5.2 The acceptance criteria for blanks includes the analytes listed in Tables 1 and 2 of this attachment.

Section 10.1.2 The labeled compound solution must include the labeled compounds listed in Tables 5 and 6 of this attachment.

Section 10.1.3 The precision and recovery standard must include the analytes listed in Tables 1 and 2 and the labeled compounds listed in Tables 5 and 6 of this attachment.

Section 12.5 Additional QC requirements for calibration verification are supplied in Table 7 of this attachment.

Section 12.7 Additional QC requirements for ongoing precision and recovery are supplied in Table 7 of this attachment.

TABLE 1.—BASE/NEUTRAL EXTRACTABLE COMPOUNDS

Compound	Pollutant	
	CAS registry	EPA–EGD
Acetophenone	98–86–2	758
Aniline	62–53–3	757
2,3-Dichloroaniline	608–27–5	578
o-Cresol	95–48–7	771
Pyridine	110–86–1	1330
1-Methylphenanthrene	832–69–9	905

CAS=Chemical Abstracts Registry
EGD=Effluent Guidelines Division

TABLE 2.—ACID EXTRACTABLE COMPOUNDS

Compound	Pollutant	
	CAS registry	EPA–EGD
Benzoic acid	65–85–0	700
p-Cresol	106–44–5	1744

CAS=Chemical Abstracts Registry
EGD=Effluent Guidelines Division

TABLE 3.—GAS CHROMATOGRAPHY [1] OF BASE/NEUTRAL EXTRACTABLE COMPOUNDS

EGD No.	Compound	Retention time [2]			Minimum Level [3] (µg/L)
		Mean (sec)	EGD Ref	Relative	
758	Acetophenone	818	658	1.003–1.005	10
757	Aniline	694	657	0.994–1.023	10
578	2,3-Dichloroaniline	1160	164	1.003–1.007	10
771	o-Cresol	814	671	1.005–1.009	10
1330	Pyridine	930	1230	1.005–1.011	10
905	1-Methylphenanthrene	1697	164	1.449–1.537	10

EGD=Effluent Guidelines Division
[1] The data presented in this table were obtained under the chromatographic conditions given in the footnote to Table 3 of EPA Method 1625B.
[2] Retention times are approximate and are intended to be consistent with the retention times for the analytes in EPA Method 1625B.
[3] See the definition in footnote 2 to Table 3 of EPA Method 1625B.

TABLE 4.—GAS CHROMATOGRAPHY [1] OF ACID EXTRACTABLE COMPOUNDS

EGD No.	Compound	Retention time [2]			Minimum level (µg/L) [3]
		Mean (sec)	EGD Ref	Relative	
1744	p-Cresol	834	1644	1.004–1.008	20
700	Benzoic acid	971	600	0.992–1.008	10

EGD=Effluent Guidelines Division
[1] The data presented in this table were obtained under the chromatographic conditions given in the footnote to Table 4 of EPA Method 1625B.
[2] Retention times are approximate and are intended to be consistent with the retention times for the analytes in EPA Method 1625B.

[3] See the definition in footnote 2 to Table 4 of EPA Method 1625B.

TABLE 5.—BASE/NEUTRAL EXTRACTABLE COMPOUND CHARACTERISTIC M/Z'S

Compound	Labeled analog	Primary m/z [1]
Acetophenone	d_5	105/110
Aniline	d_7	93/100
2,3-Dichloroaniline	n/a	161
Pyridine	d_5	79/84
o-Cresol	d_7	108/116
1-Methylphenanthrene	n/a	192

m/z=mass to charge ratio
[1] native/labeled

TABLE 6.—ACID EXTRACTABLE COMPOUND CHARACTERISTIC M/Z'S

Compound	Labeled analog	Primary m/z [1]
p-Cresol	d_7	108/116
Benzoic acid	d_5	105/110

m/z=mass to charge ratio
[1] native/labeled

TABLE 7.—ACCEPTANCE CRITERIA FOR PERFORMANCE TESTS

EGD No.	Compound	Acceptance criteria				
		Initial precision and accuracy section 8.2 (µg/L)		Labeled compound recovery sec. 8.3 and 14.2 P (percent)	Calibration verification sec. 12.5 (µg/mL)	On-going accuracy sec. 12.7 R (µg/L)
		s (µg/L)	X			
758	Acetophenone	34	44–167	.....	85–115	45–162
658	Acetophenone-d_5	51	23–254	45–162	85–115	22–264
757	Aniline	32	30–171	.....	85–115	33–154
657	Aniline-d_7	71	15–278	33–154	85–115	12–344
700	Benzoic acid	ns	ns-ns	.....	ns-322	ns-ns
600	Benzoic acid-d_5	24	ns-ns	ns-ns	66–134	ns-648
578	2,3-dichloroaniline	13	40–160	.....	85–115	44–144
771	o-Cresol	40	31–226	.....	85–115	35–196
671	o-Cresol-d_7	23	30–146	35–196	85–115	31–142
1744	p-Cresol	59	54–140	.....	85–115	37–203
1644	p-Cresol-d_7	22	11–618	37–203	85–115	16–415
1330	Pyridine	28	10–421	.....	83–117	18–238
1230	Pyridine-d_5	ns	7–392	19–238	85–115	4–621
905	1-Methylphenanthrene	16	39–240	.....	78–122	46–204

s=Standard deviation of four recovery measurements.
X=Average recovery for four recovery measurements.
EGD=Effluent Guidelines Division.
ns=no specification; limit is outside the range that can be measured reliably.

Part 445 is added to read as follows:

PART 445—LANDFILLS POINT SOURCE CATEGORY

Sec.
445.1 General applicability.
445.2 General definitions.
445.3 General pretreatment standards.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill

445.10 Applicability.
445.11 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
445.12 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).
445.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
445.14 New source performance standards (NSPS).

Subpart B—RCRA Subtitle D Non-Hazardous Waste Landfill

Sec.
445.20 Applicability.
445.21 Effluent limitations attainable by the application of best practicable control technology currently available (BPT).
445.22 Effluent limitations attainable by the best conventional pollutant control technology (BCT).
445.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
445.24 New source performance standards (NSPS).

Authority: Secs. 301, 304, 306, 307, 308, 402 and 501 of the Clean Water Act, as amended (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361)

§ 445.1 General applicability.

(a) As defined more specifically in each subpart and except as provided in paragraphs (b) through (h) of this section, this part applies to discharges of wastewater from landfill units.

(b) The provisions of this part do not apply to wastewater discharges from land application or land treatment units, surface impoundments, underground injection wells, waste piles, salt dome formations, salt bed formations, underground mines or caves as these terms are defined in 40 CFR 257.2 and 260.10.

(c) The provisions of this part do not apply to wastewater generated off-site of a landfill facility, including wastewater generated off-site from washing vehicles or from waste transfer stations.

(d) The provisions of this part do not apply to discharges of contaminated ground water or wastewater from recovery pumping wells.

(e) This part does not apply to discharges of landfill wastewater from landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill.

(f) This part does not apply to discharges of landfill wastewater from landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation.

(g) This part does not apply to landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills.

(h) This part does not apply to landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

§ 445.2 General definitions.

In addition to the definitions set forth in 40 CFR 122.2, 257.2, 258.2, 264.10, 265.10, 401.11, and 403.3 the following definitions apply to this part:

(a) *Contaminated ground water* means water below the land surface in the zone of saturation which has been contaminated by activities associated with waste disposal.

(b) *Contaminated storm water* means storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in paragraph (f) of this section. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

(c) *Landfill* directly associated with an industrial or commercial operation means:

(1) A landfill located on the same site as industrial or commercial operations; and

(2) A landfill not located on the same site as the industrial or commercial operations (off-site), but ''wholly-owned'' by the industrial or commercial facility and primarily dedicated to receiving waste from the related industrial or commercial facility.

(d) *Facility* means all contiguous property owned, operated, leased or under the control of the same person or entity.

(e) *Landfill unit* means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 258.2 and 264.10.

(f) *Landfill wastewater* means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

(g) *Non-contaminated storm water* means storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater that is defined in paragraph (f) of this section. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

(h) *Off-site* means outside the boundaries of a facility.

(i) *On-site* means within the boundaries of a facility.

(j) *Public service* means the provision of landfill waste disposal services to individual members of the general public, publicly-owned organizations (schools, universities, government agencies, municipalities) and not-for-profit organizations for which the landfill does not receive a fee or other remuneration.

(k) The regulated parameters for this part, numbered (P) and listed with approved methods of analysis in Table 1B at 40 CFR 136.3, are defined as follows:

(1) *Ammonia (as N)* means ammonia reported as nitrogen. P4.

(2) BOD_5 means 5-day biochemical oxygen demand. P9.

(3) *Arsenic* means total arsenic. P6.

(4) *Chromium* means total chromium. P19.

(5) *Zinc* means total zinc. P75.

(l) The regulated parameters for this part, numbered (P) and listed with approved methods of analysis in Table 1C at 40 CFR 136.3, are as follows:

(1) Naphthalene. P68.

(2) Phenol. P85.

(m) The regulated parameters for this part listed with approved methods of analysis in the attachments to Methods 625 and 1625B in Appendix A at 40 CFR Part 136 are as follows:

(1) Aniline.

(2) Benzoic acid.

(3) p-Cresol.

(4) Pyridine.

(5) a-Terpineol.

§ 445.3 General pretreatment standards.

Any source subject to this part that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR part 403.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill

§ 445.10 Applicability.

Except as provided in § 445.1, this subpart applies to discharges of

wastewater from landfills subject to the provisions of 40 CFR Part 264, *Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills);* and 40 CFR Part 265, *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills).*

§ 445.11 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BPT:

EFFLUENT LIMITATIONS

Maximum daily [1]	Regulated parameter	Maximum monthly avg.[1]
BOD_5	220	56
TSS	88	27
Ammonia (as N)	10	4.9
α-Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzoic acid	0.119	0.073
Naphthalene	0.059	0.022
p-Cresol	0.024	0.015
Phenol	0.048	0.029
Pyridine	0.072	0.025
Arsenic	1.1	0.54
Chromium	1.1	0.46
Zinc	0.535	0.296
pH	([2])	([2])

[1] Milligrams per liter (mg/L, ppm).
[2] Within the range 6 to 9.

§ 445.12 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BCT: Limitations for BOD_5, TSS and pH are the same as the corresponding limitations specified in § 445.11.

§ 445.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BAT: Limitations for ammonia (as N), a-terpineol, aniline, benzoic acid, naphthalene, p-cresol, phenol, pyridine, arsenic, chromium and zinc are the same as the corresponding limitations specified in § 445.11.

§ 445.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following performance standards: Standards are the same as those specified in § 445.11.

Subpart B—RCRA Subtitle D Non-Hazardous Waste Landfill

§ 445.20 Applicability.

Except as provided in § 445.1, this subpart applies to discharges of wastewater from landfills subject to the provisions of 40 CFR part 258, *Criteria for Municipal Solid Waste Landfills;* and 40 CFR part 257, *Criteria for Classification of Solid Waste Disposal Facilities and Practices.*

§ 445.21 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BPT:

EFFLUENT LIMITATIONS

Regulated parameter	Maximum daily [1]	Maximum monthly avg. [1]
BOD	140	37
TSS	88	27
Ammonia (as N)	10	4.9
a-Terpineol	0.033	0.016
Benzoic acid	0.12	0.071
p-Cresol	0.025	0.014
Phenol	0.026	0.015
Zinc	0.20	0.11
pH	2)	(2)

[1] Milligrams per liter (mg/L, ppm)
[2] Within the range 6 to 9.

§ 445.22 Effluent limitations attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BCT: Limitations for BOD_5, TSS and pH are the same as the corresponding limitations specified in § 445.21.

§ 445.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30—125.32, any existing point source subject to this subpart must achieve the following effluent limitations which represent the application of BAT: Limitations for ammonia (as N), a-terpineol, benzoic acid, p-cresol, phenol and zinc are the same as the corresponding limitations specified in § 445.21.

§ 445.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following performance standards: Standards are the same as those specified in § 445.21.

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Part III

General Services Administration

41 CFR Part 301–51, et al.

Federal Travel Regulation; Mandatory Use of the Travel Charge Card; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

[FTR Amendment 90]

RIN 3090–AG92

Federal Travel Regulation; Mandatory Use of the Travel Charge Card

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with official Government travel. This final rule implements the requirements of Public Law 105–264, October 19, 1998, regarding the required use of the travel charge card, collection of amounts owed, and reimbursement of travel expenses. This final rule also implements the Administrator of General Services' authority under Public Law 105–264 to require agencies to pay expenses in connection with official Government travel.

DATES: *Effective Date:* The provisions of this final rule are effective July 16, 1999.

Applicability Date: The provisions of this final rule governing official travel apply to official travel performed after February 29, 2000, or upon the issuance of agency implementing regulations, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to subsection 2(a) of Public Law 105–264, the Administrator of General Services is required to issue regulations ''after consultation with the Secretary of the Treasury'' requiring Federal employees to use the travel charge card established pursuant to the United States Travel and Transportation Payment and Expense Control System, or any Federal contractor-issued travel charge card (including centrally billed accounts), for all payments of expenses of official Government travel.

Additionally, Public Law 105–264 requires the Administrator of General Services to issue regulations on the reimbursement of travel expenses and collection of delinquent amounts upon written request of a Federal travel charge card contractor.

The General Services Administration (GSA) has made a number of changes to this final rule in response to agency and public comments received on Interim Rule 8 published on July 16, 1999, at 64 FR 38528.

Comments were received from twenty-two Federal agencies, seven unions and other organizations representing employees, fifty-two Federal employees, and one bank. All comments received were considered in the formulation of the final rule.

Several comments were received regarding the definition of ''proper voucher''. GSA views a ''proper voucher'' as a travel claim that meets an agency's guidelines for what they have determined to be a ''proper voucher''. GSA does not see a need to restrict agencies by establishing Governmentwide standards on what constitutes a ''proper voucher''.

Several comments received suggested expanding the list of expenses that are exempt from the mandatory use of the Government contractor-issued travel charge card. In response to this request, we expanded the list of exempt expenses and added a list of personnel exempt from use of the Government contractor-issued travel charge card.

Several requests were received for GSA to provide specific guidelines on appropriate disciplinary action for use of the Government contractor-issued travel charge card for non-official travel purposes. While we believe that each agency, not GSA, should set the level of action to take, we have provided an example of one agency's actions in the following table.

Offense	Minimum penalty	Maximum penalty
First offense	Written reprimand.	Removal.
Second offense.	Ten-day suspension.	Removal.
Third offense	Fourteen-day suspension.	Removal.

Several comments were received recommending that the 30-calendar days after submission of a proper ''travel voucher'' begin when the travel claim is received in the payment office. GSA has not adopted this suggestion and feels that starting the 30-calendar day payment clock when the approving official receives the proper travel claim is more equitable to the employee. However, more guidance is provided on what is considered to be the date of receipt by the approving official.

Several comments questioned the tax consequences for payment of a late fee to the employee when the agency fails to reimburse the employee within 30 calendar days after the receipt of a proper travel claim. The Internal Revenue Service (IRS) has determined that the late payment fee is in the nature of interest and that the additional fee, which is the amount equivalent to any late payment charge that the contractor would have been able to charge the employee, is considered to be income to the employee.

It was suggested that a minimum amount be established for late payment fees. We agree with this suggestion and therefore establish a one-dollar threshold for the late payment fee.

It was suggested that collection of undisputed delinquent amounts from the employee be allowed in circumstances where the employee has failed to submit a travel claim unless there are extenuating circumstances. We agree with this suggestion and have stipulated that employees failing to submit travel claims in accordance with § 301–52.7 are subject to their agencies' policies on the collection of undisputed delinquent amounts owed on the Government contractor-issued travel charge card.

It was suggested that the requirement that agencies notify the Administrator of General Services not later than 30 days after granting an exemption from the mandatory use of the Government contractor-issued travel charge card be changed to allow semi-annual or annual reports on exemptions or eliminate the requirement all together. The Administrator of General Services does not have the authority to change or remove the 30-day reporting requirement established in Public Law 105–264.

GSA received several comments concerning usage provisions of the Government contractor-issued charge card contract and the employee's responsibility for prompt payment of charges incurred using the card for official Government travel. This rule does not place any new financial burdens on the employee; it simply reminds the employee and the agency that the employee is responsible for payment of the bill in accordance with the cardholder agreement. Therefore, we have not addressed those comments in this rule.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71, and 301–76

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR Chapter 301 is amended as follows:

PART 301–51—PAYING TRAVEL EXPENSES

1. The authority for part 301–51 is revised to read as follows:

Authority: 5 U.S.C. 5707. Subpart A is issued under the authority of Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 486(c).

2. Part 301–51 is amended by revising subpart A to read as follows:

Subpart A—General

Sec.

301–51.1 What is the required method of payment for official travel expenses?
301–51.2 What official travel expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?
301–51.3 Who in my agency has the authority to grant exemptions from the mandatory use of the Government contractor-issued travel charge card?
301–51.4 If my agency grants an exemption, does that prevent me from using the card on a voluntary basis?
301–51.5 How may I pay for official travel expenses if I receive an exemption from use of the Government contractor-issued travel charge card?
301–51.6 May I use the Government contractor-issued travel charge card for purposes other than those associated with official travel?
301–51.7 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

Subpart A—General

§ 301–51.1 What is the required method of payment for official travel expenses?

You are required to use the Government contractor-issued travel charge card for all official travel expenses unless you have an exemption.

§ 301–51.2 What official travel expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?

The Administrator of General Services exempts the following from the mandatory use of the Government contractor-issued travel charge card:

(a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card;

(b) Laundry/dry cleaning;

(c) Parking;

(d) Local transportation system;

(e) Taxi;

(f) Tips;

(g) Meals (when use of the card is impractical, e.g., group meals or the Government contractor-issued travel charge card is not accepted);

(h) Phone calls (when a Government calling card is available for use in accordance with agency policy);

(i) An employee who has an application pending for the travel charge card;

(j) Individuals traveling on invitational travel; and

(k) New appointees.

§ 301–51.3 Who in my agency has the authority to grant exemptions from the mandatory use of the Government contractor-issued travel charge card?

The head of your agency or his/her designee(s) has (have) the authority to grant exemptions from the mandatory use of the Government contractor-issued travel charge card.

§ 301–51.4 If my agency grants an exemption, does that prevent me from using the card on a voluntary basis?

No, an exemption from use would not prevent you from using the Government contractor-issued travel charge card on a voluntary basis in accordance with your agency's policy.

§ 301–51.5 How may I pay for official travel expenses if I receive an exemption from use of the Government contractor-issued travel charge card?

If you receive an exemption from use of the Government contractor-issued travel charge card, your agency may authorize one or a combination of the following methods of payment:

(a) Personal funds, including cash or personal charge card;

(b) Travel advances; or

(c) Government Transportation Request (GTR).

Note to § 301–51.5: City pair contractors are not required to accept payment by the methods in paragraph (a) or (b) of this section.

§ 301–51.6 May I use the Government contractor-issued travel charge card for purposes other than those associated with official travel?

No, the Government contractor-issued travel charge card may be used only for official travel related expenses.

§ 301–51.7 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

If you use the Government contractor-issued travel charge card for purposes other than official travel, your agency may take appropriate disciplinary action.

PART 301–52—CLAIMING REIMBURSEMENT

3. The authority citation for 41 CFR part 301–52 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2., Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

4. Part 301–52 is amended by revising §§ 301–52.17 through 301–52.21 and adding §§ 301–52.22 through 301–52.24 to read as follows:

§ 301–52.17 Within how many calendar days after I submit a proper travel claim must my agency reimburse my allowable expenses?

Your agency must reimburse you within 30-calendar days after you submit a proper travel claim to your approving official. Your agency must ensure that it uses a satisfactory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with your agency's policy, could be annotated with the time and date of receipt by the agency. Your agency could consider travel claims electronically submitted to the approving official as submitted on the date indicated on an email log, or on the next business day if submitted after normal working hours.

§ 301–52.18 Within how many calendar days after I submit a travel claim must my agency notify me of any error that would prevent payment within 30 calendar days after submission?

Your agency must notify you within seven calendar days after you submit your travel claim of any error that would prevent payment within 30 calendar days after submission and must provide the reason(s) why your travel claim is not proper.

§ 301–52.19 Will I receive a late payment fee if my agency fails to reimburse me within 30 calendar days after I submit a proper travel claim?

Yes, your agency must pay you a late payment fee, in addition to the amount due you, for any proper travel claim not reimbursed within 30 calendar days of your submission of it to the approving official.

§ 301–52.20 How are late payment fees calculated?

Your agency must calculate late payment fees using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made. In addition to this fee, your agency must also pay you an amount equivalent to any late payment charge that the card contractor would have been able to charge you had you not paid the bill.

§ 301–52.21 Is there a minimum amount the late payment fee must exceed before my agency will pay it to me?

Yes, a late payment fee will only be paid when the computed late payment fee is $1.00 or greater.

§ 301–52.22 Will any late payment fees I receive be reported as wages on a Form W–2?

No, the Internal Revenue Service (IRS) has determined that the late payment fee is in the nature of interest (compensation for the use of money). Your agency will report payments in accordance with IRS guidelines.

§ 301–52.23 Is the additional fee, which is equal to any late payment charge that the card contractor would have been able to charge had I not paid the bill, considered income?

Yes, your agency will report this payment as additional wages on Form W–2.

§ 301–52.24 Does mandatory use of the Government contractor-issued travel charge card change my obligation to pay my travel card bill by the due date?

No, mandatory use of the Government contractor-issued travel charge card does not relieve you of your obligation to pay your bill in accordance with your cardholder agreement.

5. Part 301–54 is revised to read as follows:

PART 301–54—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

Subpart A—General Rules

Sec.

301–54.1 Is my agency allowed to collect undisputed delinquent amounts that I owe to a Government travel charge card contractor?
301–54.2 What is disposable pay?

Subpart B—Policies and Procedures

301–54.100 Are there any due process requirements with which my agency must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?
301–54.101 Can my agency initiate collection of undisputed delinquent amounts if it has not reimbursed me for amounts reimbursable under the applicable travel regulations?
301–54.102 What is the maximum amount my agency may deduct from my disposable pay?

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

Subpart A—General Rules

Note to subpart A: Use of pronouns ''I'', ''you'', and their variants throughout this subpart refers to the employee.

§ 301–54.1 Is my agency allowed to collect undisputed delinquent amounts that I owe to a Government travel charge card contractor?

Yes, upon written request from the contractor, your agency may collect, from your disposable pay, any undisputed delinquent amounts that you owe to a Government travel charge card contractor.

§ 301–54.2 What is disposable pay?

Disposable pay is your compensation remaining after the deduction from your earnings of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as health insurance, savings bonds, charitable contributions, etc. Deductions may be made from any type of pay you receive from your agency, *e.g.,* basic pay, special pay, retirement pay, or incentive pay.

Subpart B—Policies and Procedures

Note to subpart B: Use of pronouns ''I'', ''you'', and their variants throughout this subpart refers to the employee.

§ 301–54.100 Are there any due process requirements with which my agency must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?

Yes, your agency must:

(a) Provide you with written notice of the type and amount of the claim, the intention to collect the claim by deduction from your disposable pay, and an explanation of your rights as a debtor;

(b) Give you the opportunity to inspect and copy their records related to the claim;

(c) Allow an opportunity for a review within the agency of its decision to collect the amount; and

(d) Provide you with an opportunity to make a written agreement with the contractor to repay the delinquent amount of the claim.

§ 301–54.101 Can my agency initiate collection of undisputed delinquent amounts if it has not reimbursed me for amounts reimbursable under the applicable travel regulations?

No, your agency may only collect undisputed delinquent amounts for which you have been reimbursed under the applicable travel regulations. However, if you have not submitted a proper travel claim within the timeframe requirements of § 301–52.7 of this chapter, and there are no extenuating circumstances, your agency may collect the undisputed delinquent amounts based on the amounts charged on the travel charge card.

§ 301–54.102 What is the maximum amount my agency may deduct from my disposable pay?

As set forth in Public Law 105–264, 112 Stat. 2350, October 19, 1998, the maximum amount your agency may deduct from your disposable pay is 15 percent a pay period, unless you agree in writing to a larger percentage.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

6. The authority citation for 41 CFR part 301–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

7. Part 301–70 is amended by revising Subpart H to read as follows:

Subpart H—Policies and Procedures Relating to Mandatory Use of the Government Contractor-Issued Travel Charge Card for Official Travel

Sec.

301–70.700 Must our employees use a Government contractor-issued travel charge card for official travel expenses?
301–70.701 Who has the authority to grant exemptions to mandatory use of Government contractor-issued travel charge card for official travel?
301–70.702 Must we notify the Administrator of General Services when we grant an exemption?
301–70.703 If we grant an exemption, does that prevent the employee from using the card on a voluntary basis?
301–70.704 What expenses and/or classes of employees are exempt from the

mandatory use of the Government contractor-issued travel charge card?
301–70.705 What methods of payment for official travel expenses may we authorize when an exemption from use of the Government contractor-issued travel charge card is granted?
301–70.706 May an employee use the Government contractor-issued travel charge card for purposes other than those associated with official travel?
301–70.707 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

Subpart H—Policies and Procedures Relating to Mandatory Use of the Government Contractor-Issued Travel Charge Card for Official Travel

§ 301–70.700 Must our employees use a Government contractor-issued travel charge card for official travel expenses?

Yes, your employees must use a Government contractor-issued travel charge card for official travel expenses unless:

(a) A vendor does not accept the travel charge card;

(b) The Administrator of General Services has granted an exemption. (see § 301–70.704); or

(c) Your agency head or his/her designee has granted an exemption.

§ 301–70.701 Who has the authority to grant exemptions to mandatory use of Government contractor-issued travel charge card for official travel?

(a) The Administrator of General Services will exempt any payment, person, type or class of payments, or type or class of personnel in any case in which—

(1) It is in the best interest of the United States to do so;

(2) Payment through a travel charge card is impractical or imposes unreasonable burdens or costs on Federal employees or Federal agencies; or

(3) The Secretary of Defense or the Secretary of Transportation (for the Coast Guard) requests an exemption for the members of their uniformed services.

(b) The head of a Federal agency or his/her designee(s) may exempt any payment, person, type or class of payments, or type or class of agency personnel if the exemption is determined to be necessary in the interest of the agency.

§ 301–70.702 Must we notify the Administrator of General Services when we grant an exemption?

Yes, you must notify the Administrator of General Services (Attention: MTT), 1800 F Street, NW, Washington, DC 20405, in writing within 30 days after granting the exemption, stating the reasons for the exemption.

§ 301–70.703 If we grant an exemption, does that prevent the employee from using the card on a voluntary basis?

No, an exemption from use would not prevent the employee from using the Government contractor-issued travel charge card for official travel expenses on a voluntary basis in accordance with your policies.

§ 301–70.704 What expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?

The Administrator of General Services exempts the following from the mandatory use of the Government contractor-issued travel charge card:

(a) Expenses incurred at a vendor that does not accept the Government contractor-issued travel charge card;

(b) Laundry/dry cleaning;

(c) Parking;

(d) Local transportation system;

(e) Taxi;

(f) Tips;

(g) Meals (only when use of the card is impractical, *i.e.,* group meals or the Government contractor-issued travel charge card is not accepted);

(h) Phone calls (when a Government calling card is available for use in accordance with agency policy);

(i) An employee who has an application pending for the travel charge card;

(j) Individuals traveling on invitational travel; and

(k) New appointees.

§ 301–70.705 What methods of payment for official travel expenses may we authorize when an exemption from use of the Government contractor-issued travel charge card is granted?

When you grant an exemption from use of the Government contractor-issued travel charge card, you may authorize one or a combination of the following methods of payment:

(a) Personal funds, including cash or personal charge card;

(b) Travel advances; or

(c) Government Transportation Request (GTR).

Note to § 301–70.705: City pair contractors are not required to accept payment by the methods in paragraph (a) or (b) of this section.

§ 301–70.706 May an employee use the Government contractor-issued travel charge card for purposes other than those associated with official travel?

No, the Government contractor-issued travel charge card may be used only for official travel related expenses.

§ 301–70.707 What are the consequences of using the Government contractor-issued travel charge card for non-official travel purposes?

If one of your employees uses the Government contractor-issued travel charge card for purposes other than official travel, you may take appropriate disciplinary action.

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

8. The authority citation for 41 CFR part 301–71 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

9. Part 301–71 is amended by revising § 301–71.204 and §§ 301–71.208 through 301–71.211 and by adding §§ 301–71.212 through 301–71.214 to Subpart C to read as follows:

§ 301–71.204 Within how many calendar days after the submission of a proper travel claim must we reimburse the employee's allowable expenses?

You must reimburse the employee within 30 calendar days after the employee submits a proper travel claim to the approving official. You must use a satisfactory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with agency policy, could be annotated with date of receipt by the agency. You could consider travel claims electronically submitted to the approving official as submitted on the date indicated on an email log, or on the next business day if submitted after normal working hours.

§ 301–71.208 Within how many calendar days after submission of the travel claim must we notify the employee of any errors in the claim?

You must notify the employee within seven calendar days after the employee's submission of the travel claim of any error that would prevent payment within 30 calendar days after submission and provide the reason(s) why the claim is not proper.

§ 301–71.209 Must we pay a late payment fee if we fail to reimburse the employee within 30 calendar days after receipt of a proper travel claim?

Yes, a late payment fee, in addition to the amount due the employee, must be paid for any proper travel claim not reimbursed within 30 calendar days of submission to the approving official.

§ 301–71.210 How do we calculate late payment fees?

Late payment fees are calculated using the prevailing Prompt Payment

Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made. In addition to this fee, you must also pay an amount equivalent to any late payment charge that the card contractor would have been able to charge the employee had the bill not been paid. Payment of this additional fee will be based upon the effective date that a late payment charge would be allowed under the agreement between you and the card contractor.

§ 301–71.211 Is there a minimum amount the late payment fee must exceed before we will pay it?

Yes, a late payment fee will only be paid when the computed late payment fee is $1.00 or greater.

