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Washington, DC
(3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–24 of June 16, 2000

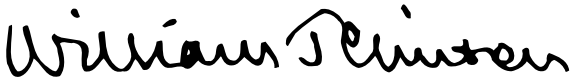
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, June 16, 2000.

[FR Doc. 00–15956
Filed 6–21–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 121
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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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG34

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P and NUHOMS®–52B Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear West (TN West), Inc., Standardized NUHOMS®–24P and NUHOMS®–52B cask system (NUHOMS® storage system) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) No. 1004. Amendment No. 2 makes two main changes: it updates the Technical Specifications' fuel qualification tables to reflect additional fuel parameters; and it allows storage of burnable poison rod assemblies (BPRAs) in model 24P of the NUHOMS® storage system, along with spent fuel. Amendment No. 2 also revises and renumbers several of the conditions in the CoC to reflect the NRC's new standard format for CoCs. However, no technical changes to the CoC's conditions are made by this amendment. This amendment will allow holders of power reactor operating licenses to store spent fuel in the TN West NUHOMS® storage system, as amended, under a general license.

DATES: The final rule is effective September 5, 2000, unless significant adverse comments are received by July 24, 2000. If significant adverse comments are received, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect. If this direct final rule is withdrawn, the NRC will address the comments received as comments on the proposed rule published in the proposed rules section of this **Federal Register** and will subsequently issue a final rule.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room reference staff at (202) 634–3273 or toll free at 1–800–397–4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie P. Bush-Goddard, Ph.D., telephone (301) 415–6257, e-mail, SPB@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65898) that approved the Standardized NUHOMS® storage system and added it to the list of NRC-approved cask designs in § 72.214, as CoC No. 1004. Amendment No. 1 to CoC No. 1004 was issued on March 28, 2000 (65 FR 16299).

Discussion

The certificate holder (Transnuclear West, Inc.) submitted an application to the NRC on February 16, 1996, supplemented on November 15, 1996, October 9, 1998, and February 10, 1999, to amend CoC No. 1004 to include a new fuel specification and on July 26, 1999, to amend CoC No. 1004 to permit a part 72 licensee to store BPRAs.

The first change permits a part 72 licensee to store spent fuel in the NUHOMS® storage system using the new fuel qualification tables. The particular changes are incorporated into section 1.2.1 of the Technical Specifications for CoC No. 1004. The changes will incorporate new fuel qualification tables for both pressurized water reactor (PWR) and boiling water reactor (BWR) fuel. The tables present the minimum required cooling time for fuel as a function of the initial fuel

enrichment and fuel burnup. The use of the tables provides a simplified approach for users of the NUHOMS® storage system to select fuel for storage without calculating specific fuel assembly decay heat and radiation source terms.

The NRC agrees that this direct final rule provides a more simplified, accurate, and straightforward method for qualifying fuel to be stored in the NUHOMS® storage system and has documented its review and evaluation in a Safety Evaluation Report (SER) regarding use of new fuel qualification tables.

The second change permits a part 72 licensee to store BPRAs with Babcock & Wilcox (B&W) 15 x 15 spent fuel assemblies in the NUHOMS® storage system model 24P. A BPRA is a reactor core component that is inserted inside a fuel assembly. BPRAs provide a means of controlling reactor power distribution and do not contain fissile material. No other changes to the TN-West system design were requested in this application. The NRC staff performed a safety evaluation of this proposed CoC amendment request and found that the addition of the BPRAs to the B&W 15 x 15 fuel does not reduce the TN-West safety margin. In addition, the NRC staff has determined that the storage of BPRAs in the TN-West does not pose any increased risk to public health and safety. This is documented in a SER concerning the BPRA change.

The amended TN-West cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured. Currently, the CoC is approved only for storage of spent fuel assemblies.

Amendment No. 2 to CoC No. 1004, the revised Technical Specifications, the underlying Safety Evaluation Reports (SERs) for the amendment and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the CoC and SERs may be obtained from Stephanie P. Bush-Goddard, Ph.D., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6257, email SPB@nrc.gov.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 will be revised indicating the addition of Amendment No. 2 with an effective date of September 5, 2000.

Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P and NUHOMS®–52B cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. The amendment to the rules will become effective on September 5, 2000. However, if the NRC receives significant adverse comments on the associated proposed rule published concurrently in the proposed rules section of this **Federal Register** by July 24, 2000, then the NRC will publish a notice that withdraws this action and will address the comments received in response to the proposed amendments. These comments will be addressed in a subsequent final rule. Absent significant modifications to the proposed changes requiring republication, the NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Federal Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will amend the CoC for the NUHOMS® storage system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will add new fuel qualification tables to the technical specifications and add BPRAs to the authorized contents of the NUHOMS® system model 24P. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stephanie P. Bush-Goddard, Ph.D., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6257, email SPB@nrc.gov.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct

final rule, the NRC would revise the Transnuclear West, Inc., Standardized NUHOMS® cask system listing within the list of NRC approved casks for spent fuel storage in § 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65898), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® storage system designs by adding them to the list of NRC-approved cask designs in § 72.214. The NRC subsequently issued Amendment No. 1 to CoC No. 1004 on March 28, 2000 (65 FR 16299). The certificate holder (Transnuclear West, Inc.) submitted an application to the NRC on February 16, 1996, supplemented on November 15, 1996, October 9, 1998, February 10, 1999 and July 26, 1999 to amend CoC No. 1004 to include new fuel specification tables and to add BPRAs to the authorized contents of the NUHOMS® storage system. The proposed new fuel specification tables in Amendment No. 2 provides a simplified method for determining acceptable spent fuel to be stored in the NUHOMS® storage system and will add BPRAs as authorized contents of the NUHOMS® storage system model 24P that are currently only for storage of spent fuel assemblies.

The alternative to Amendment 2 is to withhold approval of this amended cask system design. This alternative would require users of the NUHOMS® storage system to use a less efficient method for selecting fuel for storage and would also require users to bear the additional costs of disassembling BPRA's from the spent fuel assemblies and of storing them as low-level waste.

Approval of the direct final rule will eliminate the problems described above and is consistent with previous Commission actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the operation of nuclear power plants, independent spent fuel storage facilities, and TN-West. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects In 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment No. 1 Effective Date: April 27, 2000.

Amendment No. 2 Effective Date: September 5, 2000.

SAR Submitted by: Transnuclear West, Inc.

SAR Title: Transnuclear West, Inc., ''Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel''.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®-24P and NUHOMS®-52B.

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–15542 Filed 6–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG55

List of Approved Spent Fuel Storage Casks: VSC–24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the 10 CFR part 72 ''List of approved spent fuel storage casks,'' to include Amendment No. 2 to the Certificate of Compliance (CoC). Amendment No. 2 will revise the Technical Specifications and CoC regarding welding and nondestructive examination of welds, the method for determining cask drain time during loading, the minimum temperature for moving the loaded multi-assembly sealed basket (MSB), artificial thermal loads other than spent fuel that may be used to obtain temperature data, and the maximum permissible air outlet temperature. In addition, the amendment includes changes to the Technical Specifications and CoC to correct typographical errors and to make other minor clarifications and changes. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the VSC–24 cask system, as amended, under a general license.

DATES: The final rule is effective September 5, 2000, unless significant adverse comments are received by July 24, 2000. If adverse comments are received, a timely withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (*http://ruleforumllnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov*).

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail, GEG1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule, in 10 CFR part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72 entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule on April 7, 1993 (58 FR 17948), that approved the VSC–24 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued Certificate of Compliance Number (CoC No.) 1007.

Discussion

On November 20, 1998, PSNA (the certificate holder), submitted an application to the NRC to amend CoC No. 1007 to revise the Technical Specifications and CoC regarding welding and nondestructive examination of welds, the method for determining cask drain time during loading, the minimum temperature for moving the loaded multi-assembly sealed basket (MSB), artificial thermal loads other than spent fuel that may be used to obtain temperature data, and the maximum permissible air outlet temperature. In addition, the amendment includes changes to the Technical Specifications and CoC to correct typographical errors and to make other minor clarifications and changes. These changes are described in the Revision History for Amendment 2 (CoC, Attachment A, pages iii and iv). The staff performed a safety evaluation of the amendment request and found that the changes provide reasonable assurance that the spent fuel can be stored safely and in compliance with 10 CFR Part 72. The staff documented its review and evaluation in a Safety Evaluation Report. A separate amendment request (submitted December 30, 1998) to permit a Part 72 licensee to store burnable poison rod assemblies (BPRAs) in the VSC–24 cask design along with the spent fuel is being addressed in a separate rulemaking.

This direct final rule will revise the PSNA VSC–24 cask system listing within the list of NRC-approved casks for spent fuel storage in § 72.214 by adding Amendment No. 2 to CoC No. 1007. The amended VSC–24 cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety will continue to be ensured. Amendment No. 2 applies to any VSC–24 cask loaded after September 5, 2000.

Amendment No. 2 to CoC No. 1007 and the underlying SER, and the Environmental Assessment and Finding of No Significant Impact are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the CoC and SER may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6195, email GEG1@nrc.gov.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1007 will be revised indicating the addition of Amendment No. 2 and its effective date.

Procedural Background

This rule is limited to the changes contained in Amendment No. 2 to CoC 1007 and does not include other aspects of the VSC–24 cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. The amendment to the rules will become effective on September 5, 2000. However, if the NRC receives significant adverse comments on the associated proposed rule notice published concurrently in the proposed rules section of this **Federal Register** by July 24, 2000, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendments. These comments will be addressed in a subsequent final rule. Absent significant modification to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the PSNA VSC–24 cask system listing within the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will add Amendment No. 2 to the VSC–24 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The amendment will revise the Technical Specifications and CoC regarding welding and nondestructive examination of welds, the method for determining cask drain time during loading, the minimum temperature for moving the loaded MSB, artificial thermal loads other than spent fuel that may be used to obtain temperature data, and the maximum permissible air outlet temperature. In addition, the amendment includes changes to correct typographical errors and other minor clarifications and changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6195, email *GEG1@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met.

A list of NRC-approved cask system designs is contained in § 72.214. On April 7, 1993 (58 FR 17948), the NRC issued an amendment to part 72 that approved the VSC–24 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1007. On November 20, 1998, the certificate holder submitted an application to the NRC to amend CoC No. 1007 to revise the Technical Specifications and CoC regarding welding and nondestructive examination of welds, the method for determining cask drain time during loading, the minimum temperature for moving the loaded MSB, artificial thermal loads other than spent fuel that may be used to obtain temperature data, and the maximum permissible air outlet temperature. In addition, the amendment includes changes to the Technical Specifications and CoC to correct typographical errors and to make other minor clarifications and changes.

This rule will permit manufacture of casks under the revisions in Amendment 2. The alternative to this action is to withhold approval of this amended cask system design and give a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and the utilities more time and money in that each utility would have to pursue a new site-specific license. Conducting site-specific reviews would be in

conflict with NWPA direction to the NRC to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the NRC. This alternative does not foster competition because it would tend to favor new vendors without cause and would arbitrarily limit the choice of cask system designs available to power reactor licensees.

Approval of the direct final rule would eliminate the above problems and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and PSNA. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.214, Certificate of Compliance (CoC) 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.
Initial Certificate Effective Date: May 7, 1993.
Amendment Number 1 Effective Date: May 30, 2000.
Amendment Number 2 Effective Date: September 5, 2000.
SAR Submitted by: Pacific Sierra Nuclear Associates.
SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.
Docket Number: 72–1007.
Certificate Expiration Date: May 7, 2013.
Model Number: VSC–24.

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–15540 Filed 6–21–00; 8:45am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–8]

Amendment to Class E Airspace; Sheldon, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

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

DATES: The direct final rule published at 65 FR 20724 is effective on 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on April 18, 2000 (65 FR 20724). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on June 7, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–15533 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–14]

Amendment to Class E Airspace; Pratt, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Pratt Municipal Airport, Pratt, KS. A review of the Class E airspace area for Pratt Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 3, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–14, 901 Locust, Kansas City, MO 64106.

The official dock may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Pratt, KS. A review of the Class E airspace for Pratt Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per miles plus the distance from the Airport Reference Point (ARP) to the end the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Pratt Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will published a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rules 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 Rule Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action 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. 00–ACE–14.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE KS E5 Pratt, KS [Revised]

Pratt Municipal Airport, KS
(Lat. 37°42′00″ N., long. 98°44′46″ W.)
Pratt NDB
(Lat. 37°43′26″ N., long. 98°44′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Pratt Municipal Airport and within 2.6 miles each side of the 360° bearing from the Pratt NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 6, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–15534 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–15]

Amendment to Class E Airspace; Coffeyville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E Airspace area at Coffeyville Municipal Airport, Coffeyville, KS. A review of the Class E Airspace area for Coffeyville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, October 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 3, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–15, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Coffeyville, KS. A review of the Class E airspace for Coffeyville Municipal Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Coffeyville Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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. 00–ACE–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE KS E5 Coffeyville, KS [Revised]

Coffeyville Municipal Airport, KS
(Lat. 37°05′39″ N., long. 95°34′19″ W.)
Coffeyville NDB
(Lat. 37°05′45″ N., long. 95°34′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Coffeyville Municipal Airport and within 2.6 miles each side of the 171° bearing from the Coffeyville NDB extending from the 6.6-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 8, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–15535 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–91]

RIN 2120–AA66

Modification of the East Coast Low Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the East Coast Low Airspace Area. Specifically, this action modifies the East Coast Low Airspace Area by extending the boundaries further east, south, and southwest of the Nantucket Airport, MA, and lowering the controlled airspace floor in this new area to 2,000 feet mean sea level (MSL). The FAA is taking this action to provide additional controlled airspace for aircraft operations arriving and departing the Nantucket Airport.

EFFECTIVE DATE: 0901 UTC, July 24, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2000, the FAA published a proposal in the **Federal Register**, to amend the East Coast Low Airspace Area (65 FR 13705). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received no comments on this action. Except for editorial changes, this rule is the same as that proposed in the notice.

The Rule

This action amends 14 CFR part 71 by modifying the East Coast Low Airspace Area. This action extends the present airspace boundaries further east, south, and southwest of the Nantucket Airport and lowers the controlled floor in this area to 2,000 feet MSL. This modification will provide additional airspace to allow for more efficient control of Nantucket Airport arrivals and departures.

Offshore airspace area designations are published in paragraph 6007 of FAA Order 7400.9G, which is dated September 1, 1999, and was effective on

September 16, 1999. FAA Order 7400.9G is incorporated by reference in 14 CFR 71.1. The offshore airspace area described in this document will be published in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Civil Aviation Organization (ICAO) Considerations

Since part of this rule effects navigable airspace outside the United States, the notice of proposed rulemaking was submitted to the Department of State and the Department of Defense in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11 of the Convention, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Because this amendment involves, in part, the designation of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

East Coast Low [Revised]

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25′46″ N., long. 74°02′34″ W.; to lat. 39°02′05″ N., long. 73°39′30″ W.; to lat. 40°04′20″ N., long. 72°30′00″ W.; to lat. 40°37′14″ N., long. 72°30′00″ W.; and that airspace bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 40°41′00″ N., long. 72°17′00″ W., thence along the northern boundary of Warning Areas W–106B and W–105A to lat. 40°58′33″ N., long. 70°59′00″ W.; to lat. 40°48′30″ N., long. 70°30′00″ W.; to lat. 40°59′00″ N., long. 69°40′00″ W.; to lat. 41°30′00″ N., long. 69°10′00″ W.; to lat. 42°05′00″ N., long. 69°30′00″ W.; to lat. 42°17′00″ N., long. 69°49′30″ W.; to lat. 42°17′00″ N., long. 70°00′00″ W.; to lat. 43°17′00″ N., long. 70°00′00″ W.; to lat. 43°33′56″ N., long. 69°29′12″ W.

* * * * *

Issued in Washington, DC, on June 15, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–15811 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–069–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposed revisions to and additions of regulations concerning removal of coal incidental to government-financed construction and the suitability of topsoil substitutes or supplements. Alabama also corrected citation references. Alabama intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments,

and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the Alabama program at 30 CFR 901.15 and 901.16.

II. Submission of the Amendment

By letter dated April 11, 2000 (Administrative Record No. AL–0631), Alabama sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Alabama sent the amendment in response to our letters dated January 13, 1998, and October 15, 1998 (Administrative Record Nos. AL–0577 and AL–0587 respectively), that we sent to Alabama under 30 CFR 732.17(c). The amendment also includes changes made at Alabama's own initiative. Alabama proposes to amend the Alabama Surface Mining Commission (ASMC) rules.

We announced receipt of the amendment in the April 26, 2000, **Federal Register** (65 FR 24433). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on May 26, 2000. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment to the Alabama program.

A. 880–X–2A–.06, Definitions

1. Alabama revised the definition of ''government-finance construction'' to read as follows:

> Government-finance construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Federal Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 *et seq.*, as amended. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

The revised definition is substantively the same as the Federal definition of ''government-financed construction'' found at 30 CFR 707.5. Therefore, we find that Alabama's definition is no less effective than the Federal definition, and we are approving it.

2. In our letter dated October 15, 1998, we notified Alabama that its definitions of ''material damage'' and ''occupied residential dwelling and structures related thereto'' contained citation reference errors. Alabama corrected the definitions by removing a reference to 880–X–8I–.20 and adding a reference to 880–X–8I–.10. We find that the revised citation references are consistent with the citation references in the counterpart Federal definitions, and we are approving the revisions.

B. 880–X–2D–.04, Applicability

Alabama added language to Rule 880–X–2D–.04(1) to provide that with the exception of the requirements of Rule 880–X–2D–.06, if applicable, coal extraction which is incidental to government-financed construction is exempt from the Alabama Surface Mining Control and Reclamation Act and its implementing regulations.

As discussed below in finding C, Alabama's proposed exception to the exemption under Subchapter 880–X–2D would be applicable for coal removal incidental to government-financed construction where funding for the project is less than 50 percent and the construction is undertaken as an approved project under Title IV of SMCRA. Specifically, Rule 880–X–2D–.06 provides additional requirements for such coal removal when it is undertaken as part of a project under Alabama's approved Abandoned Mine Land Reclamation Program. Although the Federal regulations at 30 CFR Part 707 do not contain this exception language, the Federal regulations at 30 CFR Part 874 were revised to provide additional requirements for coal removal incident to AML projects receiving less than 50 percent government funding. Therefore, we find that the addition of the new exception language will not make Rule 880–X–2D–.04(1) less effective than the counterpart Federal regulation at 30 CFR 707.11(a).

C. 880–X–2D–.06, Additional Requirements for Coal Removal Incidental to Abandoned Mine Land Projects

Alabama proposes to add this new rule to provide additional requirements that apply to coal removal incidental to AML reclamation projects. The requirements of this rule apply to coal removal incidental to government-financed construction where funding for the project is less than 50 percent and the construction is undertaken as an approved reclamation project under Title IV of SMCRA. Paragraph (1) requires the AML contractor and any subcontractor involved in the removal of coal from, or processing of coal on, the project site to obtain or possess a valid license under Chapter 880–X–6 of Alabama's regulations. Paragraph (2) requires the AML contractor to identify the prospective purchasers or end users of all coal that he or she will extract under the project before the ASMC can grant concurrence under the Federal regulations at 30 CFR 874.17. Paragraph (3) requires the AML contractor to maintain records of the exact tonnage of coal removed, as well as the names and addresses of all purchasers or end users of the coal at the project site. The AML contractor must make these records available to the ASMC upon request. Paragraph (4) provides that this exemption applies only to coal located within the boundaries of the approved construction project. In addition, removal of the coal must be necessary to achieve the objectives of the AML reclamation project. Paragraph (5) provides that both the Alabama Department of Industrial Relations and the ASMC must approve the project in accordance with the provisions of the Federal regulations at 30 CFR 874.17 before the AML contractor can remove coal under Subchapter 880–X–2D. Finally, paragraph (6) provides that all coal removal under this exemption must be under the direct supervision of the AML contractor. The AML contractor is liable for any violations of these regulations.

This new rule establishes the conditions under which ASMC, as the Title V regulatory authority, will approve an exemption for the removal of coal incidental to performance of a government-financed construction project where government funding for the project is less than 50 percent and the construction in undertaken as an approved AML reclamation project under Alabama's approved Abandoned Mine Land Reclamation Program. There are no counterparts in the Federal regulations at 30 CFR Part 707 for the additional requirements proposed at Rule 880–X–2D–.06. However, the requirements are not inconsistent with the provisions in 30 CFR Part 707. Also, Alabama's proposed regulation at paragraph (5) ensures the ASMC and the Alabama AML agency's actions are consistent with the Federal regulations at 30 CFR 874.17, which provide AML agency procedures for coal removal incident to reclamation projects receiving less than 50 percent government funding. The Federal regulation at 30 CFR 874.17(a) requires the AML agency to make specific determinations in consultation with the Title V regulatory authority. The Federal regulation at 30 CFR 874.17(b) requires the AML agency to concur with the Title

V regulatory authority in specific determinations before proceeding with an AML reclamation project that involves coal removal incident to government-financed construction with less than 50 percent government financing. These consultations and concurrences are intended to ensure the appropriateness of the project being undertaken as a Title IV AML project and not under the Title V regulatory program. Therefore, we are approving Alabama's new regulation at Rule 880–X–2D–.06.

D. 880–X–8I–.08(2)(d), Reclamation Plan: General Requirements; Topsoil

In response to our letter dated January 13, 1998, Alabama added two additional sentences to Rule 880–X–8I–.08(2)(d). The revised regulation reads as follows:

> A plan for removal, storage, and redistribution of topsoil, subsoil and other material to meet the requirements of Rules 880–X–10D–.07—880–X–10D–.11. A demonstration of the suitability of topsoil substitutes or supplements shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

Alabama's revised regulation at Rule 880–X–8I–.08(2)(d) is substantively the same as the counterpart Federal regulation at 30 CFR 784.13(b)(4), and we are approving it.

E. 880–X–8I–.10, Subsidence Control Plan

In our letter dated October 15, 1998, we notified Alabama that its regulation at 880–X–8I-.10(2)(h) contained a citation reference error. Alabama corrected its regulation by removing a reference to 880–X–10D–.12(10) and adding a reference to 880–X–10D–12(9). We find that the revised citation reference is consistent with the citation reference in the counterpart Federal regulation, and we are approving the revision.

IV. Summary and Disposition of Comments

Federal Agency Comments

On April 14, 2000, under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0633). By letter dated May 2, 2000 (Administrative Record No. AL–0638), the Mine Safety and Health Administration responded that it had no comments on the proposal.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AL–0633). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 14, 2000, we requested comments on Alabama's amendment (Administrative Record No. AL–0633). By letter dated May 17, 2000 (Administrative Record No. AL–0639), the Alabama Historical Commission (AHC) provided the following comments for our consideration:

1. The AHC commented that Alabama's regulation at 880–X–2D–.04(1) appears to state that coal extraction is exempt from these regulations and asked us to clarify Alabama's provision. The AHC thought that this statement appeared to be contrary to Section 106 of the National Historic Preservation Act of 1966.

Response: The exemption for extraction of coal which is incidental to Federal, State, or local government-financed highway or other construction is authorized by section 528(2) of SMCRA. Alabama's existing regulations at Subchapter 880–X–2D exempt the extraction of coal which is incidental to Federal, State, or local government-financed highway or other construction from the State Act and Alabama's regulations when that construction meets specified criteria. Alabama's current regulations limit the exemption to those construction projects that are funded 50 percent or more by a government agency. As discussed in finding A.1, the proposed revision extends the exemption to government funding at less than 50 percent if the construction is undertaken as an approved reclamation project under Title IV of SMCRA. As discussed in finding B, Alabama revised its applicability regulation at 880–X–2D–.04(1) to specify additional criteria that would apply to coal extraction under the new exemption. Alabama's proposed regulations at Subchapter 880–X–2D are no less effective than the Federal regulations at 30 CFR Part 707.

Compliance with Section 106 is not jeopardized by the proposed revision because it requires that, for coal extraction with less than 50 percent government funding to be exempt from the State Act and regulations, it must be included as an integral part of an approved abandoned mine land reclamation project that is administered by the State Abandoned Mine Land (AML) Reclamation Program. State AML Programs are required to comply with the requirements of Section 106 for all reclamation projects. The Alabama Historical Commission will be consulted prior to any coal extraction activities authorized under Alabama's proposed revision because such consultation is required by the Office of Surface Mining as part of the National Environmental Policy Act (NEPA) review of all AML reclamation projects.

2. AHC commented that historical and archaeological should be added to the definition of a ''person having an interest which is or may be adversely affected * * * .''

Response: Alabama is not proposing to revise this previously approved definition. Also, Alabama's definition is substantively identical to the Federal definition at 30 CFR 700.5. However, a copy of your comments will be forwarded to Alabama for consideration in a future rulemaking.

3. The AHC provided the following additional comments:

> Cultural resource consultation should be required when activities will affect previously undisturbed areas. This should include any undisturbed areas impacted during reclamation projects.
>
> The Alabama Historical Commission should be consulted if human remains or historic cemeteries are known or expected to be in the area of effect, in accordance with the Alabama Burial Act.

Response: Alabama is not proposing any revisions to its regulations concerning the consideration that must be given to historic properties, cultural resources, or cemeteries. Also, Alabama's currently approved regulations require coordination with requirements under other laws, including the National Historic Preservation Act of 1966. However, a

copy of your comments will be forwarded to Alabama for consideration in a future rulemaking.

Public Comments

We asked for public comments on the amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Alabama on April 11, 2000. We approve the rules that Alabama proposed with the provision that they be published in identical form to the rules sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Alabama to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 6, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
April 11, 2000	June 22, 2000	880–X–2A–.06; 880–X–2D–.04(1) and .06; 880–X–8I–.08(2)(d); 880–X–8I–.10(2)(h).

[FR Doc. 00–15835 Filed 6–21–00; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, 685 and 692

Student Assistance General Provisions, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and State Student Incentive Grant Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary makes technical amendments to the Student Assistance General Provisions, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan Program, and the State Student Incentive Grant (SSIG) Program regulations. These amendments are necessary to change the name of the SSIG Program to the Leveraging Educational Assistance Partnership (LEAP) Program, correct cross-references, and delete obsolete references. These technical amendments incorporate changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

EFFECTIVE DATE: These regulations take effect June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Butler, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, Room 3045, Washington, DC 20202–5447. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (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 person listed.

SUPPLEMENTARY INFORMATION: Because the Higher Education Amendments renamed the State Student Incentive Grant (SSIG) Program the Leveraging Educational Assistance Partnership (LEAP) Program, we are making conforming name changes to the Student Assistance General Provisions regulations, 34 CFR part 668, FFEL Program regulations, 34 CFR part 682, William D. Ford Federal Direct Loan Program regulations, 34 CFR part 685, and SSIG Program regulations, 34 CFR part 692.

We are also correcting cross-references and removing obsolete references. Therefore:

- We have replaced references to ''institution of higher education'' throughout 34 CFR part 692 with ''institution'' to reflect the type of institutions described in § 668.1(b) of the Student Assistance General Provisions regulations, and corrected other cross-references to various terms now defined in 34 CFR parts 600 and 668.
- We have removed references to section 1203 of the HEA throughout 34 CFR part 692 to reflect that this section was eliminated by the 1998 Amendments.
- We have removed OMB control numbers after §§ 692.20, 692.21 and 692.40.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes, correct cross-references, and remove obsolete regulatory provisions. The changes do not establish or affect substantive policy. Therefore, the Secretary has concluded that these regulations are technical in nature and do not necessitate public comment. Therefore, the Secretary finds that such a solicitation would be unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that these regulations should not be subject to negotiated rulemaking.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. Although States and State agencies are impacted by these regulations, they are not defined as ''small entities'' in the Regulatory Flexibility Act. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions, State or State agencies affected.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

The LEAP Program is subject to 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 this program.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
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To use the PDF, you must have the Adobe Acrobat Reader, which is available free at the first 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.

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Access at: http://www.access.gpo.gov/nara/index.html.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.069 Leveraging Educational Assistance Partnership Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 692

Grant programs—education, Postsecondary education, State administered—education, Student aid—education, Reporting and recordkeeping requirements.

Dated: June 15, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

For the reasons stated in the preamble, the Secretary amends title 34 of the Code of Federal Regulations parts 668, 682, 685 and 692 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1091b, 1092, 1094, 1099–c, and 1099c–1, unless otherwise noted.

§ 668.1 [Amended]

2. Section 668.1(c)(4) is amended by removing ''State Student Incentive Grant (SSIG) Program'' and adding, in its place, ''Leveraging Educational Assistance Partnership (LEAP) Program''.

§ 668.2 [Amended]

3. Section 668.2(b) is amended by removing the definition *State Student Incentive Grant (SSIG) program:* and adding, in alphabetical order, the definition *Leveraging Educational Assistance Partnership (LEAP) Program:* The grant program authorized by Title IV–A–4 of the HEA.

§ 668.14 [Amended]

4. Section 668.14 is amended by removing ''SSIG and NEISP'' from paragraphs (a)(1) and (c) and adding, in its place, ''LEAP and NEISP''.

§ 668.26 [Amended]

5. Section 668.26(b)(5) is amended by removing ''NEISP or SSIG Program'' and adding, in its place, ''NEISP or LEAP Program''.

§ 668.35 [Amended]

6. Section 668.35(e)(2) is amended by removing ''SSIG'' and adding, in its place, ''LEAP''.

§ 668.138 [Amended]

7. Section 668.138(a) is amended by removing ''SSIG'' and adding, in its place, ''LEAP''.

§ 668.139 [Amended]

8. Section 668.139(c) is amended by removing ''SSIG'' and adding, in its place, ''LEAP''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

9. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

10. Section 682.200(a)(1) is amended by removing ''State Student Incentive Grant (SSIG) Program'' and adding, in alphabetical order, ''Leveraging Educational Assistance Partnership (LEAP) Program''.

PART 685–WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

11. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.102 [Amended]

12. Section 685.102(a)(1) is amended by removing ''Federal State Student Incentive Grant Program'' and adding, in alphabetical order, ''Leveraging Educational Assistance Partnership Program''.

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

13. The part heading is revised to read as set forth above.

14. The authority citation for part 692 continues to read as follows:

Authority: 20 U.S.C. 1070c through 1070c–4, unless otherwise noted.

15. The heading of subpart A is revised to read as follows:

Subpart A—Leveraging Educational Assistance Partnership Program

16. The subpart designations for subparts B through E are removed; §§ 692.10 through 692.41 are transferred to subpart A, and the subpart headings remain as undesignated center headings in subpart A.

§ 692.1 [Amended]

17. An undesignated center heading ''General'' is added preceding § 692.1.

18. Section 692.1 is amended by removing ''State Student Incentive Grant'' in the heading and adding, in its place, ''Leveraging Educational Assistance Partnership''; and by removing ''State Student Incentive Grant'' in the text and adding, in its place, ''Leveraging Educational Assistance Partnership (LEAP)''.

§ 692.2 [Amended]

19. Section 692.2 is amended by removing ''State Student Incentive Grant'' in the heading and adding, in its place, ''LEAP''; and by removing ''this program'' in paragraphs (a) and (b) and adding, in its place, ''the LEAP Program''.

§ 692.3 [Amended]

20. Section 692.3 is amended by:

A. Removing ''State Student Incentive Grant'' in the heading and undesignated introductory text, and adding, in its place, ''LEAP'';

B. Removing ''(Drug-Free Schools and Campuses)'' in paragraph (b)(8), and adding, in its place, ''(Drug and Alcohol Abuse Prevention)'';

C. Removing paragraph (c); and

D. Redesignating paragraph (d) as paragraph (c).

21. Section 692.4 is amended by revising the heading, paragraph (a), paragraph (b), and the introductory text of paragraph (c) to read as follows:

§ 692.4 What definitions apply to the LEAP Program?

* * * * *

(a) The definitions of the following terms under 34 CFR part 600:

Postsecondary vocational institution (§ 600.6).

Public or private nonprofit institution of higher education (§ 600.4).

Secretary (§ 600.2).

State (§ 600.2).

(b) The definitions of the following terms under 34 CFR part 668:

Academic year (§ 668.2).

Enrolled (§ 668.2).

HEA (§ 668.2).

Institution (§ 668.1(b)).

(c) The definitions of the following terms also apply to the LEAP Program:

* * * * *

§ 692.10 [Amended]

22. Section 692.10 is amended by removing ''SSIG'' the four times it appears in paragraph (a)(1), the five times it appears in paragraph (a)(2), and the three times it appears in paragraph (b), and adding, in its place, ''LEAP''.

§ 692.11 [Amended]

23. Section 692.11 is amended by removing ''the program'' in the heading, and adding, in its place, ''the LEAP Program''; and by removing ''this part'' in the text, and adding, in its place, ''the LEAP Program''.

24. The undesignated center heading that appears above § 692.20 is amended by removing ''This Program'', and adding, in its place, ''The LEAP Program''.

25. Section 692.20 is amended by:

A. Removing paragraph (a);

B. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

C. Removing ''State Student Incentive Grant'' in newly redesignated paragraph (a), and adding, in its place, ''Leveraging Educational Assistance Partnership'';

D. Revising newly redesignated paragraph (b); and

E. Removing the OMB control number and the cross-reference following the section.

The revision reads as follows:

§ 692.20 What must a State do to receive an allotment under the LEAP Program?

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, the State must submit its application through the State agency designated to administer its Leveraging Educational Assistance Partnership Program as of July 1, 1985.

(2) If the Governor of the State so designates, and notifies the Secretary in writing, the State may submit its application under paragraph (a) of this section through an agency that did not administer its Leveraging Educational Assistance Partnership Program as of July 1, 1985.

§ 692.21 [Amended]

26. Section 692.21 is amended by:

A. Removing ''this program'' in the undesignated introductory text, and adding, in its place, ''the LEAP Program'';

B. Removing ''in accordance with the Federal-State Relationship Agreement under section 1203 of the HEA'' in paragraph (a);

C. Removing ''of higher education'' in paragraph (g);

D. Amending paragraph (h)(2) by removing ''of higher education'', and by removing ''this program'' both times it appears, and adding, in its place, ''the LEAP Program'';

E. Removing ''SSIG'' both times it appears in paragraph (j), and adding, in its place, ''LEAP'';

F. Removing ''this part'' in paragraph (k), and adding, in its place, ''the LEAP Program''; and

G. Removing the OMB control number following the section.

§ 692.30 [Amended]

27. Section 692.30 is amended by removing ''of higher education'' in paragraphs (b)(1) and (d)(1); and by removing ''this part'' in paragraph (e)(1), and adding, in its place, ''the LEAP Program''.

§ 692.40 [Amended]

28. The undesignated center heading that appears above § 692.40 is amended by removing ''This Program'', and adding, in its place, ''The LEAP Program''.

29. Section 692.40 is amended by removing ''668.7'' and adding, in its place, ''668.32'' in paragraph (a); and by removing the OMB control number following the section.

Subpart B—[Added and Reserved]

30. Subpart B—is added and reserved.

[FR Doc. 00–15658 Filed 6–21–00; 8:45 am]

BILLING CODE 4000–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA98

Location of NARA Facilities and Hours of Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration is revising its regulation that lists NARA facilities and hours when the public and other Federal agency staff may use the records in those facilities. This rule updates information on NARA facilities throughout the United States, including the addition of two new facilities and the deletion of a closed NARA facility. Additional revisions include corrections to addresses, providing e-mail addresses for the Presidential libraries, the addition and correction of phone and fax numbers, and, in some cases, modifications to the hours that these facilities are open for research. This rule affects members of the public who visit or do research at NARA facilities.

DATES: This rule is effective June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Morton at telephone number 301–713–7360, ext. 253, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on May 8, 2000, at 65 FR 26542. The comment period ended June 7, 2000. NARA received no public comments.

This rule is effective upon publication for ''good cause'' as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes that delaying the effective date for 30 days is unnecessary as this rule represents a minor technical amendment. Moreover, as the public benefits immediately being provided with accurate contact information for all current NARA facilities, any delay in the effective date would be contrary to the public interest.

This rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities. This rule does not have federalism implications. It is not a major rule as defined in 5 U.S.C. chapter 8.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, the National Archives and Records Administration revises part 1253 of title 36, Code of Federal Regulations, to read as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

Sec.
1253.1 National Archives Building.
1253.2 National Archives at College Park.
1253.3 Presidential Libraries.
1253.4 Washington National Records Center.
1253.5 National Personnel Records Center.
1253.6 Records Centers.
1253.7 Regional Archives.

Authority: 44 U.S.C. 2104(a).

§ 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue,

NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Central Research Room and Microfilm Research Room are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(b) The phone number for the research rooms is 800–234–8861.

(c) The location and business hours of the Office of the Federal Register are located in 1 CFR 2.3.

§ 1253.2 National Archives at College Park.

(a) The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed.

(b) Research complex hours are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(c) The phone number for the research complex is 800–234–8861.

§ 1253.3 Presidential Libraries.

The Presidential libraries are open for research from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays when they are closed. NARA recommends that researchers contact the library before visiting for research. The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library that is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA web site at http://www.nara.gov/nara/president/address.html. Information for each library is as follows:

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–5825. The e-mail address is *library@hoover.nara.gov.*

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 914–229–8114 and the fax number is 914–229–0872. The e-mail address is *library@roosevelt.nara.gov.*

(c) Harry S. Truman Library is located at 500 W. US Hwy 24, Independence, MO 64050–1798. The phone number is 816–833–1400 and the fax number is 816–833–4368. The e-mail address is *library@truman.nara.gov.*

(d) Dwight D. Eisenhower Library is located at 200 SE Fourth Street, Abilene, KS 67410–2900. The phone number is 785–263–4751 and the fax number is 785–263–4218. The e-mail address is *library@eisenhower.nara.gov.*

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–929–4500 and the fax number is 617–929–4538. The e-mail address is *library@kennedy.nara.gov.*

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–916–5137 and the fax number is 512–916–5171. The e-mail address is *library@johnson.nara.gov.*

(g) Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–451–9263 and the fax number is 616–451–9570. The e-mail address is *information.museum@fordmus.nara.gov.* Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–741–2218 and the fax number is 734–741–2341. The e-mail address is *library@fordlib.nara.gov.*

(h) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–331–3942 and the fax number is 404–730–2215. The e-mail address is *library@carter.nara.gov.*

(i) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065–0699. The phone number is 800–410–8354 and the fax number is 805–522–9621. The e-mail address is *library@reagan.nara.gov.*

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–260–9554 and the fax number is 979–260–9557. The e-mail address is *library@bush.nara.gov.*

§ 1253.4 Washington National Records Center.