§ 301–71.212 Should we report late payment fees as wages on a Form W–2?

No, the Internal Revenue Service (IRS) has determined that the late payment fee is in the nature of interest (compensation for the use of money).

§ 301–71.213 Is the additional fee, which is the equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill, considered income?

Yes, you must report this late payment fee as additional wages on Form W–2.

§ 301–71.214 Does mandatory use of the Government contractor-issued travel charge card change the employee's obligation to pay his/her travel card bill by the due date?

No, mandatory use of the Government contractor-issued travel charge card does not relieve the employee of his/her obligation to honor his/her cardholder payment agreement.

10. Part 301–76 is revised to read as follows:

PART 301–76—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

Subpart A—General Rules

Sec.

301–76.1 May we collect undisputed delinquent amounts that an employee (including members of the uniformed services) owes to a Government travel charge card contractor?
301–76.2 What is disposable pay?

Subpart B—Policies and Procedures

301–76.100 Are there any due process requirements with which we must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?
301–76.101 Who is responsible for ensuring that all due process and legal requirements have been met?
301–76.102 Can we collect undisputed delinquent amounts if we have not reimbursed the employee for amounts reimbursable under applicable travel regulations?
301–76.103 What is the maximum amount we may deduct from the employee's disposable pay?

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

Subpart A—General Rules

Note to Subpart A: Use of pronouns ''we'', ''you'', and their variants throughout this part refers to the agency.

§ 301–76.1 May we collect undisputed delinquent amounts that an employee (including members of the uniformed services) owes to a Government travel charge card contractor?

Yes, upon written request from the contractor and in accordance with the procedures specified in § 301–76.100, you may collect undisputed amounts owed to a Government travel charge card contractor from the delinquent employee's disposable pay. You must promptly forward all amounts deducted to the contractor.

§ 301–76.2 What is disposable pay?

Disposable pay is the part of the employee's compensation remaining after the deduction of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as health insurance, savings bonds, charitable contributions, etc. Deductions may be made from any type of pay, e.g., basic pay, special pay, retirement pay, or incentive pay.

Subpart B—Policies and Procedures

Note to Subpart B: Use of pronouns ''we'', ''you'', and their variants throughout this part refers to the agency.

§ 301–76.100 Are there any due process requirements with which we must comply before collecting undisputed delinquent amounts on behalf of the charge card contractor?

Yes, you must:

(a) Provide the employee with written notice of the type and amount of the claim, the intention to collect the claim by deduction from his/her disposable pay, and an explanation of his/her rights as a debtor;

(b) Give the employee the opportunity to inspect and copy your records related to the claim;

(c) Allow an opportunity for a review within the agency of your decision to collect the amount; and

(d) Provide the employee an opportunity to make a written agreement with the contractor to repay the delinquent amount.

§ 301–76.101 Who is responsible for ensuring that all due process and legal requirements have been met?

You are responsible for ensuring that all requirements have been met.

§ 301–76.102 Can we collect undisputed delinquent amounts if we have not reimbursed the employee for amounts reimbursable under applicable travel regulations?

No, you may only collect undisputed delinquent amounts after you have reimbursed the employee under the applicable travel regulations and in accordance with a proper travel claim. However, if the employee has not submitted a proper travel claim within the timeframe requirements of § 301–52.7 of this chapter, and there are no extenuating circumstances, you may collect the undisputed delinquent amounts.

§ 301–76.103 What is the maximum amount we may deduct from the employee's disposable pay?

As set forth in Public Law 105–264, 112 Stat. 2350, October 19, 1998, the maximum amount you may deduct from the employee's disposable pay is 15 percent per pay period, unless the employee consents in writing to deduction of a greater percentage.

Dated: December 20, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–695 Filed 1–18–00; 8:45 am]

BILLING CODE 6820–34–P

Federal Register

Wednesday,
January 19, 2000

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act Amendments of 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act Amendments of 1997

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2000 competitions under three programs authorized by the Individuals with Disabilities Education Act (IDEA Amendments of 1997), as amended. The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (one priority); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (one priority); and (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (three priorities).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA).

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the ''Page Limits'' section under the applicable priority in this notice using the following standards:

• A ''page'' is 8.5″; x 11″ (on one side only) with one-inch margins (top, bottom, and sides).

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

If, to meet the page limit, you use a larger page or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Research and Innovation To Improve Services and Results for Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under section 672 of the Act and 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority—Directed Research Projects (84.324D)

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services. This includes professionals who work with children with disabilities in regular education environments and natural environments. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice. If the project maintains a web site, it must include relevant information and documents in an accessible form. Projects must (1) use rigorous quantitative or qualitative research and evaluation methods and (2) communicate appropriately with audiences.

Focus 1—Inclusion of Students With Disabilities in Large-Scale Assessment Programs

The IDEA Amendments of 1997 include a number of provisions related to State and district-wide assessment programs. These provisions call for (1) the participation of children with disabilities in general State and district-wide assessment programs, with appropriate accommodations, where necessary (section 612(a)(17)(A)); (2) the provision of alternate assessments for children with disabilities who cannot participate in State or districtwide assessment programs (section 612(a)(17)(A)(i) and (ii)); (3) public reporting on the participation and performance of students with disabilities in general assessment programs and alternate assessments (section 612(a)(17)(B)); and (4) statements in the IEP regarding

individual modifications needed in the administration of State and districtwide assessments or how a child will participate in alternate assessments (section 614(d)(1)(A)(v)).

Focus 1 supports projects that pursue systematic programs of applied research to (a) determine how State and local educational agencies can best meet these requirements, and (b) study the effects of efforts made by these agencies to meet these requirements. The Assistant Secretary is particularly interested in projects that examine the impact of State assessment policies on students with disabilities, specifically those projects that require students with disabilities to demonstrate reading proficiency at a particular level in order to graduate.

Projects may focus on one or more specific requirements or effects.

The Assistant Secretary intends to make approximately 3 awards in Focus Area 1 with at least one award focusing on low-incidence disabilities, i.e., a visual or hearing impairment or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

Focus 2—Instructional Interventions and Results for Children With Disabilities

The successful implementation of the IDEA Amendments of 1997 requires a strong emphasis on supports for children with disabilities to help them access the general education curricula. Research is needed to describe, test, and validate instructional practices that have the potential for generating positive results for children with disabilities as they strive to meet State and local standards and performance goals set for all students. The research must focus on children in preschool, elementary, middle, or high school.

Projects supported under Focus 2 must investigate one or more issues related to providing instruction in the general education curriculum for children with disabilities. These issues may include, but are not limited to:

The relationship of instructional interventions to results in the following areas: (1) Core subjects e.g., language arts, mathematics, science, social studies, and (2) second language acquisition;

(b) Contextual variables that influence access to the general education curriculum for students with disabilities. Contextual variables include, for example, classroom design, relative role of regular educators and special educators, groupings, or management strategies; curricular design, delivery, or materials; and family and staff interaction;

(c) Instructional and curricular accommodations to ensure that students with disabilities have access to the general education curriculum;

(d) The relationship of inclusive preschool practices and child-family transition practices to child development, readiness skills, and preparation for participation in the primary grades; and

(e) The development of interventions that promote better results through standards based reform and accountability.

The Assistant Secretary intends to fund approximately 12 awards in Focus 2 with at least 2 projects for each of the following grade levels: preschool, elementary, middle, and high school.

Focus Area 3—Early and Prescriptive Assessment of Children With Learning or Emotional Disabilities

Children with physical, sensory, speech, and significant cognitive disabilities are identified relatively early, and children with learning and emotional disabilities, relatively late. Between first grade and fourth grade, the number of children identified with learning disabilities and emotional disturbance triples. Research has shown that early intervention is particularly effective for children with learning or emotional disabilities, to improve educational results and reduce behavioral difficulties.

Attempts to explain the late identification patterns for children with learning or emotional disabilities have targeted weaknesses in assessment practices, and the reluctance of schools to engage in potentially stigmatizing erroneous identification. This late identification problem has resulted in many young children not receiving appropriate services at the age when they would obtain the greatest benefit from targeted interventions.

Research is needed to examine and document effective and prescriptive assessment procedures that will contribute to the accurate identification of young children (3 through 9 years of age) with learning or emotional disabilities, and will lead to appropriate services to maximize their social and educational development. The procedures and services to be studied must incorporate multiple assessment approaches including observational techniques, cultural and linguistic factors, and prereferral strategies to enhance the accuracy of assessment and prevent misidentification of children, where appropriate. The research must document the effectiveness of methods to accurately identify and prescribe interventions for young children with learning or emotional disabilities, including students whose eligibility for special education is based upon having specific learning disabilities, emotional disturbance, development delay, or other health impairments. Because learning and behavioral problems often coexist in young children, research awards under this focus area must address early assessment procedures that examine both emotional or behavioral and learning domains.

The Assistant Secretary intends to award approximately 3 projects in Focus 3.

Focus 4—Gender and Special Education

The purpose of this priority is to explore the influences of gender on special education referral, placement, and service provision for students with disabilities.

Males and females comprise equal proportions of the school-aged population; however, males account for approximately two-thirds of all students served in special education. In many cases, it is not clear if females are underidentified for special education, if males are overidentified, or if real differences exist in the prevalence of disability between males and females. The research to date has primarily addressed commonalities of students rather than differences based on gender.

Some additional facts regarding gender and disabilities include:

(a) Females with disabilities have more significant disabilities than their male peers at the time of referral;

(b) Females with disabilities have lower IQ scores than their male counterparts at the time of referral; and

(c) Post school outcomes for females with disabilities are significantly worse than their male peers with disabilities.

Little is known, however, about the different characteristics, treatment and experiences of males and females with disabilities. These differences are likely to be caused by a combination of factors.

Under this priority, a research project must pursue a systematic program of research that focuses on one or more issues related to gender and special education. The issues may include, but are not limited to:

(a) The differences that may exist in the prevalence of disabilities based on gender, and if those differences exist, why;

(b) The reasons for different outcomes and opportunities, (e.g., employment, parenting, vocational education programs) for students with disabilities based on gender; and

(c) The factors that contribute to disproportionate representation of males and females in special education including (i) students' environmental, social, and learning experiences, and cultural and linguistic characteristics; (ii) student or teacher behaviors and interactions; (iii) teacher expectations and attitudes; and (iv) any other relevant areas.

The Assistant Secretary intends to fund 3 awards in Focus 4.

Focus 5—Research To Improve Literacy Results for Children Who Are Unresponsive to Effective Classroom or Schoolwide Programs in Grades K–3

Recent reading research has focused on developing and validating strategies and interventions to ensure that children acquire literacy in regular education classroom settings by using effective classroom reading programs. These programs may include explicit and intensive instruction within or outside the classroom in small groups and, in the most difficult cases, with individualized one-on-one tutoring. The hope has been that all children would succeed in these circumstances; however, there are a small number of children who do not benefit from these interventions and who are at the highest risk for academic and social failure.

Effective learning and teaching strategies must also be found for these children. These strategies need to be based on the learning characteristics and needs of a child as well as by reasonable expectations for the child. Some children may benefit from more intensive interventions of longer duration, or they may benefit from a number of new innovations, e.g., a universal design of curriculum that has embedded modifications, adaptations and accommodations to serve diverse student populations. Supports and supplementary aids and services may also help these children.

Projects supported under Focus 5 must—

(a) Identify the criteria used to decide that a child is unresponsive to interventions that are effective for most students;

(b) Identify and describe characteristics related to (i) the environmental, social, and cultural factors each child may have experienced, and (ii) the learning characteristics related to the literacy of each child who is unresponsive to reading programs to which a majority of children respond. Learning characteristics may include, but are not limited to, specific deficits in phonological awareness, inattentiveness and distractibility, motivation, language development, developmental delay, and IQ;

(c) Design processes for making decisions about how to target instruction that will be effective given the identified learning characteristics of the child;

(d) Identify alternative methods of providing access to content for those who have not acquired sufficient reading proficiency;

(e) Document the progress of individual children toward meeting intervention goals, the fidelity of implementation of interventions, the qualifications of persons who make decisions and who implement interventions, the length and intensity of interventions, and the settings where the interventions take place; and

(f) Evaluate the expectations that were made for each child.

The Assistant Secretary intends to fund 3 awards in Focus 5.

Focus 6—Research to Improve Reading Comprehension Results for Children With Disabilities

In recent years, research has advanced our understanding of how skilled readers comprehend and how instructional strategies support children with learning disabilities to comprehend text. Comprehension is not merely a text-based process where meaning resides in the text and the role of the reader is to discover the meaning. To develop successful comprehension skills, many children with learning disabilities need an explicit instructional program that: (a) Teaches them how to access prior knowledge through strategies such as semantic mapping, think aloud sheets, etc.; (b) motivates and supports persistence on task, including expressions of a student's own thoughts when reading and writing, questioning the expert or inquiring, or using technology or grouping practices; and (c) teaches them cognitive and metacognitive strategies for reading with understanding, including how to monitor one's own progress through self-regulation, summarizing, generating questions, mnemonics, or imagery.

Under Focus 6, a research project must pursue a systematic program of applied research that focuses on one or more issues related to improving reading comprehension results of children with learning disabilities related to reading. These issues include, but are not limited to:

(a) The types of effective comprehension instruction for children with learning disabilities in grades K–2, 3–5, and 6–8 inclusive; the components of particularly effective programs for children with learning disabilities, e.g., the basal materials, supplemental or adapted materials, instructional strategies used by teachers, and how families may support the instructional program;

(b) The types of effective questioning strategies used by teachers, peers, and parents to encourage and develop comprehension skills; and

(c) The kinds of individualized instruction, grouping practices, instructional strategies, and curricula that improve comprehension and problem solving.

The Assistant Secretary intends to make approximately 3 awards in Focus 6.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the General Requirements section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period for All Focus Areas

Up to 36 months.

Maximum Award for All Focus Areas

We will reject any application that proposes a budget exceeding $180,000 for a single budget period of 12 months. This maximum award applies to any application for any Focus area. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Page Limits for All Focus Areas

The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the General Requirements section of this notice.

Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities [CFDA 84.325]

Purpose of Program

The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under section 673(d) of the Act and 34 CFR 75.105(c)(3), we consider only those applications that meet the following priority:

Absolute Priority—Projects of National Significance (84.325N)

The Assistant Secretary establishes an absolute priority to support projects that address issues of national significance and have broad applicability. Projects supported under this priority must develop, evaluate, and disseminate innovative models. These models must be designed to serve as blueprints for systemic improvement in the recruitment, preparation, induction, retention, or ongoing professional development of personnel who have responsibility for ensuring that children with disabilities achieve to high standards and become independent, productive citizens. These personnel include early intervention personnel, regular and special education teachers, administrators, related service personnel, and paraprofessionals. If the project maintains a web site, it must include relevant information and documents in an accessible form.

Projects must (1) Use current research-validated practices and materials and (2) communicate appropriately with target audiences.

Applicants should note that:

(a) The purpose of this priority is model development. Thus, it is not expected that student stipends will be supported. However, release time for staff for development activities is appropriate; and

(b) It is expected that projects funded under this priority will incorporate a systemic approach to dissemination to relevant training and technical assistance entities.

Invitational Priorities

Within this absolute priority, the Assistant Secretary is particularly interested in applications that meet one or more of the following priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

(a) Projects that are designed to reduce personnel shortages by developing innovative models for promoting the transferability, across State and local jurisdictions, of licensure and certification of personnel serving infants, toddlers, and children with disabilities;

(b) Projects that are designed to increase the quantity, quality, and diversity of personnel who serve infants, toddlers, or children with disabilities by developing innovative, proactive models for recruiting personnel into training programs or professional positions;

(c) Projects that are designed to increase the retention of new personnel by developing innovative, multi-year, developmental induction models;

(d) Projects that are designed to improve the learning of children with disabilities in the general education curricula by developing innovative models for collaborative training of regular and special education personnel, including paraprofessionals;

(e) Projects that are designed to enhance professional development curricula for personnel serving infants, toddlers, or children with disabilities by developing case or problem-based training modules that can be integrated into training curricula. It is expected that these projects will incorporate state of the art technology in the design and dissemination of the modules;

(f) Projects that are designed to enhance teaching and learning through the development of innovative training models that incorporate state of the art assistive, instructional and communicative technology knowledge and use; and

(g) Projects that are designed to enhance professional development curricula for teachers and administrators serving infants, toddlers, or children with disabilities by developing modules for individualized education program (IEP) decisionmaking, particularly with regard to a child's participation in assessments.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the General Requirements section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period

Up to 36 months.

Maximum Award

We will reject any application that proposes a budget exceeding $200,000 for any single budget period of 12 months. This maximum award applies to any application. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Page Limits

The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the General Requirements section of this notice.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each of these priorities are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants

State and local educational agencies, institutions of higher education, other public agencies, private nonprofit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Additional Requirements for all Technical Assistance and Dissemination Priorities

Projects funded under this program must (1) use current research-validated practices and materials and (2) communicate appropriately with target audiences.

Priority

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Linking Policy and Practice Audiences to the IDEA Amendments of 1997 (84.326A)

Background

The continued, effective implementation of the IDEA Amendments of 1997 is dependent, in part, on the active participation of educational and professional associations, parent organizations, advocacy groups, and other entities concerned with the early intervention and education for children with disabilities. In 1998, the Office of Special Education Programs funded four partnerships among these associations and other entities to address the information and training needs of four specific audiences: families and advocates; policy makers; local administrators; and services providers.

The four partnership projects include the: (1) Families and Advocates Partnership for Education (FAPE), which addresses the needs of families and advocates; (2) Policy Maker Partnership (PMP), which addresses the needs of education policy makers; (3) IDEA Local Implementation by Local Administrators Partnership (ILIAD), which addresses the needs of local education administrators; and (4) Association of Service Providers Implementing IDEA Reforms in Education Partnership (ASPIIRE), which addresses the needs of the services providers, including teachers and related service providers.

Three of the four partnership projects, FAPE, ILIAD, and ASPIIRE were funded for three years with an option for two additional years of funding. Since the PMP was funded for only two years, the following priority is needed in order to continue that partnership for up to 3 additional years.

Priority

The Assistant Secretary establishes an absolute priority to support one partnership among associations of education policy makers and other entities so they can contribute to the successful implementation of the IDEA Amendments of 1997, including those related to Part C of IDEA. This partnership will be established in order to inform and provide support to the partnership's members and constituents in understanding the law, the implications of the law for their respective roles in improving results for children with disabilities, and how research-based best practices can be used to implement the law.

The partnerships must—

(a) Collaborate to meet the needs of policy makers (e.g., chief State school officers, State boards of education, local school boards, State directors of special education, State directors of mental health programs, State directors of vocational rehabilitation programs, State directors of programs for children with special health care needs, deans of education and special education department chairs, school superintendents, governors, State legislators);

(b) Include—

(1) from 5 to 10 associations and entities representing regular and special education interests; and

(2) one project director responsible for the leadership and management of the partnership;

(c) Conduct needs assessments of member associations and other entities prior to submitting an application in order to identify the needs of their respective memberships and constituents regarding the implementation of the IDEA Amendments of 1997;

(d) Describe in the application the strategies (e.g., questionnaires, telephone surveys, focus groups, the use of documents in electronic formats) used to obtain needs assessment data from their respective memberships and constituents;

(e) Provide an analysis of the needs assessment data with the application and submit the analysis to the Coordinating Committee described in paragraph (h);

(f) Develop a joint agreement among the participating associations and other entities to be included in the application. This agreement must describe—

(1) The audience whose needs the partnership will address and the roles and responsibilities of each member organization or other entity in the partnership;

(2) The activities that the partnership is proposing to conduct. Activities must include dissemination of information and outreach. The partnership must also employ information specialists to answer questions and provide materials to audience members and constituents upon request; and

(3) How resources are to be allocated to ensure the success of the partnership activities;

(g) Implement an external review process in which experts review partnership materials for technical accuracy and clarity. Experts must be knowledgeable in the IDEA Amendments of 1997, supporting legislative history, and regulations implementing the Amendments, and also must be familiar with related OSEP policy guidance. The external expert review process shall be finalized in consultation with, and approved by, OSEP. Information products produced under this award may not be disseminated to outside audiences without prior approval by OSEP;

(h) Describe how the project will be involved in the Partnership Projects' Coordinating Committee, described below, which is comprised of representatives of each of the four partnerships described in the

Background section of this priority. The Coordinating Committee includes, at a minimum, the project director of each partnership and appropriate OSEP staff, and may also include other partnership staff for purposes of carrying out committee responsibilities, including assisting partnerships in implementing their projects. The proposal under this paragraph must address each of the ongoing committee functions listed below and include a method for allocating partnership resources to support committee activities. The Coordinating Committee—

(1) Provides technical assistance across the four partnerships and develops cross-partnership materials to ensure clarity, accuracy, consistency of message and efficient use of resources across the partnerships;

(2) Provides the partnerships timely information, including information on pertinent research;

(3) Develops and implements a joint marketing, training, dissemination, and outreach plan based on the results of the partnerships' needs assessments, for reaching each of the four target audiences in an efficient and timely manner; and

(4) Designs and conducts a media campaign that includes the successful implementation of researched-based practices and that increases public awareness of how children with disabilities are being served appropriately and how appropriate services affect results for children; and

(i) Maintain a world wide web site with relevant information and documents in an accessible form.

Competitive Preference:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the General Requirements section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period

Under this priority, the Assistant Secretary will make an award for a cooperative agreement with a project period of up to 36 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Maximum Award

We reject any application that proposes a budget exceeding $1,500,000 for any single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Page Limits

The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the General Requirements section of this notice.

Absolute Priority 2—State and Federal Policy Forum for Program Improvement. (84.326F)

Background

Access to information is critical for decisionmakers and policy officials to ensure that appropriate and effective education and early intervention services are provided to all infants, toddlers, and children with disabilities. State and Federal decisionmakers responsible for the implementation of the IDEA Amendments of 1997 must have access to valid statistics, research findings, and policy options, as well as current information on trends in providing special education and related services.

The Office of Special Education Programs (OSEP) within the U.S. Department of Education has responsibility for the Federal administration of IDEA. State educational agencies (SEAs), or other designated State agencies under Part C of IDEA, oversee the administration of IDEA at the State and local level. The project supported under the following priority will provide access to and analysis of administrative and policy information generated by the States and other jurisdictions, and will facilitate coordination between OSEP and State and local IDEA administrators.

Priority

The Assistant Secretary establishes a priority to facilitate communication between the U.S. Department of Education and State and local administrators of IDEA, and to synthesize national program information that will improve the management, administration, delivery, and effectiveness of programs and services provided under IDEA. The cooperative agreement funded under this priority will provide the Department with a mechanism and resources for analyzing policies and emerging issues that are of significant national concern.

The project must—

(a) Through expert knowledge, research reviews, and other types of needs assessment, identify national and State program improvement information that is needed to obtain better results for infants, toddlers, and children with disabilities receiving educational and early intervention settings;

(b) Organize, synthesize, interpret, and integrate information needed for program improvement using a variety of methods and formats;

(c) Analyze emerging policy or program issues regarding the administration of IDEA at the Federal, State, and local levels;

(d) Facilitate the flow of information at the Federal, State, and local levels related to program improvement for infants, toddlers, and children with disabilities, via existing information resources and communication networks;

(e) Maintain a world wide web site with relevant information and documents in an accessible form;

(f) Organize, coordinate, and maintain a data base of laws, policies, and regulations that govern special education within the States and other jurisdictions; communicate, on a regular basis, with State educational agencies to identify emerging policy issues; and convene meetings between special education administrators, outside experts, and others to review, plan, and provide leadership in recommending multi-level actions that respond to the emerging issues;

(g) Maintain communication and collaboration with technical assistance providers funded under the Linking Policy and Practice Audiences to the IDEA Amendments of 1997 priority and the Technical Assistance Project for the Parent Training and Information Centers priority to help inform OSEP of emerging policy or program issues related to IDEA that the technical assistance providers are addressing or have identified; and

(h) Communicate regularly with OSEP to provide information that may assist OSEP in improving its efficiency in administering IDEA.

In addition to the annual two-day Project Director's meeting in Washington, DC listed in the General Requirements section of this notice, the project must budget for another annual

two-day trip to Washington, DC to meet and collaborate with the OSEP project officer and other funded projects for purposes of cross-project collaboration and information exchange.

Project Period

Under this priority, the Assistant Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. During the second year of the project, the Assistant Secretary will determine whether to continue the Center for the fourth and fifth years of the project period and will consider in addition to the requirements of 34 CFR 75.253(a):

(a) The recommendation of a review team consisting of three experts selected by the Assistant Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and technical strategies are disseminating significant new knowledge.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the General Requirements section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Maximum Award

We reject any application that proposes a budget exceeding $400,000 for any single budget period of 12 months. This maximum amount applies to any application. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Page Limits

The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the General Requirements section of this notice.

Absolute Priority 3—Center on Achieving Results in Education for Students With Disabilities (84.326G)

Background

The IDEA Amendments of 1997 introduced a number of provisions related to large-scale assessment and accountability. These provisions called for the participation of students with disabilities in State and district-wide assessments, with appropriate accommodations or alternate assessments provided when necessary. States must publicly report on the performance and participation of students with disabilities on regular and alternate assessments, and must establish goals and performance indicators that address, among other things, the performance of students with disabilities on assessments. Individualized education programs (IEPs) must reflect individual decisions about modifications in administration of State and district-wide assessments, and participation in alternate assessments.

These requirements reflect the importance of ensuring that students with disabilities have access to the general curriculum and that they benefit from State and local efforts toward accountability and standards-based reform. In addition, State and district-wide assessments may provide a valuable source of national and State information about educational results for students with disabilities, provided those students are sufficiently included.

Recent evidence suggests that States are making progress in implementing these assessment and accountability requirements. However, a number of technical and policy challenges must be overcome before the requirements can yield all of their potential benefits for students with disabilities.

Priority

The Assistant Secretary establishes an absolute priority for a center to provide national leadership in improving results for students with disabilities by improving their participation in State and local assessment and accountability systems. The Center must accomplish this mission through a combination of research, technical assistance, dissemination, collaboration, and other leadership functions.

The Center's research activities must include, but are not limited to:

(a) Conducting an annual survey of States to determine their current status in implementing the assessment and accountability provisions of IDEA;

(b) Evaluating State and local policies and practices to determine the best approaches for promoting meaningful participation of students with disabilities in assessment and accountability activities;

(c) Conducting an annual review of State reports and assessment data to track the participation and performance levels of students with disabilities in large-scale assessments;

(d) Synthesizing research on relevant topics such as assessment accommodations, alternate assessments, data analysis and reporting, and other related areas; and

(e) Conducting, collaborating in, or commissioning focused research studies on topics related to assessment and accountability.

The Center's technical assistance and dissemination activities must include, but are not limited to:

(a) Preparing and disseminating reports and documents on research findings and related topics;

(b) Maintaining a world wide web site with relevant information and documents in an accessible form;

(c) Conducting national and regional meetings, in collaboration with other centers such as the Regional Resource Centers, to assist States and local education agencies in continuing the implementation of the assessment and accountability provisions of IDEA;

(d) Working directly with States and other stakeholders to improve the participation of students with disabilities in State and local assessment and accountability systems; and

(e) Developing and applying strategies for dissemination of information to specific audiences, including teachers, families, administrators, policymakers and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers as described below.

The Center's collaboration and other leadership activities must include, but are not limited to:

(a) Maintaining communication and collaboration with other technical assistance providers (including the Regional Resource Centers, Federal Resource Center, Centers funded under the ''Linking Policy and Practice Audiences with the 1997 Amendments of IDEA'' priority, Educational Labs, Parent Training and Information Centers, Technical Assistance Project for the Parent Training and Information Centers priority, and others) and organizations (including the National Association of State Directors of Special Education, the Council for Exceptional Children, the Council of Chief State School Officers and others, as well as projects funded by the Office of Bilingual Education and Minority Languages Affairs and the Office of Elementary and Secondary Education) concerning assessment and accountability related activities;

(b) Maintaining a network of researchers (including the Research Institute to Enhance the Role of Special Education and Children With Disabilities in Education Policy Reform; the Urban Special Education Collaborative; and the Outreach Services to Minority Entities to Expand Research Capacity project) studying assessment, accountability, and related topics to facilitate communication and collaboration among researchers and to promote the use of research findings and products; and

(c) Convening conferences, at the request of OSEP, on topics related to assessment and accountability.

The Center must also:

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of State and local educational agencies, individuals with disabilities, parents, educators, professional organizations and advocacy groups, researchers, and other appropriate groups to review and advise on the Center's activities and plans. The committee must include membership that represents urban schools and underrepresented populations;

(b) Fund as project assistants at least three doctoral students per year who have concentrations in relevant topics such as special education, assessment, educational policy, and administration;

(c) In addition to the two-day Project Directors Meeting listed in the General Requirements section of this notice, budget for two additional two-day trips annually to Washington, DC, to attend an additional Project Director meeting and to attend an OSEP Leadership Conference; and

(d) Budget for at least a monthly trip to attend appropriate meetings convened by the Department of Education (such as the regional Improving America's Schools conferences), the Council of Chief State School Officers (such as meetings of the State Collaborative on Assessment and Student Standards, and the Large Scale Assessment Conference), and other Centers and organizations.

Project Period

Under this priority, the Assistant Secretary will make one award for a cooperative agreement for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. During the second year of the project, the Assistant Secretary will determine whether to continue the Center for the fourth and fifth years of the project period and will consider in addition to the requirements of 34 CFR 75.253(a):

(a) The recommendation of a review team consisting of three experts selected by the Assistant Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The degree to which the Center is making a positive contribution to the participation of students with disabilities in State and local assessment and accountability systems.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the General Requirements section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Maximum Award

We reject any application that proposes a budget exceeding $700,000 for any single budget period of 12 months. We reject and do not consider an application that proposes a budget exceeding this maximum amount. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits

The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the General Requirements section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED-Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs&@inet.ed.gov).