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746–8001). The hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays. The phone number is 301–457–7000.

§ 1253.5 National Personnel Records Center.

(a) *Military Personnel Records.* NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

(b) *Civilian Personnel Records.* NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118–4199. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

§ 1253.6 Records Centers.

All records centers are closed on Federal holidays. Information for each center is as follows:

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8108.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 215–671–1175.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7063.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Rd., Dayton, OH 45439–1883. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 937–225–2852.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8:30 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3011. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6920.

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064–1182. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–478–7079.

(i) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX

76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5515.

(j) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0827.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–876–9077.

(l) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–6334.

(m) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

§ 1253.7 Regional Archives.

Most regional archives offer extended research room hours for microfilm research only. Information on extended hours is available from individual facilities. Regional archives are closed on Federal holidays. Information on each regional archives facility is as follows:

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8100.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Northeast Region (New York City) is located at 201 Varick St., New York, NY 10014–4811. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 212–337–1300.

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St. Room 1350, Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–3000.

(e) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7474.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3060. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6982.

(h) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX, 76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5525.

(i) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0804.

(j) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–2641.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–876–9009.

(l) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

(m) NARA—Pacific Alaska Region (Anchorage) is located at 654 West Third Avenue, Anchorage, AK 99501–2145. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 907–271–2443.

Dated: June 15, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–15836 Filed 6–21–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–6717–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado, Montana, South Dakota, Utah, Wyoming; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the Clean Air Act section 111(d) Plans submitted by the Colorado Department of Public Health and the Environment on December 22, 1998 (with additional information submitted on October 4, 1999); the Montana Department of Environmental Quality on January 19, 1999; the South Dakota Department of Environment and Natural Resources on February 7, 2000, the Utah Department of Environmental Quality on March 2, 1999 (with additional information submitted on October 25, 1999); and the Wyoming Department of Environmental Quality on September 7, 1999 (with recodification of state regulations submitted on November 9, 1999), to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The EG require States to develop plans to reduce toxic air emissions from all HMIWIs. In addition, as an administrative matter, the heading of 40 CFR 62 Subpart G is being corrected to include the state name.

DATES: This direct final rule is effective on August 21, 2000, without further notice, unless we receive adverse comments by July 24, 2000. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rules will not take effect.

ADDRESSES: Send written comments to: Richard R. Long, EPA Region 8, Office of Air and Radiation (8P–AR), 999 18th Street, Suite 500, Denver, Colorado 80202.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: EPA Region 8 offices, 999 18th Street, Suite 500, Denver, Colorado 80202. Please contact Meredith Bond at (303) 312–6438 before visiting the Region 8 office.

Copies of the State documents relevant to this action are available for

public inspection at the respective State offices:

1. Colorado—Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530
2. Montana—Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901
3. South Dakota—Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181
4. Utah—Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114–4820
5. Wyoming—Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002

Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, EPA Region 8, Air and Radiation Program, at the above address, telephone (303) 312–6438.

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I. What Action Is Being Taken by EPA Today?

We are approving the Colorado, Montana, South Dakota, Utah, and Wyoming State Plans, as submitted on December 22, 1998 (with additional information submitted on October 4,1999); January 19, 1999; February 7, 2000; January 19, 1999 (with additional information submitted on October 25, 1999); and September 7, 1999 (with recodification of state regulations submitted on November 9, 1999), respectively. These plans were developed in accordance with section 111(d) of the CAA for the control of air emissions from HMIWIs. These plans do not apply to those HMIWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed Emissions Guidelines (EG) to control air emissions from older HMIWIs as we were required to do by section 129(a) of the Clean Air Act (42 U.S.C. 7429(a)). (See 62 FR 48348–48391, September 15, 1997). Colorado, Montana, South Dakota, Utah, and Wyoming, developed State Plans, as required by section 111(d) of the Clean Air Act (the Act) (42 U.S.C. 7411(d)), to adopt the EG into their body of regulations, and we are acting today to approve these State Plans as meeting all requirements of section 111(d) and 129 of the Act and EPA regulations governing the adoption and approval of State Plans for designated facilities (40 CFR part 60, subpart B).

In addition, as an administrative matter, the heading of 40 CFR part 62, subpart G is being corrected to include the state name, ''Colorado.''

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective August 21, 2000, unless by July 24, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective August 21, 2000.

II. Why Do We Need To Regulate HMIWI Emissions?

The State Plans establish control requirements which reduce the following emissions from HMIWIs: particulate matter, sulfur dioxide, hydrogen chloride, nitrogen oxides, carbon monoxide, lead, cadmium, mercury, dioxin, and dibenzofurans.

These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants, other than criteria pollutants, controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated for a non-criteria pollutant, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to implement and enforce it.

IV. What Does the Colorado State Plan Contain?

Colorado adopted the Federal NSPS and EG by reference into its State regulations at Regulation No. 6, part A. The Colorado State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan. The State did not,

however, submit evidence of authority to regulate existing HMIWI in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

2. State rules adopted into Regulation No. 6 as the mechanism for implementing the emission guidelines.

3. An inventory of twelve known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of 1 year after EPA approval of the State Plan.

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

A. Why Is the Colorado HMIWI State Plan Approvable?

EPA compared the Colorado rules (Regulation No. 6, part A, subpart Ce) against our HMIWI EG. EPA finds the Colorado rules to be at least as protective as the EG. The Colorado State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Colorado State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Colorado HMIWI State Plan.

B. Is My HMIWI Subject To Colorado's Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.32e(b)–(h) (Regulation No. 6, part A), you are subject to these regulations.

C. What Steps Do I Need To Take?

First, you will need to decide whether you will continue to operate your incinerator and comply with the requirements of the Colorado State Plan, or whether you will shut down your incinerator.

If you decide to continue operating your incinerator, you must meet the requirements listed in Regulation No. 6, part A, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. You must meet the emission limits established for your incinerator's size category. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. (40 CFR 60.33e; 62 FR 48382, September 15, 1997).

3. Determine if your incinerator qualifies for treatment as a small rural incinerator (40 CFR 60.33e(b), 60.36e, 60.37e(d), and 60.38e(b); 62 FR 48380, September 15, 1997).

4. You must meet a 10% opacity limit on your incinerator's discharge, averaged over a six-minute block (40 CFR 60.33e(c); 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c) (40 CFR 60.34e; 62 FR 48380). Your operator must be certified no later than one year after we approve Colorado's State Plan (40 CFR 60.39e(e); 62 FR 48382).

6. You must develop a waste management plan, and submit it to the Colorado Department of Public Health and Environment no later than one year after we approve this State Plan. Your waste management plan will describe the solid waste practices that your facility will undertake to reduce the amount of hospital, medical, and infectious waste that is disposed of in your incinerator. Your plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993. (40 CFR 60.35e; 62 FR 48380).

7. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. (40 CFR 60.37e and 60.8; 62 FR 48380).

8. You must install and maintain devices to monitor the parameters listed under Table 3 to subpart Ec (40 CFR 60.37e(c); 62 FR 48381).

9. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e; 62 FR 48381).

10. You must report to the Colorado Department of Public Health and Environment the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e; 62 FR 48381).

11. You must submit a complete Title V operating permit application to the Colorado Department of Public Health and Environment no later than September 15, 2000.

12. In general, you must comply with all the requirements of this State Plan within one year after we approve it regardless of whether your facility has been identified in the plan inventory. The Colorado State Plan does not provide for petitions to extend the compliance deadlines (40 CFR 60.39e; 62 FR 48381).

If you decide to shut down your incinerator, you must do so within one year after we approve the State Plan in order to meet the requirements of Regulation No. 6, part A.

V. What Does the Montana State Plan Contain?

Montana adopted the Federal NSPS and EG by reference into its State regulations at Administrative Rules of Montana (ARM) 17.8.302, ''Incorporation By Reference,'' and ARM 17.8.340, ''Standard of Performance For New Stationary Sources.'' Montana State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan. The State did not, however, submit evidence of authority to regulate existing HMIWI in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

2. State rules adopted into ARM 17.8.340 as the mechanism for implementing the emission guidelines.

3. An inventory of four known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of three years after EPA approval of the State Plan but not later than September 15, 2002.

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

A. Why Is the Montana HMIWI State Plan Approvable?

EPA compared the Montana rules (ARM 17.8.302 and ARM 17.8.340) against our HMIWI EG. EPA finds the Montana rules to be at least as protective as the EG. The Montana State Plan was reviewed for approval with respect to the following criteria: 40 CFR

60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Montana State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Montana HMIWI State Plan.

B. Is My HMIWI Subject to Montana's Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.32e (b)–(h) (ARM 17.8.340), you are subject to these regulations.

C. What Steps Do I Need To Take?

First, you will need to decide whether you will continue to operate your incinerator and comply with the requirements of the Montana State Plan, or whether you will shut down your incinerator.

If you decide to continue operating your incinerator, the Montana State Plan provides for measurable and enforceable incremental steps of progress for designated facilities planning to install the necessary air pollution control equipment allowing compliance on or before the date 3 years after EPA approval of the State Plan but not later than September 15, 2002. Further, Montana incorporated by reference the requirements contained in 40 CFR part 60, subpart Ce which contains additional compliance time requirements. You must meet the requirements listed in ARM 17.8.340, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. Determine if your incinerator qualifies for treatment as a small rural incinerator (40 CFR 60.33e(b), 60.36e, 60.37e(d), and 60.38e(b); 62 FR 48380, September 15, 1997).

3. You must meet the emission limits established for your incinerator's size category. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. (40 CFR 60.33e; 62 FR 48382, September 15, 1997).

4. You must meet a 10% opacity limit on your incinerator's discharge, averaged over a six-minute block (40 CFR 60.33e(c); 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c)(40 CFR 60.34e; 62 FR 48380). Your operator must be certified no later than one year after we approve the Montana State Plan (40 CFR 60.39e(e); 62 FR 48382).

6. You must develop a waste management plan, and submit it to the Montana Department of Environmental Quality no later than one year after we approve this State Plan. Your waste management plan will describe the solid waste practices that your facility will undertake to reduce the amount of hospital, medical, and infectious waste that is disposed of in your incinerator. Your plan must be developed under guidance provided by the American Hospital Association publication, *An Ounce of Prevention:* Waste Reduction Strategies for Health Care Facilities, 1993. (40 CFR 60.35e; 62 FR 48380).

7. You must submit a final Control Plan to the department for review and final approval within 15 months after the date of our approval of the State Plan. Your Control Plan will explain how your HMIWI will meet the State Plan requirements.

8. You must award contracts for any necessary control systems/process changes within 21 months after the date of our approval of the State Plan.

9. You must initiate on-site construction or installation of any necessary air pollution control devices, and initiate any necessary process changes, within 24 months after the date of our approval of the State Plan.

10. You must complete on-site construction or installation of any necessary air pollution control devices, and initiate any necessary process changes, within 24 months after the date of our approval of the State Plan.

11. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. (40 CFR 60.37e and 60.8; 62 FR 48380).

12. You must install and maintain devices to monitor the parameters listed under Table 3 to subpart Ec (40 CFR 60.37e(c); 62 FR 48381).

13. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e; 62 FR 48381).

14. You must report to the Montana Department of Environmental Quality the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e; 62 FR 48381).

15. You must submit a complete Title V operating permit application to the Montana Department of Environmental Quality no later than September 15, 2000.

16. In general, you must comply with all the requirements of this State Plan within 36 months after we approve it or by September 15, 2002. (40 CFR 60.39e; 62 FR 48381).

If you decide to shut down your incinerator, you must submit a ''final control plan'' that notifies the department that you will be shutting down your incinerator within 15 months after the date of our approval of the State Plan.

VI. What Does the South Dakota State Plan Contain?

South Dakota adopted the Federal NSPS and EG by reference into its State regulations at Administrative Rules of South Dakota (ARSD) 74:36:07, ''New Source Performance Standards.'' The South Dakota State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan. The State did not, however, submit evidence of authority to regulate existing HMIWI in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

2. State rules adopted into ARSD 74:26:07:06.01 as the mechanism for implementing the emission guidelines.

3. An inventory of one known designated facility, along with estimates of its toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of 3 years after EPA approval of the State Plan but not later than September 15, 2002.

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

A. Why Is the South Dakota HMIWI State Plan Approvable?

EPA compared the South Dakota rules (ARSD 74:36:07:06.01) against our HMIWI EG. EPA finds the South Dakota rules to be at least as protective as the EG. The South Dakota State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for*

Designated Facilities; and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The South Dakota State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the South Dakota HMIWI State Plan.

B. Is My HMIWI subject to South Dakota's Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.32e (b)–(h) (ARSD 74:36:07:06.01), you are subject to these regulations.

C. What Steps Do I Need To Take?

First, you will need to decide whether you will continue to operate your incinerator and comply with the requirements of the South Dakota State Plan, or whether you will shut down your incinerator.

If you decide to continue operating your incinerator, South Dakota's State Plan provides for measurable and enforceable incremental steps of progress for designated facilities planning to install the necessary air pollution control equipment allowing compliance on or before the date 3 years after EPA approval of the State Plan but not later than September 15, 2002. Further, South Dakota incorporated by reference the requirements contained in 40 CFR part 60, subpart Ce which contains additional compliance time requirements. You must meet the requirements listed in ARSD 74:36:07:06.01, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. Determine if your incinerator qualifies for treatment as a small rural incinerator (40 CFR 60.33e(b), 60.36e, 60.37e(d), and 60.38e(b); 62 FR 48380, September 15, 1997).

3. You must meet the emission limits established for your incinerator's size category. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. (40 CFR 60.33e; 62 FR 48382, September 15, 1997).

4. You must meet a 10% opacity limit on your incinerator's discharge, averaged over a six-minute block (40 CFR 60.33e(c); 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c)(40 CFR 60.34e; 62 FR 48380). Your operator must be certified no later than one year after we approve the South Dakota State Plan (40 CFR 60.39e(e); 62 FR 48382).

6. You must develop a waste management plan, and submit it to the South Dakota Department of Environment and Natural Resources no later than one year after we approve this State Plan. Your waste management plan will describe the solid waste practices that your facility will undertake to reduce the amount of hospital, medical, and infectious waste that is disposed of in your incinerator. Your plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993. (40 CFR 60.35e; 62 FR 48380).

7. You must submit a final Control Plan to the department for review and final approval within 6 months after the date of our approval of the State Plan. Your Control Plan will explain how your HMIWI will meet the State Plan requirements.

8. You must submit a part 70 operating permit application and design drawings of the air pollution control device to the department within one year after the date of our approval of the State Plan.

9. You must submit a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within 15 months after the date of our approval of the State Plan.

10. You must begin initiation of site preparation for installation of the air pollution control device within 2 years after the date of our approval of the State Plan.

11. You must complete installation of the air pollution control device within 30 months after the date of our approval of this State Plan.

12. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits (40 CFR 60.37e and 60.8; 62 FR 48380). This test must be completed within 33 months after the date of our approval of this State Plan.

13. You must install and maintain devices to monitor the parameters listed under Table 3 to subpart Ec (40 CFR 60.37e(c); 62 FR 48381).

14. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e; 62 FR 48381).

15. You must report to the South Dakota Department of Environment and Natural Resources the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e; 62 FR 48381).

16. In general, you must comply with all the requirements of this State Plan within 36 months after we approve it or by September 15, 2002 (40 CFR 60.39e; 62 FR 48381).

If you decide to shut down your incinerator, you must notify the department within six months of the date of our approval of the State Plan. Your written notification must inform the department of when the unit will be shutdown. You shutdown date shall not be later than one year after the date of our approval of the State Plan.

VII. What Does the Utah State Plan Contain?

Utah adopted the Federal NSPS and EG requirements into its State regulations at Utah Administrative Code (UAC) R307–220–3 and R307–222. The Utah State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan. The State did not, however, submit evidence of authority to regulate existing HMIWI in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

2. State rules adopted into R307–222 as the mechanism for implementing the emission guidelines.

3. An inventory of fifteen known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of 1 year after EPA approval of the State Plan.

6. Provisions allowing designated facilities to petition the State for extensions, specifying incremental steps of progress towards compliance for facilities planning to install the necessary air pollution control equipment.

7. A Requirement that all designated facilities, whether or not they have been identified in the Plan, are in compliance no later than September 15, 2002.

8. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

9. Records from the public hearing; and,

10. Provisions for progress reports to EPA.

A. Why Is the Utah HMIWI State Plan Approvable?

EPA compared the Utah rules (UAC R307–220–3 and R307-222) against our HMIWI EG. EPA finds the Utah rules to be at least as protective as the EG. The Utah State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Utah State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Utah HMIWI State Plan.

B. Is My HMIWI Subject To Utah's Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.32e (b)–(h) (UAC R307–222–1.(2)), you are subject to these regulations.

C. What Steps Do I Need To Take?

First, you will need to decide whether you will continue to operate your incinerator and comply with the requirements of the Utah State Plan, or whether you will shut down your incinerator.

If you decide to continue operating your incinerator, Utah's State Plan requires that you comply with all requirements within one year after EPA approval of the State Plan, unless you petition the executive secretary of the Utah Department of Environmental Quality for a later compliance date. Utah also incorporated by reference the requirements contained in 40 CFR part 60, subpart Ce which contains additional compliance time requirements. You must meet the requirements listed in R307–220–3 and R307–222, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. Determine if your incinerator qualifies for treatment as a small rural incinerator (40 CFR 60.33e(b), 60.36e, 60.37e(d), and 60.38e(b); 62 FR 48380, September 15, 1997).

3. You must meet the emission limits established for your incinerator's size category. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e; 62 FR 48382, September 15, 1997).

4. You must meet a 10% opacity limit on your incinerator's discharge, averaged over a six-minute block (40 CFR 60.33e(c); 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c) (40 CFR 60.34e; 62 FR 48380). Your operator must be certified no later than one year after we approve this Utah State Plan (40 CFR 60.39e(e); 62 FR 48382).

6. You must develop a waste management plan, and submit it to the Utah Department of Environmental Quality no later than one year after we approve this State Plan. Your waste management plan will describe the solid waste practices that your facility will undertake to reduce the amount of hospital, medical, and infectious waste that is disposed of in your incinerator. Your plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993. (40 CFR 60.35e; 62 FR 48380).

7. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. (40 CFR 60.37e and 60.8; 62 FR 48380).

8. You must install and maintain devices to monitor the parameters listed under Table 3 to subpart Ec (40 CFR 60.37e(c); 62 FR 48381).

9. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e; 62 FR 48381).

10. You must report to the Utah Department of Environmental Quality the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e; 62 FR 48381).

11. You must submit a complete Title V operating permit application to the Utah Department of Environmental Quality no later than September 15, 2000.

12. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (40 CFR 60.39e; 62 FR 48381). The criteria for requesting an extension of your compliance date, and the milestones that you would be required to meet, are explained in R307–222–3 and the Utah State Plan. You may petition the Executive Secretary of the Utah Department of Environmental Quality to extend your compliance date to a date as late as three years after we approve this Utah State Plan, but no later than September 15, 2002.

If you decide to shut down your incinerator, you must do so within one year of our approval of this State Plan, unless you petition the Executive Secretary for a later date in accordance with the provisions of the State Plan and R307–222–3.

VIII. What Does the Wyoming State Plan Contain?

Wyoming adopted the Federal NSPS and EG requirements into the Wyoming Air Quality Standards and Regulations (WAQSR), Chapter 4, section 5. The Wyoming State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan. The State did not, however, submit evidence of authority to regulate existing HMIWI in Indian Country as defined in 18 U.S.C. 1151. Therefore, EPA is not approving this State Plan as it relates to those sources.

2. State rules adopted into WAQSR Chapter 4, section 5, as the mechanism for implementing the emission guidelines.

3. An inventory of thirty-four known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of three years after EPA approval of the State Plan but not later than September 15, 2002.

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

A. Why Is the Wyoming HMIWI State Plan Approvable?

EPA compared the Wyoming rules (WAQSR Chapter 4, section 5) against our HMIWI EG. EPA finds the Wyoming rules to be at least as protective as the EG. The Wyoming State Plan was

reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Wyoming State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Wyoming HMIWI State Plan.

B. Is My HMIWI Subject to Wyoming's Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion and does not qualify for exemption under 40 CFR 60.32e (b)–(h) (WAQSR Ch. 4, sec. 5(b)(ii)–(ix)), you are subject to these regulations.

C. What Steps Do I Need To Take?

First, you will need to decide whether you will continue to operate your incinerator and comply with the requirements of the Wyoming State Plan, or whether you will shut down your incinerator.

If you decide to continue operating your incinerator, Wyoming's State Plan requires that you comply with all requirements within one year after EPA approval of the State Plan, unless you petition the Administrator of the Wyoming Air Quality Division for a later compliance date. Wyoming also incorporated the requirements contained in 40 CFR part 60, subpart Ce which contains additional compliance time requirements. You must meet the requirements listed in WAQS&R Ch. 4, sec. 5, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Determine if your incinerator qualifies for treatment as a small rural incinerator (40 CFR 60.33e(b), 60.36e, 60.37e(d), and 60.38e(b); 62 FR 48380, September 15, 1997).
3. You must meet the emission limits established for your incinerator's size category. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. (40 CFR 60.33e; 62 FR 48382, September 15, 1997).
4. You must meet a 10% opacity limit on your incinerator's discharge, averaged over a six-minute block (40 CFR 60.33e(c); 62 FR 48380, September 15, 1997).
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR 60.53c(c) (40 CFR 60.34e; 62 FR 48380). Your operator must be certified no later than one year after we approve the Wyoming State Plan (40 CFR 60.39e(e); 62 FR 48382).
6. You must develop a waste management plan, and submit it to the Wyoming Department of Environmental Quality no later than one year after we approve this State Plan. Your waste management plan will describe the solid waste practices that your facility will undertake to reduce the amount of hospital, medical, and infectious waste that is disposed of in your incinerator. Your plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993 (40 CFR 60.35e; 62 FR 48380).
7. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits (40 CFR 60.37e and 60.8; 62 FR 48380).
8. You must install and maintain devices to monitor the parameters listed under Table 3 to subpart Ec (40 CFR 60.37e(c); 62 FR 48381).
9. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e; 62 FR 48381).
10. You must report to the Wyoming Department of Environmental Quality the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e; 62 FR 48381).
11. You must submit a complete Title V operating permit application to the Wyoming Department of Environmental Quality no later than September 15, 2000.
12. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (40 CFR 60.39e; 62 FR 48381). The criteria for requesting an extension of your compliance date, and the milestones that you would be required to meet, are explained in WAQSR Ch. 4, sec. 5(i) and the Wyoming State Plan. You may petition the Administrator of the Wyoming Air Quality Division to extend your compliance date to a date as late as three years after we approve this Wyoming State Plan, but no later than September 15, 2002.

If you decide to shut down your incinerator, you must do so within one year of our approval of this State Plan, or by September 15, 2000, whichever occurs first (WAQSR Ch. 4, sec. 5(i)(i)).

IX. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

B. 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 an economically significant action under Executive Order 12866.

C. Executive Order 13084

Under Executive Order 13084 (63 FR 27655, May 10, 1998), 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, 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 implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. This action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. 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 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order 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.

Pursuant to section 605(b) of the RFA, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under State law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated 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 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 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**.

H. National Technology Transfer and Advancement Act

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

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 August 21, 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671.

Subpart G—Colorado

2. Add a new undesignated center heading and §§ 62.1360, 62.1361, and 62.1362 to subpart G to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.1360 Identification of plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation in part A of Colorado Regulation No. 6, submitted by the State on December 22, 1998 and October 4, 1999.

§ 62.1361 Identification of sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.1362 Effective date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is August 21, 2000.

* * * * *

Subpart BB—Montana

3. Add a new undesignated center heading and §§ 62.6610, 62.6611, and 62.6612 to subpart BB to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.6610 Identification of plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation in sections 17.8.302(1)(k) and 17.8.340 of the Administrative Rules of Montana, submitted by the State on January 19, 1999.

§ 62.6611 Identification of sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.6612 Effective date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is August 21, 2000.

* * * * *

Subpart QQ—South Dakota

4. Add a new undesignated center heading and §§ 62.10360, 62.10361, and 62.10362 to subpart QQ to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.10360 Identification of plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation, chapter 74:36:07 section 74:36:07:06.01 of the Administrative Rules of South Dakota, submitted by the State on February 7, 2000.

§ 62.10361 Identification of sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, Subpart Ce.

§ 62.10362 Effective date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is August 21, 2000.

Subpart TT—Utah

5. Add a new undesignated center heading and §§ 62.11120, 62.11121, and 62.11122 to subpart TT to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.11120 Identification of plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation R307–220–3 and R307–222 of the Utah Air Conservation Regulations, submitted by the State on March 2, 1999 and October 25, 1999.

§ 62.11121 Identification of sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.11122 Effective date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is August 21, 2000.

* * * * *

Subpart ZZ—Wyoming

6. Add a new undesignated center heading and §§ 62.12610, 62.12611, and 62.12612 to subpart ZZ to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.12610 Identification of plan.

Section 111(d) Plan for Hospital/Medical/Infectious Waste Incinerators and the associated State regulation, Chapter 4, section 5, of the Wyoming Air Quality Standards and Regulations, submitted by the State on September 7, 1999 and November 9, 1999.

§ 62.12611 Identification of sources.

The plan applies to all existing hospital/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.12612 Effective date.

The effective date for the portion of the plan applicable to existing hospital/medical/infectious waste incinerators is August 21, 2000.

[FR Doc. 00–15292 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AZ 025–MWIa; FRL–6717–7a]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arizona; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the Arizona State hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the ''plan'') submitted on November 16, 1999 by the Arizona Department of Environmental Quality (ADEQ). The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The plan establishes emission limitations and other requirements for existing HMIWIs and provides for the implementation and enforcement of those limitations and requirements.

DATES: This final rule is effective August 21, 2000 unless by July 24, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the submitted Plan and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted Plan are 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

Arizona Department of Environmental Quality, 3033 North Central, Phoenix, Arizona 85012

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

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

I. General Provisions

What action is EPA approving?
What is a State 111(d)/129 plan?
What pollutants will this action control?
What are the expected environmental and public health benefits from controlling HMIWI emissions?

II. Federal Requirements the Arizona HMIWI 111(d)/129 Plan Must Meet for Approval

What general EPA requirements must Arizona meet to receive approval of its County 111(d)/129 plan?
What does the Arizona plan contain?
Does the Arizona State plan meet all EPA requirements for approval?

III. Requirements for Affected HMIWI Owners/Operators

How do I determine if my HMIWI is subject to the Arizona 111(d)/129 plan?
What general requirements must I meet under the Arizona 111(d)/129 plan?
What emissions limits must I meet, and in what time frame?
Are there any operational requirements for my HMIWI and emissions control system?
What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?
Is there a requirement for obtaining a Title V permit?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Q. What Action Is EPA Approving?

A. EPA is approving the Arizona 111(d)/129 plan (the ''plan'') for the control of air pollutant emissions from hospital/medical/infectious waste incinerators (HMIWIs). The plan was submitted to EPA by the Arizona Department of Environmental Quality (ADEQ) on November 16, 1999. The plan contains requirements applicable to HMIWIs located in the jurisdictions of ADEQ and the Maricopa County Environmental Services Department (MCESD). EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What Is a State 111(d)/129 Plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that ''designated'' pollutants, controlled under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste incineration and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT based emission guideline (EG) document and then requires states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State 111(d)/129 plan that is ''at least as protective'' as the EG and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, ''Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plan, EPA–456/R–97–007, November, 1997.''

Q. What Pollutant(s) Will This Action Control?

A. The September 15, 1997 promulgated EG, Subpart Ce, are applicable to all existing HMIWIs (*i.e.,* the designated facilities). HMIWIs emit metals (cadmium, lead, mercury, particulate matter, and opacity), acid gases (hydrogen chloride and sulphur dioxide), organics (dioxins/furans), carbon monoxide, and nitrogen oxides. This action establishes emission limitations for each of these pollutants.

Q. What Are the Expected Environmental and Public Health Benefits From Controlling HMIWI Emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone level, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium and lead include probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

II. Federal Requirements the Arizona HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What General Requirements Must Arizona Meet To Receive Approval of Its County 111(d)/129 Plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for designated pollutants and facilities. The EG, subpart Ce, and the related new source performance standards (NSPS), subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with sections 111(d) and 129 of the CAA. In general, the applicable provisions of subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the Arizona plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, sections 60.30e through 60.39c, and the related subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What Does the Arizona Plan Contain?

A. Consistent with the requirements of subparts B, Ce and Ec, the Arizona plan contains the following elements:

1. A demonstration of the ADEQ's and MCESD's legal authority to implement

the plan, in their respective jurisdictions, under Arizona law;

2. Identification of the plan's enforceable mechanisms, Arizona Administrative Code (AAC) R18–2–732 (Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators), and Maricopa County Rule 317 (Hospital/Medical/Infectious Waste Incinerators);

3. Source and emission inventories, as required;

4. Emission limitation requirements that are no less stringent than those in Subpart Ce;

5. A source compliance schedule, including increments of progress, as required;

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

7. HMIWI operator training and qualification requirements;

8. Requirements for development of a Waste Management Plan;

9. Records of the public hearing on the State plan;

10. Provision for State submittal to EPA of annual reports on progress in plan enforcement; and

11. A Title V permit application due date.

The State regulation, AAC R18–2–732, was adopted by the Governor's Regulatory Review Council on August 3, 1999 and became effective on August 10, 1999. The Maricopa County regulation, Rule 317, was adopted by MCESD on April 7, 1999 and became effective on April 7, 1999. Both regulations incorporate by reference (IBR) applicable subpart Ec requirements.

Q. Does the Arizona State Plan Meet All EPA Requirements for Approval?

A. Yes. The ADEQ has submitted a plan that conforms to all EPA Subpart B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators

Q. How Do I Determine if My HMIWI Is Subject to the Arizona 111(d)/129 Plan?

A. The Arizona plan only applies to HMIWIs under the jurisdictions of ADEQ and MCSED.[1] If construction commenced on your HMIWI on or before June 20, 1996, your HMIWI is classified as an existing or designated facility that may be subject to the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns. The provisions regarding applicability and exemptions are found in section A of AAC R18–2–732 and in section 102 of Maricopa Rule 317.

Q. What General Requirements Must I Meet Under the Arizona 111(d)/129 Plan?

A. In general, the State and Maricopa County HMIWI regulations establish the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_X), lead (Pb), cadmium (Cd), and mercury (Hg)
- Compliance and performance testing
- Operating parameter monitoring
- Operator training and qualification
- Development of a waste management plan
- Source testing, recordkeeping and reporting
- A Title V permit

A full and comprehensive statement of the above requirements is incorporated in the AAC R18–2–732 and Maricopa Rule 317.

Q. What Emissions Limits Must I Meet, and in What Time Frame?

A. You must install an emissions control system capable of meeting the maximum available control technology (MACT) emission limitations for the pollutants identified above. The emissions limitations are stipulated in section E of AAC R18–2–732 and in sections 302 and 303 of Maricopa Rule 317. All designated facilities must be in compliance with the emission limitations on or before the effective date of the relevant regulation.

Q. Are There Any Operational Requirements for My HMIWI and Emissions Control System?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within the established operating parameter limits constitutes an emissions violation for the controlled air pollutants. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner.

A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the Subpart Ec criteria referenced in AAC R18–2–732 at section F and in Maricopa Rule 317 at sections 301 and 306. The Arizona plan requires compliance with this training requirement within one year of EPA approval of the State Plan.

Also, as a HMIWI owner/operator, you are required to develop and update annually site-specific information regarding your facilities' operations. Each of your HMIWI operators is required on an annual basis to review the updated operational information. The ADEQ and MCESD regulations IBR the applicable operational requirements of the EG and the related NSPS. See subpart Ec, sections 60.53c, 60.56c, and 60.58c, respectively for details regarding these operational requirements.

Q. What Are the Testing, Monitoring, Recordkeeping, and Reporting Requirements for My HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below:

You are required to conduct an initial stack test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test.

[1] The submitted Arizona HMIWI plan does not apply to HMIWIs located in the counties of Pima and Pinal. The Pima County Department of Environmental Quality and the Pinal County Air Quality Control District intend to adopt regulations to implement the EG later this year. In the future, ADEQ will submit these regulations to EPA as amendments to the Arizona HMIWI plan.

Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (*e.g.,* carbon) flow rate, hydrogen chloride sorbent (*e.g.,* lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial stack test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl.

Recordkeeping and reporting are required in order to document: (1) The results of the initial and annual performance tests, (2) monitoring of site-specific operating parameters, (3) compliance with the operator training and qualification requirements, and (4) development of the waste management plan. Records must be maintained for at least five years.

The ADEQ and MCESD regulations IBR the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and related NSPS. See subpart Ec, sections 60.56c, 60.57c, and 60.58c, respectively for details regarding these requirements.

Q. Is There a Requirement for Obtaining a Title V Permit?

A. Yes, affected facilities are required to operate under a Title V permit no later than September 15, 2000. This is required under section D of AAC R18–2–732 and section 401 of Maricopa Rule 317.

IV. Final EPA Action

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Arizona 111(d)/129 plan for the control of HMIWI emissions from designated facilities.[2] As provided by 40 CFR 60.28(c), any revisions to the Arizona plan or associated regulations will not be considered part of the applicable plan until submitted by the ADEQ in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective August 21, 2000 without further notice unless the Agency receives relevant adverse comments by July 24, 2000. If 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 on this rule. Parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 21, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. 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 August 21, 2000. Filing a petition for reconsideration by the Administrator of this final rule does

[2] The State did not submit evidence of authority to regulate existing HMIWIs in Indian Country; therefore, EPA is not approving this Plan as it relates to those sources.

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Hospital/medical/infectious waste incinerators, Reporting and recordkeeping requirements.

Dated: June 5, 2000

Laura Yoshii,

Acting Regional Administrator, Region IX.

40 CFR Part 62, Subpart D, is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. A new center heading, and §§ 62.630, 62.631, and 62.632, are added to Subpart D to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

§ 62.630 Identification of plan.

The Arizona Department of Environmental Quality submitted on November 16, 1999 the State of Arizona's section 111(d)/129 Plan for Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The submitted plan does not apply to sources located in Pima and Pinal counties.

§ 62.631 Identification of sources.

The plan applies to existing HMIWI for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

§ 62.632 Effective date.

The effective date of EPA approval of the plan is August 21, 2000.

[FR Doc. 00–15288 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NC–FORS–T5–2000–01a; FRL–6712–5]

Clean Air Act Full Approval of Operating Permit Program; Forsyth County (North Carolina)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permit program of the Forsyth County Environmental Affairs Department. Forsyth County's operating permit program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Forsyth County's operating permit program on November 15, 1995. The County revised its program to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on August 21, 2000 without further notice unless EPA receives adverse comments in writing by July 24, 2000. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW., Atlanta, Georgia 30303. Copies of Forsyth County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562-9124.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What is the Operating Permit Program?

The CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain Federal criteria. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include: ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM_{10} 10); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because Forsyth County's operating permit program

substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on November 15, 1995 (60 FR 57357). The interim approval notice stipulated eight conditions that had to be met in order for the County's program to receive full approval. Forsyth County submitted nine revisions to its interimly approved operating permit program; these revisions were dated September 25, 1995, January 16, 1997, August 1, 1997, April 22, 1998, October 2, 1998, February 18, 1999, September 29, 1999, October 26, 1999, and February 24, 2000. This document describes the changes that have been made in Forsyth County's operating permit program.

What Are the Program Changes That EPA Is Approving?

Full approval of Forsyth County's operating permit program was made contingent upon the following rule changes, as stipulated in EPA's November 15, 1995 rulemaking:

(1) Revise Rule 3Q.0507 to require permit applications include all fugitive emissions, in accordance with 40 CFR 70.3(d). The County revised Rule 3Q.0507(b) to cite 40 CFR 70.3(d) and the local-effective rule change was submitted to EPA on August 1, 1997.

(2) Revise Rule 3Q.0502(c) to ensure that research and development (R&D) facilities which are collocated with manufacturing facilities and which are under common control and belonging to a single major industrial grouping will be considered as the same facility for determining title V applicability. The County deleted Rule 3Q.0502(c) and the local-effective rule change was submitted to EPA on October 26, 1999.

(3) Revise Rule 3Q.0102(b)(2)(B) to adjust the insignificant emission threshold levels downward from potential emissions of 40 tons per year (tpy) to 5 tpy for criteria pollutants and 1000 pounds per year for HAPs, and to provide that the activities listed in Rule 3Q.0102(b)(2)(F) are subject to these caps. In addition, EPA notified the County on July 15, 1996 of another deficiency in its insignificant activities provisions that came to light as a result of the court decision in *Western States Petroleum Association (WSPA)* v. *EPA,* 87 F.3d 280 (D.C. Cir. 1996): Rule 3Q.0102(a) had inadvertently been approved without identifying the exemption of insignificant activities from permit requirements as a program deficiency. In the **Federal Register** document granting final interim approval to the Alaska operating permit program (61 FR 64466, December 5, 1996), EPA acknowledged that its approval of the insignificant activities provisions in the North Carolina programs may have been inconsistent with the WSPA decision. Further review revealed this to be true.