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for Research and Innovation) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive

order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

Available Funds

The Administration has requested funds for these programs for Fiscal Year 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, provided Congress appropriates funds for these programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2000

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated number of awards
84.324D Directed Research Projects.	01/26/00	03/20/00	05/19/00	$180,000	Up to 36 mos.	50	27
84.325N Projects of National Significance.	01/26/00	03/10/00	05/09/00	200,000	Up to 36 mos.	40	12
84.326A Linking Policy and Practice Audiences to the 1997 Amendments of IDEA.	01/26/00	03/10/00	05/09/00	1,500,000	Up to 36 mos.	60	1
84.326F State and Federal Policy Forum for Program Improvement.	01/26/00	03/10/00	05/09/00	400,000	Up to 60 mos.	60	1
84.326G Center on Achieving Results in Education for Students with Disabilities.	01/26/00	03/10/00	05/09/00	700,000	Up to 60 mos.	60	1

*The Assistant Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months. **Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included in the General Requirements section of this notice. The Assistant Secretary rejects and does not consider an application that does not adhere to this requirement.

Note: The Department of Education is not bound by any estimates in this notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC. area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: January 12, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–1121 Filed 1–18–00; 8:45 am]

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Federal Register

Wednesday,
January 19, 2000

Part V

Environmental Protection Agency

40 CFR Part 247
Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Recovered Materials Advisory Notice III; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 247

[SWH–FRL–6524–2]

RIN 2050–AE23

Comprehensive Guideline for Procurement of Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is amending the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is designating 18 new items that are or can be made with recovered materials. These items are carpet cushion; flowable fill; railroad grade crossing surfaces; park benches and picnic tables; playground equipment; food waste compost; plastic lumber landscaping timbers and posts; solid plastic binders; plastic clipboards; plastic file folders; plastic clip portfolios; plastic presentation folders; sorbents (i.e., absorbents and adsorbents); industrial drums; awards and plaques; mats; signage; and manual-grade strapping.

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA) and section 502 of Executive Order 13101, which require EPA to designate items that are or can be made with recovered materials and to recommend practices that procuring agencies can use to procure designated items. Once EPA designates an item, any procuring agency that uses appropriated Federal funds to procure that item must purchase the item containing the highest percentage of recovered materials practicable. Today's action will use government purchasing power to stimulate the use of these materials in the manufacture of new products, thereby, fostering markets for materials recovered from solid waste.

RCRA section 6002 provides certain limited exceptions to the general requirement to buy EPA-designated items. Under certain circumstances based on competition, price, availability, and performance, RCRA section 6002 does not require that procuring agencies purchase an item designated by EPA. In the May 1, 1995 CPG, EPA codified the RCRA section 6002 procurement requirements for the convenience of procuring agencies so they could find all of the RCRA section 6002 procurement provisions, as well as EPA's item designations, in one location. You can find these requirements at 40 CFR Part 247.

EFFECTIVE DATE: This final rule is effective on January 19, 2001.

ADDRESSES: The public docket for this document is Docket F–1999–CP3F–FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. Copies cost $0.15/page. The index and some supporting materials are available electronically. See Section IX of the ''Supplementary Information'' section below for information on accessing the documents electronically.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item designations, contact Terry Grist at (703) 308–7257.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. What is the statutory authority for this amendment?
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III. Why is EPA taking this action?
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IX. Supporting Information and Accessing Internet

I. What Is the Statutory Authority for This Amendment?

EPA (''the Agency'') is promulgating this amendment to the Comprehensive Procurement Guideline under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962. The Agency is also promulgating this amendment under section 502 of Executive Order (E.O.) 13101, ''Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition,'' (63 FR 49643, September 14, 1998).

II. Who Is Affected by This Amendment?

This action may potentially affect procuring agencies that purchase the following items: carpet cushion; flowable fill; railroad grade crossing surfaces; park benches and picnic tables; playground equipment; food waste compost; plastic lumber landscaping timbers and posts; solid plastic binders; plastic clipboards; plastic file folders; plastic clip portfolios; plastic presentation folders; sorbents (i.e., absorbents and adsorbents); awards and plaques; industrial drums; mats; signage; and manual-grade strapping. Under RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agency using appropriated Federal funds for a procurement; or (3) any contractors of these agencies who are procuring these items for work they perform under the contract. See RCRA section 1004(17). The requirements of section 6002 apply to these procuring agencies only when the agencies procure designated items whose price exceeds $10,000 or when the quantity of the item purchased in the previous year exceeded $10,000. A list of entities that this rule may cover is provided in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

Category	Examples of regulated entities
Federal Government	Federal departments or agencies that procure $10,000 or more of a designated item in a given year.
State Government	A State agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.
Local Government	A local agency that uses appropriated Federal funds to procure $10,000 or more of a designated item in a given year.
Contractor	A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more of a designated item in a given year.

This table is not intended to be exhaustive. To determine whether this action applies to your procurement practices, you should carefully examine the applicability criteria in 40 CFR § 247.12. If you have questions about whether this action applies to a particular entity, contact Terry Grist at (703) 308–7257.

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local governments that would be impacted by this rule based on information on the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

III. Why Is EPA Taking This Action?

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to help procuring agencies meet their obligations for procuring items designated under RCRA section 6002. RCRA requires that when a procuring agency purchase an EPA-designated item, the agency must purchase that item made of the highest percentage of recovered materials practicable.

E.O. 13101 establishes the procedures EPA must follow when implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. At the same time EPA promulgates the CPG, the Agency must publish its recommended procurement practices for entities that purchase designated items in a related Recovered Materials Advisory Notice (RMAN). These practices must also provide recommendations for the content of recovered materials in the designated items. The Executive Order also directs EPA to update the CPG every two years and to issue RMANs periodically to reflect changing market conditions.

The original CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items, and consolidated five earlier item designations. At the same time, EPA published the first RMAN (RMAN I) (60 FR 21386). On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items. At the same time, EPA published a RMAN II (62 FR 60975). Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214).

On August 26, 1998, EPA proposed to designate 19 additional items (CPG III) and published draft recommendations that provided recommendations for entities to use when purchasing items that contain recovered materials (RMAN III). See 63 FR 45558–45578 and 63 FR 45580–45589, respectively. Today, EPA is designating 18 of the items proposed in CPG III. In CPG III, EPA proposed designating nylon carpet with backing containing recovered materials, but the Agency is not designating this item, at this time for the reasons explained below. The 18 newly designated items are listed below by product category.

Construction Products

Carpet cushion
Flowable fill
Railroad grade crossing surfaces

Park and Recreation Products

Park benches and picnic tables
Playground equipment

Landscaping Products

Food waste compost
Plastic lumber landscaping timbers and posts

Non-Paper Office Products

Solid plastic binders
Plastic clipboards
Plastic file folders
Plastic clip portfolios
Plastic presentation folders

Miscellaneous

Sorbents
Industrial drums
Awards and plaques
Mats
Signage, including sign supports and posts
Manual-grade strapping

IV. What Criteria Did EPA Use To Select Items for Designation?

RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

The Agency also considers other factors in its selection criteria. EPA consulted with Federal procurement and requirements officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires that each procuring agency that procures an item that EPA has designated procure the item that contains the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if the procuring agency determines: (1) The item is not available within a reasonable period of time; (2) the item fails to meet the performance standards that the procuring agency has set forth in the product specifications; or (3) the item is available only at an unreasonable price.

EPA recognized that these criteria could provide procuring agencies with a rationale for not purchasing EPA-designated items that contain recovered materials. For this reason, EPA considers the limitations cited in RCRA section 6002(c) when it selects items to

designate in the CPG. Therefore, in CPG I, the Agency outlined the following criteria that it uses when it selects items for designation:

- Use of materials found in solid waste,
- Economic and technological feasibility and performance,
- Impact of government procurement,
- Availability and competition, and
- Other uses for recovered materials.

EPA discussed these criteria in the CPG I background documents and repeated that discussion, for reader convenience, in Section II of the document entitled, ''Proposed Comprehensive Procurement Guideline (CPG) III and Draft Recovered Materials Advisory Notice (RMAN) III—Supporting Analyses.'' The RCRA public docket for the proposed CPG III rule, docket F–1998–CP3P–FFFFF contains this document.

In CPG I, EPA stated that it had adopted two approaches for designating items that are made with recovered materials. For some items, such as floor tiles, the Agency designated *broad* categories and provided information in the RMAN about the appropriate applications or uses for the items. For other items, such as plastic trash bags, EPA designated *specific* items, and, in some instances, specified the types of recovered materials or applications to which the designation applies. The Agency explained the approaches that it took to designate items in the preamble to CPG I (60 FR 21373, May 1, 1995), and repeats them here for the convenience of the reader:

> EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879, April 20, 1994): ''This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials * * *''

The Agency understands that some procuring agencies may believe that designating a broad category of items in the CPG requires that they (1) procure all items included in such category with recovered materials content and (2) establish an affirmative procurement program for the entire category of items, even when specific items within the category do not meet the procuring agency's performance standards. RCRA clearly does not require such actions, as implemented through the CPG and the RMAN. RCRA section 6002 does not require a procuring agency to purchase items that contain recovered materials if the items are not available or if they do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item that contains recovered material is only available at an unreasonable price, or if purchasing such item does not maintain a reasonable level of competition. However, EPA stresses that, the procuring agency should seek to purchase the product made with highest percentage of recovered materials practicable if that product meets the procuring agency's performance requirements and all other factors are equal.

The items designated today have all been evaluated against EPA's criteria. The Agency discusses these evaluations in the ''Background Document for the Final Comprehensive Procurement Guideline (CPG) III and Final Recovered Materials Advisory Notice (RMAN) III'' (hereafter referred to as the ''Background Document for the Final CPG III/RMAN III),'' which the Agency has placed in the docket for the final CPG III and RMAN III. You can also access the document electronically. (See Section IX below for Internet access directions.)

V. What Are the Definitions of Terms Used in Today's Action?

Today, in 40 CFR 247.3, EPA is defining the following new item-specific terms: carpet cushion; flowable fill; railroad grade crossing surfaces; park benches and picnic tables; playground equipment; food waste compost; plastic lumber landscaping timbers and posts; solid plastic binders; plastic clipboards; plastic file folders; plastic clip portfolios; plastic presentation folders; sorbents; industrial drums; awards and plaques; mats; signage; and manual-grade strapping. These definitions are based on industry definitions, such as the American Society for Testing and Materials (ASTM) or other industry standards, or describe the scope of items that the Agency is designating.

For several items that the Agency is designating today, EPA recommends in the final RMAN III that procuring agencies use two different measures of the content of recovered materials: (1) A component of postconsumer recovered materials and (2) a component of total recovered materials. In these instances, EPA found that manufacturers were using both types of materials to manufacture the products. If the Agency recommended only postconsumer content levels, it would fail to meet the RCRA mandate to maximize the use of recovered materials, because the Agency would fail to acknowledge the contribution that manufacturers using other manufacturers' byproducts as feedstock have made to solid waste management.

Because the recommendations for the items that the Agency is designating today use the terms ''postconsumer materials'' and ''recovered materials,'' we repeat the definitions for these terms in this notice. The Agency provided these definitions in CPG I, and they are also provided at 40 CFR 247.3.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. *Postconsumer material* is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

VI. What Did Commenters Say About the Proposed CPG III and Draft RMAN III?

Forty commenters responded to the proposed CPG III and the draft RMAN III. These commenters represented various interests, including but not limited to Federal agencies, State agencies, local governments, product manufacturers, trade associations and product users.

In this section, EPA discusses the major comments that commenters provided on the proposed CPG III. The most significant comments received on the draft RMAN III are discussed in the preamble to the notice of availability of the final RMAN III, which is published in the notices section of today's **Federal Register**. You can find a summary of all

comments and EPA's responses in the ''Background Document for the Final CPG III/RMAN III.''

A. General Comments

1. Recordkeeping and Reporting

Comment: The U.S. Department of Energy (DOE) stated that it supports efforts to conserve resources by procuring products containing recovered materials. DOE stated that it has aggressively instituted an affirmative procurement program (APP) throughout the Department. DOE expressed its concern, however, that as the number of designated items increases, administrative costs of the program will become increasingly burdensome. DOE believes that as the reporting and data collection requirements continue to grow with additional designations, it is likely that the good will and positive environmental message of E.O. 13101 will be misplaced. DOE suggested that EPA seek to revise the Federal Acquisition Regulation (FAR) to channel federal purchasing toward products with recycled content. This way, federal agencies could report progress in implementing the FAR language, as opposed to attempting to capture every purchase made by the federal government.

Response: EPA has stated on many occasions that implementation of RCRA section 6002 must be consistent with other federal procurement law. For example, in Appendix II to the ''Background Document for Proposed Comprehensive Procurement Guideline (CPG) III and Draft Recovered Materials Advisory Notice (RMAN) III,'' April 1998, EPA stated the following:

> The purchase of recycled products under RCRA section 6002 must be consistent with other Federal procurement law, which requires that contracts be awarded to the lowest priced, responsive, responsible bidder * * *.
>
> On August 22, 1997, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) issued a final rule amending the Federal Acquisition Regulation (FAR) parts 1, 10, 11, 13, 15, 23, 36, 42, and 52 to reflect the government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. (See 62 FR 44809, August 22, 1997.)

On September 23, 1999, the CAAC and DARC proposed amendments to the FAR to clarify language relating to implementation of Executive Order 13101. The proposed rule (64 FR 51656, September 23, 1999) also reorganizes various sections of the FAR to make environmental procurement policies easier to find and implement. Procuring agencies should consult the FAR for guidance on acquisitions issues.

In addition, the Office of the Federal Environmental Executive has established a Reporting Workgroup and associated subcommittees to examine issues on recordkeeping and reporting. Topics of discussion have included the potential for using automated systems and electronic commerce, vendor reporting, as well as other alternatives. It is the intent of these efforts that, through the use of interagency workgroups, reporting and recordkeeping requirements can be effectively and efficiently implemented. Presumably, if these workgroups determine that additional FAR changes are warranted, these changes could be proposed through the process and procedures already established for amending the FAR.

2. Designation of Materials

Comment: The Steel Recycling Institute (SRI) and the Steel Manufacturers Association submitted separate comments in support of EPA's proposed designation of items containing recovered steel (i.e., railroad grade crossing surfaces, park benches and picnic tables, playground equipment, industrial drums, signage, and strapping). SRI also urged EPA to recognize (i.e., designate) steel in general for its high recyclability and guaranteed recycled content. The American Iron and Steel Institute and the American Zinc Association also submitted comments endorsing the comments provided by SRI.

SRI provided updated information for use in the ''Summary of Benefits'' section of this notice, stating that its latest study shows that for every ton of steel recycled, 1,400 pounds of coal and 120 pounds of limestone are saved, versus 1,000 pounds of coal and 40 pounds of limestone stated in EPA's notice (63 FR 45575).

SRI also submitted comments on the recycled content of steel products. A summary of these comments and the Agency's response is discussed in RMAN III which is published in the notices section of today's **Federal Register**.

Response: EPA agrees that steel, like many metals, is both recyclable and can contain recovered materials. EPA also agrees that steel, like many metals, is a waste management success story in terms of its recyclability, high recycling rate, and recovered materials content. EPA also applauds the steel industry's source reduction efforts to produce stronger, lighter weight steel, in response to customer demand. RCRA, however, specifically requires EPA to designate items that are or can be made with recovered materials, not the component materials used in those items. Accordingly, EPA designates items that are manufactured with steel, not the material itself.

EPA has used the new data provided by SRI for coal and limestone savings resulting from the use of recovered steel in manufacturing. This information has been incorporated in all applicable documents supporting the final CPG/RMAN III.

B. Comments on Proposed Item Designations

A vast majority of commenters supported the item designations proposed in CPG III with minor comments. This section discusses the major comments submitted on specific items proposed for designation in the proposed CPG III. EPA has included a summary of all comments on the proposed CPG III and our responses in the ''Background Document for the Final CPG III/RMAN III.'' EPA received significant comments on four items: carpet backing, flowable fill, railroad grade crossings, and sorbents. These comments are discussed below. Based on the item-specific comments received, we are promulgating all of the items proposed with the exception of nylon carpet with backing containing recovered materials.

1. Nylon Carpet With Backing Containing Recovered Materials

Comments: EPA received six comments in opposition to the proposed designation of nylon carpet with backing containing recovered materials. These commenters all stated that there is only one manufacturer currently making nylon carpet backing with recovered materials content. They indicated that the manufacturer uses a patented process and, therefore, a designation is premature and does not meet the statutory requirements for adequate competition when designating items.

Response: EPA proposed to designate nylon carpet with backing containing recovered materials based on the fact that at the time of the proposal, one manufacturer was producing carpet tiles with backing containing recovered materials commercially and, as the Agency stated in the background document, two other manufacturers were piloting production runs with recovered materials content and were expected to enter the marketplace. As a result of this comment, EPA conducted

additional research and found that, since the proposal, significant developments have occurred in the carpet industry with respect to the use of recovered materials in nylon carpet backing and the fiber facing. As an example, one company is currently making ''renewed'' carpet tiles. The company takes old carpet and makes renewed carpet tiles through a series of process steps which include supercleaning, retexturing of fibers, and adding colors and patterns. In addition, many companies have begun or are expected to begin manufacturing nylon carpet tiles with recovered materials in the fiber facing. Since significant developments have occurred with respect to the use of recovered materials in the nylon carpet industry, the Agency believes additional research should be conducted before a final designation for nylon carpet or nylon carpet backing is issued to ensure these developments are given proper consideration. Therefore, the Agency is not designating this item at this time, but will consider designating nylon carpet products when proposing the next procurement guideline (CPG IV).

Although the Agency is not designating this item at this time, procuring agencies may choose to procure any item containing recovered materials, regardless of whether the item is specifically designated by EPA. Procurement of items containing recovered materials, whether or not they are designated by EPA, is consistent with RCRA section 6002 and E.O. 13101.

2. Flowable Fill

EPA received 18 sets of comments on its proposal to designate flowable fill containing coal fly ash and ferrous foundry sands. While all commenters supported the proposed designation for flowable fill containing coal fly ash, some commenters raised issues on the proposed designation of flowable fill containing ferrous foundry sands. The following discussions summarize these concerns and other issues raised by the commenters and also provides the Agency's response.

Comment: The FIRST Project (Foundry Industry Recycling Starts Today), which is an industry consortium, supported EPA's designation of flowable fill containing foundry sand, with a few comments. The FIRST Project took issue with EPA's statement that nonferrous foundry sands are typically hazardous waste due to their lead and cadmium content (63 FR 45563). The FIRST Project maintains that spent sand from the vast majority of nonferrous foundries is not hazardous, nor does it contain lead and cadmium. The FIRST Project provided analytical data from nonferrous foundry sand samples to support their position. According to the FIRST Project, due to changes in alloy chemistries of many nonferrous foundry operations over the past decade, spent sands meet EPA and state definitions of nonhazardous waste. The FIRST Project requested that EPA correct the statement about nonferrous sands being hazardous waste. They also suggested that EPA list the American Foundrymen's Society as another resource for obtaining information on the use of spent foundry sand in flowable fill.

Response: EPA based its statement regarding the hazardousness of nonferrous foundry sands on industry data provided to the Agency in 1995 as part of the Phase IV Land Disposal Restrictions (LDR) rulemaking (60 FR 43654, August 22, 1995). These data indicated that the sands from 98% of bronze and brass (B&B) foundries and 40% of bronze and brass and aluminum (B&B&A) foundries were characteristically hazardous for metals.

The commenter's analytical data do not support their claim that a majority of nonferrous foundry sands are nonhazardous because in numerous cases, improper test methods were used. First, for 8 of 12 aluminum green sand waste samples, the digestion of the sample uses SW–846 Method 3010A or Method 3020A (both normally used for water) instead of Methods 3050 and 3051 (both used for solids). (The other 4 aluminum green sand samples did use Method 3051.) These digestion methods are weaker and would extract less of whatever metals are present in the waste matrix. In addition, virtually all of the commenter's leachate extraction data on spent sand waste samples were done using either the Synthetic Precipitation Leaching Procedure (SPLP) SW–846 Method 1312 (which relies on nitric/sulphuric acid as the extractant or deionized water) rather than the Toxicity Characteristic Leachate Procedure (TCLP) SW–846 Method 1311 which the Agency uses to determine toxicity for purposes of assessing hazardousness under 40 CFR 261.24. Therefore, the commenter's leachate extraction data are not appropriate for determining whether the samples tested are characteristically hazardous.

The Agency agrees with the commenter, however, that the statement in the proposed CPG III was too general and may have implied a conclusive determination about the regulatory nature of nonferrous foundry sands. This clearly was not the intent of the statement. Therefore, the Agency has removed any characterization of nonferrous foundry sands as hazardous in the final CPG III and all supporting documents.

The Agency agrees with the commenter that the American Foundrymen's Society should be identified as a resource for obtaining information regarding the use of spent foundry sand in flowable fill and EPA will ensure this reference is made in all documents supporting the final CPG III/RMAN III where appropriate.

Comment: The FIRST Project commented that applications for the use of flowable fill should be broadened to include structural fill for foundation subbases, subfootings, floor lab bases, and pipe beddings.

Response: EPA's designation in the CPG and recommendations in the RMAN do not preclude procuring agencies from using flowable fill in the applications suggested by the commenter. If flowable fill meets the requisite specifications and performance standards for a particular application, then flowable fill can be considered for use by a procuring agency. The specifications and test methods identified in the RMAN are provided to help procuring agencies in their procurement efforts. If a procuring Agency wants to include other applications for flowable fill in their affirmative procurement program (APP), it can exercise its discretion in doing so without being restricted to the applications recommended by EPA in the RMAN. EPA is required to revise the RMAN recommendations periodically and will consider the applications suggested by the commenter in future revisions. However, any recommendations made by EPA, will be subject to notice and public comment. EPA requests that commenters provide any pertinent information on the suggested applications, including references to any industry specifications and test methods appropriate for the various applications. We will consider all information received on this matter when we update the RMAN recommendations.

Comment: The Federal Highway Administration (FHWA) submitted comments stating its concern that, based on one of its user guidelines, there might be a problem with foundry sand stockpile water being contaminated with phenols and, that if this is the case, there would be a discrepancy between this and the CPG statement that ferrous foundry sands are not known to be a hazardous waste. They provided no information or analytical data to substantiate their statement. FHWA requested that this issue be addressed

since they could not support this designation if it placed an undue burden on state departments of transportation to monitor each site or if it requires mitigation by contractors.

Response: EPA is aware that phenols may be present in some ferrous foundry sands. According to a 1989 study sponsored by the American Foundrymen's Society and conducted by the University of Wisconsin, phenols were present in some ferrous foundry sands well below regulatory levels, so the Agency does not believe there is reason for concern. In addition, the designation of flowable fill containing ferrous foundry sands in the CPG does not exempt these sands from regulatory control if phenols, or any other regulated contaminants, are present at levels of regulatory concern. EPA's designation does not change the regulatory management obligations for the recovered material nor does it in any way suggest that the materials are relieved from waste management regulations. The determination as to whether the sands contain contaminants at regulatory levels should be made in accordance with all applicable federal and state regulations and, thus, no additional burden would be placed on any entity to monitor stockpiles as a result of a final designation for this item in the CPG. All actions relating to determining the regulatory status of these sands would be performed by generators or those manufacturing flowable fill, not by those using a commercial product.

Comment: The Illinois Department of Transportation (IDOT) submitted comments in opposition to the use of ferrous foundry sands in flowable fill since, according to IDOT, these sands are normally contaminated with oil. They did not provide any information or data to substantiate this claim. IDOT believes the use of coal fly ash in flowable fill is logical because it has an acceptable track record. IDOT stated that little research has been done on ferrous foundry sand and that its use has been minimal.

EPA contacted the commenter to ascertain the basis for their comment and was told that since the comment was submitted, IDOT has learned that ''oil contamination is not always present.''

Response: As stated previously, EPA's designation does not change the regulatory management obligations for treatment or management of the recovered material nor does it exempt the materials from existing waste management regulations. The determination as to whether the ferrous foundry sands contain contaminants at regulatory levels should be made in accordance with applicable federal and state regulations before the material is used to make a commercial product.

Comment: American Electric Power (AEP) submitted comments supporting the proposed designation of flowable fill containing ferrous foundry sand and also stated that EPA should note in the CPG and RMAN, that a variety of flowable fills have been successfully developed without the use of cement as an ingredient. AEP referred to flowable fills that use materials such as Class C fly ashes that have a high calcium content, making them appropriate for use in lieu of cement. AEP also stated that these flowable fill mixes, which sometimes utilize other recycled materials such as Class F fly ash and bottom ash as filler, have been approved for use in several states. AEP provided copies of some state specifications.

Response: Information presented in the CPG and RMAN pertains to those items that have been or are being designated by EPA. The designation of items under RCRA section 6002 and E.O. 13101 requires notice and comment before final designations are promulgated. Because EPA did not propose to designate flowable fill containing other materials such as Class C fly ashes, has not reviewed sufficient information on these materials, and did not solicit public comments, no reference or recommendations for these items are appropriate at this time. However, procuring agencies may choose to procure any item containing recovered materials, regardless of whether the item is specifically designated by EPA. Procurement of items containing recovered materials, whether or not they are designated by EPA, is consistent with RCRA section 6002 and E.O. 13101. EPA will consider designating additional flowable fills containing other recovered materials in future amendments to the CPG.

3. Railroad Grade Crossing Surfaces

Comment: The Illinois Department of Transportation (IDOT) submitted comments opposing the designation and recovered materials content recommendations for railroad grade crossing surfaces because crossing designs are usually job-specific, and IDOT believes this designation would inhibit innovation. In addition, IDOT believes it would be very costly to verify the total recovered materials content.

Response: EPA disagrees that designating railroad grade crossing surfaces and providing recommendations on recovered materials content ranges would inhibit innovation. As stated in Table C–11A of RMAN III, ''EPA's recommendations do not preclude a procuring agency from purchasing another type of railroad grade crossing surface * * *. They simply require procuring agencies, when purchasing concrete, rubber, or steel grade crossing surfaces, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.'' Therefore, job-specific requirements and specifications should be factored into the procuring agency's decision whether to use products containing recovered materials. If railroad grade crossings made with recovered materials do not meet legitimate job-specific requirements, the procuring agency is not required to use the designated items with recovered materials.

EPA disagrees with the commenter's claim that it might be costly to verify recovered materials content in designated items. RCRA section 6002(i) requires that an agency's affirmative procurement program (APP) ''contain a program for requiring vendors to estimate, certify, and reasonably verify the recovered materials content of their products.'' This provision is not meant to burden either of the contracting parties. At the federal level, there are standard provisions for all contracts in the Federal Acquisition Regulations (FAR) that can be used to certify that the products contracted for are delivered. Standard clauses presumably exist for contracts issued by state agencies as well. These standard provisions can be used to certify recovered materials content levels with no extraneous costs to either party.

4. Sorbents

Comment: Synthetic Industries (SI) produces sorbents made of polypropylene (PP) that are used to clean up solvent and oil spills. SI is opposed to the designation of sorbents containing postconsumer recovered PP because, according to SI, such products are technologically infeasible. In addition, SI believes PP sorbents should not be designated for performance-related reasons, citing doubts about the ability of manufacturers to produce a highly sensitive PP product from postconsumer material. SI also stated that it is not feasible to make sorbents with postconsumer PP since it is difficult to obtain a consistent, non-contaminated source of postconsumer PP material. SI stated that if the sorbent's chemical content is not known, it could react with a spilled chemical, create a further hazard, or not work properly.

Response: EPA did not propose to designate sorbents with postconsumer PP, only those with total recovered plastics. EPA's research identified three companies currently making these products. The Agency agrees with the commenter that not all sorbent materials are right for all clean-ups. The Agency stated this position in both its background document and the proposed CPG III FR notice (63 FR 45569, August 26, 1998). The Agency wrote, ''The type of sorbents used for spill applications generally depends on the type of substance being sorbed, where the spill occurs, and worker health and safety issues.'' The Agency provided a lengthy discussion of the importance of choosing sorbents for particular applications both in the FR notice and background document. The Agency notes that these factors should be considered regardless of whether the sorbent is made from recovered or virgin materials. In the RMAN, published in the notices section of today's **Federal Register**, EPA recommends that procuring agencies use industry standard specifications for solvent performance when determining the sorbents to be used in particular applications.

Comment: The Brookhaven National Laboratory commented on the performance of recovered-content sorbents. The commenter believes that EPA should tell potential users of sorbents that sorbent capacity is an important factor in sorbent selection for oil and solvent spills, and that lower sorbent capacities compromise performance and will result in greater waste volumes and higher disposal costs.

Response: EPA believes that both virgin and recovered material content sorbents can provide similar performance in oil and solvent spill situations as long as the appropriate type of sorbent is chosen (based on a variety of factors including sorbent capacity) for the type of substance being sorbed and for the location of the spill. Whenever an inappropriate sorbent is used, either virgin or recovered content, the possibility exists for dangerous reactions, environmental damage, or increased sorbent use and recovery or disposal. EPA notes that used sorbent material does not necessarily end in disposal. Under certain conditions, some sorbent materials can be reused or recycled. Synthetic sorbents, for example, release sorbed substances under pressure, and inorganic sorbents can be recovered and used again through a laundering process. Several federal agencies are successfully using recovered content sorbents to deal with oil and solvent spills. The National Park Service, for example, uses a product made from recovered polypropylene, for heavy or viscose oils. The U.S. Army Corps of Engineers at Dworshak Dam in Idaho, uses a product made from 100 percent recovered wood waste, for emergency spill responses.

C. Comments on Other Items Considered for Designation

In the proposed CPG III notice, the Agency stated that we had considered two items (recycled ink and shotgun shells) and determined that it was inappropriate to designate these items (63 FR 45574). We requested additional information demonstrating whether these items should be reconsidered for possible future designation. No comments were submitted on these items or on our decision not to designate these items. EPA has received letters from a recycled ink manufacturer, separate from the **Federal Register** notice request for comments, stating that ink be reconsidered for designation. However, no additional information has been submitted by this company despite repeated requests by the Agency.

For the above reasons, EPA is no longer conducting research relative to these items or considering them for designation in a future CPG. However, we will review any information submitted in support of designating these items in the future to determine whether these items should be reconsidered.