Forsyth County addressed the deficiencies in its insignificant activities provisions by removing Rule 3Q.0102 from its operating permit program and revising Rule 3Q.0503 to define two categories of insignificant activities: ''insignificant activities because of category'' and ''insignificant activities because of size or production rate.'' The first category includes:

(a) Mobile sources,

(b) Air conditioning units used for human comfort that are not subject to applicable requirements under Title VI of the Federal Clean Air Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process,

(c) Ventilating and heating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process,

(d) Noncommercial food preparation,

(e) Consumer use of office equipment,

(f) Janitorial services and consumer use of janitorial products,

(g) Internal combustion engines used for landscaping purposes, and

(h) New residential wood heaters subject to 40 CFR 60, Subpart AAA.

The second category, ''insignificant activities because of size or production rate,'' is defined as ''any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, *i.e.*, potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices are each below 1000 pounds per year.'' The County also revised Rule 3Q.0508(f)(3) to remove the exemption from monitoring, recordkeeping, and reporting requirements for insignificant activities, and revised Rule 3Q.0508(aa) to require the inclusion of insignificant activities in permits. The local-effective rule changes were submitted to EPA on October 26, 1999.

(4) Revise Rule 3Q.0514(a) to clarify that: (a) Administrative permit amendments may be used to change test dates or construction dates only as long as no applicable requirements are violated in the process, and (b) an administrative permit amendment may be used to move terms and conditions from the state-enforceable portion of the permit to the state-and Federal-enforceable portion of the permit provided that the term being moved is a requirement which has become Federally enforceable through sections 110, 111, 112, or other parts of the Act. The County added language to Rule 3Q.0514(a)(4) stipulating that changes in test dates or construction dates qualify as administrative permit amendments ''provided that no applicable requirements are violated by the change in test dates or construction dates.'' The County also added language to Rule 3Q.0514(a)(5) stipulating that administrative permit amendments may be used to move terms and conditions from the County-enforceable portion of the permit to the County-and-Federal enforceable portion of the permit ''provided that terms and conditions being moved have become federally enforceable through section 110, 111, or 112 or other parts of the federal Clean Air Act.'' The local-effective rule changes were submitted to EPA on August 1, 1997.

(5) Revise Rule 3Q.0515(f) to stipulate that a permit shield may not be granted for a minor permit modification. The County revised Rule 3Q.0515 to disallow permit shields for minor permit modifications and submitted the local-effective rule change to EPA on August 1, 1997.

(6) Revise Rule 3Q.0515(d) to require minor permit modifications to be processed within 90 days after receiving the application or 15 days after the end of EPA's 45-day review period, whichever is later. The County revised Rule 3Q.0515(d) accordingly and submitted the local-effective rule change to EPA on August 1, 1997.

(7) Revise Rule 3Q.0517(b) to provide that: (a) a part 70 permit shall be reopened and reissued within 18 months after a newly applicable requirement is promulgated, and (b) no reopening is required if the effective date of the newly applicable requirement is after the expiration of the permit, unless the term of the permit was extended based on the fact that it had not been renewed prior to its expiration. The County revised Rule 3Q.0517(b) to require the completion of permit reopenings within 18 months after newly applicable requirements are promulgated. This rule was also revised to state that ''[n]o reopening is required if the effective date of the requirement is after the expiration of the permit term unless the term of the permit was extended pursuant to Rule .0513(c). . .'' The local-effective revised rule was submitted to EPA on August 1, 1997.

(8) Revise Rule 3Q.0518(f) to remove the phrase ''subject to adjudication'' from the requirement to take action on a complete permit application. The County deleted Rule 3Q.0518(f) and submitted the local-effective rule revision to EPA on September 25, 1995.

Forsyth County made several additional program changes after EPA granted interim approval on November 15, 1995. The definition of ''Major facility'' as ''a major source as defined under 40 CFR 70.2'' was added to Rule 3Q.0103 in the general provisions of the County's air quality permitting regulations. The County submitted the local-effective rule revision to EPA on January 16, 1997. The County also changed the method for determining its annual title V fee. Forsyth County's operating permit program was initially approved based on use of the ''presumptive minimum'' fee described in 40 CFR 70.9(b)(2)(i). However, the County revised Rule 3Q.0204 in October 1996 to use a mechanism based on 40 CFR 70.9(b)(1), which involves establishing a fee schedule that results in the collection and retention of revenues sufficient to cover the actual costs of the operating permit program. The County now establishes its annual fee schedule based on the actual cost of administering the title V program during the previous year. The County submitted the revised fee rule to EPA on January 16, 1997, and submitted documentation of fee increases on April 22, 1998, February 18, 1999 and February 24, 2000. The County also submitted a fee program update on September 29, 1999 demonstrating that its title V program is adequately funded by operating permit fees.

The other substantive changes in Forsyth County's title V program involve the following:

(1) Revising the definition of ''Affected States'' in Rule 3Q.0503 to mean all States or local air pollution control agencies whose areas of jurisdiction are contiguous to Forsyth County, rather than contiguous to the entire state. The local-effective rule revision was submitted to EPA on October 2, 1998.

(2) Deleting the part 70 permit application processing schedule in Rule 3Q.0507(f) and replacing it with a new application processing schedule in Rule 3Q.0525. The new schedule established time frames for the County to complete various aspects of permit issuance, including acknowledging receipt of the application, the completeness check, the technical review, mailing the public notice, and holding a public hearing if one is requested. Rule 3Q.0525 was initially submitted to EPA on September 25, 1995 and then amended in September 1998 to ensure that final action on permit applications would be taken within 18 months of being deemed complete, as stipulated in 40 CFR 70.7(a)(2). The amended rule was submitted to EPA on October 2, 1998.

What is involved in this final action?

The Forsyth County Environmental Affairs Department has fulfilled the conditions of the interim approval granted on November 15, 1995, and EPA is taking final action by this notice to fully approve the County's operating permit program. EPA is also taking action to approve other program changes made by the County since the interim approval was granted.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant final full approval should adverse comments be filed. This action will be effective August 21, 2000 unless the Agency receives adverse comments by July 24, 2000.

If EPA receives such comments, then EPA will withdraw the final rule and inform 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. 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 August 21, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 is not an economically significant regulatory action as defined in Executive Order 12866, and 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 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, 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. 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, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA)

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

This rule will not have a significant impact on a substantial number of small entities because part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this 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 a 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).

G. Unfunded Mandates

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

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

H. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 August 21, 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).)

J. 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.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that

otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: June 8, 2000.

Phyllis P. Harris,

Acting Regional Administrator, Region 4.

For reasons set out in the preamble, Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by revising the entry for North Carolina to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

North Carolina

(a)(1) Department of Environment and Natural Resources: submitted on November 12, 1993, and supplemented on December 17, 1993, May 31, 1994, and August 3, 1994, March 23, 1995, and August 9, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) [Reserved]

(b)(1) Forsyth County Environmental Affairs Department: submitted on November 12, 1993, and supplemented on May 31, 1994 and November 28, 1994; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) Forsyth County submitted program revisions on September 25, 1995, January 16, 1997, August 1, 1997, April 22, 1998, October 2, 1998, February 18, 1999, September 29, 1999, October 26, 1999, and February 24, 2000. The rule revisions contained in the September 25, 1995, August 1, 1997, and October 26, 1999 submittals adequately addressed the conditions of the interim approval which would expire on June 1, 2000. The County is hereby granted final full approval effective on August 21, 2000.

(3) [Reserved]

(c)(1) Mecklenburg County Department of Environmental Protection: submitted on November 12, 1993, and supplemented on June 5, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) [Reserved]

(d)(1) Western North Carolina Regional Air Pollution Control Agency: submitted on November 12, 1993, and supplemented on January 12, 1994, September 16, 1994, October 11, 1994, and May 17, 1995; interim approval effective on December 15, 1995; interim approval expires June 1, 2000.

(2) [Reserved]

* * * * *

[FR Doc. 00–15290 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301003; FRL–6557–9]

RIN 2070–AB78

Azinphos-Methyl, Revocation and Lowering of Certain Tolerances; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the tolerances for azinphos-methyl by revoking specific tolerances and modifying specific other tolerances listed in the regulatory text for the insecticide azinphos-methyl (40 CFR 180.154). In the **Federal Register** on December 22, 1999 (FRL–6399–6), EPA issued a document which proposed to revoke and modify the tolerances addressed in this document. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. This document counts 22 tolerance reassessments made toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This final rule becomes effective September 20, 2000. Objections and requests for hearings, identified by docket control number OPP–301003, must be received by EPA on or before August 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV of the ''SUPPLEMENTARY INFORMATION'' section of this document. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301003 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barry O'Keefe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8035; fax number: (703) 308–8041; e-mail address: okeefe.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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
	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 this table could also be affected. The North American Industrial Classification System (NAICS) codes are 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–301003. 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.

II. Background

A. What Action is the Agency Taking?

This final rule revokes and modifies the FFDCA tolerances for residues of the insecticide azinphos-methyl in or on certain specified commodities, in accordance with a Memorandum of Agreement (MOA) of August 2, 1999, between registrants and EPA. In the **Federal Register** of December 22, 1999 (64 FR 71708) (FRL–6399–6), EPA issued a proposed rule to revoke the tolerances listed in this final rule. The December 22, 1999 proposal invited public comment for consideration. No comments were received by the Agency.

EPA is revoking and modifying certain tolerances for residues of the insecticide azinphos-methyl in 40 CFR 180.154. In particular, EPA is revoking the tolerance on sugarcane, with a revocation/expiration date of June 30, 2000, since by agreement this use has been deleted from active labels, because of surface water vulnerability and to prevent unreasonable risks to wildlife and contamination of water. EPA is setting the revocation/expiration date of June 30, 2000, in order to allow time for existing stocks in the hands of users to be used.

EPA is lowering tolerances found in 40 CFR 180.154(a) for residues of the insecticide azinphos-methyl in or on apples, crabapples, pears, and quinces, each from 2.0 ppm to 1.5 ppm, in or on cranberries from 2.0 ppm to 0.5 ppm, and in or on grapes from 5.0 ppm to 4.0 ppm. These modifications will be effective 90 days after the publication of this final rule in the **Federal Register**.

Also, the Agency is revoking tolerances for residues of azinphos-methyl in or on commodities for which there are no registered uses; including: apricots; artichokes; barley, grain; barley, straw; beans (dry); gooseberries; grass, pasture (green); grass, pasture, hay; kiwi fruit; oats, grain; oats, straw; peas, black-eyed; rye, grain; rye, straw; soybeans; wheat, grain; and wheat, straw in 40 CFR 180.154(a), and pomegranates in 40 CFR 180.154(b). These revocations concern uses that have not been on active labels since January 1999. The Agency believes that azinphos-methyl had not been used on these crops for some time. Consequently, no treated commodities covered by these tolerances are expected to be in the channels of trade. Therefore, EPA is revoking these tolerances because they are not necessary to cover residues in or on domestically treated commodities or commodities treated outside but imported into the United States. Azinphos-methyl is no longer used on these specified commodities within the United States and no person has provided comment identifying a need for EPA to retain the tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated. No such comments were received. Therefore, these revocations will be effective 90 days after the publication of this final rule in the **Federal Register**.

EPA is also removing 40 CFR 180.531, and is revoking the three tolerances found in that section for residues of azinphos-methyl; which are as follows: Sugarcane bagasse, since this commodity is not considered a significant livestock feed item; citrus pulp, dried, since an adequate orange processing study did not show concentration in dried orange pulp (in accordance with FFDCA section 408(a)(2), since residues in the processed food will not exceed the raw food tolerance); and soybean oil, since there are no active registrations with soybean on the label. Therefore, these revocations will be effective 90 days after the publication of this final rule in the **Federal Register**.

Since the available data indicate that finite residues of azinphos-methyl are not expected in animal tissues or milk, in accordance with 40 CFR 180.6(a)(3) EPA is revoking tolerances found in 40 CFR 180.154(a) for cattle, fat; cattle, mbyp; cattle, meat; goat, fat; goat, mbyp; goat, meat; horse, fat; horse, mbyp; horse, meat; sheep, fat; sheep, mbyp; and sheep, meat; and EPA is revoking 40 CFR 180.154a, the tolerance for milk. The revocation of these 13 meat, milk, poultry and egg (MMPE) tolerances implements the Agency finding as published in the **Federal Register** on August 2, 1999 (64 FR 41933) (FRL–6097–3), which stated, under 40 CFR 180.6 there is no reasonable expectation of finite residues for azinphos-methyl on the MMPE commodities and, therefore, these tolerances were considered reassessed and could be revoked, because they are not needed.

EPA is removing the tolerance in 40 CFR 180.154(a) for residues of azinphos-methyl in or on nectarines, in accordance with 40 CFR 180.1(h), since the tolerance on nectarines (set at 2.0 ppm) is not necessary, because its use is covered by the tolerance for peaches (also set at 2.0 ppm).

This rule also lowers tolerances found in 40 CFR 180.154(a) for residues of azinphos-methyl in or on almond and potato, each from 0.3 to 0.2 ppm, and in or on almond hulls from 10.3 to 5.0 ppm, since the available data indicate that these tolerances can be lowered to achieve compatibility with the corresponding Codex MRLs. These reductions in tolerances are based on the most recent data that more accurately reflect residue levels that are likely to be detected.

Codex MRLs exist for the following tolerances, i.e. apricot at 2.0 ppm, cereal grains at 0.2 ppm, kiwi fruit at 4.0 ppm, and soya bean at 0.2 ppm. Notwithstanding the existence of these MRLs, EPA is revoking the tolerances because retention would increase the chances of misuse and may result in unnecessary restriction on trade of pesticides and foods as well as inhibiting the retention and approval of tolerances, as discussed in greater detail in Unit II.B., below.

Additionally, in this final rule, EPA is changing commodity terminology and definitions for several commodities to conform to current Agency practice. These changes are in accordance with

the revised Crop Group Regulation (40 CFR 180.41) and the updated Table I ''Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' (August, 1996) in the Residue Chemistry Test Guidelines: OPPTS 860.1000 (EPA 721–C–96–169). Table I contains data on both crops and livestock diets, and lists feed commodities considered significant in livestock diets. Significant feedstuffs account for more than 99 percent of the available annual tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of more than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs. The EPA has devised criteria to include or exclude feedstuffs from Table I and set tolerances for significant feedstuffs. Tolerances are not set for feedstuffs which are neither significant nor a human food. Pesticide residues on such feedstuffs are governed by tolerances on the commodity from which they are derived (62 FR 66020, December 17, 1997) (FRL–5753–1). These changes relate only to nomenclature and have no effect on the scope of the tolerance. The specific commodity terminology name changes are listed in the table as follows:

Old Commodity Name	New Commodity Name
Almonds	Almond
Almonds, hulls	Almond, hulls
Apples	Apple
Beans, snap	Bean, snap, succulent
Blackberries	Blackberry
Blueberries	Blueberry
Boysenberries	Boysenberry
Cherries	Cherry
Citrus fruits	Fruit, citrus, group
Crabapples	Crabapple
Cranberries	Cranberry
Cucumbers	Cucumber
Eggplants	Eggplant
Filberts	Filbert
Grapes	Grape
Loganberries	Loganberry
Melons (honeydew, muskmelon, cantaloupe, watermelon, and other melons).	Melon
Nuts, pistachio	Pistachio
Onions	Onion
Parsley, leaves	Parsley, leaf
Parsley, roots	Parsley, root
Peaches	Peach
Pears	Pear
Pecans	Pecan
Peppers	Pepper
Plums (fresh prunes).	Plum, prune
Potatoes	Potato
Quinces	Quince
Raspberries	Raspberry
Strawberries	Strawberry
Tomatoes (PRE- and POST-H).	Tomato, postharvest
Walnuts	Walnut

Please note that a few typographical errors were made in the proposed rule that are corrected in this final rule. Unit II.F. should have read as Unit II.C. Also, the parts per million value for crabapple was listed incorrectly in the codification section as 2.0 parts per million, while it was listed correctly in the preamble as 1.5 parts per million.

The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid these trade-restricting situations, the Agency is revoking tolerances for residues on crop uses for which FIFRA registrations no longer exist. Through the proposed rule, the Agency invited individuals who may have needed these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities. No responses were received.

Under section 408(d) of the FFDCA, the Agency may issue a final or proposed regulation establishing, modifying, or revoking a tolerance in response to a petition filed with the Agency that proposes the issuance of such regulation. On August 2, 1999, EPA and the registrants holding Section 3 registrations for azinphos-methyl signed a Memorandum of Agreement (MOA), which specifically states that the registrants shall submit to EPA a petition requesting many of the tolerance modifications detailed in this proposal; i.e. lowering tolerances on apples, crabapples, cranberries, grapes, pears, and quinces, and revoking the tolerance on sugarcane. Such a petition has been received by the Agency, dated September 22, 1999. Thus, the Agency is authorized by section 408(d) of the FFDCA to issue a proposed regulation in response to that petition. The MOA was made to help mitigate acute dietary, agricultural worker, and environmental risks. During phase five of the Tolerance Reassessment Advisory Committee (TRAC) process, the Agency invited the registrants, and any other affected or interested parties, to submit to the Agency additional risk mitigation thoughts or measures, since the acute dietary risk estimates from the revised human health risk assessment remained above the Agency's level of concern. The revised human health risk assessment may be found at http://www.epa.gov/pesticides/op. In addition to the MOA, EPA is also revoking or lowering other tolerances, as well as changes in commodity nomenclature for various reasons as described in Unit II of this document.

C. What is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66%, or about 6,400, of the tolerances in existence on August 2, 1996, by August

2002. EPA is also required to assess the remaining tolerances by August 2006. As of 11/1/99, EPA has assessed over 3,400 tolerances. This document revokes 35 tolerances and removes 1 tolerance, which is not considered a revocation nor considered reassessed at this time. Since 13 tolerances were previously counted as reassessed, 22 of the 35 revocations are counted as reassessed in this final rule. The 22 reassessments are being counted toward the August, 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

D. When Do These Actions Become Effective?

These actions become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, the effective date is September 20, 2000; except for the tolerance on sugarcane, which expires on June 30, 2000.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Other Considerations

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

IV. Objections or Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301003 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 21, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C–400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301003, to: Public Information and Records Integrity Branch, Information Resources and

Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; Resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. How Do the Regulatory Assessments Requirements Apply to this Final Action?

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning azinphos-methyl, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with the revoked pesticides, generally within the same countries from which the relevant commodities are currently imported. Furthermore, no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis.

In addition, the Agency has determined that this action 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 12, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.154 is revised to read as follows:

§ 180.154 O,O-Dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)methyl]phosphorodithioate; tolerances for residues.

(a) *General.* Tolerances for residues of the insecticide *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl]phosphorodithioate in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa	2.0	None
Alfalfa, hay	5.0	None
Almond	0.2	None

Commodity	Parts per million	Expiration/ Revocation Date
Almond, hulls	5.0	None
Apple	1.5	None
Bean, snap, succulent	2.0	None
Birdfoot trefoil	2.0	None
Birdfoot trefoil, hay	5.0	None
Blackberry	2.0	None
Blueberry	5.0	None
Boysenberry	2.0	None
Broccoli	2.0	None
Brussels sprouts	2.0	None
Cabbage	2.0	None
Cauliflower	2.0	None
Celery	2.0	None
Cherry	2.0	None
Clover	2.0	None
Clover, hay	5.0	None
Cottonseed	0.5	None
Crabapple	1.5	None
Cranberry	0.5	None
Cucumber	2.0	None
Eggplant	0.3	None
Filbert	0.3	None
Fruit, citrus, group	2.0	None
Grape	4.0	None
Loganberry	2.0	None
Melon	2.0	None
Onion	2.0	None
Parsley, leaf	5.0	None
Parsley, root	2.0	None
Peach	2.0	None
Pear	1.5	None
Pecan	0.3	None
Pepper	0.3	None
Pistachio	0.3	None
Plum, prune	2.0	None
Potato	0.2	None
Quince	1.5	None
Raspberry	2.0	None
Spinach	2.0	None
Strawberry	2.0	None
Sugarcane	0.3	6/30/00
Tomato, postharvest	2.0	None
Walnut	0.3	None

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

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

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

§§ 180.154a and 180.531 [Removed]

3. By removing § 180.154a and § 180.531.

[FR Doc. 00–15725 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300924; FRL–6383–7]

RIN 2070–AB78

Trichoderma Harzianum Rifai Strain T-39; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Trichoderma harzianum* Rifai strain T-39 on all food commodities when applied/used as ground and certain foliar applications. Makhteshim Agan of North America submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma harzianum* Rifai strain T-39.

DATES: This regulation is effective June 22, 2000. Objections and requests for hearings, identified by docket control number OPP–300924, must be received by EPA on or before August 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300924 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8097; and e-mail address: bacchus.shanaz@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
	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 in the ''FOR FURTHER INFORMATION CONTACT'' section.

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–300924. The official record consists of the documents specifically referenced in this action, 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.

II. Background and Statutory Findings

In the **Federal Register** of June 26, 1998 (63 FR 34390–34392) (FRL–5794–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Makhteshim Agan of North America, (hereafter referred to as MANA), 551 Fifth Avenue, Suite 1100, New York, NY 10176. This notice included a summary of the petition prepared by the petitioner, MANA. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma harzianum* Rifai strain T-39.

III. Risk Assessment

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Trichoderma harzianum strain T-39 was considered neither toxic nor pathogenic based on the results of the Tier I toxicology studies. Tier II and Tier III studies were not required because the results from the Tier I studies were sufficient to satisfy guideline requirements. On the basis of the studies submitted, it was considered a Toxicity Category III pesticide for acute oral effects due to the amount dosed only, and Toxicity Category IV for dermal and primary dermal irritation health effects. These and additional toxicology studies are summarized below.

1. *Acute oral infectivity/pathogenicity.* Based on the submitted data, *Trichoderma harzianum* strain T-39 demonstrated a low toxicity profile. It was not infectious, pathogenic or toxic to rats when administered orally at 1.4 to 2.0×10^8 colony forming units (cfu) per animal. Clearance and infectivity were evaluated in the brain, blood, lymph nodes, kidney, liver, spleen, lungs, caecum and feces. The microbe was detected only in fecal samples, and in those samples a distinct clearance pattern was demonstrated throughout the study.

2. *Acute dermal toxicity.* A single 1,150–1,570 mg/kg dose of *Trichoderma harzianum* was applied dermally for a 24 hour exposure period to rabbits. There were no clinical signs of toxicity and no effects on mortality or body weight nor any signs of dermal irritation during the study. The available information indicates that dermal toxicity is not likely to occur with *Trichoderma harzianum* strain T-39.

3. *Primary Dermal Irritation Study.* A dermal application of 0.5g of *Trichoderma harzianum* strain T-39 at 5×10^9 cfu/g produced no dermal response in rabbits after a 4–hour exposure period. The results of this study are classified as Supplementary, but taken in conjunction with the acute dermal toxicity study, the microbial pesticide is likely to be mildly irritating to skin. The pesticide was classified as Toxicity Category IV for primary dermal irritation effects.

4. *Skin sensitization in guinea pig.* Under the conditions of this study, *Trichoderma harzianum* strain T-39 in physiological saline was applied in occluded dermal patches. This study demonstrated potential delayed contact hypersensitivity in guinea-pigs. This study was designed to meet the requirements of the OECD Guidelines for Testing Chemicals, and was submitted in support of fulfilling EPA data requirements for hypersensitivity incidents. While the study is not a substitute for reporting hypersensitivity incidents, it was considered acceptable. However, the registrant must report any hypersensitivity incidents to the Agency. The label must indicate that products containing this active ingredient are likely to demonstrate a potential for dermal sensitization.

5. *Primary eye irritation.* Three eye irritation studies were submitted. Two acute eye irritation studies were conducted using undiluted TGAI on a single male rabbit each time. The studies indicated a potential for severe eye irritation, placing the undiluted TGAI in acute Toxicity Category I. In one study, a single dose of 0.1g of the active ingredient, approximately 5×10^8 cfu, was used to treat one rabbit. The results indicated that the microbial pest control agent (MPCA) TGAI, *Trichoderma harzianum* strain T-39, has the potential to cause serious ocular damage. The active ingredient was a severe eye irritant. In another study a single dose of 0.1g was administered into the everted lower right eyelid of a sentinel male rabbit. The results of this study indicated that a 3 minute, 180 ml saline rinse, applied 3 minutes post dosing, had no ameliorating effect on the irritancy of the active ingredient. The adhesion of the TGAI to the conjunctivae remained a serious effect of treatment even after rinsing.

However, another eye irritation study was done in which the test material was the End-use Product (EP), Trichodex. Six male rabbits were treated with a single dose of 0.1 ml (0.04 g) of Trichodex-EP into the everted lower right eyelid. The maximum average irritation score was determined to be 15.3 at 24 hours post dosing. There was no corneal involvement after 72 hours and ocular irritation was no longer present after 7 days, equivalent to a mildly irritating, or an acute Toxicity Category III rating for the EP. This study was considered acceptable and can be used for labeling of the EP. Workers, who are most likely to be exposed to the pesticide during mixing/loading, application and post application activities, are required to wear goggles to mitigate against potential eye irritation.

6. *Acute intraperitoneal toxicity/pathogenicity.* Under conditions of this study the LD_{50} for the EP, Trichodex,

administered via intraperitoneal injection was 644 mg/Kg in male rats, 1.087 mg/Kg in female rats and 806 mg/Kg for combined results from male and female rats. The lowest dose administered, 1.5×10^7 cfu/animal, showed no indications of significant adverse effects. This study was considered acceptable and is a substitute for the intravenous study with fungi as active pesticidal ingredients.

7. *Acute pulmonary toxicity/pathogenicity.* Small 2 mm pale raised areas were found in the lungs of some animals of both genders treated with test material containing the active fungi. However, minimal clinical signs and no deaths were observed. There were no significant macroscopic lesions found in any test animals in the other experimental groups. The active ingredient was not found in samples of liver, brain, spleen, kidneys, lymph nodes or blood. Microbial clearance through the caecum was evident. Although there was no evidence of the reproduction of the microbe in the tissues, colony forming units persisted in the lungs of animals treated with the active fungus. However, no adverse effects were seen even in the absence of lung clearance by day 21. Based on this study the TGAI was classified as Toxicity Category III. Because the predominant inert ingredient is known to have associated irritation and inhalation effects, the microbial, EP was classified as an acute Toxicity Category II pesticide or likely to be a moderate acute inhalation hazard. Workers who are most likely to be exposed during mixing/loading, application and post application activities are required to wear the recommended respirators with NIOSH prefixes, N–95, P–95 or R–95, to mitigate against exposure.

8. *Mouse Micronucleus Test.* This study is not required under the guidelines for registration of microbials but was submitted by the registrant for consideration of the application. A preliminary toxicity test using doses of 2,500 and 5,000 mg/Kg resulted in no deaths and no significant chromosome damage. Subsequently, the main study was carried out with administration of Trichodex suspended in 0.5% methyl cellulose solution by oral gavage. Doses were 200, 1,000, or 5,000 mg/kg. Under conditions of this test, there was no evidence of chromosomal damage leading to micronucleus formation in polychromatic erythrocytes of treated mice 24, 48, or 72 hours after dosing. The study was rated supplemental.

V. Aggregate Exposures

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

A. Dietary Exposure

Dietary exposure to the microbial pesticide is likely to occur. The lack of acute oral toxicity/pathogenicity, and the ubiquitous nature of the microbial, support the establishment of an exemption from the requirement of a tolerance for *Trichoderma harzianum* strain T-39.

1. *Food.* The microbial pesticide can be removed from foods by washing, peeling, cooking and processing. Dietary exposure to the microbial and the risk posed to adults, infants and children are likely to be minimal, because of the low acute oral toxicity/pathogenicity potential of the microbial pesticide.

2. *Drinking water exposure.* Oral exposure, at very low levels, may occur from ingestion of drinking water. Drinking water is not being screened for *Trichoderma harzianum* as a potential indicator of microbial contamination. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to the fungal active ingredient through drinking water. Therefore, the potential of significant transfer of residues to drinking water is minimal to non-existent. Even if negligible oral exposure should occur through drinking water, the Agency concludes that such exposure would present no risk due to the lack of acute oral toxicity/pathogenicity and the ubiquitous nature of the microbe.

B. Other Non-Occupational Exposure

Dermal and inhalation exposure. Dermal and inhalation exposures and risks to adults, infants and children via treated lawns or recreational areas are not likely if the pesticide is applied as labeled. However, should such exposures occur, adverse effects via the dermal and inhalation routes are expected to be minimal based on the low toxicity potential of this naturally occurring, ubiquitous microbe.

VI. Cumulative Effects

There are other species and strains of *Trichoderma* registered. The Agency has received information to distinguish strain T-39 from other registered strains. It is not clear to the Agency whether the registered strains share a common mechanism of toxicity, or any mechanism of toxicity with strain T-39. Because the data available demonstrate a low toxicity/pathogenicity potential of the active ingredient, the likelihood of adverse dietary effects is expected to be minimal.

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

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to the U.S. population to Trichoderma harzianum Rifai strain T-39 residues. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has imposed appropriate risk mitigation measures to protect the at-risk worker population from potential eye irritation and acute pulmonary effects. These include goggles and appropriate dust-mist filtering respirators which comply with the Worker Protection Standards.

VIII. Other Considerations

A. Endocrine Disruptors

EPA does not have any information regarding endocrine effects of this microbial pesticide at this time. There is no evidence to suggest that use of *Trichoderma harzianum* strain T-39 at the proposed concentrations will adversely affect the endocrine system.

B. Analytical Method(s)

As part of the standard Quality Control measures, the Agency is requiring microbial assays and analytical methods to identify the active ingredient and potential contaminants. Analytical methods are available and sufficient to identify metabolites and contaminants within regulatory levels. All batches containing potential human pathogens are to be destroyed.

C. Codex Maximum Residue Level

There are no Codex Maximum Residue Levels or exemption from tolerances for the microbial active ingredient *Trichoderma harzianum* strain T-39. There is an exemption from tolerance on all food commodities except mushrooms for another strain of *Trichoderma harzianum*, Rifai strain KRL-AG2, in the United States.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the

submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300924 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 21, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room C–400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300924, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Regulatory Assessment Requirements

This final rule will establish an exemption from the tolerance requirement under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that

there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Agency has determined that this action 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

XI. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: May 25, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. Section 180.1201 is revised to read as follows:

§ 180.1201 Trichoderma harzianum strain T-39; exemption from the requirement of a tolerance.

Trichoderma harzianum strain T-39 is exempt from the requirement of a tolerance on all food commodities.

[FR Doc. 00–15723 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301010; FRL–6592–4]

RIN 2070–AB78

Cloquintocet-mexyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of the inert ingredient (herbicide safener) cloquintocet-mexyl and its acid metabolite in or on wheat grain, forage, hay, and straw. Novartis Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 22, 2000. Objections and requests for hearings, identified by docket control number OPP–301010, must be received by EPA on or before August 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301010 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8373; and e-mail address: alston.treva@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	111 112 311 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–301010. The official record consists of the documents specifically referenced in this action, 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.

II. Background and Statutory Findings

In the **Federal Register** of April 15, 1998 (63 FR 18417) (FRL–5781–9), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 7E4920) for tolerances by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, North Carolina 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the petitioner. The petition was subsequently amended to increase the original proposed tolerances and an additional notice of filing was published in the **Federal Register** on April 19, 2000 (65 FR 20972). There were no comments received in response to the notice of filing.

The April 19, 2000 (FRL–6554–3) petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the inert ingredient (herbicide safener) cloquintocet-mexyl (acetic acid, [(5-chloro-8-quinolinyl)oxy]-, 1-methylhexyl ester) and its acid metabolite (5-chloro-8-quinolinoxyacetic acid), in or on wheat, grain at 0.1 parts per million (ppm); wheat, forage at 0.1 ppm; and wheat, hay at 0.1 ppm and wheat, straw at 0.1 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of cloquintocet-mexyl and its acid metabolite) on wheat, grain at 0.1 ppm; wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.1 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cloquintocet-mexyl are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY

Guideline No./Study Type	Results
870.3100 28-Day Oral in Rodents	NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on microscopic kidney lesions.
870.3100 28-Day Oral in Rodents	NOAEL = 10 mg/kg/day (females only) LOAEL = 400 mg/kg/day based on transient decrease in body weight gain, microscopic alterations of the pituitary and thyroid and possible increased SGPT.
870.3100 90-Day Oral Toxicity Rodents	NOAEL = males: 150 ppm (9.7 mg/kg/day), females: 6,000 ppm (407) mg/kg/day LOAEL = males: 1000 ppm (63.9 mg/kg/day); females: ≥ 6,000 ppm (≥ 407 mg/kg/day based on urinary bladder hyerplasia, kidney hydronephrosis and increased serum bilirubin in males.
870.3150 90-Day Oral Toxicity in Non-rodents.	NOAEL = 100 ppm (2.9 mg/kg/day in males and 3.3 mg/kg/day in females) LOAEL = 1,000 ppm (30.2 mg/kg/day in males and females based on perivascular mixed inflammatory cell infiltrates and multicellular multifocal necrosis of the liver and thymic atrophy.
870.3200 28-Day Dermal Toxicity	NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on mottled or reddish livers accompanied by histopathological changes including necrosis and fibrosis.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./Study Type	Results
870.3700a Prenatal Developmental in Rodents.	Maternal NOAEL = 100 mg/kg/day LOAEL = 400 mg/kg/day based on clinical signs and decrease in body weight gain and food consumption. Developmental NOAEL = 100 mg/kg/day LOAEL = 400 mg/kg/day based on the higher incidence of skeletal variants and decrease in fetal body weights in the high dose group.
870.3700b Prenatal Developmental in Nonrodents.	Maternal NOAEL = 60 mg/kg/day LOAEL = 300 mg/kg/day based on maternal toxicity (death) in high dose group. Developmental NOAEL = 300 mg/kg/day LOAEL '' 300 mg/kg/day
870.3800 Reproduction and Fertility Effects.	Parental/Systemic NOAEL = 5,000 ppm (males: 370.7 mg/kg/day; females: 442.8 mg/kg/day LOAEL = 10,000 ppm (males: 721.7 mg/kg/day; females: 846.9 mg/kg/day based on decreased body weight, decreased food consumption, and pathological changes in the kidney (dilated renal pelvis, nephrolith, hydronephrosis, urethral constrictions) and urinary bladder (cytoliths, hyperemia, cystitis and urothelial hyperplasia). Reproductive NOAEL = 10,000 ppm (721.7 mg/kg/day) LOAEL = 10,000 ppm (721.7) mg/kg/day. Developmental NOAEL = 5,000 ppm (442.8) mg/kg/day LOAEL = 10,000 ppm (846.9 mg/kg/day based on decreased pup weight and dilated renal pelvis.
870.4100b Chronic Toxicity in Nonrodents.	NOAEL = 1,500 ppm (males: 43 mg/kg/day; females: 45 mg/kg/day LOAEL = 15,000/10,000 ppm M: 196 F: 216 mg/kg/day based on decreased body weight/weight gain and food consumption, anemia, increased serum iron, protein alterations, bone marrow hypoplasia and possible decreased testes/prostate weights and interstitial nephritis.
870.4200 Carcinogenicity Mice	NOAEL = 1,000 ppm (males: 111 mg/kg/day; females: 102 mg/kg/day LOAEL = 5,000 ppm (males: 583 mg/kg/day; females: 520 mg/kg/day based on decreased body weight/weight gain in both sexes, urinary bladder lesions (chronic inflammation, ulceration, calculus and submucosa edema) in males and possible slightly increased water consumption in both sexes. Negative for oncogenicity.
870.4300 Combined Chronic/oncogenicity in rat.	NOAEL = females: 100 ppm (4.3 mg/kg/day); males: 1,000 ppm 36.4 mg/kg/day). LOAEL = females: 1,000 ppm (41.2 mg/kg/day); males: 2,000 ppm (81.5 mg/kg/day) based on increased incidence of thyroid follicular epithelial hyperplasia in females and based on lymphoid hyperplasis of the thymus in males.
870.5100 Gene Mutation	Testing up to 5,000 μg/plate with or without S9 microsomes produces no evidence that cloquintocet-mexyl technical induced a mutagenic effect in any strain. Negative mutagen.
870.5200 Gene Mutation	There was no evidence of any mutagenic effect at any dose (up to 500 μg/plate) with or without S9 activation. Negative mutagen.
870.5375 Human Lymphocytes *in vitro* ..	Human lymphocytes were exposed *in vitro* up to 75 μg/mL with or without S9 activation showed no evidence of inducing a cytogenetic effect at any dose. Negative mutagen.
870.5395 Micronucleus Test	Chinese hamsters dosed from 625 to 2,000 mg/kg showed no evidence of inducing a clastogenic or aneugenic effect in either sex at any dose or sacrifice time. Negative mutagen.
870.5550 DNA Repair Human Fibroblasts.	Cultured human fibrocytes were exposed *in vitro* to up to 60 μg/mL for 5 hrs. and scored for silver grains in the nucleus. There was no evidence that cloquintocet-mexyl technical in the absence of S9 activation induced a genotoxic response.
870.5550 DNA Repair Rat Hepatocytes	Primary rat hepatocytes exposed to 200 μg/mL for 16–18 hours and scored for nuclear grain showed no evidence that cloquintocet-mexyl technical induced a genotoxic response. Negative mutagen.
870.7485 Metabolism and pharmcokinetics.	Absorption after a single low oral dose (50 mg/kg bw), was between 40.2% (males) and 35.6% (females). The major metabolite in the 0 to 24 hour fecal and urinary pools was determined to be quinolinoxy acetic acid, accounting for approximately 95% of the recovered radioactivity.
870.7485 Metabolism and pharmacokinetics.	The major metabolic pathway was determined to be hydrolysis of the ester group, resulting in the formation of 5-chloro-8-quinolinoxy acetic acid. The major metabolic pathway was not significantly affected by sex, dose level or dosing regime.