VII. Where Can Agencies Get Information on the Availability of EPA-Designated Items?

EPA has developed lists of manufacturers and vendors of the items designated in today's rule. In addition, EPA has updated the lists of manufacturers and vendors of the 36 items previously designated in the CPG. These lists have been placed in the RCRA docket for this action and will be updated periodically as new sources are identified and product information changes. These lists will also be available through EPA's web site on the Internet. (See section IX below for Internet access information.) Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to obtain detailed information on the availability and price of recycled products meeting their needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), State and local recycling offices, private corporations, and trade associations. Refer to Section XIV of the document, ''Background Document for the Final CPG III/RMAN III'' for more information on these other sources of information.

State and local recycling programs are also a potential source of information on local distributors and the availability of designated items. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information. A current list of state purchasing/procurement officials has been placed in the docket for the final CPG III. The public docket also includes a list of states with recycled content products purchasing programs, current as of October 1998. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials. These trade associations are included in the updated lists of product manufacturers and vendors described above.

Additionally, Environmental Newsletters, Inc., publisher of *Waste Reduction Tips,* prepared a directory of recycled product directories. EPA has placed the ''1996 Directory of Recycled Product Directories,'' from Environmental Newsletters' *Recycled Products Business Letter,* in the public docket for the final CPG III. Environmental Newsletters, Inc. can be reached at 703 758–8436 for further information.

VIII. Administrative Assessments

A. Executive Order 12866: Regulatory Planning and Review

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

EPA estimates that the costs associated with today's rule is well below the $100 million threshold. EPA

has prepared an Economic Impact Analysis (EIA) to evaluate the potential impact of today's action. The results of the EIA are discussed below. More information on the estimated economic impact of today's rule is included in the ''Economic Impact Analysis for the Final Comprehensive Procurement Guideline III.'' A copy of this document is in the public docket.

1. Summary of Costs

EPA estimated that the annualized costs of the proposed rule to designate 19 items would fall in the range of $6.5 to $13 million. Even though today's final rule designates 18 items, rather than 19 items, the costs associated with this rule are estimated to be slightly higher than the estimates in the proposal. This is due to the fact that the Agency revised the economic impact analysis to reflect 1999 labor rates which are higher than those in 1998 when the rule was proposed.

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $7.6 to $14.8 million, with costs being spread across all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that influence the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with today's final rule are provided in the Economic Impact Analysis for this rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG III AMENDMENTS TO ALL PROCURING AGENCIES

Procuring agency	Total annualized costs ($1000)	Best Estimate Total annualized costs ($1000)
Federal agencies	$9,254–$4,627	$9,254
States	1,680–840	$1,680
Local Governments	3,787–2,066	2,927
Contractors	123–61	92
Total	14,844–7,594	13,953

As a result of today's rule, procuring agencies will be required to take certain actions pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's rule are included in the Economic Impact Analysis.

There may be both positive and negative impacts to individual businesses, including small businesses. EPA anticipates that today's final rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials collected in recycling programs.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's final rule. If a business currently supplies products to a procuring agency and those products are made only out of virgin materials, the amendments to the CPG may reduce that company's ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than similar virgin products. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left up to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's final rule will result in increased opportunities for recycling and waste prevention. Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Using less raw materials results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining,

harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,400 lbs. of coal; and 120 lbs. of limestone. Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of high density polyethylene, low density polyethylene, or polyethylene terephthalate plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for all of these benefits. On a national and regional level, today's final rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses involved in recycling activities.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to public a general notice of proposed rulemaking, the agency must prepare a final regulatory flexibility analysis (FRFA). The agency must prepare an FRFA for a final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. EPA is today certifying, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an FRFA.

The final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines ''small entity'' to mean a small business, small organization or small governmental jurisdiction. EPA's action today in designating 18 new items that are or may be produced with recovered materials content may establish requirements applicable, in some cases, to small governmental jurisdictions and small businesses.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the rule will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 18 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Similarly, EPA has concluded that the economic impact on small entities that are small businesses would not be significant. The CPG applies to small businesses that are ''procuring agencies.'' The potential economic impact of the CPG on small businesses that are ''procuring agencies'' is minimal.

RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under Section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, i.e., not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if the State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (and any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

For these reasons, EPA certifies that today's designations will not have a significant economic impact on a substantial number of small entities. Because today's action does not impose significant new burdens on small entities, this rule does not require a final regulatory flexibility analysis.

The basis for EPA's conclusions that today's rule will not have a significant impact on a substantial number of small entities is described in greater detail in the ''Economic Impact Analysis'' for the rule which is located in the RCRA public docket.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, EPA believes that the effect of today's rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

C. Unfunded Mandates Reform Act of 1995 and Consultation With State, Local, and Tribal Governments

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves

the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this rule on State and local governments, they are exempt from inclusion as Federal inter-governmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $4.6 million annually. The cost of enforceable duties which may arise as a result of today's rule on the private sector are estimated not to exceed $92,000 annually. Thus, today's rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The newly designated items included in the CPG may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement program and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $4.6 million annually. In compliance with E.O. 12875, which requires the involvement of State and local governments in the development of certain Federal regulatory actions, EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in the CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in the CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, the Environmental Defense Fund, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments, is not expected to exceed, at the maximum, $4.6 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 have been satisfied.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It 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, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. As a result of today's action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and record keeping. As noted above, EPA estimates that the total annualized costs of today's rule will range from $7.6 to $14.8 million. EPA's estimate reflects the costs of the rule for all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors), not just States and localities. Thus, the costs to States and localities alone will be even lower and not substantial. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the

rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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. The rule does not impose any mandate on tribal governments or impose any duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 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.

EPA interprets the E.O. 13045 as encompassing only those regulatory actions that are risk based or health based, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not involve decisions regarding environmental health or safety risks.

G. National Technology Transfer and Advancement Act of 1995

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, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not establish technical standards. Therefore, the Agency has not conducted a search to identify potentially applicable test methods from voluntary consensus standard bodies. As part of this rulemaking effort, EPA has developed guidance for procuring agencies to use in complying with section 6002's obligation to purchase items with recovered materials content to the maximum extent practicable. These recommendations include minimum recovered materials content standards and, as previously noted, are published today in the companion RMAN for the designated items. In developing these recommendations, EPA did consider current voluntary consensus standards on recovered materials content.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 19, 2000.

IX. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG III is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The index and the following supporting materials are available in the RIC and on the Internet:

''Background Document for the Final CPG III/RMAN III,'' U.S. EPA, Office of Solid Waste and Emergency Response, September 1999.

Copies of the following supporting materials are available for viewing at the RIC only:

''Economic Impact Analysis for the Final Comprehensive Procurement Guideline III,'' U.S. Environmental Protection Agency, July 14, 1999.

''Telephone Notes, Nylon Carpet With Backing Containing Recovered Materials, Between Lynne Gilbert, Eastern Research Group and Dave Whitley, Interface Carpet, January, 22, 1999.''

''E-mail message, Nylon Carpet With Backing Containing Recovered Materials, Between Lynne Gilbert, Eastern Research Group and Dobbin Callahan, Collins & Aikman, January 26, 1999.''

''Telephone Notes and Facsimile Message, Nylon Carpet With Backing Containing Recovered Materials, Between Birgette Junior, Eastern Research Group and Pamela Marple, Brand, Lowell, and Ryan, June 24, 1999.''

''National Association of State Purchasing Officials, 1998/1999 Membership Roster.''

''List of States with Recycled Content Product Purchasing Programs.''

To access information on the Internet go to *www.epa.gov/cpg*.

List of Subjects in 40 CFR Part 247

Environmental protection, Government procurement, Recycling.

Dated: January 10, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 247, is amended as set forth below.

PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 is revised to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962; E.O. 13101, 63 FR 49643, 3 CFR, 1998 Comp., p. 210.

2. In § 247.3, the following definitions are added alphabetically:

§ 247.3 Definitions.

* * * * *

Awards and plaques refers to free-standing statues and boardlike products generally used as wall-hangings.

* * * * *

Carpet cushion, also known as carpet underlay, is padding placed beneath carpet to reduce carpet wear caused by foot traffic or furniture indentation,

enhance comfort, and prolong appearance.

* * * * *

Compost made from yard trimmings, leaves, grass clippings, and/or food wastes is a thermophilic converted product with high humus content. Compost can be used as a soil amendment and can also be used to prevent or remediate pollutants in soil, air, and storm water run-off.

* * * * *

Flowable fill is a low strength material that is mixed to a wet, flowable slurry and used as an economical fill or backfill material in place of concrete, compacted soils, or sand.

* * * * *

Industrial drums are cylindrical containers used for shipping and storing liquid or solid materials.

* * * * *

Manual-grade strapping refers to straps of material used with transport packaging to hold products in place on pallets or in other methods of commercial, bulk shipment. Strapping can also prevent tampering and pilferage during shipping.

Mats are temporary or semipermanent protective floor coverings used for numerous applications, including home and office carpet protection, car and truck floor board protection, traction on slippery surfaces, cushion from floor hardness, and reduction of injury risk during athletic events.

* * * * *

Park benches and picnic tables are recreational furniture found in parks, outdoor recreational facilities, and the grounds of office buildings and other facilities.

* * * * *

Plastic lumber landscaping timbers and posts are used to enhance the appearance of and control erosion in parks, highways, housing developments, urban plazas, zoos, and the exteriors of office buildings, military facilities, schools, and other public use areas.

Playground equipment includes many components, like slides, merry-go-rounds, hand rails, etc., and is found in parks, schools, child care facilities, institutions, multiple family dwellings, restaurants, resort and recreational developments, and other public use areas.

* * * * *

Railroad grade crossing surfaces are materials placed between railroad tracks, and between the track and the road at highway and street railroad crossings, to enhance automobile and pedestrian safety.

* * * * *

Signage (including sign posts and supports) is used for identification and directional purposes for public roads and highways, and inside and outside office buildings, museums, parks, and other public places.

* * * * *

Sorbents (i.e., absorbents and adsorbents) are materials used to retain liquids and gases in a diverse number of environmental, industrial, agricultural, medical, and scientific applications. Absorbents incorporate a substance while adsorbents gather substances on their surfaces.

* * * * *

3. In § 247.12, add paragraphs (h), (i), and (j) to read as follows:

§ 247.12 Construction products.

* * * * *

(h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.

(i) Flowable fill containing coal fly ash and/or ferrous foundry sands.

(j) Railroad grade crossing surfaces containing coal fly ash, recovered rubber, or recovered steel.

4. In § 247.14, add paragraphs (c) and (d) to read as follows:

§ 247.14 Park and recreation products.

* * * * *

(c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.

(d) Playground equipment containing recovered plastic, steel, or aluminum.

5. In § 247.15, revise paragraph (b) and add paragraph (e) to read as follows:

§ 247.15 Landscaping products.

* * * * *

(b) Compost made from yard trimmings, leaves, grass clippings, and/or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

* * * * *

(e) Plastic lumber landscaping timbers and posts containing recovered materials.

6. In § 247.16, revise paragraph (d) and add paragraphs (h) through (k) to read as follows:

§ 247.16 Non-paper office products.

* * * * *

(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.

* * * * *

(h) Plastic clipboards containing recovered plastic.

(i) Plastic file folders containing recovered plastic.

(j) Plastic clip portfolios containing recovered plastic.

(k) Plastic presentation folders containing recovered plastic.

7. In § 247.17, add paragraphs (b) through (g) to read as follows:

§ 247.17 Miscellaneous products.

* * * * *

(b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.

(c) Industrial drums containing recovered steel, plastic, or paper.

(d) Awards and plaques containing recovered glass, wood, paper, or plastic.

(e) Mats containing recovered rubber and/or plastic.

(f)(1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.

(2) Sign supports and posts containing recovered plastic or steel.

(g) Manual-grade strapping containing recovered steel or plastic.

[FR Doc. 00–1066 Filed 1–18–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6524–3]

Recovered Materials Advisory Notice III

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Final Document.

SUMMARY: The Environmental Protection Agency is providing notice of the availability of the final Recovered Materials Advisory Notice III (RMAN III) and supporting materials. The final RMAN III contains EPA's recommendations for purchasing 18 items designated in the final Comprehensive Procurement Guideline III, which is published elsewhere in today's **Federal Register**. This action will help use government purchasing power to stimulate the use of recovered materials in the manufacture of new products and expand markets for those recovered materials. EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items under section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA). The 18 items EPA is making recommendations for include: Carpet cushion; flowable fill; railroad grade crossing surfaces; park benches and picnic tables; playground equipment; food waste compost; plastic lumber landscaping timbers and posts; solid plastic binders; plastic clipboards; plastic file folders; plastic clip portfolios; plastic presentation folders; sorbents (*i.e.,* absorbents and adsorbents); awards and plaques; industrial drums; mats; signage; and manual-grade strapping. The final RMAN III contains recommended recovered materials content levels for these items and provides other purchasing recommendations. RMAN III also contains revised recovered materials content recommendations for steel shower and restroom dividers/partitions, steel recycling containers and waste receptacles, and the steel components of traffic barricades and delineators. These items were previously designated in CPG I and II with recommendations provided in RMAN I and II. The revised recommended recovered materials content levels for these previously designated items are based on comments submitted on the draft RMAN III for all items containing recovered steel.

EFFECTIVE DATES: The recommendations for purchasing the 18 newly-designated items are effective January 19, 2001. The recommendations for previously designated items (*i.e.,* steel shower and restroom dividers/partitions, steel recycling containers and waste receptacles, and steel components of traffic barricades and delineators) are effective January 19, 2000.

ADDRESSES: The public docket for this notice is Docket F–1999–CP3F–FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. Copies cost $0.15/page. The index and some supporting materials are available electronically. For information on accessing the documents electronically, see Section V of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Terry Grist at (703) 308–7257.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. What is the statutory authority for this action?
II. Why is EPA taking this action?
III. What are the definitions of terms used in this action?
V. What did commenters say about the recommendations in the draft RMAN III?
A. Comments on Proposed Items Containing Recovered Steel
B. Comments on Specifications for Flowable Fill
V. Supporting Information and Accessing Internet

I. What Is the Statutory Authority for This Action?

The Recovered Materials Advisory Notice III (RMAN III) is published under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962; and Executive Order (E.O.) 13101 (63 FR 49643, September 14, 1998).

II. Why Is EPA Taking This Action?

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (I) of section 6002. Once EPA designates an item, section 6002 requires that each procuring agency that procures the designated item using appropriated Federal funds, must procure that item containing the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) Any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; and (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to procuring agencies only when procuring a designated item where the price of the item exceeds $10,000 or when the quantity of the item, or functionally equivalent items, purchased in the previous year exceeded $10,000.

Executive Order 13101 (63 FR 49643, September 14, 1998) requires EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered materials content levels for the designated items in Recovered Materials Advisory Notices (RMAN). The Executive Order (E.O.) also requires EPA to update the CPG every two years and the RMAN periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMAN is not codified in the CFR. This process allows EPA to revise its recommendations in a timely manner and in response to changes in a product's availability or recovered materials content.

EPA promulgated the CPG I and issued notice of RMAN I on May 1, 1995 (60 FR 21370 and 21386, respectively). CPG I designated 19 items and consolidated five previous item designations made in earlier EPA procurement guidelines, and RMAN I recommended purchasing practices for these 24 items. On November 13, 1997, EPA published CPG II (62 FR 60962), which designated an additional 12 items and concurrently published an RMAN II (62 FR 60975). The final RMAN II also

provided clarification of EPA's 1995 recommendations for purchasing floor tiles containing recovered materials. Paper Products RMANs were issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). On August 26, 1998, EPA proposed CPG III (63 FR 4558), which proposed to designate an additional 19 items. EPA concurrently published a draft RMAN III (63 FR 45580). The 19 items EPA proposed for designation were: nylon carpet with backing containing recovered materials; carpet cushion; flowable fill; railroad grade crossing surfaces; park benches and picnic tables; playground equipment; food waste compost; plastic lumber landscaping timbers and posts; solid plastic binders; plastic clipboards; plastic file folders; plastic clip portfolios; plastic presentation folders; sorbents (*i.e.,* absorbents and adsorbents); awards and plaques; industrial drums; mats; signage; and manual-grade strapping. Today, EPA is publishing recommendations for 18 of the 19 items. EPA is not designating nylon carpet with backing containing recovered materials at this time and, therefore, is not publishing final recommendations for purchasing this item. The reasons for this decision are discussed in the final CPG III, published in the rules section of today's **Federal Register**.

EPA wants to stress that the recommendations in its RMAN are just that—recommendations and guidance to procuring agencies to help them meet their obligations under section 6002. The designation of an item as one that is or can be manufactured with recovered materials and the inclusions of recommended content levels for an item in an RMAN do not require the procurement of an item when it is not suitable for an agency's intended purpose. Section 6002 is explicit about this when it authorizes a procuring agency not to procure a designated item which ''fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies.''(Section 6002(1)(B), 42 U.S.C. 6962(c)(B)).

Thus, for example, in the final CPG III published elsewhere in today's **Federal Register**, EPA is designating playground equipment as an item that is or can be produced with recovered materials. The Agency's research shows that this item is available in either steel, aluminum, or plastic containing recovered materials. However, the mere fact that this item is available containing recovered materials does not require the procurement of steel, aluminum, or plastic playground equipment in every circumstance. The choice of appropriate materials may depend on state or local codes. The effect of EPA's designation (and section 6002) is simply to require the purchase of items with recovered materials where consistent with the purpose of how the item is to be used. Procuring agencies remain free to procure playground equipment made of materials other than steel, aluminum, or plastic (*e.g.,* wood) where the design specifications call for other materials.

III. What Are the Definitions of Terms Used in This Action?

Today's final RMAN III recommends postconsumer or recovered materials content levels which EPA believes the designated items are generally available. The RMAN III recommends two different measures of recovered materials: (1) A component of postconsumer recovered materials and (2) a component of total recovered materials for the following items: carpet cushion; railroad-grade crossing surfaces; park benches and picnic tables; playground equipment; plastic lumber landscaping timbers and posts; plastic binders, clipboards, file folders, clip portfolios, and presentation folders; sorbents; industrial drums; awards and plaques; mats; signage; and manual-grade strapping. For these items, EPA found that manufacturers were using both types of materials to manufacture these products. If the Agency recommended only postconsumer content levels it would fail to meet the RCRA mandate to maximize the use of recovered materials, because it would fail to acknowledge the contribution that manufacturers using other manufacturers' byproducts as feedstock have made to solid waste management. EPA defined the terms ''recovered materials'' and ''postconsumer materials'' in the CPG and in 40 CFR 247.3. We repeat the definitions for these terms in this notice for the convenience of the reader.

Postconsumer materials means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

Recovered materials means waste materials and byproducts which have been recovered or diverted from solid waste, but the term does not include those materials and byproducts generated from, and commonly used within, an original manufacturing process.

IV. What Did Commenters Say About the Recommendations in the Draft RMAN III?

This section discusses the major public comments on the draft RMAN III. The Agency received a number of significant comments related to flowable fill and the recommended recovered materials content levels for proposed designated items containing recovered steel. These comments are discussed below. A summary of all of the comments and the Agency's response is provided in the document entitled ''Background Document for the Final Comprehensive Procurement Guideline (CPG) III and Recovered Materials Advisory Notice (RMAN) III,'' September 1999, hereafter referred to as the ''Background Document for the Final CPG III/RMAN III.'' A copy of this document has been placed in the docket for the final RMAN III. See **ADDRESSES** above for information about reviewing documents in the public docket. This document is also available electronically on the Internet. See Section V of this notice for information on accessing this document electronically.

A. Comments on Proposed Designated Items Containing Recovered Steel

Comment: The Steel Recycling Institute (SRI) submitted comments noting that all items proposed for designation (with the exception of industrial drums) could be manufactured with steel made by both Basic Oxygen Furnace (BOF) and Electric Arc Furnace (EAF) processes. SRI noted that items made by the BOF process typically contain 25 to 30 percent recovered materials including more than 15 percent postconsumer steel. When these items are made out of steel manufactured by the EAF process they may contain up to 100 percent recovered materials, including 67 percent postconsumer steel. SRI suggested EPA recommend recycled content levels of 16 percent postconsumer and 25 percent total recovered content for all items made from BOF steel and 67 percent postconsumer and 100 percent total recovered content when items are made from EAF steel. SRI pointed out that currently, industrial drums are only being made from BOF steel and, therefore, contain a total of 25 percent total recovered steel, including 16 postconsumer steel. SRI requested that, for all items proposed in CPG III containing steel, the final RMAN III should reflect these recovered materials content levels.

Response: EPA included the recommended recovered materials content levels for steel in this final RMAN notice to reflect SRI's comments regarding BOF and EAF manufactured steel for the items designated in the CPG, with one exception. Rather than recommend a single total recovered materials content level of 25 percent for items made from BOF steel, the Agency is recommending a range of 25–30 percent. The use of a recovered materials content range in this instance reflects both the information provided by SRI and the requirements of E.O. 13101 for making recommendations. EPA is also revising the content level recommendations for the steel component of traffic barricades and delineators, steel recycling containers and waste receptacles, and for steel shower and restroom dividers/partitions to reflect this new information. These items were designated in CPG I and CPG II. No other revisions to the recommendations for items previously designated in CPG I and CPG II are being made at this time.

B. Comments on Specifications for Flowable Fill

Comment: The FIRST Project (Foundry Industry Recycling Starts Today), an industry consortium, suggested that there is an inconsistency with two of the specifications listed in the RMAN for flowable fill. ASTM's C33–93 Concrete Aggregate specification limits the use of some spent sands that have fines content greater than 3 to 5 percent, while ACI 229R–94 indicates that foundry sands with up to 20 percent fines were successfully utilized in flowable fill mix designs. The commenter believes that recommending ASTM C33–93 effectively limits the use of this material without taking into account whether the performance specification is clearly met. The commenter suggests that the mix design specification should be based on performance, not simply on the aggregate.

Response: EPA has learned that ASTM C33–93 was developed to optimize the strength and compactability of concrete and was not meant to be used with controlled low-strength material or flowable fill. The Agency, therefore, recognizes that ASTM C33–93 may not be an appropriate specification for sands used in flowable fill. Procuring agencies may wish to use this specification's physical tests as a measure to assure the quality and uniformity of the sands used in flowable fill; however, the agency now believes this specification should not be referred to for gradation requirements. Based on this information, the final RMAN III for flowable fill has been revised to delete any reference to the use of ASTM C33–93 for gradation purposes. The RMAN recommends that procuring agencies ''refer to ASTM C33–93, ''Standard Specification for Concrete,'' to assure the quality and uniformity of the ferrous foundry sands in flowable fill * * *.''

V. Supporting Information and Accessing Internet

The index of supporting materials for today's final RMAN III is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in the **ADDRESSES** section above. The index and the following supporting materials are available on the Internet:

''Background Document for the Final CPG III/RMAN III,'' U.S. EPA, Office of Solid Waste and Emergency Response, September 1999.

Copies of the following supporting materials are available for viewing at the RIC only:

''Telephone Notes, Flowable Fill Specifications, Between Lynne Gilbert, Eastern Research Group and Paul Tikalsky, Penn State University, May 12, 1999.''

To access information on the Internet go to <www.epa.gov/cpg>.

Dated: January 10, 2000.

Carol M. Browner,

Administrator.

Recovered Materials Advisory Notice III

The following represents EPA's recommendations to procuring agencies for purchasing the items designated today in the Comprehensive Procurement Guideline III in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA) and section 502(b) of E.O. 13101. These recommendations are intended to be used in conjunction with the RMANs issued on May 1, 1995 (60 FR 21386) and November 13, 1997 (62 FR 60975) and the Paper Products RMANs issued on May 29, 1996 (61 FR 26985) and June 8, 1998 (63 FR 31214). Refer to May 1, 1995 and November 13, 1997 RMANs for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items. In the case of traffic barricades, delineators, recycling containers and waste receptacles, and shower and restroom dividers/partitions, the recommendations published today revise the previous recommendations issued in RMAN I and RMAN II.

Contents

I. General Recommendations
II. Specific Recommendations for Procurement of Designated Items
Part C. Construction Products
Section C–6 (Revised). Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel
Section C–8. Carpet Cushion Made from Bonded Polyurethane, Jute, Synthetic Fibers, or Rubber Containing Recovered Materials.
Section C–9. Flowable Fill Containing Coal Fly Ash and/or Ferrous Foundry Sands.
Section C–10. Railroad Grade Crossing Surfaces Containing Coal Fly Ash, Recovered Rubber, or Recovered Steel
Part D. Transportation Products
Section D–1 (Revised). Temporary Traffic Control Devices
Section D–3 (Revised). Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel
Part E. Park and Recreation Products
Section E–3. Park Benches and Picnic Tables Containing Recovered Steel, Aluminum, Plastic, or Concrete.
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Part F. Landscaping Products
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Section F–5. Plastic Lumber Landscaping Timbers and Posts Containing Recovered Materials.
Part G. Non-Paper Office Products
Section G–1 (Revised). Office Recycling Containers and Office Waste Receptacles Containing Recovered Paper, Plastic, or Steel
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Part H. Miscellaneous Products
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Section H–3. Industrial Drums Containing Recovered Steel, Plastic, or Paper.
Section H–4. Awards and Plaques Containing Recovered Glass, Wood, Paper, or Plastic.
Section H–5. Mats Containing Recovered Rubber and/or Plastic.
Section H–6. Manual-grade Strapping Containing Recovered Steel or Plastic.
Section H–7. Non-Road Signs Containing Recovered Plastic or Aluminum and Road Signs Containing Recovered Aluminum.

I. General Recommendations

General recommendations for definitions, specifications, and affirmative procurement programs can be found in the May 1, 1995 RMAN (60 FR 21386).

II. Specific Recommendations for Procurement of Designated Items

Recommendations for purchasing previously-designated items can be found in the May 1, 1995 and November 13, 1997 RMANs and the May 29, 1996 and June 8, 1998 Paper Products RMANs. Revised recovered materials content level recommendations for the steel components of traffic barricades and delineators, steel shower and restroom dividers/partitions, and steel office recycling containers and waste receptacles are included in today's notice.

Part C—Construction Products

Note: Refer to Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses and to Part F—Landscaping Products for additional items that can be used in construction applications.

Section C–6 (Revised). Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–6, procuring agencies establish minimum content standards for use in purchasing shower and restroom dividers/partitions.

TABLE C–6 (REVISED).—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SHOWER AND RESTROOM DIVIDERS/PARTITIONS CONTAINING RECOVERED PLASTIC OR STEEL

Material	Postconsumer materials (%)	Total recovered materials content (%)
Steel	16	25–30
	67	100
Plastic	20–100	20–100

NOTES: EPA's recommendation does not preclude agencies from purchasing shower and restroom dividers/partitions manufactured from another material, such as wood. It simply recommends that procuring agencies, when purchasing shower and restroom dividers/partitions made from plastic or steel, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring shower and restroom dividers/partitions:

(1) The American Institute of Architects (AIA) has issued guidance for specifying construction materials, including plastic and steel dividers/partitions. The AIA guidance is known throughout the construction industry as the ''Masterspec'' and is available through the U.S. General Services Administration (GSA).

(2) U.S. Army Corps of Engineers' Guide Specification CEGS–10160, Toilet Partitions.

Section C–8. Carpet Cushion Made from Bonded Polyurethane, Jute, Synthetic Fibers, or Rubber Containing Recovered Materials

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–8, procuring agencies establish minimum content standards for use in purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushion containing recovered materials.

TABLE C–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BONDED POLYURETHANE, JUTE, SYNTHETIC FIBER, AND RUBBER CARPET CUSHION

Product	Material	Postconsumer content (%)	Total recovered materials content (%)
Bonded polyurethane	Old carpet cushion	15–50	15–50
Jute	Burlap	40	40
Synthetic fibers	Carpet fabrication scrap	—	100
Rubber	Tire rubber	60–90	60–90

NOTE: EPA's recommendations do not preclude a procuring agency from purchasing another type of carpet cushion. They simply require that procuring agencies, when purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushions, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. Refer to Section C–4 in RMAN I for EPA's recommendations for purchasing polyester carpet containing recovered materials.

Specifications: EPA is not aware of carpet cushion specifications unique to carpet cushions containing recovered materials. Therefore, EPA recommends that procuring agencies use any appropriate standards set by the Carpet and Rug Institute and the Carpet Cushion Council when purchasing bonded polyurethane, jute, synthetic fiber, or rubber carpet cushion containing recovered materials.

Section C–9. Flowable Fill Containing Coal Fly Ash and/or Ferrous Foundry Sands

Preference Program: EPA recommends that procuring agencies use flowable fill containing coal fly ash and/or ferrous foundry sands for backfill and other fill applications. EPA further recommends that procuring agencies include provisions in all construction contracts involving backfill or other fill applications to allow for the use of flowable fill containing coal fly ash and/or ferrous foundry sands, where appropriate.

The specific percentage of coal fly ash or ferrous foundry sands used in flowable fill depends on the specifics of the job, including the type of coal fly ash used (Class C or Class F); the strength, set time, and flowability needed; and bleeding and shrinkage. Therefore, EPA is not recommending specific coal fly ash or ferrous foundry sands content levels for procuring agencies to use in establishing minimum content standards for flowable fill. EPA recommends that procuring agencies refer to the mix proportions in Tables C–9a and C–9b for typical proportions for high and low coal fly ash content mixes. EPA further recommends that procuring agencies refer to American Concrete Institute (ACI) report ACI 229R–94 for guidance on the percentages of coal fly ash that can be used in flowable fill mixtures.

TABLE C–9a.—TYPICAL PROPORTIONS FOR HIGH FLY ASH CONTENT FLOWABLE FILLS

Component	Range kg/m³(lb/yd³)	Mix design kg/m³ (lb/yd³)
Fly ash (95%)	949 to 1542 (1600 to 2600)	1234 (2080)
Cement (5%)	47 to 74 (80 to 125)	62 (104)
Added water	222 to 371 (375 to 625)	247 (416)*
Total:		1543 (2600)

* Equal to 189 liters (50 gallons).
Source: ''Fly Ash Facts for Highway Engineers,'' FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995.