B. Toxicological Endpoints

The dose at which no observed adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the

extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^6 or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLOQUINTOCET-MEXYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF [1] and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age.	NOAEL = 100 mg/kg/day. UF =100 ..... Acute RfD = 1.0 mg/kg/day	FQPA SF = 1x aPAD = acute RfD/FQPA ... SF = 1.0 mg/kg/day	Developmental toxicity study in rats. LOAEL = 400 mg/kg/day based on higher incidence of skeletal variants and decrease in fetal body weights.
Acute Dietary general population including infants and children.	None	Not applicable	Not applicable.
Chronic Dietary all populations ..	NOAEL = 4.3 mg/kg/day. UF = 100 ..... Chronic RfD = 0.04 mg/kg/day.	FQPA SF = 1x cPAD = chronic RfD/FQPA SF = 0.04 mg/kg/day	Chronic/Oncogenicity Toxicity-Rats LOAEL = 41.2 mg/kg/day based on observation of thyroid hyperplasia in females.
Short-Term Dermal (1 to 7 days)	Dermal NOAEL = 200 mg/kg/day.	LOC for MOE = 100.	28-Day Dermal Toxicity-Rats. LOAEL = 1,000 mg/kg/day based on mottled or reddish livers accompanied by histopathological changes including necrosis and fibrosis in two of five female rats.
Intermediate-Term Dermal (1 week to several months).	Dermal NOAEL = 200 mg/kg/day.	LOC for MOE = 100.	28-Day Dermal Toxicity-Rats LOAEL = 1,000 mg/kg/day based on mottled or reddish livers accompanied by histopathological changes including necrosis and fibrosis in two of five female rats.
Long-Term Dermal (several months to lifetime).	None	Not applicable	Based on the current use pattern, no long-term dermal exposure is expected to occur.
Short-Term Inhalation (1 to 7 days).	Oral NOAEL = 100 mg/kg/day. absorption rate = 100%	LOC for MOE = 100.	Developmental toxicity study in rats LOAEL = 400 mg/kg/day based on higher incidence of skeletal variants and decrease in fetal body weights in the high dose group.
Intermediate-Term Inhalation (1 week to several months).	Oral NOAEL = 4.3 mg/kg/day. absorption rate = 100%	LOC for MOE = 100	Chronic/Oncogenicity Toxicity Rat. LOAEL = 41.2 mg/kg/day based on observation of thyroid hyperplasia in females.
Long-Term Inhalation (several months to lifetime).	None	Not applicable	Based on the current use pattern, no long-term inhalation exposure is expected to occur.

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

In accordance with the Proposed EPA Weight-of-the-Evidence Categories, August 1999, the Agency classified cloquintocet-mexyl as ''not likely to be a human carcinogen''. Carcinogenicity studies in rats and mice did not show increased incidence of spontaneous tumor formation. With negative mutagenicity test battery, it is suggested that cloquintocet-mexyl is not likely to be a human carcinogen.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. No tolerances have previously been established for the combined residues of cloquintocet-mexyl and its acid metabolite 5-chloro-8-quinolinoxyacetic acid. A risk assessment was conducted by EPA to assess dietary exposures from cloquintocet-mexyl and its acid metabolite in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Agency has conducted Tier 1 acute food exposure assessments for cloquintocet-mexyl using the Dietary Exposure Evaluation Model (DEEM). This model incorporates consumption data generated in USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1989–1992. For this acute food risk assessment, the entire distribution of single day food consumption events is combined with a single residue level (deterministic analysis) to obtain a distribution of exposure in mg/kg/day. For a Tier 1 analysis, the Agency considers exposure at the 95th percentile of exposure. The following assumptions were made for the Tier 1 acute exposure assessment: (1) Residues of cloquintocet-mexyl and its acid metabolite would be present in/on wheat at the tolerance level (0.1 ppm); and (2) 100% of the wheat crop would be treated.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. For chronic food risk assessments, the three-day average of consumption for each sub-population is combined with residues in commodities to determine average exposure in mg/kg/day. The following assumptions were made for the chronic exposure assessments: (1) Residues of cloquintocet-mexyl and its acid metabolite would be present in/on wheat at the tolerance level (0.1 ppm); and (2) 100% of the wheat crop would be treated.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for cloquintocet-mexyl and its acid metabolite 5-chloro-8-quinolinoxyacetic acid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of cloquintocet-mexyl and its acid metabolite.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to cloquintocet-mexyl and its acid metabolite 5-chloro-quinolinoxyacetic acid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of cloquintocet-mexyl in surface water and ground water for acute exposures are estimated to be 0.038 parts per billion (ppb) for surface water and 0.0060 ppb for ground water. The EECs for chronic exposures are estimated to be 0.0053 ppb for surface water and 0.0060 ppb for ground water. The EECs for ground water for the acid metabolite for acute and chronic exposures are estimated to be 0.00017 ppb. The EEC for surface water for acute exposure for the acid metabolite is estimated to be 0.031 ppb, while the chronic exposure is estimated to be 0.017 ppb for surface water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Cloquintocet-mexyl is not registered for use on any sites that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through

using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity*. There was no evidence of developmental or reproductive toxicity for cloquintocet-mexyl. The data demonstrate no increased sensitivity of rats or rabbits to in utero or early post-natal exposure to cloquintocet-mexyl. NOAELs for maternal/parental toxicity were either less than or equal to the NOAELs for fetal or reproductive toxicity.

iii. *Conclusion*. There is a complete toxicity data base for cloquintocet-mexyl. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA has determined that the 10X safety factor to protect infants and children should be removed (i.e., reduced to 1X) because the toxicology database (i.e., developmental toxicity studies in rats and rabbits; 2-generation reproduction study in rats) is complete, and there is no indication of quantitative or qualitative increased susceptibility of rats or rabbits in the available toxicity data.

E. Aggregate Risks and Determination of Safety

The following text is based on the assumption that water models were used to estimate residues in drinking water. If exposure to residues in drinking water is not expected, delete the following three paragraphs. If exposure is based on monitoring data, the text must be revised.

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD -(average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to cloquintocet-mexyl and its acid metabolite will occupy < 1.0 % of the aPAD for females 13–50 years. In addition, there is potential for acute dietary exposure to cloquintocet-mexyl and its acid metabolite in drinking water. The acute DWLOC for the population subgroups females of child-bearing age is 30,000 ppb. After calculating the acute DWLOC and comparing the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD since the DWLOC greatly exceeds the EEC.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to cloquintocet-mexyl and its acid metabolite from food will utilize < 1 % of the cPAD for the U.S. population, infants (< 1 year), and male and female adult populations. Exposure from food will utilize 1 % of the cPAD for children (1–6) and (7–12 years). There are no residential uses for cloquintocet-mexyl that result in chronic residential exposure.

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLOQUINTOCET-MEXYL

Population Subgroup [1]	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.04	<1.0	0.0053	0.0060	1,400
Children 1–6	0.04	1.0	0.0053	0.0060	400
Females 13+ Nursing	0.04	< 1.0	0.0053	0.0060	1,200
Males 13–19	0.04	< 1.0	0.0053	0.0060	1,400

[1] For all population subgroups, EPA does not expect the aggregate exposure to exceed 100% of a cPAD since the DWLOC greatly exceeds the EEC.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Cloquintocet-mexyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). There are no established residential uses for cloquintocet-mexyl.

Cloquintocet-mexyl is not registered for use on any sites that would result in residential exposure. Therefore the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.Cloquintocet-mexyl is classified as ''not likely'' to be a human carcinogen*. Therefore, cloquintocet-

mexyl is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to residues of cloquintocet-mexyl and its acid metabolite.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner has proposed residue analytical methods for tolerance enforcement that use high performance liquid chromatography with UV detection (HPLC-UV). These methods are currently being validated by the Analytical Chemistry Branch laboratories, BEAD (7503C), Office of Pesticide Programs. Upon successful completion of the EPA validation, these methods will be forwarded to FDA for publication in a future revision of the Pesticide Analytical Manual. Vol-II (PAM-II). Prior to publication in PAM-II and upon request, the methods will be available prior to the harvest season from the Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; contact Francis D. Griffith, Jr., telephone (410) 305–2905, e-mail griffith.francis @epa.gov. The analytical standards for these methods are also available from the EPA National Pesticide Standard Repository at the same location.

B. International Residue Limits

There are no Codex, Canadian, or Mexican tolerances for cloquintocet-mexyl on wheat. Therefore, no compatibility issues exist.

C. Conditions

The following residue chemistry data gaps have been identified for cloquintocet mexyl: (1) additional wheat metabolism data; (2) additional information on meat, milk, poultry, and egg analyses; (3) storage stability data; and (4) additional field trial residue studies. Because of these deficiencies, the Agency incorporated several conservative assumptions into the risk assessment for cloquintocet-mexyl. The Agency believes that the available data and risk assessment support the determination that there is a reasonable certainty of no harm and the establishment of permanent tolerances for cloquintocet-mexyl.

Cloquintocet-mexyl will be used with the active ingredient, clodinafop-propargyl. The registration of clodinafop-propargyl will be time-limited and conditional upon submission of additional information/data to satisfy certain toxicology, residue chemistry, ecological effects, and environmental fate data deficiencies. Several guideline requirements are either data gaps or are only partially fulfilled, and the additional information is required to confirm and/or refine the parameters of the Agency's risk assessment. The required data for both cloquintocet-mexyl and clodinafop-propargyl must be submitted to maintain this registration.

V. Conclusion

Therefore, the tolerances are established for combined residues of cloquintocet-mexyl (acetic acid, [(5-chloro-8-quinolinyl)oxy]-, 1-methylhexyl ester) and its acid metabolite (5-chloro-8-quinolinoxy acetic acid), in or on wheat, grain at 0.1 ppm (parts per million); wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.1 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301010 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 21, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301010, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 6, 2000.

Susan B. Hazen

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.560 is added to read as follows:

§ 180.560 Cloquintocet-mexyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of cloquintocet-mexyl (acetic acid, [(5-chloro-8-quniolinyl)oxy]-, 1-methylhexyl ester)(CAS Reg. No. 99607–70–2) and its acid metabolite (5-chloro-8-quinlinoxyacetic acid) when used as an inert ingredient (safener) in pesticide formulations containing the herbicide, clodinafop-propargyl in a 1:4 ratio of safener to active ingredient in or on the following food commodities:

Commodity	Parts per million
Wheat, forage	0.1
Wheat, straw	0.1
Wheat, hay	0.1
Wheat, grain	0.1

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

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

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

[FR Doc. 00–15716 Filed 6–21–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301009; FRL–6590–7]

RIN 2070–AB78

Clodinafop-propargyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of clodinafop-propargyl and its acid metabolite in or on wheat, grain; wheat, forage; wheat, hay; and wheat, straw. Novartis Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 22, 2000. Objections and requests for hearings, identified by docket control number OPP–301009, must be received by EPA on or before August 21, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301009 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: 703–305–6224; and e-mail address: miller.joanne@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	111 112 311 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–301009. The official record consists of the documents specifically referenced in this action, 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.

II. Background and Statutory Findings

In the **Federal Register** of April 26, 2000 (65 FR 24471–24477) (FRL– 6554–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the amended filing of a pesticide petition (PP) for tolerance by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide clodinafop-propargyl (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester, (2R)-) and its acid metabolite, CGA–193469, (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-, (2R)-), in or on wheat, grain at 0.1 part per million (ppm); wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.5 ppm.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for

combined residues of clodinafop-propargyl and its acid metabolite on wheat, grain at 0.1 ppm; wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by clodinafop-propargyl are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY

Guideline No./ Study Type	Results
870.3100 28-Day Oral Gavage	NOAEL <5 mg/kg LOAEL = 5 mg/kg for M and F based on liver toxicity (enzyme changes),
870.3100 13-Week Oral Toxicity in Rodent.	NOAEL = M: 0.9 mg/kg; F: 8.2 mg/kg/day LOAEL = M: 120 ppm (8.2 mg/kg/day); F: 1000 ppm (71.1 mg/kg/day) decreased body weight; based on increased liver weights and enzymes (AlPtase); decreased thymus weight (atrophy). Reversed after 28 day recovery period.
870.3100 13-Week Oral Toxicity in Mice	NOAEL = M: 0.9 mg/kg/day; F: 1.1 mg/kg/day LOAEL = M: 7.3 mg/kg/day ; F: 8.6 mg/kg/day based on clinical chemistry; glucose, sodium, and chloride increases and hepatocellular hypertrophy in males and females.
870.3150 90-Day Oral Toxicity in Dogs ..	The NOAEL = M: 0.346 mg/kg/day, F: 1.89 mg/kg/day. The LOAEL = M: 1.73 mg/kg/day ; F: 7.16 mg/kg/day based on occurrence of skin lesions.
870.3200 28-Day Dermal Toxicity in Rats.	Systemic NOAEL = 50 mg/kg/day Systemic LOAEL = 200 mg/kg based on dose-related increases in liver weights and clinical signs (piloerection and hunched posture) in male rats. Dermal NOAEL = 1000 mg/kg/day.
870.3700a Prenatal Developmental in Rats.	Maternal NOAEL = 160 mg/kg/day Maternal LOAEL > 160 mg/kg/day based on lack of effect. Developmental NOAEL = 5 mg/kg/day Developmental LOAEL = 40 mg/kg/day based on increased incidences of bilateral distension and torsion of the ureters, unilateral 14th ribs, and incomplete ossification of the metacarpals and various cranial bones (parietals, interparietals, occipital, and squamosal).
870.3700b Prenatal Developmental in Rabbits.	Maternal NOAEL = 25 mg/kg/day pMaternal LOAEL = 125 mg/kg/day based on mortality, clinical signs and body weight loss Developmental NOAEL = 125 mg/kg/day Developmental LOAEL > 125 mg/kg/day
870.3800 Two Generation Reproduction	Parental/Systemic NOAEL = 3.2 mg/kg/day. Parental/Systemic LOAEL = 31.7 mg/kg/day based on decrease in body weight gain, reduced food consumption, increased liver and kidney weights and histopathological changes in the liver and renal tubules. Offspring NOAEL = 3.2 mg/kg/day Offspring LOAEL = 31.7 mg/kg/day based on reduced viability, decreased pup body weight and dilatation of renal pelvis. Reproductive NOAEL = 64.2 mg/kg/day. Reproductive LOAEL ≧ 64.2 mg/kg/day
870.4100b Chronic Toxicity Nonrodent ..	NOAEL = M: 3.38 mg/kg/day; F: 3.37 mg/kg/day LOAEL = M: 15.2 mg/kg/day; F: 16.7 mg/kg/day based on occurrence of skin lesions, clinical signs, and reduced body weight gain and food consumption.
870.4200b Carcinogenicity Mice	NOAEL = M: 1.10 mg/kg/day; F: 1.25 mg/kg/day LOAEL = M: 11.0 mg/kg/day; F: 12.6 mg/kg/day based on increase in liver enzyme activity and liver weights. Under the conditions of this study, clodinafop-propargyl induced hepatocellular tumors at 29.6 mg/kg. The chemical was tested at doses sufficient to measure its carcinogenic potential.
870.4300 Chronic/Oncogenicity in the Rat.	NOAEL = M:0.03 mg/kg/day ; F: 0.03 mg/kg/day LOAEL = M: 0.3 mg/kg/day; F: 0.4 mg/kg/day based on hepatocytic hypertrophy, chronic progressive nephropathy, and tubular pigmentation. Under the conditions of this study, treatment with clodinafop-propargyl increased the incidence of prostate and ovarian tumors in rats at 750 ppm. For males, an increased incidence of prostate adenoma was seen in the high-dose group. The chemical was administered at a dose sufficient to test its carcinogenic potential.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./ Study Type	Results
870.5100 Gene Mutation *Salmonella* and *Escherichia*/Liver Microsome Test.	Negative for mutagenicity.
870.5200 Gene Mutation Mutation Test with Chinese Hamster cells V79.	Negative for mutagenicity.
870.5315 Chromosome Studies; Human Lymphocytes *in vitro*.	Owing to the conflicting results from the cytotoxicity assessment and the presence of rare complex chromosome aberrations both with and without S9 activation, the study is considered inconclusive.
870.5395 Micronucleus Test (Chinese Hamster).	No clear evidence that clodinafop-propargyl induced a clastogenic or aneugenic effect in either sex at any dose or sacrifice time.
870.5550 DNA Repair Human Fibroblasts.	Compound precipitation was seen at doses ≧ 320 μg/mL: there was, however, no indication of a cytotoxic effect at any dose. The positive control induced the expected marked increases in unscheduled DNA synthesis (UDS). There was, however, no evidence that CGA–184927 in the absence of S9 activation induced a genotoxic response in either trial.
870.5550 DNA Repair Rat Hepatocytes	Compound precipitation was noted at levels ≧ 4000 μ/mL. Lethality was apparent in the preliminary cytotoxicity test at 94.8 μg/mL. The positive control induced the expected marked increases in UDS. There was, however, no evidence that clodinafop-propargyl induced a genotoxic response in either trial.
870.7485 Metabolism and Pharmacokinetics.	The main metabolite was CGA–193469 (76% in male urine). Additional 5% was in the form of taurine conjugate of CGA–193469. Similar distribution was found in feces.
870.7485 Metabolism and Pharmacokinetics.	The major metabolite in urine and feces was determined to be CGA–193469, accounting for about 36% to 47% of the administered dose (AD) for males, and 80% to 85% of the AD for females. In addition, 11 minor metabolite fractions were isolated from urine and feces. Three were further identified as reference materials CGA– 193468, CGA–214111 and unchanged clodinofop-propargyl.
Special Study: Determination Of Residues As CGA–193469 in Abdominal Fat After A 3-Month Oral Toxicity Study in Rat.	There was a dose-dependent increase in clodinofop-propargyl residues in fat samples from both sexes taken at the end of treatment (14 weeks) and after the 4-week recovery period (18 weeks). Concentrations of clodinofop-propargyl were higher in male rats at all dose levels tested. With the exception of low-dose group males, for all remaining groups, residues in the fat at 18 weeks had decreased by between 40%—51.5% of the 14 week value.
Special Study Determination of Residues as CGA–193469 in Abdominal Fat After 12 Months in Study.	1 ppm and 10 ppm, the concentration of CGA–184927 in the abdominal fat was higher in males when compared to females. At 300 and 750 ppm, the concentration of CGA–184927 in the abdominal fat was comparable between males and females. The results of this study also indicate that the clodinafop-propargyl residue in fat is reduced after 1 year of treatment compared to 3 month treatment.
Special Study: The Effect Of CGA–184927 on Selected Biochemical Parameters in the Rat Liver Following Subchronic Administration.	The effects of clodinafop-propargyl on selected liver enzymes in the rat were similar to the effects seen after subchronic treatment with known peroxisome proliferators (hypolipidemic compounds, phenoxyacetic acid derivatives). Hence, clodinafop-propargyl was considered to most likely be a peroxisome proliferator in the rat liver.
Special Study: Apparently Clonal Thyroid Adenomas May Contain Heterogeneously Growing and Functioning Cell Subpopulations. New Frontiers in Thyroidology, p. 901–905, 1986.	The asynchronous growth rate of subsets of cells within the old adenomas as well as the intercellular heterogeneity of the endocytotic response to TSH suggests that clonal thyroid adenomas may acquire new qualities and can modify gene expression via much debated mechanism. The author concludes that the growth of benign thyroid tumors and progression does not require a change in genomic expression in any cell. The apparent heterogeneity of a tumor does not necessarily exclude its monoclonal origin.
Special Study: Assessment of Hyperplastic and Neoplastic Lesions of the Thyroid Gland. TIPS, Vol. 8, p. 511–514.	In cell cultures, TSH does not induce proliferation of human thyroid cells, but does stimulate the growth of cells obtained from rat and dog thyroids. Conventional procedures of evaluating carcinogenicity tests by simply counting tumors in rodents treated with high doses, and by mathematical extrapolation to the low doses to which humans are exposed, are not suitable for the proliferative reactions of the thyroid gland. In assessing the human risk, relevant conclusions can only be drawn if the physiological factors of growth control are known, and if the biological mechanisms by which chemicals initiate focal proliferation and support their progression to tumors are considered.
Special Study: Stott, W.T. Chemically Induced Proliferation of Peroxisomes: Implications for Risk Assessment. Regulatory Toxicology and Pharmacology, Vol. 8, p. 125–159, 1988.	The author concludes that a more appropriate maximum tolerated dose (MTD) of a peroxisome proliferative agent in sensitive species would appear to be based upon evidence of the proliferation of peroxisomes and the induction of peroxisomal enzymes capable of producing an increased intracellular oxidative stress. Exceeding these dosages will only result in a predictable sequence of events leading, ultimately, to tumor formation due to physiological adaptation of the animal to the administered compound rather than from the direct effects of the compound itself.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY—Continued