TABLE C–9b.—TYPICAL PROPORTIONS FOR LOW FLY ASH CONTENT FLOWABLE FILLS

Component	Range kg/m³ (lb/yd³)	Mix design kg/m³ (lb/yd³)
Fly ash (6% to 14%)	119 to 297 (200 to 500)	178 (300)
Cement	30 to 119 (50 to 200)	59 (100)
Sand	1483 to 1780 (2500 to 3000)	1542 (2600)
Added water	198 to 494 (333 to 833)	297 (500)*
Total:		2076 (3500)

High calcium fly ash is used in lower amounts than low calcium fly ash.
*Equal to 227 liters (60 gallons).
Source: ''Fly Ash Facts for Highway Engineers,'' FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995.

Specifications: The following recommendations address mix designs, test methods, and performance standards.

• Mix designs. EPA recommends that procuring agencies use ACI report ACI229R–94, ''Controlled Low Strength Materials (CLSM)'' and ''Fly Ash Facts for Highway Engineers,'' (FHWA–SA–94–081, U.S. Department of Transportation, Federal Highway Administration, August 1995) in developing mix designs. Among other things, ACI229R–94 addresses materials, including coal fly ash and foundry sands, mix design, and mixing, transporting, and placing. It also provides examples of mixture designs containing coal fly used by the states of Iowa, Florida, Illinois, Indiana, Oklahoma, Michigan, Ohio, and South Carolina. ''Fly Ash Facts for Highway Engineers'' addresses materials, strength, flowability, time of set, bleeding and shrinkage.

A mix design for the use of foundry sand and coal fly ash in flowable fill was developed for Ford Motor Company. Procuring agencies can obtain a copy of this design by contacting the RCRA Hotline at 1–800–424–9346. Table C–9c provides the recommended trial mixture from this specification.

TABLE C–9c.—MATERIALS QUANTITIES FOR FLOWABLE FILL MIXTURE CONTAINING FOUNDRY SANDS AND COAL FLY ASH

Component	Quantity per cubic yard (lbs.)
Cement	50
Coal fly ash	250
Foundry sand	2,850
Water	500

• Materials specifications and test methods. EPA recommends that procuring agencies use ACI229R–94 and the ASTM standards listed in Table C–9d when purchasing flowable fill or contracting for construction that involves backfilling or other fill applications.

EPA recommends that procuring agencies refer to ASTM C 33–93, ''Standard Specification for Concrete Aggregates,'' to assure the quality and uniformity of the ferrous foundry sands used as aggregates in flowable fills.

TABLE C–9d.—RECOMMENDED TEST METHODS FOR FLOWABLE FILLS (CONTROLLED LOW STRENGTH MATERIALS)

ASTM specification Number	Title
D4832–95e1	Standard Test Method for Preparation and Testing of Controlled Low Strength Material (CLSM) Test Cylinders.
D5239–92	Standard Practice for Characterizing Fly Ash for Use in Soil Stabilization.
D5971–96	Standard Practice for Sampling Freshly Mixed Controlled Low Strength Material.
D6103–07	Standard Test Method for Flow Consistency of Controlled Low Strength Material.
D6023–96	Standard Test Method for Unit Weight, Yield, Cement Content and Air Content (Gravimetric) of Controlled Low Strength Material (CLSM).
D5971–96	Standard Practice for Sampling Freshly Mixed Controlled Low Strength Material.
d6024–96	Standard Test Method for Ball Drop on Controlled Low Strength Material (CLSM) to Determine Suitability for Load Application.

• State specifications. The following states have specifications for flowable fill containing coal fly ash: California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Texas, Washington, West Virginia, and Wisconsin.

The state of Ohio has a specification entitled ''Flowable Fill Made with Spent Foundry Sand,'' and the states of Pennsylvania, Wisconsin, and Indiana are developing specifications for using foundry sands in flowable fill.

If needed, procuring agencies can obtain state specifications from the respective state transportation departments and adapt them for use in their programs. ACI229R–94 includes mix designs from several of these states.

• Contract specifications. EPA recommends that procuring agencies which prepare or review ''contract'' specifications for individual construction projects revise those specifications to allow the use of flowable fills containing coal fly ash and/or ferrous foundry sands.

• Performance standards. EPA recommends that procuring agencies review and, if necessary, revise performance standards relating to fill materials to insure that they do not arbitrarily restrict or preclude the use of flowable fills containing coal fly ash and/or ferrous foundry sands, either intentionally or inadvertently, unless the restriction is justified on a job-by-job basis: (1) To meet reasonable performance requirements for fill materials or (2) because the use of coal fly ash or ferrous foundry sands would be inappropriate for technical reasons. EPA recommends that this justification be documented based on specific performance information. Legitimate documentation of technical infeasibility can be for certain classes of applications, rather than on a job-by-job basis. Agencies should reference such documentation in individual contract specifications to avoid extensive repetition of previously documented points. However, procuring agencies should be prepared to submit such documentation to scrutiny by interested parties and should have a review process available in the event of disagreements.

Promotion program: EPA recommends that, as part of the promotion programs required by section 6002(I) of the Resource Conservation and Recovery Act, procuring agencies conduct demonstration programs for using flowable fills containing coal fly ash and/or ferrous foundry sands. EPA further recommends that procuring agencies educate construction contractors about the design, use, and performance of flowable fills containing coal fly ash and/or ferrous foundry sands.

Section C–10. Railroad Grade Crossing Surfaces Containing Coal Fly Ash, Recovered Rubber, or Recovered Steel

Preference Program: EPA recommends that based on the recovered materials content levels shown in Table C–10a, procuring agencies establish minimum content standards for use in purchasing concrete, rubber, and steel railroad grade crossing surfaces containing recovered materials.

EPA further recommends that procuring agencies include provisions in all concrete railroad grade crossing construction contracts to allow for the use, as optional or alternate materials, of concrete containing coal fly ash, where appropriate.

TABLE C–10a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CONCRETE, RUBBER, AND STEEL RAILROAD GRADE CROSSING SURFACES

Surface material	Recovered material	Postconsumer content (%)	Total recovered materials content (%)
ConcreteCoal	fly ash		15–20
Rubber	Tire rubber		85–95
Steel	Steel	16	25–30
		67	100

Notes: EPA's recommendations do not preclude a procuring agency from purchasing another type of railroad grade crossing surface, such as wood or asphalt. They simply require that procuring agencies, when purchasing concrete, rubber, or steel grade crossing surfaces, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

The recommended recovered materials content levels for rubber railroad grade crossing surfaces are based on the weight of the raw materials, exclusive of any additives such as binders or other additives.

Coal fly ash can be used as an ingredient of concrete slabs, pavements, or controlled density fill product, depending on the type of concrete crossing system installed. Higher percentages of coal fly ash can be used in the concrete mixture; the higher percentages help to produce a more workable and durable product but can prolong the curing process.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Specifications: EPA recommends that procuring agencies use the ASTM standards listed in Table C–10b when purchasing rubber railroad grade crossing surfaces. EPA recommends that procuring agencies use the ASTM and AASHTO standards listed in Table C–10c when purchasing concrete railroad grade crossing surfaces.

TABLE C–10b.—RECOMMENDED SPECIFICATIONS FOR RUBBER RAILROAD GRADE CROSSINGS

ASTM specification number	Title
D 2000–96	Rubber Products in Automotive Applications.
D 2240–97	Rubber Property—Durometer Hardness.
D 412–97	Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers—Tension.
D 297–93	Rubber Products—Chemical Analysis.
E 303–93	Measuring Surface Frictional Properties Using the British Pendulum Tester.
D 1171–94	Rubber Deterioration—Surface Ozone Cracking Outdoors or Chamber (Triangular Specimens).
D 573–88	Deterioration in an Air Oven.

TABLE C–10b.—RECOMMENDED SPECIFICATIONS FOR RUBBER RAILROAD GRADE CROSSINGS—Continued

ASTM specification number	Title
D 395–89	Rubber Property—Compression Set.
D 257–93	DC Resistance or Conductance of Insulating Materials.
D 2137–94	Rubber Property—Brittleness Point of Flexible Polymers and Coated Fabrics.

TABLE C–10c.—RECOMMENDED SPECIFICATIONS FOR CEMENT AND CONCRETE CONTAINING RECOVERED MATERIALS

Specification number	Title
ASTM C 595	Standard Specification for Blended Hydraulic Cements
ASTM C 150	Standard Specification for Portland Cement.
AASHTO M 240.	Blended Hydraulic Cements.
ASTM C 618	Standard Specification for Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete.

TABLE C–10c.—RECOMMENDED SPECIFICATIONS FOR CEMENT AND CONCRETE CONTAINING RECOVERED MATERIALS—Continued

Specification number	Title
ASTM C 311	Standard Methods of Sampling and Testing Fly Ash and Natural Pozzolans for Use as a Mineral Admixture in Portland Cement Concrete.

Part D. Transportation Products

Section D–1 (Revised). Temporary Traffic Control Devices

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table D–1, procuring agencies establish minimum content standards for use in purchasing traffic cones and traffic barricades.

TABLE D–1 (REVISED).—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR TRAFFIC CONES AND TRAFFIC BARRICADES

Product	Material	Postconsumer materials (%)	Total recovered materials (%)
Traffic Cones	PVC, LDPE, Crumb Rubber	—	50–100
Traffic Barricades	HDPE, LDPE, PET	80–100	100
	Steel	16	25–30
		67	100
	Fiberglass	—	100

NOTES: The recommended recovered materials content levels are based on the dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agents.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Section D–3 (Revised). Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table D–3 (Revised), procuring agencies establish minimum content standards for use in purchasing channelizers, delineators, and flexible delineators.

TABLE D–3 (REVISED).—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CHANNELIZERS, DELINEATORS, AND FLEXIBLE DELINEATORS CONTAINING RECOVERED PLASTIC, RUBBER, OR STEEL

Product	Material	Postconsumer content (%)
Channelizers	Plastic	25–95
	Rubber (base only)	100
Delineators	Plastic	25–90
	Rubber (base only)	100
	Steel (base only)	16% postconsumer and 25–30% total recovered materials or 67% postconsumer and 100% total recovered materials.
Flexible delineators	Plastic	25–85

Notes: EPA's recommendation does not preclude a procuring agency from purchasing channelizers, delineators, or flexible delineators manufactured from another material. It simply requires that a procuring agency, when purchasing these items made from rubber, plastic, or steel, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Specifications: EPA recommends that procuring agencies use the following specifications when procuring channelizers, delineators, and flexible delineators:

(1) The Federal Highway Administration's *Manual on Uniform Traffic Control Devices* contains specifications for the size, shape, mounting, and placement of temporary traffic control devices.

(2) The States of Florida and North Carolina have specifications that require the use of recovered materials in their flexible delineators. The California Department of Transportation (CALTRANS) has specifications for ''Drivable Flexible Plastic Guide Marker and Clearance Marker Posts.'' A copy of these specifications are available from the RCRA Hotline at 1–800–424–9346.

Part E. Park and Recreation Products

Section E–3. Picnic Tables and Park Benches Containing Recovered Steel, Aluminum, or Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–3a, procuring agencies establish minimum content standards for use in purchasing aluminum, steel, or plastic park benches and picnic tables containing recovered materials.

TABLE E-3a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PARK BENCHES AND PICNIC TABLES CONTAINING RECOVERED ALUMINUM, STEEL, CONCRETE OR PLASTIC

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastics	90–100	100
Plastic composites	50–100	00
Aluminum	25	25
Concrete	.....	15–40
Steel	67	100

Notes:''Plastics'' includes both single and mixed plastic resins. Picnic tables and park benches made with recovered plastics may also contain other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

TABLE E-3a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PARK BENCHES AND PICNIC TABLES CONTAINING RECOVERED ALUMINUM, STEEL, CONCRETE OR PLASTIC—Continued

Material	Postconsumer content (%)	Total recovered materials content (%)

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

EPA's recommendations do not preclude a procuring agency from purchasing park benches or picnic tables made from other materials. They simply require that procuring agencies, when purchasing park benches or picnic tables made from plastic, aluminum, concrete, or steel purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA did not identify any specifications for park benches or picnic tables made from steel, concrete, or aluminum. EPA recommends that procuring agencies ensure that there is no language in their specifications for park benches or picnic tables that would preclude or discourage the use of products containing recovered materials.

EPA recommends that procuring agencies use the ASTM specifications referenced in Table E–3b for park benches and picnic tables made from plastic lumber.

TABLE E–3b.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PARK BENCHES AND PICNIC TABLES

ASTM specification number	Title
D 6108–97	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.

TABLE E–3b.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PARK BENCHES AND PICNIC TABLES—Continued

ASTM specification number	Title
D 6111–97	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.
D 6117–97	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Section E–4. Playground Equipment

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table E–4a, procuring agencies establish minimum content standards for use in purchasing playground equipment made from plastic lumber, steel, or aluminum containing recovered materials.

TABLE E–4a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLAYGROUND EQUIPMENT CONTAINING RECOVERED PLASTIC, STEEL, OR ALUMINUM

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastics	90–100	100
Plastic Composites	50–75	95–100
Steel	16	25–30
	67	100
Aluminum	25	25

Notes: ''Plastics'' includes both single and mixed plastic resins. Playground equipment made with recovered plastics may also contain other recovered materials such as wood or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the item.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

EPA's recommendations do not preclude a procuring agency from purchasing playground equipment made from other materials. They simply require that procuring agencies, when purchasing playground equipment made from plastic, aluminum, or steel purchase these items made with recovered materials when the item meets applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the specifications in Table E–4b when procuring playground equipment. Playground equipment may also be subject to state and local codes and standards as well as Federal child safety laws. EPA also recommends that procuring agencies use the ASTM specifications referenced in Table E–4c for playground equipment made from plastic lumber.

TABLE E–4b.—RECOMMENDED SAFETY SPECIFICATIONS FOR PLAYGROUND EQUIPMENT

Specification	Title
Consumer Product Safety Commission (CPSC) Publication No. 325.	Handbook for Public Playground Safety.
ASTM F–1487–95	Safety Performance Specification for Playground Equipment for Public Use.

TABLE E–4c.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PLAYGROUND EQUIPMENT

ASTM Specification Number	Title
D 6108–97 ...	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97 ...	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.
D 6111–97 ...	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97 ...	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.

TABLE E–4c.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER USED IN PLAYGROUND EQUIPMENT—Continued

ASTM Specification Number	Title
D 6117–97 ...	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Part F. Landscaping Products

Section F–2 (Revised). Compost Made From Yard Trimmings and/or Food Waste

Note: Following are EPA's revised recommendations for purchasing compost. The revisions add recommendations for purchasing compost made from food waste to EPA's 1995 recommendations for purchasing yard trimmings compost. Procuring agencies should substitute these recommendations for the recommendations found in Section F–2 of the 1995 RMAN I.

Preference Program: EPA recommends that procuring agencies purchase or use compost made from yard trimmings, leaves, grass clippings and/or food wastes in such applications as landscaping, seeding of grass or other plants on roadsides and embankments, as nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

EPA further recommends that those procuring agencies that have an adequate volume of yard trimmings, leaves, grass clippings, and/or food wastes, as well as sufficient space for composting, should implement a composting system to produce compost from these materials to meet their landscaping and other needs.

Specifications: EPA recommends that procuring agencies ensure that there is no language in their specifications relating to landscaping, soil amendments, erosion control, or soil reclamation that would preclude or discourage the use of compost. For instance, if specifications address the use of straw or hay in roadside revegetation projects, procuring agencies should assess whether compost could substitute for straw or hay or be used in combination with them.

The U.S. Department of Transportation's ''Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects 1996,'' specifies compost as one of the materials suitable for use in roadside revegetation projects associated with road construction. These standards do not preclude the use of compost made from yard trimmings, leaves, grass, clippings, and/or food waste.

The State of Maine has developed quality standards for compost products that are used by its agencies and/or purchased with state funds. The quality standards have been set for six types of compost products, ranging from topsoil (three classes), to wetland substrate, to mulch (two classes). For each of these types of compost product, standards for maturity, odor, texture, nutrients, pH, salt content, organic content, pathogen reduction, heavy metals, foreign matter, moisture content, and density have been established. EPA recommends that procuring agencies obtain and adapt this or another suitable specification for their use in purchasing compost products.

The Composting Council is helping to define and develop industry wide standards for composts made from various combinations of materials, including yard trimmings, leaves, grass clippings, and food wastes. The Composting Council publishes these standards in an operating guide for composting facilities entitled, ''Test Methods for Examination of Composting and Compost.'' The guide also provides standards for the suitability of different types of composts made for different applications, depending on the compost mix.

Section F–5. Plastic Lumber Landscaping Timbers and Posts Containing Recovered Materials

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table F–5a, procuring agencies establish minimum content standards for use in purchasing plastic lumber landscaping timbers and posts containing recovered materials.

TABLE F–5a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC LUMBER LANDSCAPING TIMBERS AND POSTS

Material	Post consumer content (%)	Total recovered materials content (%)
HDPE	25–100	75–100
Mixed Plastics/Sawdust	50	100
HDPE/Fiberglass	75	95
Other mixed resins ...	50–100	95–100

Note: EPA's recommendations do not preclude a procuring agency from purchasing wooden landscaping timbers and posts. They simply require that procuring agencies, when purchasing plastic landscaping timbers and posts purchase these items made with recovered materials when the items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies use the ASTM specifications referenced in Table F–5b for plastic lumber landscaping timbers and posts.

TABLE F–5b.—RECOMMENDED SPECIFICATIONS FOR PLASTIC LUMBER LANDSCAPING TIMBERS AND POSTS

ASTM specification number	Title
D 6108–97 ...	Standard Test Method for Compressive Properties of Plastic Lumber.
D 6109–97 ...	Standard Test Method for Flexural Properties of Unreinforced and Reinforced Plastic Lumber.
D 6111–97 ...	Standard Test Method for Bulk Density and Specific Gravity of Plastic Lumber and Shapes by Displacement.
D 6112–97 ...	Standard Test Method for Compressive and Flexural Creep and Creep Rupture of Plastic Lumber and Shapes.
D 6117–97 ...	Standard Test Method for Mechanical Fasteners in Plastic Lumber and Shapes.

Part G. Non-Paper Office Products

Section G–1 (Revised). Office Recycling Containers and Office Waste Receptacles

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–1 (Revised), procuring agencies establish minimum content standards for use in purchasing office recycling containers and office waste receptacles.

TABLE G–1 (REVISED)—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR OFFICE RECYCLING CONTAINERS AND OFFICE WASTE RECEPTACLES

Product	Recovered materials (materials and percent)
Office Recycling Containers and Office Waste Receptacles.	Plastic: 20–100 Postconsumer Recovered Materials. Paper: Refer to the Paper Products Recommendations in Part A of RMAN. Steel: 16% postconsumer and 25%–30% total recovered materials.

Notes: EPA's recommendations for office recycling containers and office waste receptacles containing recovered plastic, paper, or steel do not preclude a procuring agency from purchasing containers or receptacles manufactured from another material, such as wood. They simply require that procuring agencies, when purchasing office recycling containers or office waste receptacles manufactured from plastic, paper, or steel, purchase these items made with recovered materials when the items meet applicable specifications and performance requirements.

TABLE G–1 (REVISED)—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR OFFICE RECYCLING CONTAINERS AND OFFICE WASTE RECEPTACLES—Continued

Product	Recovered materials (materials and percent)
The recommended recovered materials content levels for steel in this table reflect the fact that the designated items are made from steel manufactured in a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel.	

Section G–8. Solid Plastic Binders, Plastic Clipboards, Plastic File Folders, Plastic Clip Portfolios, and Plastic Presentation Folders Containing Recovered Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table G–8, procuring agencies establish minimum content standards for use in purchasing solid plastic binders, plastic clipboards, plastic file folders, plastic clip portfolios, and plastic presentation folders containing recovered materials.

TABLE G–8.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SOLID PLASTIC BINDERS, CLIPBOARDS, FILE FOLDERS, CLIP PORTFOLIOS, AND PRESENTATION FOLDERS

Product	Material	Postconsumer content (%)	Total recovered materials content (%)
Solid plastic binders	HDPE	90	90
	PE	30–50	30–50
	PET	100	100
	Misc. Plastics	80	80
Plastic clipboards	HDPE	90	90
	PS	50	50
	Misc. Plastics	15	15–80
Plastic file folders	HDPE	90	90
Plastic clip portfolios	HDPE	90	90
Plastic presentation folders	HDPE	90	90

Note: EPA's recommendations do not preclude a procuring agency from purchasing binders, clipboards, file folders, clip portfolios, or presentation folders made from another material, such as paper. They simply require that procuring agencies, when purchasing these items made from solid plastic, purchase them made with recovered plastics when these items meet applicable specifications and performance requirements. For EPA's recommendations for purchasing pressboard binders and paper file folders containing recovered materials, see table A–1c in the Paper Products RMAN (61 FR 26986, May 29, 1996). See Table G–3 in RMAN I for EPA's recommendations for purchasing plastic-covered binders containing recovered materials.

Specifications: EPA did not identify any specifications for solid plastic binders, clipboards, file folders, clip portfolios, and presentation folders. EPA recommends that procuring agencies ensure that there is no language in their specifications for these items that would preclude or discourage the use of products containing recovered materials.

Part H. Miscellaneous Products

Section H–2. Sorbents

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–2a, procuring agencies establish minimum content standards for use in purchasing sorbent materials for use in oil and solvent clean-ups and for use as animal bedding.

TABLE H–2a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SORBENTS USED IN OIL AND SOLVENTS CLEAN-UPS AND FOR USE AS ANIMAL BEDDING

Material	Postconsumer content (%)	Total recovered materials content (%)
Paper	90–100	100
Textiles	95–100	95–100
Plastics	.....	25–100
Wood	.....	100

TABLE H–2a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SORBENTS USED IN OIL AND SOLVENTS CLEAN-UPS AND FOR USE AS ANIMAL BEDDING—Continued

Material	Postconsumer content (%)	Total recovered materials content (%)
Other Organics/ Multi-Materials	.....	100

Notes:''Wood'' includes materials such as sawdust and lumber mill trimmings. Examples of ''other organics'' include, but are not limited to, peanut hulls and corn stover. An example of ''multi-material'' sorbents would include, but not be limited to, a polymer and cellulose fiber combination.

EPA's recommendations do not preclude a procuring agency from purchasing sorbents made from other materials. They simply require that procuring agencies, when purchasing sorbents made from paper, wood, textiles, plastics, or other organic materials, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA recommends that procuring agencies ensure that there is no language in their specifications for sorbents that would preclude or discourage the use of products containing recovered materials.

EPA recommends that procuring agencies use the ASTM specifications in Table H–2b when procuring sorbents for use on oil and solvent clean-ups.

TABLE H–2b.—ASTM SPECIFICATIONS FOR ABSORBENTS AND ADSORBENTS

ASTM specification number	Title
F 716–81	Standard Method of Testing Sorbent Performance of Adsorbents.
F 716–82	Standard Method of Testing Sorbent Performance of Absorbents.

Section H–3. Industrial Drums Containing Recovered Steel, Plastic, and Paper

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–3, procuring agencies establish minimum content standards for use in purchasing steel, plastic, or fiber industrial drums containing recovered materials. EPA further recommends that procuring agencies reuse drums, purchase or use reconditioned drums, or procure drum reconditioning services, whenever feasible.

TABLE H–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR STEEL, PLASTIC, AND FIBER INDUSTRIAL DRUMS

Product	Material	Postconsumer content (%)	Total recovered materials content (%)
Steel drums	Steel	16	25–30
Plastic drums	HDPE	30–100	30–100
Fiber drums	Paper	100	100

Note: EPA's recommendation does not preclude a procuring agency from purchasing another type of industrial drum. It simply requires that procuring agencies, when purchasing steel, plastic, or fiber industrial drums, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items are made from steel manufactured in a Basic Oxygen Furnace (BOF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel.

Specifications: EPA is not aware of specifications unique to industrial drums containing recovered materials. EPA notes that industrial drums containing recovered materials can meet applicable U.S. Department of Transportation specifications for packaging hazardous materials. Additionally, the National Motor Freight Traffic Association specifications for containers used to transport goods via truck do not prohibit the use of industrial drums containing recovered materials.

Section H–4. Awards and Plaques

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–4, procuring agencies establish minimum content standards for use in purchasing awards and plaques containing recovered materials.

TABLE H–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR AWARDS AND PLAQUES CONTAINING RECOVERED MATERIALS

Material	Postconsumer content (%)	Total recovered materials content (%)
Glass	75–100	100
Wood	.....	100
Paper	40–100	40–100

TABLE H–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR AWARDS AND PLAQUES CONTAINING RECOVERED MATERIALS—Continued

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastic and Plastic/Wood Composite	50–100	95–100

Note: EPA's recommendations do not preclude a procuring agency from purchasing awards or plaques made from other materials. They simply require that procuring agencies, when purchasing awards or plaques made from paper, wood, glass, or plastics/plastic composites, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications or standards for awards or

plaques containing recovered materials. EPA recommends that procuring agencies ensure that there is no language in their specifications for awards and plaques that would preclude or discourage the use of products containing recovered materials.

Section H–5. Mats

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–5, procuring agencies establish minimum content standards for use in purchasing mats containing recovered materials.

TABLE H-5.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR MATS

Material	Postconsumer content (%)	Total recovered materials content (%)
Rubber	75–100	85–100
Plastic	10–100	100
Rubber/Plastic Composite	100	100

Note: EPA's recommendations do not preclude a procuring agency from purchasing mats made from other materials. They simply require that procuring agencies, when purchasing mats made from rubber and/or plastic, purchase them made with recovered materials when these items meet applicable specifications and performance requirements. When purchasing mats with steel or aluminum linkages, the Agency recommends that these linkages also contain recovered materials.

Specifications: EPA is not aware of specifications or standards for mats containing recovered materials. EPA recommends that procuring agencies ensure that there is no language in their specifications for mats that would preclude or discourage the use of products containing recovered materials. EPA is aware of one ASTM specification for wrestling mats, but does not believe that this type of mat is purchased in appreciable quantities by procuring agencies.

Section H–6. Manual-Grade Strapping Containing Recovered Steel and Plastic

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–6a, procuring agencies establish minimum content standards for use in purchasing manual-grade strapping containing recovered materials.

TABLE H–6a.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR MANUAL-GRADE POLYESTER, POLYPROPYLENE, AND STEEL STRAPPING

Product	Material	Postconsumer content (%)	Total recovered materials content (%)
Polyester strapping	PET	50–85	50–85
Polypropylene strapping	PP		10–40
Steel strapping	Steel	16	25–30
		67	100

Notes: EPA's recommendations do not preclude a procuring agency from purchasing another type of strapping, such as nylon. They simply require that procuring agencies, when purchasing polyester, polypropylene, or steel manual-grade strapping, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

Specifications: EPA is not aware of specifications unique to strapping containing recovered materials. EPA notes that strapping containing recovered materials can meet the ASTM strapping specifications and selection guide listed in Table H–6b.

TABLE H–6b.—RECOMMENDED ASTM SPECIFICATIONS AND GUIDE FOR STRAPPING

ASTM specification/guide number	Title
ASTM 3953	Standard Specification for Strapping, Flat Steel and Seals.
ASTM D 3950.	Standard Specification for Strapping, Nonmetallic (and Joining Methods).
ASTM D 4675.	Standard Guide for Selection and Use of Flat Strapping Materials.

Section H–7. Signage

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table H–7, procuring agencies establish minimum content standards for use in purchasing plastic signs for non-road applications (*e.g.,* building signs, trail signs) and aluminum signs for roadway or non-road applications containing recovered materials. EPA also recommends that, based on the recovered materials content levels shown in Table H–7, procuring agencies establish minimum content standards for use in purchasing sign supports and posts containing recovered plastic or steel.

TABLE H–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SIGNS CONTAINING RECOVERED PLASTIC OR ALUMINUM AND SIGN POSTS/SUPPORTS CONTAINING RECOVERED PLASTIC OR STEEL

Item/material	Postconsumer content (%)	Total recovered materials content (%)
Plastic signs	80—100	80–100
Aluminum signs	25	25
Plastic sign posts/supports	80–100	80–100
Steel sign posts/supports	16	25–30
	67	100

Notes: Plastic signs and sign posts are recommended for nonroad applications only such as, but not limited to, railway signs in parks and directional/informational signs in buildings.

The recommended recovered materials content levels for steel in this table reflect the fact that the designated items can be made from steel manufactured in either a Basic Oxygen Furnace (BOF) or an Electric Arc Furnace (EAF). Steel from the BOF process contains 25%–30% total recovered materials, of which 16% is postconsumer steel. Steel from the EAF process contains a total of 100% recovered steel, of which 67% is postconsumer.

EPA's recommendations do not preclude a procuring agency from purchasing signs or sign posts made from other materials. They simply require that procuring agencies, when purchasing signs made from plastic or aluminum or sign posts made from plastic or steel, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

Specifications: EPA is not aware of specifications for non-road signs containing recovered materials. Standard specifications for road sign size, lettering, color, strength, and performance requirements can be found in the ''Manual on Uniform Traffic Control Devices,'' which is published by the Federal Highway Administration. Applicable portions of this manual have been placed in the RCRA public docket for the proposed CPG/RMAN III notices.

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Federal Register

Wednesday,
January 19, 2000

Part VI

Department of The Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Santa Barbara County Distinct Population of the California Tier Salamander as Endangered; Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF81

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: We, the Fish and Wildlife Service (Service), exercise our authority to emergency list the Santa Barbara County Distinct Vertebrate Population Segment (DPS) of California tiger salamander (*Ambystoma californiense*), as endangered under the Endangered Species Act of 1973, as amended (Act). Of 14 documented breeding sites and associated uplands, half have been destroyed or have suffered severe degradation in the last 18 months. Plans to convert additional sites from grazing to intensive agriculture are being developed and implemented. Because these losses and planned conversions constitute an emergency posing a significant and imminent risk to the well-being of the Santa Barbara County DPS of the California tiger salamander, we find that emergency listing is necessary. This emergency rule provides Federal protection pursuant to the Act for a period of 240 days. A proposed rule to list the Santa Barbara County DPS of the California tiger salamander is published concurrently with this emergency rule, in this same issue of the **Federal Register** in the proposed rule section.

DATES: This emergency rule becomes effective January 19, 2000 and expires September 15, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Grace McLaughlin or Carl Benz, Ventura Fish and Wildlife Office, at the address listed above (telephone: 805/644-1766; facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The California tiger salamander was first described as a distinct species, *Ambystoma californiense,* by Gray in 1853 from specimens collected in Monterey (Grinnell and Camp 1917). Storer (1925) and Bishop (1943) likewise considered the California tiger salamander as a distinct species. However, Dunn (1940), Gehlbach (1967), and Frost (1985) considered the California tiger salamander a subspecies (*Ambystoma tigrinum californiense*) that belonged within the *A. tigrinum* complex. Based on recent morphological and genetic work, geographic isolation, and ecological differences among the members of the *A. tigrinum* complex, the California tiger salamander is considered to be a distinct species (Shaffer and Stanley 1991; Jones 1993; Shaffer and McKnight 1996; Irschick and Shaffer 1997). The California tiger salamander was recognized as a distinct species in the November 21, 1991, Animal Notice of Review (56 FR 58804).

The California tiger salamander is a large, stocky, terrestrial salamander with a broad, rounded snout. Adults may reach a total length of 207 millimeters (mm) (8.2 inches (in)), with males generally averaging about 200 mm (8 in) in total length and females averaging about 170 mm (6.8 in) in total length. For both sexes, the average snout-vent length is approximately 90 mm (3.6 in). The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background on the back and sides. The belly varies from almost uniform white or pale yellow to a variegated pattern of white or pale yellow and black. Males can be distinguished from females, especially during the breeding season, by their swollen cloacae (a common chamber into which the intestinal, urinary, and reproductive canals discharge), more developed tail fins, and larger overall size (Stebbins 1962; Loredo and Van Vuren 1996).

California tiger salamanders are restricted to California, and their range does not overlap with any other species of tiger salamander (Stebbins 1985). Within California, the Santa Barbara County population is separated by the Coast Ranges, particularly the La Panza and Sierra Madre Ranges, and the Carrizo Plain from the closest other population, which extends into the Temblor Range in eastern San Luis Obispo and western Kern Counties (Shaffer, *et al.* 1993).

The California tiger salamander inhabited low elevation, below 300 meters (m) (1000 feet (ft)), vernal pools and seasonal ponds and the associated coastal scrub, grassland, and oak savannah plant communities of the Santa Maria, Los Alamos, and Santa Rita Valleys in western Santa Barbara County (Shaffer, *et al.* 1993; Sam Sweet, University of California, Santa Barbara, *in litt.* 1993, 1998a). Although California tiger salamanders still exist across most of their historic range in Santa Barbara County, the habitat available to them has been reduced greatly. The ponds available to the salamanders for breeding have been degraded and reduced in number and the associated upland habitats inhabited by salamanders for most of their life cycle have been degraded and reduced in area through changes in agriculture practices, urbanization, building of roads and highways, chemical applications, and overgrazing (Gira *et al.* 1999; S. Sweet, *in litt.* 1993, 1998a,b).

Subadult and adult California tiger salamanders spend much of their lives in small mammal burrows found in the upland component of their habitat, particularly those of ground squirrels and pocket gophers (Loredo and Van Vuren 1996, Trenham 1998a). During estivation (a state of dormancy or inactivity in response to hot, dry weather), California tiger salamanders eat very little (Shaffer, *et al.* 1993). Once fall and winter rains begin, they emerge from these retreats on nights of high relative humidity and during rains to feed and to migrate to the breeding ponds (Stebbins 1985, 1989; Shaffer, *et al.* 1993). The salamanders breeding in and living around a pool or seasonal ponds, constitute a local subpopulation. The rate of natural movement of salamanders among subpopulations depends on the distance between the ponds or complexes and on the intervening habitat (e.g., salamanders may move more quickly through sparsely covered and more open grassland versus more densely vegetated scrublands).

Adults may migrate up to 2 kilometers (km) (1.2 miles (mi)) from summering to breeding sites. The distance from breeding sites may depend on local topography and vegetation, the distribution of ground squirrel or other rodent burrows, and climatic conditions (Stebbins 1989, Hunt 1998). In Santa Barbara County, juvenile California tiger salamanders have been trapped over 360 m (1,200 ft) while dispersing from their natal (birth) pond (Ted Mullen, Science Applications International Corporation (SAIC), personal communication, 1998), and adults have been found along roads over 2 km (1.2 mi) from breeding ponds (S. Sweet, *in litt.* 1998a). Migration is concentrated during a few rainy nights early in the winter, with males migrating before females (Twitty 1941; Shaffer, *et al.* 1993; Loredo and Van Vuren 1996; Trenham 1998b). Males

usually remain in the ponds for an average of about 6 to 8 weeks, while females stay for approximately 1 to 2 weeks. In dry years, both sexes may stay for shorter periods (Loredo and Van Vuren 1996, Trenham 1998b). Although most marked salamanders have been recaptured at the pond where they were initially captured, in one study approximately 20 percent were recaptured at different ponds (Trenham 1998b). As with migration distances, the number of ponds used by an individual over its lifetime will be dependent on landscape features.

Female California tiger salamanders mate and lay their eggs singly or in small groups (Twitty 1941; Shaffer, *et al.* 1993). The number of eggs laid by a single female ranges from approximately 400 to 1,300 per breeding season (Trenham 1998b). The eggs typically are attached to vegetation near the edge of the breeding pond (Storer 1925, Twitty 1941), but in ponds with no or limited vegetation, they may be attached to objects (rocks, boards, etc.) on the bottom (Jennings and Hayes 1994). After breeding, adults leave the pond and typically return to small mammal burrows (Loredo *et al.* 1996; Trenham 1998a), although they may continue to come out nightly for approximately the next 2 weeks to feed (Shaffer, *et al.* 1993).

Eggs hatch in 10 to 14 days with newly hatched larvae ranging from 11.5 to 14.2 mm (0.45 to 0.56 in) in total length. Larvae feed on algae, small crustaceans, and mosquito larvae for about 6 weeks after hatching, when they switch to larger prey (P.R. Anderson 1968). Larger larvae have been known to consume smaller tadpoles of Pacific treefrogs (*Hyla regilla*) and California red-legged frogs (*Rana aurora*) as well as many aquatic insects and other aquatic invertebrates (J.D. Anderson 1968; P.R. Anderson 1968). Captive salamanders appear to locate food by vision and olfaction (smell) (J.D. Anderson 1968).

Amphibian larvae must grow to a critical minimum body size before they can metamorphose (change into a different physical form) to the terrestrial stage (Wilbur and Collins 1973). Feaver (1971) found that California tiger salamander larvae metamorphosed and left the breeding ponds 60 to 94 days after the eggs had been laid, with larvae developing faster in smaller, more rapidly drying ponds. The longer the ponding duration, the larger the larvae and metamorphosed juveniles are able to grow. The larger juvenile amphibians grow, the more likely they are to survive and reproduce (Semlitsch *et al.* 1988; Morey 1998).

In the late spring or early summer, before the ponds dry completely, metamorphosed juveniles leave the ponds and enter small mammal burrows after spending up to a few days in mud cracks or tunnels in moist soil near the water (Zeiner *et al.* 1988; Shaffer, *et al.* 1993; Loredo *et al.* 1996). Like the adults, juveniles may emerge from these retreats to feed during nights of high relative humidity (Storer 1925; Shaffer, *et al.* 1993) before settling in their selected estivation sites for the dry summer months.

Many of the pools in which California tiger salamanders lay eggs do not retain water long enough to support successful metamorphosis. Generally, 10 weeks is required to allow sufficient time to metamorphose. The larvae will desiccate (dry out and perish) if a site dries before larvae complete metamorphosis (P.R. Anderson 1968, Feaver 1971). Pechmann *et al.* (1989) found a strong positive correlation with ponding duration and total number of metamorphosing juveniles in five salamander species. In one study, successful metamorphosis of California tiger salamanders occurred only in larger pools with longer ponding durations (Feaver 1971), which is typical range-wide (Jennings and Hayes 1994). Even though there is little difference in the number of pools used by salamanders between wet and dry years, pool duration is the most important factor to consider in relation to persistence and survival (Feaver 1971; Shaffer, *et al.* 1993; Seymour and Westphal 1994, 1995).

Lifetime reproductive success for California and other tiger salamanders is typically low, with fewer than 30 metamorphic juveniles per breeding female. While individuals may survive for more than 10 years, many may breed only once, and, in some populations, less than 5 percent of marked juveniles survive to become breeding adults (Trenham 1998b). With such low recruitment, isolated subpopulations can decline greatly from unusual, randomly occurring natural events as well as from human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated ponds that are too far from other ponds for migrating individuals to replenish the population can quickly drive a local population to extinction.

Distinct Vertebrate Population Segment

The evidence supports recognition of Santa Barbara County California tiger salamanders as a DPS for purposes of listing, as defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). The definition of ''species'' in section 3(16) of the Act includes ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' When listing a population under the Act as a DPS, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.,* is the population segment, when treated as if it were a species, endangered or threatened?) (61 FR 4722).

The DPS of California tiger salamanders in Santa Barbara County is discrete in relation to the remainder of the species as a whole. The DPS is geographically isolated and separate from other California tiger salamanders; no mixing of the population with other California tiger salamander populations occurs. As detailed below, this finding is supported by an evaluation of the species' genetic variability.

Genetic analyses of the California tiger salamander suggest that levels of interchange among populations are very low, and that populations or subpopulations are genetically isolated from one another (Jones 1993; Shaffer, *et al.* 1993). Allozyme variation (distinct types of enzymes (proteins) in the cells, which are formed from an individual's inherited genes) and mitochondrial DNA sequence data indicate the existence of at least seven genetically distinct California tiger salamander populations (Shaffer, *et al.* 1993). Although the allozyme variation reported by Shaffer, *et al.* (1993) is quite low, it does indicate patterns of geographic isolation. Probably because of this isolation, the population in Santa Barbara County is one of the two most genetically distinct, and these salamanders are more similar to California tiger salamanders on the eastern side of the Central Valley than to those in the closest populations found in the Temblor Range (Shaffer, *et al.* 1993). The populations in the Temblor Range are about 67.5 km or 44 mi by air, from the Santa Barbara County population, while the eastern Central Valley populations are 200 km or 128 mi by air, across mountain ranges, an arid plain, and the Central Valley, all of which are inhospitable zones for California tiger salamanders. The Santa Barbara County population may be a relict population of a much more widespread group that extended across the area where the Tehachapi and

Transverse Ranges now extend. The uplift of those ranges changed the terrain and the local climatic conditions, isolating salamanders in what is now northwestern Santa Barbara County. The Temblor Range salamanders appear to be a more recent extension from the populations south of San Francisco Bay. The sequence divergence between the Santa Barbara County tiger salamanders and other samples from throughout the species' range is on the order of 1.7 percent (Shaffer, *in litt.* 1998) or 1.8 percent (Shaffer, *et. al.* 1993). Shaffer's mitochondrial DNA sequence data (Shaffer and McKnight 1996, and unpublished data) suggest that the seven distinct populations differ markedly in their genetic characteristics, with Santa Barbara County tiger salamanders having gene sequences not found in any other California tiger salamander populations (Shaffer, *in litt.* 1998). California tiger salamanders in Santa Barbara County may have been separated from the other populations for about 1 to 1.5 million years (Shaffer, *et al.* 1993; Shaffer and McKnight 1996; H. Bradley Shaffer, University of California, Davis (UCD), *in litt.* 1998). Shaffer, *et al.* (1993) and Shaffer (*in litt.* 1998) suggest that differentiation at this level is sufficient to justify species-level recognition.

The Santa Barbara County California tiger salamander population is biologically and ecologically significant to the species. As discussed above, the Santa Barbara County population is genetically distinct from other populations of California tiger salamanders, and individuals exhibit genetic characteristics not found in other California tiger salamanders. The Santa Barbara County population is also significant in that it constitutes the only population of California tiger salamanders west of the outer Coast Ranges, and it is the southernmost population of the species. The DPS covered in this emergency rule is found only in Santa Barbara County. The extinction of the Santa Barbara County California tiger salamander population would result in the loss of a significant genetic entity, the curtailment of the range of the species as a whole, and the loss of a top predator in the aquatic systems that Santa Barbara County California tiger salamanders inhabit. Based on geographic isolation, the lack of evidence of gene flow with other populations, and marked genetic differentiation, we conclude that the Santa Barbara County population of California tiger salamanders meets the discreteness and significance criteria in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments and qualifies as a DPS. We discuss the Santa Barbara County population's conservation status below.

Status and Distribution

Currently, California tiger salamanders in Santa Barbara County are found in four discrete regions (S. Sweet, *in litt.* 1998a). Collectively, salamanders in these regions constitute a single genetic population or DPS, reproductively separate from the rest of the California tiger salamanders (Jones 1993; Shaffer, *et al.* 1993; Shaffer and McKnight 1996). Ponds and associated uplands in southwestern (West Orcutt) and southeastern (Bradley-Dominion) Santa Maria Valley, Los Alamos Valley, and Santa Rita Valley constitute the four discrete regions or metapopulations where California tiger salamanders now exist in Santa Barbara County (S. Sweet, *in litt.* 1998a). For the purposes of this rule, a metapopulation is defined as a group of subpopulations or ''local populations'' linked by genetic exchange. Of 14 known breeding sites or subpopulations within this DPS, 1 was destroyed in 1998, the upland habitat around 3 has been converted into more intensive agriculture practices (*i.e.* vineyards, gladiolus fields, and row crops, which may have eliminated the salamander subpopulations), 1 is surrounded by agriculture and urban development, 2 are affected by overgrazing, 4 are imminently threatened with conversion to vineyards or other intensive agriculture practices, and the remaining 3 are in areas rapidly undergoing conversion to vineyards and row crops (Sweet, *et al.* 1998; Sweet, *in litt.* 1998; Santa Barbara County Planning and Development 1998; Grace McLaughlin, Service, personal observations, 1998). Thus, only 6 or 7 of 13 existing ponds potentially provide breeding habitat for viable subpopulations of Santa Barbara County California tiger salamanders. Although other breeding ponds could exist within each of the four metapopulations noted above, searches around extant localities in the county, as well as in other areas with suitable habitat, have not identified additional subpopulations of the species (Paul Collins, Santa Barbara Museum of Natural History, *in litt.* 1998, pers. comm. 1999; S. Sweet, *in litt.* 1998a). Four possible breeding ponds or pond complexes (three in the Bradley-Dominion area, one in Santa Rita Valley) have been identified from aerial photography and by finding salamanders on roads in the vicinity (Sweet, *et al.* 1998) but have not been sampled. Most of the upland habitats around the ponds have been converted to vineyards or row crops within the last 6 years (Santa Barbara County Planning and Development 1998). All of the known and potential localities of the California tiger salamander in Santa Barbara County are on private lands, none are protected by conservation easements or agreements, and access is limited.

Previous Federal Action

On September 18, 1985, we published the Vertebrate Notice of Review (50 FR 37958), which included the California tiger salamander as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. The January 6, 1989, and November 21, 1991, candidate notices of review (54 FR 554 and 56 FR 58804, respectively) also included the California tiger salamander as a category 2 candidate, soliciting information on the status of the species. On February 21, 1992, we received a petition from Dr. H. Bradley Shaffer of the University of California, Davis, to list the California tiger salamander as an endangered species. We published a 90-day petition finding on November 19, 1992 (57 FR 54545), concluding that the petition presented substantial information indicating that listing may be warranted. On April 18, 1994, we published a 12-month petition finding (59 FR 18353) that the listing of the California tiger salamander was warranted but precluded by higher priority listing actions. We elevated the species to category 1 status at that time, which was reflected in the November 15, 1994, Animal Notice of Review (59 FR 58982). Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. In a memorandum dated November 3, 1994, from the acting Assistant Regional Director to the Field Supervisor, the recycled 12-month finding on the petition and a proposed rule to list the species under the Act were given a due date of December 15, 1995. However, on April 10, 1995, Public Law 104–6 imposed a moratorium on listings and critical habitat designations and rescinded $1.5 million from the listing program funding. The moratorium was lifted and listing funding was restored through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints

imposed by a number of continuing resolutions between November 1995 and April 1996. The listing of the California tiger salamander throughout its range was precluded by the need to address higher priority species, although the status of the entire species is currently under review. The decision to emergency list this DPS of the California tiger salamander is based on information contained in the original petition, information referenced in the petition, and new information otherwise available to the Service.

The processing of this emergency rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This emergency rule is a Priority 1 action and is being completed in accordance with the current Listing Priority Guidance.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Santa Barbara County population of the California tiger salamander warrants classification as an endangered DPS. We followed procedures found at section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Santa Barbara County DPS of the California tiger salamander (*Ambystoma californiense*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

California tiger salamanders now occur in scattered subpopulations within four isolated areas or metapopulations across the historic range in Santa Barbara County. Based on the topography and habitat type of the lands that have been converted to agriculture and urban development, we conclude that the number of breeding ponds, the extent of upland habitats, and the quality of the remaining habitats have been reduced greatly since Europeans first settled the region. While those areas remained in grazing lands or oil production, which generally have relatively low effects on the subpopulations, the species was relatively secure. However, based on aerial photography from the 1930's through the 1990's (archived at the Santa Barbara County Department of Planning and Development), the conversion to intensive agriculture and urban developments has resulted in the loss of breeding habitat from the destruction or alteration of natural vernal pools and seasonal ponds, and the loss of upland habitat used for estivation and migration.

Pools and ponds are destroyed when they are filled during grading and leveling operations or deep-ripping. Deep-ripping or deep slip plowing is a technique that uses a 4- to 7-foot deep plow to break up the hardpan (layer of dense soil or material that prevents water percolation) or compacted soil to allow water to drain deeper into the soil and prevents water retention or ponding. Alternatively, seasonal ponds may be converted to irrigation ponds, which are often managed in ways that are not conducive to salamander survival (Lawrence Hunt, Biological Consultant, *in litt.* 1998). The repeated plowing and discing or deep-ripping of upland habitats can alter the hydrology of the pools, thus destroying them (Coe 1988), or can kill salamanders outright and destroy the small mammal burrow systems in which they live most of the year.

Intensive agricultural practices began in the Santa Maria River and San Antonio Creek Valleys over 130 years ago (Elihu Gevirtz, Santa Barbara County Planning and Development, pers. comm. 1999), probably eliminating many breeding ponds and associated upland habitats. The increasingly rapid conversion of these lands and those in the Los Alamos and Santa Rita Valleys to intensive agricultural practices is characterized by the increase in row crop acreage by more than 9,900 hectares (ha) (over 25,000 acres (ac)) since 1986 and the installation of approximately 4,000 ha (10,000 ac) of vineyards just since 1996 (Gira *et al.* 1999). These conversions have resulted in the destruction of two breeding ponds (one suspected and one documented) and the grading of 90 and 100 percent of their drainage basins, and the grading of 50 to 100 percent of the drainage basins of five documented and two suspected breeding ponds in the last 5 years (Santa Barbara County Planning and Development 1998). Six of 14 documented breeding sites and associated uplands have been destroyed or severely affected since 1996, and there are proposals to develop vineyards around 4 other documented breeding ponds, leaving only 4 of 13 remaining pond sites relatively free from imminent threat (Hunt 1998; G. McLaughlin, pers. obs. 1998; Santa Barbara County Planning and Development 1998; Sweet, *et al.* 1998; Sweet, *in litt.* 1998). The current and potential threats to the remaining ponds from agriculture and urbanization are discussed below by region (West Orcutt, Bradley-Dominion, Los Alamos, Santa Rita).

The known breeding sites in southwestern Santa Maria Valley (west of Highway 101 and Santa Maria), comprising the West Orcutt metapopulation, are on grazing and other agricultural lands. Vernal pools in the area have been lost or adversely affected by rapid development in the Santa Maria Valley (E. Gevirtz, pers. comm. 1999). Thirty years ago, a housing development directly affected one of three documented breeding sites in this metapopulation. The two remaining sites are separated by a railroad that may disrupt migration routes and reduce genetic interchange. These sites are also threatened by overgrazing (G. McLaughlin, pers. obs. 1998) (see discussion on grazing in Factors C and E, below) and potentially threatened by urban development (S. Sweet, *in litt.* 1998a; E. Gevirtz, pers. comm. 1999).

Before 1996, the four documented and three possible breeding sites (Sweet, *et al.* 1998) in southeastern Santa Maria Valley, which constitute the Bradley-Dominion metapopulation, were surrounded by oil production and grazing lands. Since 1996, agricultural land conversion for vineyards, vegetable row crops, and flowers has destroyed one documented and one suspected breeding site, possibly extirpated salamanders from two other documented sites and one possible breeding site, and threatens the remaining possible breeding site (S. Sweet, *in litt.* 1993; 1998a,b). Although

California tiger salamanders were found migrating across roads in the vicinity of the possible breeding sites throughout the 1980's, salamanders have not been observed since the early 1990's, when the grazing lands were converted to vineyards (S. Sweet, *in litt.* 1998a).

A storage facility for agricultural products and chemicals is within the watershed of the remaining documented breeding site (S. Sweet, *in litt.* 1998a; Theresa Stevens, Santa Barbara County Planning and Development, pers. comm. 1999). Although precautions have been taken to reduce the threats of runoff and spills into the natural pond (Analise Merlo, Santa Barbara County Planning and Development, pers. comm. 1999) that could eliminate or injure salamanders during the breeding or development seasons, the threats still exist. A road between this pond and a nearby pond, the watershed of which was converted to gladiolus fields in 1998, disrupts migration between the ponds and the uplands, has caused the deaths of many salamanders, and contributes to potentially lethal contamination of the ponds (S. Sweet, *in litt.* 1993, 1998a).

The Los Alamos Valley or Las Flores metapopulation, although fragmented by Highway 101, was considered to be an important breeding site for the species provided existing conditions could be maintained (Stebbins 1989). However, recent changes in land ownership and management have resulted in the conversion from grazing lands to vineyards, east of the highway. The direct effects of this conversion resulted in the loss of one vernal pool and the severe degradation of upland habitats surrounding that pool and another documented breeding site (Hunt 1998). On the west side of Highway 101, habitat around four vernal pools and seasonal ponds that are documented breeding sites and currently grazing lands, may be converted for intensive agricultural practices (Santa Barbara County Planning and Development 1998; L. Hunt, *in litt.* 1999; S. Sweet, *in litt.* 1998a; Abe Lieder, Santa Barbara County Planning and Development, *in litt.* 1999; Morgan Wehtje, California Department of Fish and Game (CDFG), pers. comm. 1999).

In the Santa Rita Valley metapopulation, one of the two sites used by the California tiger salamander west of Buellton has been severely affected by agricultural grading and conversion to row crops (S. Sweet, *in litt.* 1993, 1998a,b). The other site has two vernal pools that have been deepened to create a permanent water source for cattle and have had introductions of mosquitofish (*Gambusia affinis*) and sunfish (*Lepomis* spp.). The pools are adjacent to Highway 246, resulting in considerable road mortality of salamanders during their breeding migrations (S. Sweet, *in litt.* 1993, 1998). Upland habitats around two possible breeding ponds northeast of the latter were deep-ripped in 1998 in preparation for conversion to vineyards (L. Hunt, *in litt.* 1998; Santa Barbara County Planning and Development 1998). The conversion to vineyard of these areas is in progress (G. McLaughlin, pers. obs. 1999), and one of the ponds has recently been enlarged and deepened (E. Gevirtz, pers. comm. 1999; Jim Mace, U.S. Army Corps of Engineers, pers. comm. 1999). This change may make the pond less desirable for the California tiger salamander and more likely to be inhabited by exotic fish, crayfish, and bullfrogs.

Oil production began within the range of the salamander approximately 100 years ago, with the discovery of oil in the Solomon Hills (within the range of the Los Alamos tiger salamander metapopulation). By 1910, production had begun in the Santa Maria Valley (E. Gevirtz, pers. comm. 1999). Although oil production is less disruptive to the upland habitats than agriculture, oil sump ponds, particularly those located where natural ponds and pools once existed, may act as toxic sinks. While attracting salamanders seeking breeding sites, these ponds may contain levels of contaminants that may kill adults, eggs, and larvae outright, or cause deformities in the developing larvae thus precluding their survival (see discussion on contaminants in Factor E of this section). Also, the ''burping''' (release) of hydrogen sulfide gas by the wells can acidify the ponds as the gas settles in low-lying areas, reducing the survival rates of larvae and adults (S. Sweet, *in litt.* 1993).

The primary cause of the reduced distribution of the California tiger salamander in Santa Barbara County is the conversion of native habitat to intensive agricultural practices and urban development. In addition, the largest remaining subpopulations are in areas most severely threatened by human encroachment (Shaffer, *et al.* 1993; S. Sweet, *in litt.* 1993; 1998a; E. Gevirtz, *in litt.* 1998). Besides direct loss of habitat, the widespread conversion of land to agricultural and residential uses has led to the fragmentation of the range of the tiger salamander and isolation of remaining subpopulations in Santa Barbara County (Shaffer, *et al.* 1993; S. Sweet, *in litt.* 1993; 1998a). Even relatively minor habitat modifications, such as construction of roads, pipelines, fences, and berms that traverse the area between breeding and refuge sites, can increase habitat fragmentation, impede or prevent breeding migrations, and result in direct and indirect mortality (Mader 1984; S. Sweet, *in litt.* 1993, 1998; Findlay and Houlahan 1996; Launer and Fee 1996; Gibbs 1998).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although tiger salamanders have been used for bait and imported larvae (''waterdogs'') are still sold in California, we have no information about the use of California tiger salamanders for this purpose (see discussion under Factor E of this section).

C. Disease or Predation

Disease

The direct effect of disease on the Santa Barbara County population of California tiger salamanders is not known and the risks to the DPS have not been determined. Because California tiger salamanders are found in so few sites in Santa Barbara County, and because the sites are found across a relatively small area, disease must be considered a potential threat to the persistence of the DPS. Sam Sweet (pers. comm. 1998) reported that one landowner in the Los Alamos Valley has seen large numbers of dead and dying salamanders in a pond, but the cause was not determined. Several pathogenic (disease-causing) agents, including at least one bacterium (Worthylake and Hovingh 1989), a water mold (fungus) (Kiesecker and Blaustein 1997; Lefcort *et al.* 1997), and a virus (McLean 1998), have been associated with die-offs of closely related tiger salamanders, as well as other amphibian species. Each of these pathogens could devastate one or all of the remaining subpopulations or metapopulations if introduced into Santa Barbara County.

Worthylake and Hovingh (1989) reported on repeated die-offs of tiger salamanders (*Ambystoma tigrinum*) in Desolation Lake in the Wasatch Mountains of Utah. Affected salamanders had red, swollen hind legs and vents, and widespread hemorrhage of the skin and internal organs. The researchers determined that the die-offs were due to infection with the bacterium *Acinetobacter.* The number of bacteria in the lake increased with increasing nitrogen levels as the lake dried. The nitrogen was believed to come from both atmospheric deposition and waste from sheep grazing in the watershed (Worthylake and Hovingh

1989). *Acinetobacter* spp. are common in soil and animal feces. Overstocking of livestock in pond watersheds could lead to high levels of nitrogen in ponds and contribute to increased bacterial levels.

Lefcort *et al.* (1997), in Georgia, found that tiger salamanders raised in natural and artificial ponds contaminated with silt were susceptible to infection by the water mold *Saprolegnia parasitica.* The fungus first appeared on the feet, then spread to the entire leg. All infected animals died. Die-offs of western toads (*Bufo boreas*), Cascades frogs (*Rana cascadae*), and Pacific treefrogs (*Hyla regilla*) also have been associated with *Saprolegnia* infections (Kiesecker and Blaustein 1997). *Saprolegnia* spp. are widespread in natural waters and commonly grow on dead organic material (Wise 1995).

High nitrogen and silt levels from overgrazing or other agricultural or urban runoff may increase susceptibility to disease and may interact with other risk factors (*e.g.,* habitat loss, introduced species) to jeopardize the persistence of a local population. Two of the three ponds in the West Orcutt metapopulation area are in severely overgrazed grasslands and are at risk of receiving runoff that has both high nitrogen and high silt levels. Four ponds in the Los Alamos metapopulation and the two ponds in the Santa Rita metapopulation are on grazing lands; although the levels of grazing are not excessive, silt and nitrogen levels must be considered when assessing the health of these populations. One of the ponds in the Los Alamos Valley was the site of a die-off of California tiger salamanders, but the cause was unknown (S. Sweet, pers. comm. 1998).

In addition to the *Acinetobacter* discussed above, an iridovirus (viruses with DNA as the genetic material that occur in insects, fish, and amphibians and may cause death, skin lesions, or no symptoms) has been identified by the U.S. Geological Service (USGS), National Wildlife Health Center in Madison, Wisconsin, as the cause of deaths of large numbers of tiger salamanders at Desolation Lake, Utah. Infected salamanders moved slowly in circles and had trouble remaining upright. They had red spots and swollen areas on the skin. Viruses associated with die-offs of tiger and spotted salamanders in two other States, Maine and North Dakota, have been isolated (McLean 1998). In 1995, researchers reported similar die-offs attributed to an iridovirus in southern Arizona and near Regina, Saskatchewan, Canada (McLean 1998). Iridoviruses are found in both fish and frogs and may have been introduced to some sites through fish stocking programs. Little is known about the historical distribution of iridoviruses in salamander populations. A virus could enter California via bait shops where eastern tiger salamanders are legally sold in certain counties (California Code of Regulations (CCR) Title 14, Division 1, Subdivision 1, Chapter 2, Article 3, Sec. 4, 1999), or where they are illegally sold in other areas. The virus may be carried by birds, such as herons and egrets, that feed on the salamanders. Such a virus could be devastating to the Santa Barbara County population of California tiger salamanders.

Predation

Predation and competition by introduced or nonnative species potentially affect 38 percent of the remaining 13 Santa Barbara County California tiger salamander breeding sites. Shaffer, *et al.* (1993) consider bullfrogs (*Rana catesbeiana*), mosquitofish, and other introduced fish to be biological indicators of ponds that have been disturbed to a degree that California tiger salamanders are excluded. Competition is discussed under Factor E of this section.

Bullfrogs prey on California tiger salamander larvae (P.R. Anderson 1968). Morey and Guinn (1992) documented a shift in amphibian community composition at a vernal pool complex, with California tiger salamanders becoming proportionally less abundant as bullfrogs increased. Although bullfrogs are unable to establish permanent breeding populations in unaltered vernal pools and seasonal ponds, dispersing immature frogs take up residence in vernal pools during winter and spring (Morey and Guinn 1992) and may prey on native amphibians, including larval California tiger salamanders. Lawler *et al.* (1999) found that less than 5 percent of California red-legged frog tadpoles survived to metamorphosis when raised with bullfrog tadpoles (initially, ponds held 720 red-legged frog tadpoles and 50 bullfrog tadpoles; approximately 50 percent of the bullfrogs successfully metamorphosed). Due to the documented effects of bullfrogs on other amphibian species, we believe that they are likely to have similar effects on California tiger salamanders and that the presence of bullfrogs in salamander habitat threatens the persistence of the salamander populations. Bullfrogs are found within 1.6 km (1 mi) of one vernal pool complex in Santa Barbara County (S. Sweet, pers. comm. 1999), posing a threat to that metapopulation.

Mosquitofish, instead of pesticides, often are placed into ponds by vector control agencies to eliminate mosquitoes. Mosquitofish are used by every vector control district in the State and in some districts represent the majority of their control efforts (Ken Boyce, California Mosquito and Vector Control Association, *in litt.* 1994). These fish were first introduced to California in 1922 and have since become well-established throughout the State's water systems (K. Boyce *in litt.* 1994). In general, mosquitofish are stocked in very small numbers because they quickly reproduce to the maximum population levels that a particular habitat may sustain. Mosquitofish are extremely tolerant of polluted water with low levels of dissolved oxygen and have an extremely wide range of temperature tolerance (Boyce 1994). Mosquitofish prey on the California newt (*Taricha torosa*) (Gamradt and Kats 1996) and Pacific treefrog (Goodsell and Kats 1999) larvae in both field and laboratory experiments, even given the optional prey of mosquito larvae (Goodsell and Kats 1999; Lee Kats, Pepperdine University, pers. comm. 1999). Both newt and Pacific treefrog larvae were found in stomachs of wild-caught mosquitofish (Goodsell and Kats 1999; L. Kats, pers. comm. 1999). Robert Stebbins observed mosquitofish ingesting and then spitting out California newt larvae, causing severe damage to the newts in the process (Graf 1993). Schmieder and Nauman (1993) found that mosquitofish significantly affected the survival of both prefeeding and large larvae of California red-legged frogs. Lawler *et al.* (1999) did not find a reduction in survival rates of California red-legged frog tadpoles raised in the presence of mosquitofish versus controls with no mosquitofish, but those tadpoles that did survive weighed less than control tadpoles and metamorphosed later, and most were injured by the fish. Smaller size at metamorphosis may reduce survival to breeding age and reproductive potential Morey 1998, Semlitsch *et al.* 1988). Salamanders may be especially vulnerable to mosquitofish predation due to their fluttering external gills, which may attract these visual predators (Graf 1993). Loredo-Prendeville *et al.* (1994) found no California tiger salamanders in ponds with mosquitofish. Due to the documented effects of mosquitofish on other amphibian species, we believe that they are likely to have similar effects on California tiger salamanders and that the use of mosquitofish in salamander habitat threatens the persistence of the salamander populations.

Louisiana red swamp crayfish (*Procambarus clarki*) also apparently prey on California tiger salamanders (Shaffer, *et al.* 1993) and may have eliminated some populations (Jennings and Hayes 1994). The crayfish prey on California newt eggs and larvae, in spite of toxins that the species has developed, and may be a significant factor in the loss of newts from several streams in southern California (Gamradt and Kats 1996). These crayfish are found in two salamander breeding sites in Santa Barbara County, but their effect on egg and larval survival is unknown (S. Sweet, pers. comm. 1999).

California tiger salamander larvae also are preyed upon by many native species. In healthy salamander populations such predation is probably not a significant threat, but when combined with other impacts, such as predation by nonnative species, contaminants, or habitat alteration, it may cause a significant decrease in population viability. Native predators include great blue herons (*Ardea herodias*) and egrets (*Casmerodius albus*), western pond turtles (*Clemmys marmorata*), various garter snakes (*Thamnophis* spp.), larger California tiger salamander larvae, larger spadefoot toad (*Scaphiopus hammondii*) larvae, and California red-legged frogs (Mike Peters, Service, *in. litt.* 1993; Hansen and Tremper 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline of the Santa Barbara County population of California tiger salamanders is the loss, degradation, and fragmentation of habitat from human activities. Federal, State, and local laws have not been sufficient to prevent past and ongoing losses of California tiger salamander habitat.

Federal

Section 404 of the Clean Water Act (CWA) authorizes the U.S. Army Corps of Engineers (Corps) to issue individual or general permits for the discharge of dredged or fill material into waters of the United States, which include navigable waters, wetlands (*e.g.,* vernal pools), and other seasonal ponds typically used by breeding salamanders. Projects that involve only the excavation of pools or that alter the watershed and hydrological regime of the pool but do not involve ''discharge'' into the pool do not require a section 404 permit (Coe 1988). General permits include both nationwide and regional permits and may allow projects to proceed without the scrutiny afforded through the individual permitting process.

Of particular concern relative to the persistence of California tiger salamanders are activities conducted under Nationwide Permit (NWP) Number 26 (33 CFR part 330 Appendix A), which authorizes an applicant to fill up to 1.2 ha (3 ac) of waters and wetlands, including vernal pools and seasonal ponds. Filling of less than 0.13 ha (0.33 ac) of isolated waters can be undertaken without notifying the Corps of the proposed activity. If the activity will affect between 0.13 and 0.4 ha (0.33 and 1 ac) of wetlands, an applicant is required to notify the Corps, but the Corps is not required to notify resource agencies unless the project may affect a listed species or designated critical habitat. Because vernal pools are often small and scattered across the landscape, projects, even very large development projects that fill hundreds of vernal pools, can be authorized under NWP 26. Numerous small projects in a given area also could be authorized, cumulatively resulting in the loss of significant amounts of wetland and associated upland habitats, with significant negative effects on local and regional biodiversity (Semlitsch and Brodie 1998).

Projects affecting between 0.4 ha and 1.2 ha (1 ac and 3 ac) of isolated waters also can be authorized under NWP 26 after the Corps circulates a pre-discharge notification to the Service and other resource agencies for review and comments. For such projects, the Corps can place special conditions requiring minimization of impacts and/or compensatory mitigation on authorizations granted under NWP 26. The Corps can require an individual permit for these projects if it determines the project will have significant individual or cumulative effects. However, the Corps generally is reluctant to withhold authorization under NWP 26 unless a listed threatened or endangered species is known to be present. Also, the Corps often confines its evaluation of impacts to those areas under its jurisdiction (*i.e.,* wetlands and other waters of the United States). Impacts to uplands and mitigation for upland habitat losses usually are not addressed by the Corps. Preservation of existing pools without protection of large blocks of suitable uplands is unlikely to result in the persistence of viable salamander populations because the salamanders require both aquatic and upland habitats during their life cycle. Thus, section 404 provides insufficient protection of small isolated wetlands.

An individual permit is required for projects filling or affecting 1.2 ha (3 ac) or more of isolated waters. Individual permits are subject to review by the Service, other resource agencies, and the public. When we review the permit, we may recommend measures to avoid, minimize, or mitigate losses. In some cases, compensatory mitigation (*e.g.,* the creation of artificial wetlands) is incorporated in the Corps permit as a Special Condition. However, problems associated with such compensatory measures often decrease or eliminate the habitat value for salamanders at the sites (DeWeese 1994).

The creation of artificial wetlands and ponds as breeding habitat for tiger salamanders has been used as a compensatory mechanism for the loss of natural wetlands and pools. The long-term viability and suitability of artificially created wetlands are unknown. In 1994 the Service completed a report evaluating 30 wetland creation projects authorized through the Corps of Engineers section 404 program (DeWeese 1994). Twenty-two projects ranged in age from 3 to 5 years old, and eight projects were greater than 5 years old at the time of the study. The Service found that, although it appeared the Service's goal of ''no net loss of acreage'' was being met or exceeded, the value of the habitat created, which included the local wildlife species that would be expected to use the habitat, was low. This situation was especially the case for vernal pools and seasonal wetlands that had a value of only 20 and 40 percent (respectively) of what existed previously. Particular problems were noted for these habitat types, which often were inundated (flooded) for longer than natural systems or more frequently. The study concluded that, of the 600 ac of proposed mitigation, half were meeting less than 75 percent of the mitigation conditions. Mitigation and compensation for impacts to larger wetlands under section 404 have failed to reduce threats to California tiger salamanders.

The conversion of grazing land to intensive agricultural uses that may adversely affect the California tiger salamander generally is unregulated at any level of government. For example, the Corps has promulgated regulations that exempt some farming, forestry, and maintenance activities from the regulatory requirements of section 404 (33 CFR 323.4). Therefore, not all activities that destroy or degrade vernal pools require Corps authorization. Certain normal farming activities, including discing and plowing to depths less than 16 in, can degrade or destroy vernal pools without requiring a permit because these activities are exempt under the Clean Water Act. However,

deep-ripping, which disrupts the water-retaining hardpan that underlies vernal pools and other seasonal wetlands, of lands formerly used for ranching (*i.e.,* grazing) or dry-land farming (*e.g.,* non-irrigated hay production) represents a ''change in use'' of the lands and is not considered a normal and ongoing farming activity. As such, the practice triggers section 404(f)(2) of the CWA, and requires review by and a permit from the Corps (R. H. Wayland III, U.S. Environmental Protection Agency, and D. R. Burns, Corps, *in litt.* 1996). However, as discussed previously, the Corps typically asserts jurisdiction only over the actual wetlands, not over the surrounding uplands.

State

The State of California recognizes the California tiger salamander as a species of special concern under the California Endangered Species Act (ESA), and has placed this species on the list of protected amphibians, which means that it may not be taken without a special (*i.e.,* scientific collecting) permit (CRC, Title 14, Section 41). However, this protection applies only to actual possession or intentional killing of individual animals, and affords no protection to habitat. Activities that destroy habitat and kill salamanders in the process are not regulated.

The California Environmental Quality Act (CEQA) offers some opportunities to protect rare threatened and endangered plants and animals and declares that it is the policy of the State to ''(p)revent the elimination of fish or wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities.'' (California Public Resources Code, section 21001(c) 1999). Species do not have to be listed under the Federal or California ESAs to meet the determination of rare (California Code of Regulations (CRC), Title 14, Chapter 3, Section 15380(b)(2)). Species that have been classified as ''species of special concern'' are considered rare for the purposes of CEQA. When the CEQA process is triggered, it requires full disclosure of the potential environmental impacts of proposed projects. However, the CEQA review process is not triggered unless issuance of a permit associated with a project is considered ''discretionary'' rather than ''ministerial.'' The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the projects or to decide that overriding social or economic considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of rare species. Protection of listed or rare species through CEQA is, therefore, dependent upon the discretion of the agency involved. Therefore, the effectiveness of this statute in protecting California tiger salamanders and their vernal pool and upland habitats has not been consistent.

Local

In Santa Barbara County, no specific regulatory protection exists for vernal pools, surrounding uplands, and their associated species, including California tiger salamanders. Some provisions are discretionary and could provide some measure of protection. For example, the Santa Barbara County Grading Ordinance (Ordinance 3937, Chapter 14 of the County Code) states that the issuance of a grading permit is discretionary (Section 14—6.(a)), and that ''no person shall cause or allow a significant environmental impact to occur as a result of new grading as defined herein, including grading that is otherwise exempt from these regulations.'' In one case in 1998, the Planning Department required, after the fact, a permit, the preparation of an environmental impact report, and mitigation for the discing of a vernal pool and the deep-ripping of uplands associated with that and an adjacent, larger pool in preparation for vineyard installation (Albert J. McCurdy, Deputy Director, Santa Barbara County Planning and Development, *in litt.* 1998a). Those requirements were overturned by the County Board of Supervisors (A. McCurdy, *in litt.* 1998b). The Corps did require a small set-aside approximately 5.7 ha (14 ac) to provide a narrow buffer around both ponds, as mitigation for the discing of the smaller pool (David Castanon, Army Corps of Engineers, *in litt.* 1999). In another case, grazing lands surrounding another pool were converted to row crops to the edge of the pool. Although discing and other activities clearly degraded the wetland, no agency has required any review, permits, or mitigation for the activities.

Typically, California tiger salamander habitat has been eliminated without offsetting mitigation measures. Most mitigation plans that have been required were designed specifically for vernal pool plants and did not consider the upland habitats, including mammal burrows, needed by salamanders, or their dispersal needs. As indicated above, the artificial creation of vernal pools and seasonal wetlands as compensatory mitigation has not been proven scientifically to be successful over the long term (Zedler and Black 1988, Ferren and Gevirtz 1990, Zedler and Calloway 1999). Race and Fonseca (1996) reviewed numerous published and unpublished documents, which collectively analyzed over 2,000 permitted wetland mitigation projects, and concluded that significant wetland losses will continue unless compliance with existing regulations and permits is improved, more habitat is generated, and more fully functioning wetlands are created.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Several other factors, including habitat fragmentation, contaminants, hybridization with and competition from introduced species, and effects from oil production and over-grazing may have negative effects on California tiger salamanders and their aquatic and upland habitats.

Fragmentation

Amphibian populations may be prone to local extinction due to human-caused fragmentation (Findlay and Houlahan 1996, Gibbs 1998). The primary factors that cause habitat fragmentation are road construction, urbanization, and intensive agriculture (Mader 1984; Saunders *et al.* 1991). All documented localities of California tiger salamanders in Santa Barbara County are affected by railroads, highways, or other roads that have caused extensive fragmentation of the landscape. The dispersal and migration distances of California tiger salamanders require a large amount of barrier-free landscape (Loredo, *et al.* 1996; Shaffer, *et al.* 1993). Large roads and highways represent permanent physical obstacles and can block California tiger salamanders from moving to new breeding habitat or prevent them from returning to their breeding ponds or estivation sites. Road construction can reduce or completely eliminate the breeding population of an entire pond and, in some cases, large portions of a metapopulation.

Two Santa Barbara County tiger salamander breeding ponds are within 0.4 km (0.2 mi) of a railroad that runs

between them, possibly reducing migration and genetic interchange between the ponds. In addition to the barriers created by fill deposited in small canyons and watercourses, the railroad tracks themselves can act as barriers to migrating salamanders (Thomas R. Jones, Museum of Zoology, University of Michigan, *in litt.* 1993). The animals have difficulty getting under the tracks unless adequate holes are present.

All 13 remaining breeding sites in Santa Barbara County are near roads of various sizes. Four are within 0.5 km (0.3 mi) of a major U.S. highway that bisects the pond complex, two are bounded by a State highway, one is immediately adjacent to a secondary road (as was the one destroyed in 1998), five are within 0.5 km (0.3 mi) of secondary roads, and one is in an oil field with dirt roads in the vicinity (Sweet, *et al.* 1998a). Findlay and Houlahan (1996) found that roads within 2 km (1.2 mi) of wetlands adversely affected the number of amphibian species in the wetlands.

Large numbers of California tiger salamanders, up to 15 or 20 per mile of road (Joe Medeiros, Sierra College, pers. comm. 1993), are killed as they cross the roads on breeding migrations (Hansen and Tremper 1993; S. Sweet, *in litt.* 1993). Estimates of losses to automobile traffic range from 25 to 72 percent of the breeding population (Twitty 1941; S. Sweet, *in litt.* 1993; Launer and Fee 1996). Curbs and berms as low as 9 to 12 cm (3.5 to 5 in), which allow salamanders to climb onto the road but can restrict or prevent their movements off the roads, are of particular concern, as they effectively turn the roads into death traps (Launer and Fee 1996; S. Sweet, *in litt.* 1998a). Such berms exist on the State highway and the secondary road adjacent to three ponds in Santa Barbara County.

Although few currently used breeding ponds are within 0.5 km (0.3 mi) of urban developments, the rapid expansion of Santa Maria and nearby communities will continue to fragment the remaining habitat. The urbanization of the Santa Maria River and Orcutt Creek Valleys divided what was probably a large, relatively contiguous tiger salamander population extending from the Casmalia Hills in the west to Fulger Point in the east into isolated subpopulations (West Orcutt, Bradley-Dominion) that are no longer capable of genetic interchange. One pond in the West Orcutt area is adjacent to an urban development, the owner of the other two ponds in that area has expressed a desire to develop his property (E. Gevirtz, pers. comm. 1999), and home sites are being marketed in the Bradley-Dominion area.

Contaminants

Hydrocarbon and other contamination from oil production and road runoff; the application of numerous chemicals for agricultural production, roadside maintenance, urban/suburban landscape maintenance; and rodent and vector control programs may all have negative effects on tiger salamander populations, as detailed below.

Road mortality is not the only risk factor associated with roads, as oil and other contaminants in runoff have been detected in adjacent ponds and linked to die-offs of and deformities in California tiger salamanders and spadefoot toads and die-offs of invertebrates that form most of both species' prey base (S. Sweet, *in litt.* 1993). Lefcort *et al.* (1997) found that oil had limited direct effects on 5-week-old marbled (*A. opacum*) and eastern tiger salamanders (*A. t. tigrinum*), but that salamanders from oil-contaminated natural ponds metamorphosed earlier at smaller sizes and those from oil-contaminated artificial ponds had slower growth rates than larvae raised in non-contaminated ponds. Their studies did not address effects on eggs and early larval stages, where the effects may be more pronounced. Hatch and Burton (1998) and Monson *et al.* (1999) investigated the effects of one component of petroleum products and urban runoff (fluoranthene, a polycyclic aromatic hydrocarbon) on spotted salamanders (*A. maculatum*), northern leopard frogs (*Rana pipiens*), and African clawed frogs (*Xenopus laevis*). In laboratory and outdoor experiments, using levels of the contaminant comparable to those found in service station and other urban runoff, the researchers found reduced survival and growth abnormalities in all species and that the effects were worse when the larvae were exposed to the contaminant under natural levels of sunlight, rather than in the laboratory under artificial light.

Agricultural Contaminants

Even though most of the crop lands in California have been in agricultural production since 1900, the application and associated effects of large amounts of pesticides, herbicides, fungicides, and nitrogen fertilizers on the landscape have been addressed only recently (Burow *et al.* 1998a,b). The concentrations of these chemicals and their immediate effects on various species have been difficult to assess mainly due to lack of water sample data and lack of samples close to the sources of application where the effects on wildlife are most severe. In 1986–87 and from 1993 to 1997, USGS and California Department of Pesticide Regulation (CDPR) personnel sampled well and ground water at 156 locations throughout the range of the California tiger salamander (CDPR 1998; Burow *et al.* 1998a,b). From these samples, 29 different chemicals potentially toxic to amphibians in general and California tiger salamanders specifically were detected.

In Santa Barbara County, over 1 million kilograms (kg) (2.2 million pounds (lb)) of agricultural chemicals were used in 1994 on strawberries, grapes, lettuce, broccoli, and carrots, which were the five major crop types grown on or near tiger salamander sites at that time (California Department of Food and Agriculture (CDFA) Internet Website). These chemicals included metam-sodium, methyl bromide, maneb, fosetyl-aluminum, acephate, cryolite, chlorpyrifos, and malathion, some of which are extremely toxic to aquatic organisms, including amphibians and the organisms on which they prey.

Metam-sodium, a carbamate, was one of the main chemicals applied on broccoli and lettuce grown in 1994, when over 114,000 kg (over 250,000 lb) were used in Santa Barbara County (CDFA). Metam-sodium is toxic to fish (Meister 1997). However, no test data are available for amphibians.

Chlorpyrifos is a highly toxic organophosphate insecticide applied as granules, wettable powder, dustable powder, or emulsifiable concentrate (EXTOXNET 1996). Chlorpyrifos was detected at a concentration of 0.006 micrograms/liter (µg/l) in domestic well water close to vineyards at one location (Burow *et al.* 1998a); however, animals migrating across recently treated fields may be exposed to much higher concentrations. The compound is absorbed through the skin of mammals (EXTOXNET 1999); amphibians, with their more permeable skins, absorb the chemical even more readily. General agricultural use of chlorpyrifos is considered to pose a serious threat to wildlife (EXTOXNET 1999). Over 6,000 kg (13,000 lb) were used in Santa Barbara County in 1994 (CDFA).

Malathion has caused effects such as mortality, delays in metamorphosis, and decreased size at metamorphosis in several species of frogs and toads at concentrations as low as 0.2 milligrams (mg/l) (Devillers and Exbrayat 1992). Malathion was detected at concentrations up to 0.1 µg/l in test wells near fields on which it has been used (Burow 1998a). Over 3,500 kg

(7,800 lb) of malathion were used in Santa Barbara County in 1994 (CDFA).

Although test data for amphibian species could not be found, methyl bromide is extremely toxic and is used to kill weeds, insects, nematodes, and rodents (Salmon and Schmidt 1984). Methyl bromide is used primarily on strawberries in Santa Barbara County, which are grown extensively in the eastern Santa Maria Valley (Bradley-Dominion metapopulation). Over 225,000 kg (500,000 lb) were used in Santa Barbara County in 1994 (CDFA).

About 50 percent (6) of the remaining 13 documented California tiger salamander breeding sites in Santa Barbara County may be directly or indirectly affected by toxic agricultural chemical contaminants because there is intensive agriculture within their drainage basins. Even if toxic or detectable amounts of pesticides are not found in the breeding ponds or groundwater, salamanders may still be affected, particularly when chemicals are applied during the migration and dispersal seasons.

Rodent Control

California tiger salamanders spend much of their lives in underground retreats, typically in the burrows of ground squirrels and gophers (Loredo *et al.* 1996; Trenham 1998a). Widespread ground squirrel control programs were begun in California as early as 1910 and are carried out on more than 4 million ha (9.9 million ac) in California (Marsh 1987). It is unclear how effective such control programs were in reducing ground squirrel populations. According to Marsh (1987), when a ground squirrel population is at or near carrying capacity, it must be reduced by at least 90 percent annually for several years to significantly reduce the population. However, it may not be practical to attain such high reduction rates over large areas typical of rangelands, but it may be possible to reduce populations to low numbers (Salmon and Schmidt 1984). In some primarily agricultural counties, the ground squirrel population has been reduced and maintained at perhaps 10 to 20 percent of the carrying capacity. Rodent control programs are conducted by individual land owners and managers on grazing, vineyard, and crop production lands (R. Thompson, *in litt.* 1998).

Until about 1990, ground squirrel control programs using compound 1080 (sodium fluoroacetate) were carried out on lands in Santa Barbara County (Rosemary Thompson, Senior Biologist, SAIC, *in litt.* 1998). Compound 1080 is extremely toxic to nontarget fish, birds, and mammals (U.S. Environmental Protection Agency 1990) and may have contributed to reductions in salamander populations in the areas where it was used.

Poisoned grains are the most common method used to control ground squirrels on rangelands, and there is little risk of ingestion by California tiger salamanders. However, the use of these grains may impact the California tiger salamanders indirectly if washed into burrows or ponds used by the species. Two of the most commonly used rodenticides, chlorophacinone and diphacinone, are anticoagulants that cause animals to bleed to death. They can be absorbed through the skin and are considered toxic to fish and wildlife (EPA 1985, EXTOXNET 1999). Both, along with strychnine, are used in Santa Barbara County to control rodents (R. Thompson, *in litt.* 1998). Zinc phosphide, an acute rodenticide and a restricted material, turns into a toxic gas once ingested. Although the effects of these poisons on California tiger salamanders have not been assessed, use along roadways or railways may result in contamination of salamander breeding ponds, with undetermined effects. Gases, including aluminum phosphide, carbon monoxide, and methyl bromide, can be introduced into burrows either by using cartridges or by pumping. When such fumigants are used, all animals inhabiting the burrow are killed (Salmon and Schmidt 1984).

In addition to possible direct effects of rodent control chemicals, control programs probably have an adverse indirect effect on California tiger salamander populations. Control of ground squirrels could significantly reduce the number of burrows available for use by the species (Loredo-Prendeville *et al.* 1994). Because the burrow density required to support California tiger salamanders in an area is not known, the loss of burrows as a result of control programs cannot be quantified at this time. However, Shaffer, *et al.* (1993) believe that rodent control programs may be responsible for the lack of California tiger salamanders in some areas. Active ground squirrel colonies probably are needed to sustain tiger salamanders because inactive burrow systems become progressively unsuitable over time. Loredo *et al.* (1996) found that burrow systems collapsed within 18 months following abandonment by or loss of the ground squirrels; although the researchers found that California tiger salamanders used both occupied and unoccupied burrows, they did not indicate that the salamanders used collapsed burrows. Rodent control programs must be analyzed and implemented carefully in California tiger salamander habitat so the persistence of the salamanders is not threatened. Current risks to the salamander in Santa Barbara County from rodent control programs are unknown.

Mosquito Control

A commonly used method to control mosquitoes, including in Santa Barbara County (Kenneth Leanard, Santa Barbara County Vector Control, pers. comm. 1999) is the application of methoprene, which increases the level of juvenile hormone in insect larvae and disrupts the molting process. Lawrenz (1984–85) found that methoprene (Altosid® SR–10) retarded the development of selected crustacea that had the same molting hormones (*i.e.*, juvenile hormone) as insects and anticipated that the same hormone may control metamorphosis in other arthropods. Because the success of many aquatic vertebrates relies on an abundance of invertebrates in temporary wetlands, any delay in insect growth could reduce the numbers and density of prey available (Lawrenz 1984–85). The use of methoprene thus could have an indirect adverse effect on the California tiger salamander by reducing the availability of prey. In more recent studies, although methoprene did not cause increased mortality of gray treefrog (*Hyla versicolor*) tadpoles (Sparling and Lowe 1998), it caused reduced survival rates and increased malformations in northern leopard frogs (*Rana pipiens*) (Ankley *et al.* 1998) and increased malformations in southern leopard frogs (*R. utricularia*) (Sparling 1998). Blumberg *et al.* (1998) also correlated exposure to methoprene with delayed metamorphosis and high mortality rates in northern leopard and mink (*R. septentrionalis*) frogs. Methoprene appears to have both direct and indirect effects on the growth and survival of larval amphibians.

Other insecticides (*e.g.*, temephos) have caused reductions in the growth rates of gray treefrog tadpoles, increased mortality rates in green frog (*R. clamitans*) tadpoles (Sparling and Lowe 1998), and increased mortality rates in southern leopard frogs (Sparling 1998). Few data are available on the effects of most insecticides on salamanders. A bacterium, *Bacillus thuringensis israeli* (Bti), is also used in Santa Barbara County for mosquito control (K. Leanard, pers. comm. 1999). Its effects on the salamander prey base have not been quantified. Because of a lack of information regarding which mosquito control chemicals are used and where, and about the chemicals' effects on salamanders, the degree to which the

practices directly affect the California tiger salamander in Santa Barbara County cannot be determined at this time.

Introduced Species

Introduced species can have negative effects on California tiger salamander populations through competition and hybridization (Shaffer, *et al.* 1993; H. B. Shaffer, *in litt.* 1999). Competition from fish that prey on mosquito larvae and other invertebrates can reduce the survival of salamanders. Both California tiger salamanders (Stebbins 1962; J. D. Anderson 1968; Holomuzki 1986) and mosquitofish feed on micro and macro-invertebrates; large numbers of mosquitofish may out-compete the salamander larvae for food (Graf 1993). As urban areas continue to expand, the introduction of mosquitofish into previously untreated ponds may result in the elimination of California tiger salamanders from additional breeding sites. The introduction of other fish either inadvertently (fathead minnow, *Pimephales promelas*) (P. Collins, pers. comm. 1999) or for recreational fishing (*e.g.*, bass (*Micropterus salmoides, M. dolomieui*), sunfish (S. Sweet, pers. comm. 1999) or other purposes may also affect the prey base, reducing growth and survival rates of salamanders. Fish such as bass, green sunfish (*L. cyanellus*), carp (*Cyprinus carpio*), and bullhead (*Ictalurus* spp.) may also prey on tiger salamander larvae, reducing or eliminating populations (Shaffer, *et al.* 1993).

Various nonnative subspecies of the tiger salamander, *Ambystoma tigrinum*, have been imported into much of California for use as fish bait. The practice is still legal in California but is now restricted to fewer counties and is regulated by the California Department of Fish and Game (CCR Title 14, Division 1, Subdivision 1, Chapter 2, Article 3, Section 4 1999). Although importation into Santa Barbara County is illegal, introduced tiger salamanders have been documented at one locality west of the Santa Rita Valley (S. Sweet, pers. comm. 1998). Although they have not been documented in California tiger salamander habitat nonnative salamanders could potentially be introduced into breeding sites or into nearby ponds. The introduced salamanders may out-compete the California tiger salamander, or interbreed with the natives to create hybrids that may be less adapted to the California climate or are not reproductively viable past the first or second generations (Bury and Lukenbach 1976; Shaffer, *et al.* 1993). More recent evidence suggests that the hybrids are viable, and that they breed with California tiger salamanders (H. B. Shaffer, *in litt.* 1999). With so few remaining subpopulations of California tiger salamanders in Santa Barbara County, the loss of any to hybridization with or competition from introduced species is of serious concern.

Grazing

Grazing in many cases has positive, or at least neutral, effects on the California tiger salamander (H. B. Shaffer and Peter Trenham, UCD, pers. comm. 1998; S. Sweet, pers. comm. 1998; 1999). By keeping vegetation shorter, grazing can make areas more suitable for ground squirrels, whose burrows are used by California tiger salamanders. In Santa Barbara County, the only remaining sites with large amounts of suitable salamander habitat (eight ponds at five sites) currently are being grazed. Although cattle drink large quantities of water, sometimes causing temporary pools to dry faster than they otherwise would (Sheri Melanson, Service, *in litt.* 1993) and possibly causing breeding pools to dry too quickly for salamanders to be able to metamorphose (Feaver 1971), these rangelands are the only undeveloped habitat in the area and thus provide the only chance for salamanders to breed successfully. Although Melanson (1993) noted that vernal pool species continued to reproduce under a November-to-April grazing regime, California tiger salamanders were either absent or found in low numbers in portions of pools that were heavily trampled by cattle. Continued trampling of a ponds' edge by cattle can increase the surface area of a pond and may increase water temperature and speed up the rate of evaporation and thus reduce the amount of time the pond contains enough water (S. Sweet, pers. comm. 1998). Cattle hoofprints could trap salamanders as water levels in pools recede, and reduction in water quality caused by cattle excrement may negatively affect the animals mainly by increasing potentially detrimental nitrogen levels. High nitrogen levels have been associated with blooms of deadly bacteria (Worthylake and Hovingh 1989), and silt has been associated with fatal fungal infections (Lefcort *et al.* 1997) (see Factor C of this section). However, grazing generally is compatible with the continued use of rangelands by the California tiger salamander as long as intensive burrowing rodent control programs are not implemented on such areas and grazing is not excessive (T. Jones, *in litt.* 1993; Shaffer, *et al.* 1993; S. Sweet, pers. comm. 1998, 1999).

Reason for Emergency Determination

Under section 4(b)(7) of the Act and regulations at 50 CFR 424.20, we may emergency list a species if the threats to the species constitute an emergency posing a significant risk to its well-being. Such an emergency listing expires 240 days following publication in the **Federal Register** unless, during this 240-day period, we list the species following the normal listing procedures. Below, we discuss the reasons why emergency listing the Santa Barbara County population of California tiger salamanders as endangered is necessary. In accordance with the Act, if at any time after we publish this emergency rule, we determine that substantial evidence does not exist to warrant such a rule, we will withdraw it.

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Santa Barbara County population of California tiger salamanders. This DPS is one of the two most genetically differentiated populations of the species and is restricted to very few breeding ponds, all of which are threatened by agricultural conversion, fragmentation, and development. As discussed under Factor A of this section, ponds and upland habitats are being lost at a rapid rate in all four regions of the county in which the species occurs, and no preserves have been established to protect the species. As discussed in Factor E of this section, this salamander is a DPS and still occurs in a significant part of its historic range, but the remaining subpopulations are becoming increasingly fragmented and thus vulnerable to threats associated with isolation and small population size. From the discussion under Factor D of this section, it is clear that Federal, State, and local regulations and ordinances, individually and collectively, do not provide adequate protection for California tiger salamanders or assure that California tiger salamanders will continue to survive in Santa Barbara County.

The 14 known breeding sites (1 was destroyed in 1998 (G. McLaughlin, *in litt.* 1999) and several others may no longer support breeding) are all located on privately owned land, and no conservation agreements or easements are in place. Given the extremely rapid rate of recent and projected habitat loss and degradation, this DPS is in imminent danger of extinction throughout its historic range. The survival of the Santa Barbara County population of the California tiger

salamander now depends on protecting as many breeding sites and the associated upland habitats from further degradation and destruction as possible, and on the rapid rehabilitation of sites that have been seriously degraded in the last few years. The remaining subpopulations in Santa Barbara County are vulnerable to extinction from random natural or human-caused events unless sufficient habitat can be protected and the subpopulations increased in size.

Critical Habitat

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have examined the question of whether critical habitat for the Santa Barbara County California tiger salamander would be prudent.

Due to the small number of populations the Santa Barbara County California tiger salamander is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for Santa Barbara County California tiger salamander and have not found specific evidence of taking, vandalism, collection, or trade of this species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for the Santa Barbara County California tiger salamander.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, ''The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year.'' As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the Santa Barbara County California tiger salamander will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Santa Barbara County California tiger salamander without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Santa Barbara County California tiger salamander as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may affect the Santa Barbara County population of California tiger salamanders and may require conference and/or consultation with us include, but are not limited to, those within the jurisdiction of the Corps, Bureau of Reclamation, Natural Resources Conservation Service, Federal Farm Bureau, and Federal Highway Administration.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been

taken illegally. Certain exceptions apply to our agents and those of State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession of a Santa Barbara County California tiger salamander legally acquired prior to the effective date of this rule and consistent with 50 CFR 17.4;

(2) Actions that may affect the Santa Barbara County California tiger salamander that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(3) Actions that may affect the Santa Barbara County California tiger salamander that are not authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by us under section 10(a)(1)(B) of the Act. Applicants design a plan or a Habitat Conservation Plans and apply for an incidental take permit. These are developed for species listed under section 4 of the Act and are designed to minimize and mitigate impacts to the species to the greatest extent practicable; and

(4) Actions that may affect the Santa Barbara County California tiger salamander that are conducted in accordance with the conditions of a section 10(a)(1)(A) permit for scientific research or to enhance the propagation or survival of the species.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including intrastate, interstate, and foreign commerce, or harming, or attempting any of these actions, of Santa Barbara County California tiger salamanders without a permit (research activities where salamanders are trapped or captured will require a permit under section 10(a)(1)(A) of the Endangered Species Act);

(2) Destruction or alteration of the Santa Barbara County California tiger salamander occupied habitat through the discharge of fill material into breeding sites; draining, ditching, tilling, stream channelization, drilling, pumping, or other activities that interrupt surface or ground water flow into or out of the vernal pool and seasonal pond habitats of this species (*i.e.,* due to the construction, installation, or operation and maintenance of roads, impoundments, discharge or drain pipes, storm water detention basins, wells, water diversion structures, etc.);

(3) Discharges or dumping of toxic chemicals, silt, or other pollutants into, or other alteration of the quality of waters supporting Santa Barbara County California tiger salamanders that results in death or injury of the species or that results in degradation of their occupied habitat;

(4) Release of exotic species (including, but not limited to, bullfrogs, eastern tiger salamanders, mosquitofish, bass, sunfish, bullhead, catfish, crayfish) into Santa Barbara County tiger salamander breeding habitat; and

(5) Destruction or alteration of uplands associated with vernal pool or seasonal pond habitats used by Santa Barbara County California tiger salamanders during estivation and dispersal, or modification of migration routes such that migration and dispersal are reduced or precluded.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063, facsimile 503/231–6243).

National Environmental Policy Act

We have determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered wildlife, see 50 CFR 17.21 and 17.22.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this rule are Grace McLaughlin, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, and Dwight Harvey, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS							
*	*	*	*	*	*	*	
Salamander, California tiger.	*Ambystoma californiense*.	U.S.A. (CA)	U.S.A., (CA—Santa Barbara County).	E	667	NA	NA
*	*	*	*	*	*	*	

Dated: December 20, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–1156 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF81

Endangered and Threatened Wildlife and Plants; Proposal To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the Santa Barbara County Distinct Vertebrate Population Segment of the California tiger salamander, (*Ambystoma californiense*), as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). An emergency rule listing the population is published concurrently in this issue of the **Federal Register**. The Santa Barbara County population segment of the California tiger salamander is endemic to low elevation (typically below 300 meters (1,000 feet)) vernal pools and seasonal ponds and the surrounding grasslands, oak woodlands, and coastal scrub of Santa Barbara County, California, and is imperiled primarily by habitat loss from conversion of natural habitat to intensive agriculture and urban development, habitat fragmentation, and agricultural contaminants.

DATES: Comments from all interested parties must be received by March 20, 2000. Public hearing requests must be received by March 6, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments to Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003

2. You may send comments by e-mail to sbsalamander@r1.fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805/644–1766.

3. You may hand-deliver comments to our Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address. The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Grace McLaughlin or Carl Benz, Ventura Fish and Wildlife Office at the address listed above (telephone: 805/644–1766; facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

For a discussion of biological background information, previous Federal actions, factors affecting the species, critical habitat, and conservation measures available to listed and proposed species, consult the emergency rule for the Santa Barbara County distinct population of the California tiger salamander published concurrently in this issue of the **Federal Register**.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Santa Barbara County California tiger salamander;

(2) The location of any additional populations of the Santa Barbara County distinct population of California tiger salamanders and the vernal pools and associated upland habitats (including specific vegetation and soil type) used by such populations, and reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this distinct population; and

(4) Current or planned activities in the subject area and their possible impacts on this distinct population.

Final promulgation of the regulation on the Santa Barbara County California tiger salamander will take into consideration the comments and any additional information received by us. Such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that environmental assessments as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered wildlife, see 50 CFR 17.22 and 17.23.

References Cited

A complete list of all references cited in this document, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Grace McLaughlin of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble to the emergency rule listing the Santa Barbara County distinct population of the California tiger salamander as endangered, published concurrently in

this issue of the **Federal Register**, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Amphibians							
*	*	* *		*	*	*	
Salamander, California tiger.	*Ambystoma californiense*.	U.S.A. (CA)	U.S.A., (CA—Santa Barbara County).	E	.....	NA	NA
*	*	* *		*	*	*	

December 20, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–1157 Filed 1–18–00; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
January 19, 2000

Part VII

Department of the Treasury

Fiscal Service

31 CFR Part 375

Marketable Treasury Securities Redemption Operations; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 375

Marketable Treasury Securities Redemption Operations

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

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is issuing rules in final form setting out the terms and conditions by which we may redeem outstanding, unmatured marketable Treasury securities. We are establishing a new part in the Code of Federal Regulations for this purpose. Redemption operations (''buybacks'') will help us better manage our financing needs, promote more efficient capital markets, and may lower financing costs for taxpayers.

EFFECTIVE DATE: January 19, 2000.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Senior Financial Advisor), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION:

I. Background

The government's improved fiscal position has caused Treasury's borrowing needs to decline significantly, and we have been adjusting the government's borrowing program accordingly. Our adjustments to date have distributed the required cuts in market borrowing across all maturity areas. In this environment, we began examining the concept of purchasing outstanding Treasury securities in the market.

Buybacks will provide us with greater flexibility to manage the government's debt and to respond to our improved fiscal condition. First, buybacks will enhance market liquidity by allowing us to maintain regular issuances of new benchmark securities across the maturity spectrum, in greater volume than would otherwise be possible. Over the long term, this enhanced liquidity could reduce the government's interest expense and promote more efficient capital markets.

Second, buybacks will enhance our ability to exert greater control over the maturity structure of the outstanding debt. Without a buyback program, further reductions in Treasury new issue sizes and frequencies could be necessary. A buyback program, however, will provide us the option of managing the maturity structure of the debt by selectively targeting the maturities of debt to be repurchased.

Third, buybacks will provide an additional cash management tool, absorbing excess cash in periods when tax revenues usually exceed immediate spending needs.

In addition, although not a primary reason for conducting buybacks, we may occasionally be able to reduce the government's interest expense by purchasing ''off-the-run'' debt and replacing it with lower-yield ''on-the-run'' debt.[1]

On August 5, 1999 (64 FR 42626), we published proposed rules for public comment that laid out the proposed terms and conditions by which we would conduct buybacks. The closing date for comments was October 4, 1999. As explained in more detail below, after considering the comments provided, we have decided to adopt the proposed methodology for conducting buybacks.

II. Comments Received in Response to the Proposed Rule

We received 13 comment letters on the proposed rule [2]—five from securities firms, four from individuals, and one each from a major trade association, the Treasury advisory committee of a major trade association, a futures exchange, and a Federal Reserve Bank. Overall these commenters were supportive of the proposal. No commenters opposed the proposal. As explained below, the comments raised a series of policy or technical issues related to implementation.

A. *Debt Management Policy Issues*

Two commenters expressed concern that the budget accounting treatment of any premiums that Treasury would pay to buy back Treasury securities could limit the size of the buyback program. Both commenters suggested a budget accounting policy change—that these premiums be amortized over the remaining life of the security bought back.

We consider this issue to be outside the scope of these regulations, which set out the terms and conditions of redemption operations.

Several comment letters made recommendations on the scheduling of redemption operations. Two commenters wanted them to be held in conjunction with the regular Treasury quarterly refunding auctions in February, May, August, and November. Another commenter recommended that redemption operations be held close to auctions of Treasury securities of similar maturity, while another commenter suggested only a regular schedule of redemption operations. Two commenters preferred that redemption operations not be conducted near potential delivery dates for Treasury futures contracts.

Commenters recommended a variety of maturity ranges to buy back. For example, one commenter advocated that securities with 15 to 25 years remaining to maturity were the best candidates for the Treasury to purchase, while another commenter recommended that Treasury buy back debt within the two-year to five-year maturity range to minimize any effects on the average length of the debt outstanding. Another commenter suggested that Treasury avoid buying back those securities that are the ''cheapest-to-deliver'' for Treasury futures contracts.

Two commenters expressed concern about the effect that redemption operations may have on the remaining liquidity of off-the-run issues. Both suggested limiting redemption operations for a particular security to 10 percent of its outstanding amount. One of these commenters also suggested that at least $1 billion of a security always remain outstanding. On the other hand, one commenter advocated that ''issues with less than $2 billion outstanding should be removed from the market,'' while another commenter saw ''no reason to state a limit on the specific amount of any given security that the Treasury can purchase.''

The issues of the scheduling of redemption operations, the maturities to redeem, and the remaining supply of securities redeemed are not addressed in the final rule. For each operation we will first announce when the operation will occur and which maturity sector or sectors will be eligible for redemption. We will determine the amount of any particular security to redeem during the

[1] A Treasury security is ''on-the-run'' when it is the newest security issue of its maturity (*e.g.,* in October the two-year note issued September 30 would be on the run'' while the two-year note issued August 31 would be ''off-the-run''). An on-the-run security is normally the most liquid issue for that maturity.

[2] The comment letters are available for downloading on the Internet and for inspection and copying at the Treasury Department Library at the addresses provided earlier in this rule.

redemption operation consistent with our debt management goals.

B. Technical/Operational Issues

Two commenters recommended that we issue redemption operation announcements several days in advance of the redemption operations. They contended that a relatively long notice period would give securities dealers more time to prepare for the redemption operation, to canvass their customers to determine their levels of interest, and that it would aid price discovery. One commenter, however, preferred ''a relatively short lead time * * *, not unlike the process for a Federal Reserve coupon pass.''

We are not addressing the notice period in the final rule so that we can retain flexibility in the timing of announcements.

Opinion was fairly evenly divided on the issue of whether Treasury should announce the specific securities that are eligible for redemption or merely announce a particular range of maturities that will be purchased. Those who favored announcing specific issues primarily argued that this would help dealers add eligible securities to their inventories prior to the redemption operation. Commenters preferring announcing a range of securities contended that participants would have greater flexibility to decide which securities to offer, and Treasury would have greater flexibility to decide which securities to purchase. One commenter also predicted that announcing a maturity range would mitigate the ''announcement effect'' of the prices of specific issues increasing as a direct result of the announcement.

The announcement will provide the maturity sector or sectors that will be eligible for redemption. It will also provide descriptions of each security within those maturity sectors including the CUSIP number, interest rate, maturity date, and the amount outstanding.

One commenter recommended that we use a proprietary electronic system for processing offers different from the Federal Reserve Bank of New York's. We will use the Federal Reserve Bank of New York's system, however, because it is already in place at the location where offers will be received and it meets our processing needs.

Another commenter suggested that Treasury consider using a single-price rather than a multiple-price auction mechanism. This commenter suggested that submitters may make more aggressive offers in a single-price format.

Redemption operations will at least initially be a multiple-price process in which successful offerors will receive the price at which they offered securities. Multiple-price redemption operations will allow us to make immediate use of the Federal Reserve Bank of New York's electronic system for executing open market operations. At some future time, however, we might want to evaluate the potential merits of a single-price process.

One commenter noted that the proposed rule was silent on the length of time between the closing time for submission of offers and the time that confirmations will be provided to submitters. The commenter stressed that this time period should be as short as possible because of the submitting dealers' exposure to market risk during this timeframe.

We will provide confirmations (results messages) to submitters, and issue a redemption operation results press release, as quickly as possible following the deadline for submitting offers.

In the preamble to the proposed rule, we indicated that settlement would occur on the day after the redemption operation in conformance with the market's next-day settlement convention for other Treasury securities transactions. We specifically requested comment, however, on settlement-related issues. Two commenters recommended that there be at least two days between a redemption operation and settlement, primarily to inform any customers that their offers had been accepted and to facilitate timely delivery of customer securities. Another commenter specifically urged a three-day settlement timeframe because that is the settlement standard for corporate debt.

We will initially provide a minimum of two days between a redemption operation and settlement. This timeframe, however, is not stated in the final rule. Rather, the redemption operation and settlement dates will be provided in the redemption operation announcement.

We also received a comment that the definition of ''accrued interest'' should be revised to clarify that the time period covered in the accrued interest calculation includes the settlement date. We agree with this recommendation.

One comment letter expressed confusion over whether participation in redemption operations would be voluntary and concern that the Treasury might purchase, or a securities dealer might offer to sell, a Treasury security without the permission of its owner.

In response, we want to emphasize that participation in a Treasury redemption operation will be entirely voluntary and that securities industry rules for dealing fairly with customers prohibit securities dealers from conducting unauthorized customer transactions.

Finally, one comment letter consisted of a series of questions regarding various aspects of the redemption program, but made no recommendations.

III. Changes From the Proposed Rule

After taking the comments we received into consideration, we are adopting this final rule setting out the terms and conditions by which we may redeem outstanding, unmatured marketable Treasury securities. The final rule adopts the proposed rule without significant changes. The only changes that have been made are in the definitions of ''Accrued interest,'' ''Price,'' and ''Privately held amount'' (§ 375.2), and in the descriptions of the redemption operation announcement (§ 375.10), how to submit an offer (§ 375.12), and who is responsible for delivering securities (§ 375.15).

The description of the redemption operation announcement was revised to add the range of maturities of eligible securities as one of the details that we will provide.

The description of how to submit an offer was revised to provide us greater flexibility in which electronic system we will use for receiving offers. The proposed rule specified the Federal Reserve Bank of New York's Trading Room Automated Processing System (TRAPS) as the system through which submitters must submit offers. While TRAPS is the system through which submitters will submit offers, eliminating specific mention of this system in the final rule allows for a different system to be used at some future date.

The description of who is responsible for delivering securities was revised to clarify that submitters are responsible for delivering all securities we accept in a redemption operation, including any securities for which they submitted offers on behalf of others.

In addition, we eliminated the paragraphs on the maximum amount offered (§ 375.13) and deliveries of definitive securities (§ 375.23). We removed the limit on the maximum amount of a particular security that a submitter may offer because it is not necessary operationally. The Federal Reserve Bank of New York's electronic system will accept the correct amount of an offer, even if the offer exceeds the security's amount outstanding.

We eliminated the paragraph that would have permitted deliveries of definitive securities because developing a process for timely definitive deliveries would have been too complex operationally in relation to any participation we might expect from holders of definitive securities. Relatively few Treasury securities continue to be held in definitive form. Those still holding definitive securities can easily convert them to book-entry securities if they wish to participate in any future redemption operations.

A summary of the main features of the final rule that remain unchanged from the proposed rule are:

(1) We will issue an announcement of an upcoming redemption operation, including the expected maximum amount of the operation;

(2) Offers will be competitive, on the basis of price, to three decimals;

(3) Redemption operations will be a multiple-price process in which successful offerors receive the price at which they offered securities;

(4) Only primary dealers as designated by the Federal Reserve Bank of New York will be allowed to submit offers for themselves or others, enabling use of the Bank's existing electronic systems; and

(5) There will be no limits on the number of offers per security or on the total number of offers from a particular submitter.

IV. Procedural Requirements

This final rule is not a ''significant regulatory action'' under Executive Order 12866. Although we issued this rule in proposed form to benefit from public comment, the notice and public procedures and delayed effective date requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

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

List of Subjects in 31 CFR Part 375

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, part 375 is added to 31 CFR chapter II to read as follows:

PART 375—MARKETABLE TREASURY SECURITIES REDEMPTION OPERATIONS

Subpart A—General Information

Sec.

375.0 What authority does the Treasury have to redeem its securities?
375.1 Where are the rules for the redemption operation located?
375.2 What special definitions apply to this rule?
375.3 What is the role of the Federal Reserve Bank of New York in this process?

Subpart B—Offering, Certifications, and Delivery

375.10 What is the purpose of the redemption operation announcement?
375.11 Who may participate in a redemption operation?
375.12 How do I submit an offer?
375.13 What requirements apply to offers?
375.14 Do I have to make any certifications?
375.15 Who is responsible for delivering securities?

Subpart C—Determination of Redemption Operation Results; Settlement

375.20 When will the Treasury decide on which offers to accept?
375.21 When and how will the Treasury announce the redemption operation results?
375.22 Will I receive confirmations and, if I am submitting offers for others, do I have to provide confirmations?
375.23 How does the securities delivery process work?

Subpart D—Miscellaneous Provisions

375.30 Does the Treasury have any discretion in this process?
375.31 What could happen if someone does not fully comply with the redemption operation rules or fails to deliver securities?

Authority: 5 U.S.C. 301; 31 U.S.C. 3111; 12 U.S.C. 391.

Subpart A—General Information

§ 375.0 What authority does the Treasury have to redeem its securities?

Section 3111 of Title 31 of the United States Code authorizes the Secretary of the Treasury to use money received from the sale of an obligation and other money in the general fund of the Treasury to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of the United States Government. For the purposes of this part, we will refer to these outstanding obligations as ''securities.''

§ 375.1 Where are the rules for the redemption operation located?

The provisions in this part and the redemption operation announcement govern the redemption of marketable Treasury securities under 31 U.S.C. 3111. (See § 375.10.)

§ 375.2 What special definitions apply to this rule?

The definitions in 31 CFR part 356 govern this part except as follows:

Accrued interest means an amount payable by the Treasury as part of the settlement amount for the interest income earned between the last interest payment date up to and including the settlement date.

Bank means the Federal Reserve Bank of New York.

Customer means a person or entity on whose behalf a submitter has been directed to submit an offer of a specified amount of securities in a specific redemption operation.

Minimum offer amount means the smallest par amount of a security that may be offered to the Treasury. We will state the minimum offer amount in the redemption operation announcement.

Multiple means the smallest additional par amount of a security that may be offered to the Treasury. We will state the multiple in the redemption operation announcement.

Offer means an offer to deliver for redemption a stated par amount of a specific security to the Treasury at a stated price.

Price means the dollar amount to be paid for a security expressed as a percent of its current par amount.

Privately held amount means the total amount outstanding of a security less holdings of the Federal Reserve System and Federal Government accounts.

Redemption amount means the maximum par amount of securities that we are planning to redeem through a redemption operation. We will state the redemption amount in the redemption operation announcement.

Redemption operation means a competitive process by which the Treasury accepts offers of marketable Treasury securities that by their terms are not immediately payable.

Security means an outstanding unmatured obligation of the United States Government that the Secretary is authorized to buy, redeem or refund under section 3111 of Title 31 of the United States Code.

Settlement means full and complete delivery of and payment for securities redeemed.

Settlement amount means the par amount of each security that we redeem, multiplied by the price we accept in a redemption operation, plus any accrued interest.

Settlement date means the date specified in the redemption operation announcement on which you must deliver a security to the Treasury for payment.

Submitter means an entity submitting offers directly to the Treasury for its own account, for the account of others, or both. (See § 375.11(a).)

Tender means a computer transmission or document submitted in a redemption operation that contains one or more offers.

We (''us'') means the Secretary of the Treasury and his or her delegates, including the Treasury Department, the Bureau of the Public Debt, and their representatives. The term also includes the Federal Reserve Bank of New York, acting as fiscal agent of the United States.

You means a prospective submitter in a redemption operation.

§ 375.3 What is the role of the Federal Reserve Bank of New York in this process?

As fiscal agent of the United States, the Federal Reserve Bank of New York performs various activities necessary to conduct a redemption operation under this part. These activities may include but are not limited to:

(a) Accepting and reviewing tenders;

(b) Calculating redemption operation results;

(c) Issuing notices of redemptions;

(d) Accepting deliveries of Treasury securities at settlement; and

(e) Processing the Treasury payment for securities delivered at settlement.

Subpart B—Offering, Certifications, and Delivery

§ 375.10 What is the purpose of the redemption operation announcement?

We provide public notice that we are redeeming Treasury securities by issuing a redemption operation announcement. This announcement lists the details of each proposed redemption operation, including the maximum redemption amount, the range of maturities of eligible securities, descriptions of the securities that fall within that maturity range, and the redemption operation and settlement dates. The redemption operation announcement and this part specify the terms and conditions of a redemption operation. If anything in the redemption operation announcement differs from anything in this part, the redemption operation announcement will apply. Accordingly, you should read the applicable redemption operation announcement along with this part.

§ 375.11 Who may participate in a redemption operation?

(a) *Submitters.* To be a submitter, you must be an institution that the Federal Reserve Bank of New York has approved to conduct open market transactions with the Bank.

(b) *Others.* A person or entity other than a submitter may participate only if it arranges to have an offer or offers submitted on its behalf by a submitter.

§ 375.12 How do I submit an offer?

As a submitter, you must submit an offer in a tender to the Treasury via the Federal Reserve Bank of New York. You must submit any tenders in an approved format and the Bank must receive them prior to the closing time stated in the redemption operation announcement. If we do not receive your tenders timely, we will reject them. Your tenders are binding on you after the closing time specified in the redemption operation announcement. You are responsible for ensuring that we receive your tenders on time. We will not be responsible in any way for any unauthorized tender submissions or for any delays, errors, or omissions in submitting tenders.

§ 375.13 What requirements apply to offers?

(a) *General.* You may only submit competitive offers (specifying a price). All offers must state the security description, par amount, and price of each security offered. All offers must equal or exceed the minimum offer amount, and be in the multiple, stated in the redemption operation announcement.

(b) *Price format.* You must express offered prices in terms of price per $100 of par with three decimals, *e.g.,* 102.172. The first two decimals represent fractional 32nds of a dollar. The third decimal represents eighths of a 32nd of a dollar, and must be a 0, 2, 4, or 6. For example, an offer of 102.172 means one hundred two and seventeen 32nds and two eighths of a 32nd, or in decimals, 102.5390625.

(c) *Maximum number of offers.* There is no limit on the number of offers you may make for each eligible security. There is also no limit on the number of eligible securities you may offer.

§ 375.14 Do I have to make any certifications?

By submitting a tender offering a security or securities for sale, you certify that you are in compliance with this part and the redemption operation announcement.

§ 375.15 Who is responsible for delivering securities?

As a submitter, you are responsible for delivering any securities we accept in the redemption operation, including any securities for which you submitted offers on behalf of others. (See § 375.23.) All securities you deliver must be free and clear of all liens, charges, claims, and any other restrictions.

Subpart C—Determination of Redemption Operation Results; Settlement

§ 375.20 When will the Treasury decide on which offers to accept?

We will determine which offers or portions of offers to accept after the closing time for receipt of tenders. All such determinations will be final.

§ 375.21 When and how will the Treasury announce the redemption operation results?

We will make an official announcement of the redemption operation results through a press release. For each security we redeem, the press release will include such information as the amounts offered and accepted, the highest price accepted, and the remaining privately held amount outstanding.

§ 375.22 Will I receive confirmations and, if I am submitting offers for others, do I have to provide confirmations?

(a) *Confirmations to submitters.* We will provide a confirmation of acceptance or rejection in the form of a results message to submitters of offers by the close of the business day of the redemption operation.

(b) *Confirmation of customer offers.* If you submit a successful offer for a customer, you are responsible for notifying that customer of the impending redemption.

§ 375.23 How does the securities delivery process work?

If any of the offers you submitted are accepted, you must transfer the correct book-entry Treasury securities in the correct par amount against the correct settlement amount on the settlement date. You must deliver the securities to the account specified in the redemption operation announcement.

Subpart D—Miscellaneous Provisions

§ 375.30 Does the Treasury have any discretion in this process?

(a) We have the discretion to:

(1) Accept or reject any offers or tenders submitted in a redemption operation;

(2) Redeem less than the amount of securities specified in the redemption operation announcement;

(3) Add to, change, or waive any provision of this part; or

(4) Change the terms and conditions of a redemption operation.

(b) Our decisions under this part are final. We will provide a public notice if we change any redemption operation provision, term or condition.

§ 375.31 What could happen if someone does not fully comply with the redemption operation rules or fails to deliver securities?

(a) *General.* If a person or entity fails to comply with any of the redemption operation rules in this part, we will consider the circumstances and take what we deem to be appropriate action. This could include barring the person or entity from participating in future redemption operations under this part and future auctions under 31 CFR part 356. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to deliver securities on time, we may require you to pay liquidated damages of up to 1% of your projected settlement amount.

Dated: January 13, 2000.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 00–1250 Filed 1–18–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 19, 2000

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Law book industry; published 1-19-00

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Outer Continental Shelf operations:

Technical amendments; published 1-19-00

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Towing vessels; fire protection measures; published 10-19-99

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Federal Aviation Administration

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Airbus; published 1-4-00

TREASURY DEPARTMENT

Comptroller of the Currency

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Fiscal Service

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Agricultural Marketing Service

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Forest Service

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Special use authorizations; costs recovery for processing applications and monitoring compliance; comments due by 1-24-00; published 11-24-99

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Food Safety and Inspection Service

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National Oceanic and Atmospheric Administration

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Halibut and sablefish; Individual Fishing Quota Program; comments due by 1-26-00; published 12-27-99

Meetings:

Western Pacific Fishery Management Council; comments due by 1-24-00; published 12-17-99

COMMODITY FUTURES TRADING COMMISSION

Contract markets:

Contract market rule review procedures; comments due by 1-25-00; published 11-26-99

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Federal Acquisition Regulation (FAR):

Construction Industry Payment Protection Act; implementation; comments due by 1-27-00; published 12-28-99

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Alaska; comments due by 1-28-00; published 12-29-99

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.