Guideline No./ Study Type	Results
Special Study Bieri, F. The Effect of CGA–193469, the Free Acid Derivative of CGA–184927, on Peroxisomal-oxidation in Primary Cultures of Rat, Mouse, Marmoset and Guinea Pig Hepatocytes.	This study characterized and compared the *in vitro* effects of clodinafop-propargyl on selected parameters (i.e., cytotoxicity and induction of peroxisomal beta-oxidation) in primary hepatocytes from various species. The monolayer cultures were treated with medium containing clodinafop-propargyl, CGA–193469 or propargyl alcohol at the appropriate concentrations (0.1 to 100 μg/mL), or solvent controls and incubated for three days. Hepatocytes were then examined for morphological alterations and cell viability. The lactate dehydrogenase (LDH) activity was measured as an indicator of cytotoxicity. In addition, protein content of hepatocytes were measured to determine the membrane damage. Peroxisomal beta-oxidation was measured in hepatocyte homogenates treated with [1-14]palmitoyl-CoA, a peroxisomal enzyme marker. Clodinafop-propargyl-induced cytotoxicity through propargyl alcohol.
Special Study Guyomard, C. (1992). Effects of CGA–193469, the Acid Derivative of CGA–184927, on the Peroxisomal Beta-oxidation in Human Hepatocytes.	Under the conditions of this study, neither CGA–193469 nor bezafibric acid induced peroxisomal beta-oxidation in human hepatocytes, *in vitro*. However, in the absence of a known concurrent human positive control to validate the test system, (i.e., a substance known to elicit peroxisomal beta-oxidation in human hepatocytes,) this cannot be definitely concluded.
Special Study: Trendelenburg, C. Effects on Selected Plasma Concentrations and Biochemical Parameters in the Liver upon Subchronic Administration to Male Adult Rats.	Clodinafop-propargyl may act as a peroxisomal proliferating agent and alters monooxygenase activity in subfamilies of cytochrome P450 which are known to be involved in the synthesis or catabolism of steroid hormones.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

TABLE 2. SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLODINAFOP-PROPARGYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF [1] and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age.	NOAEL = 5 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day.	FQPA SF = 10X aPAD = acute RfD ÷ FQPA SF = 0.005 mg/kg/day.	Developmental Toxicity Study in Rats LOAEL = 40 mg/kg/day based on increased incidences of bilateral distension and torsion of the ureters, unilateral 14th ribs, and incomplete ossification of the metacarpals and various cranial bones (parietals, interparietals, occipital, and squamosal) .

TABLE 2. SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR CLODINAFOP-PROPARGYL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF [1] and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary infants and children.	NOAEL = 25 mg/kg/day UF = 100 ..... Acute RfD = 0.25 mg/kg/day	FQPA SF = 3X aPAD = acute RfD ÷ FQPA SF = 0.083 mg/kg/day	Developmental Toxicity Study in Rabbits LOAEL = 125 mg/kg/day based on increased mortality, clinical signs and body weight loss
Acute Dietary general population.	NOAEL = 25 mg/kg/day UF = 100 ..... Acute RfD = 0.25 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 0.25 mg/kg/day.	Developmental Toxicity Study in Rabbits LOAEL = 125 mg/kg/day based on increased mortality, clinical signs and body weight loss
Chronic Dietary all populations.	NOAEL = 0.03 mg/kg/day UF = 100 ..... Chronic RfD = 0.0003 mg/kg/day	FQPA SF = 10X cPAD = chronic RfD ÷ FQPA SF = 0.00003 mg/kg/day.	Chronic Toxicity Study in Rats LOAEL = 0.3 mg/kg/day based on Hepatocytic hypertrophy, chronic progressive nephropathy, and tubular pigmentation

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

Carcinogenicity. In accordance with the EPA *Proposed EPA Weight-of-the-Evidence Categories*, August 1999, the Agency's Cancer Assessment Review Committee (CARC) classified clodinafop-propargyl as ''likely to be carcinogenic to humans'' by the oral route based on the occurrence of prostate tumors in male rats, ovarian tumors in female rats, and liver tumors in both sexes of mice, as well as blood vessel tumors in female mice. For the quantification of human cancer risk, the CARC recommended a linear low-dose extrapolation approach based on the most potent of these tumor types. This approach is supported by possible genotoxic potential and the lack of confirmation of the mode of action of clodinafop-propargyl. The most potent unit risk, Q_1^*(mg/kg/day)$^{-1}$, of those calculated for clodinafop-propargyl is that for male mouse liver benign hepatoma and/or carcinoma combined tumor rates at 0.129 (mg/kg/day)$^{-1}$ in human equivalents.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have previously been established for clodinafop-propargyl. Risk assessments were conducted by EPA to assess dietary exposures from clodinafop-propargyl in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: (1) residues of clodinafop-propargyl and its acid metabolite would be present in/on wheat at the tolerance level (0.1 ppm); and (2) 100% of the wheat crop would be treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: (1) residues of clodinafop-propargyl and its acid metabolite would be present in/on wheat at the anticipated residue level of 0.07 ppm; and (2) 4 percent of the wheat crop would be treated. The anticipated residue value of 0.07 ppm was derived from the sum of the limit of quantitation (LOQ) of clodinafop-propargyl (0.02 ppm) plus the LOQ of the acid metabolite (0.05 ppm) in/on wheat grain. The percent crop treated value of 4% assumes that the target pest, wild oats, occurs on 10% of the wheat acreage and that 40% of the affected acreage could be treated.

iii. *Cancer.* A lifetime cancer risk assessment was performed for the U.S. total population. Lifetime cancer risk was estimated by applying the Q_1^* value of 0.129 (mg/kg/day)$^{-1}$ to the chronic dietary exposure estimate.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

A routine chronic dietary exposure analysis for clodinafop-propargyl was based on 4% of the wheat crop treated, derived as follows. Of the approximately 63 to 70 million acres of wheat grown in the United States, about 6.5 million acres of wheat (or approximately 10% of the total) are treated to control the target pest, wild oats. The petitioner expects to capture up to 40% of the available market, or 2.5 million acres, representing 4% of the total U.S. wheat crop (40% × 10% = 4%).

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for clodinafop-propargyl used on wheat is reliable and has a valid basis. The PCT information is based on reliable estimates of the potential market for clodinafop-propargyl and the petitioner's estimate of the market share it expects to capture. EPA believes the petitioner's estimate is an overestimate. At the present time, there are several competing products, making it very unlikely that the petitioner will gain 40% of the available market when it enters the market. The use of 4% in the chronic dietary exposure assessment is, therefore, considered conservative. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which clodinafop-propargyl may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for clodinafop-propargyl and its acid metabolite in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling, taking into account data on the physical characteristics of clodinafop-propargyl and its acid metabolite.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in ground water (SCI-GROW), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to clodinafop-propargyl they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of clodinafop-propargyl in surface water and ground water for acute exposures are estimated to be 0.23 parts per billion (ppb) for surface water and 5×10^{-6} ppb for ground water. The EECs for chronic exposures are estimated to be 0.0017 ppb for surface water and 5×10^{-6} ppb for ground water. The estimated environmental concentrations (EECs) of the acid metabolite, CGA–193496, in surface water and ground water for acute exposures are estimated to be 1.1 ppb for surface water and 0.044 ppb for ground water. The EECs for chronic exposures are estimated to be 0.11 ppb for surface water and 0.044 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clodinafop-propargyl is not registered for use on any sites that would result in residential exposure.

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

EPA does not have, at this time, sufficient data to determine whether clodinafop-propargyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that clodinafop-propargyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children* i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in

calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity*. The Agency concluded that there is concern for the increased susceptibility of infants and children to exposure to clodinafop-propargyl based on the developmental toxicity study in rats where increased skeletal effects were observed at doses much lower (LOAEL of 40 mg/kg/day) than the maternal NOAEL (160 mg/kg/day). Although there was no evidence of reproductive toxicity, a fetotoxic effect was noted in the two-generation reproduction study in rats since reduced fetal viability, decreased pup body weight, and dilatation of renal pelvis were observed in the offspring at doses that produced relatively minimal parental toxicity (decreased body weight gain, increased liver and kidney weights with histopathological changes).

iii. *Conclusion*. The toxicology database for clodinafop-propargyl is incomplete. Acute neurotoxicity, subchronic neurotoxicity, developmental neurotoxicity and *in vitro* cytogenetics studies are required. There is quantitative evidence of increased susceptibility of the young following *in utero* exposure to clodinafop-propargyl in the prenatal developmental study in rats, and there is concern for qualitative increased susceptibility in the 2-generation reproduction study in rats. A developmental neurotoxicity study has been required based on the evidence of potential endocrine disruption in the mechanism studies with clodinafop-propargyl.

For the reasons given above, the Agency concluded that the FQPA safety factor be retained at 10x. When assessing acute dietary exposure, the safety factor is retained at 10x for the females 13–50 years old population subgroup since there are data gaps in the toxicology database for clodinafop-propargyl including a developmental neurotoxicity study and there is quantitative evidence of increased susceptibility following *in utero* exposure to clodinafop-propargyl in the prenatal developmental study in rats.

The safety factor can be reduced to 3x for the infants and children population subgroups when assessing acute dietary exposure since the increased susceptibility observed following *in utero* exposure is only of concern for females of childbearing age leaving only the uncertainty due to the data gap for the developmental neurotoxicity study.

The safety factor can be reduced to 1x for all other populations subgroups not included in females 13-50 years old and infants and children when assessing acute dietary exposure. The increased susceptibility observed following *in utero* exposure is only of concern for females of childbearing age. The data gap for developmental neurotoxicity is of concern for infants and children.

When assessing the chronic dietary exposure, the safety factor should be retained at 10x for all population subgroups since there is concern for qualitative increased susceptibility of the young demonstrated after repeated oral exposures in the 2-generation reproduction study and since there are data gaps in the toxicology database including a developmental neurotoxicity study in rats.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the population adjusted dose (PAD)) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD—(average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's use, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to clodinafop-propargyl will occupy <1.0% of the aPAD for the U.S. population, 7.5% of the aPAD for nursing females 13 years and older, the subgroup of adult females with the highest estimated exposure, and 1.0% of the aPAD for children 1 to 6 years old, the subgroup of infants and children with the highest estimated exposure. In addition, there is potential for acute dietary exposure to clodinafop-propargyl in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO CLODINAFOP-PROPARGYL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.25	<1.0	0.23 ppb clodinafop-propargyl; 1.1 ppb CGA–193469	5×10^{-6} ppb clodinafop-propargyl; 0.044 ppb CGA–193469	8.7×10^{3}
Females 13+ years old	0.005	7.5	Same as above	Same as above	1.4×10^{2}
Children, 1 to 6 years old	0.083	1.0	Same as above	Same as above	8.3×10^{2}

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to clodinafop-propargyl from food will utilize 14% of the cPAD for the U.S. population and 32% of the cPAD for children 1 to 6 years old, the subgroup of infants and children with the highest estimated exposure. There are no residential uses for clodinafop-propargyl that result in chronic residential exposure to clodinafop-propargyl.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO CLODINAFOP-PROPARGYL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0. 00003	14	0.0017 ppb clodinafop-propargyl; 0.11 ppb CGA–193469	5×10^{-6} ppb clodinafop-propargyl; 0.044 ppb CGA–193469	0.91
Children, 1 to 6 years old	0. 00003	32	Same as above	Same as above	0.21

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clodinafop-propargyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Clodinafop-propargyl is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The DEEM® analysis using residues of 0.07 ppm for wheat and assuming 4% crop treated estimates that chronic exposure of the U.S. population to clodinafop-propargyl will be 0.000004 mg/kg/day. Applying the Q_1* value of 0.129 $(mg/kg/day)^{-1}$ results in a food only risk of 5.3×10^{-7}. Following an aggregate dietary (food + water) assessment for lifetime cancer risk, the resulting DWLOC is 0.13 μg/L or ppb. Using the models described above in section C.2, the largest EEC value is for surface water chronic exposure to the acid metabolite, CGA–193469 (0.11 ppb). The cancer DWLOC is slightly greater than the highest EEC.

Because the models used to obtain the EECs for clodinafop-propargyl and CGA–193469 are highly conservative screening models not designed specifically for estimating concentrations in drinking water and because of the conversative nature of the food exposure assessment (anticipated residues at LOQ for parent + metabolite), EPA believes this aggregate cancer dietary assessment will not underestimate exposure and that chronic dietary exposure from clodinafop-propargyl residues in food and drinking water will not exceed the Agency's level of concern for lifetime aggregate cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to clodinafop-propargyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner has proposed residue analytical methods for tolerance enforcement that use both normal and reverse phase liquid chromatography with UV detection (HPLC-UV). These methods are currently being validated by the Analytical Chemistry Branch laboratories, BEAD (7503C), Office of Pesticide Programs. Upon successful completion of the EPA validation and the granting of this registration these methods will be forwarded to FDA for publication in a future revision of the Pesticide Analytical Manual, Vol-II (PAM–II). Prior to publication in PAM-II and upon request, the methods will be available prior to the harvest season from the Analytical Chemistry Branch (ACB), BEAD (7503C), Environmental Science Center, 701 Mapes Road, Fort George G. Meade, MD 20755–5350; contact Francis D. Griffith, Jr, telephone (410) 305–2905, e-mail griffith.francis@epa.gov. The analytical standards for these methods are also available from the EPA National Pesticide Standard Repository at the same location.

B. International Residue Limits

A default Maximum Residue Limit of 0.1 mg/kg has been established in Canada for residues of clodinafop-propargyl on wheat. A Mexican limit exists for clodinafop-propargyl on wheat at 0.050 ppm. There are no Codex tolerances for clodinafop-propargyl on wheat. Therefore, no compatibility issues exist with Codex in regard to the proposed U.S. tolerances discussed in this review.

C. Conditions

The registration of clodinafop-propargyl will be time-limited and conditioned upon submission of additional information/data to satisfy certain toxicology, residue chemistry, ecological effects and environmental fate data deficiencies. Several guideline requirements are either data gaps or are only partially fulfilled, and the additional information is required to confirm and/or refine the parameters of the Agency's risk assessment. Deficiencies exist in the following areas: toxicology (neurotoxicity and cytogenetics); residue chemistry (nature of the residue in plants and animals, analytical methods, storage stability, magnitude of the residue in wheat and processed commodities, and rotational crop data); ecological effects (avian reproduction and seedling emergence/vegetative vigor); and environmental fate (hydrolysis, photolysis in water, anaerobic and aerobic soil metabolism, adsorption/desorption and field dissipation). Because of these deficiencies, the Agency incorporated several conservative assumptions into the risk assessment for clodinafop-propargyl, including the use of the limit of quantitation (0.07 ppm) as the anticipated residue in wheat and the assumption of 4% crop treated in the chronic and cancer risk assessments. Therefore, despite the data deficiencies noted above, the Agency believes the available data and risk assessment support the determination that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to clodinafop-propargyl residues.

V. Conclusion

Therefore, tolerances are established for combined residues of clodinafop-propargyl (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester, (2R)-) and its acid metabolite (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-, (2R)-)], in or on wheat, grain at 0.1 ppm; wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301009 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 21, 2000.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301009, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any

technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: June 6, 2000.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.559 is added to read as follows:

§ 180.559 Clodinafop-propargyl; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of clodinafop-propargyl (propanoic acid, 2-[4-(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester, (2R)-) and its acid metabolite (propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-, (2R)-), in or on wheat, grain at 0.1 ppm ; wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.50 ppm.

Commodity	Parts per million
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, hay	0.1
Wheat, straw	0.5

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

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

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

[FR Doc. 00–15715 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6718–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and request for comments.

SUMMARY: EPA Region 5 announces the Partial Deletion of the Motor Wheel Disposal Superfund Site from the National Priorities List (NPL) and requests public comment on this action. Specifically, 3.45 acres of land would be deleted from the Site. The NPL constitutes Appendix B of 40 CFR part 300 to 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 is taking this action because the Remedial Investigation (RI) has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate for the 3.45 acres of land. EPA, in consultation with the State of Michigan, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the 3.45 acres of land to date have been protective of public health, welfare, and the environment.

DATES: This ''direct final'' action will be effective August 21, 2000 unless U.S. EPA receives dissenting comments by July 24, 2000. If written dissenting 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 Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region 5 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region 5 office and at the local information repository located at: The Lansing Public Library, Reference Section, 401 Capital Ave., Lansing, MI 48933. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Heather Nelson, Remedial Project Manager, at (312) 353–0685 (SR–6J), or Gladys Beard, Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Jennifer Ostermeier (P–19J), Office of Public Affairs, U.S. EPA, Region 5 77 W. Jackson Blvd.,Chicago, IL 60604, (312) 353–0618.

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 5 announces the deletion of 3.45 acres of the Motor Wheel Disposal Superfund Site from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health, welfare and the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions that the Hazardous Substance Superfund Response Trust Fund (Fund) finances. Under § 300.425(e)(3) of the NCP, any site or portion of site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

EPA will accept comments on this proposal for thirty (30) 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 procedures that EPA is using for this action. Section IV discusses the history of this site and explains how a portion of the Site meets the deletion criteria. Section V states EPA's prospective action of deleting a portion of the Site from the NPL unless dissenting comments are received during the comment period.

Deletion or partial deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

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

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

(ii) All appropriate Fund-financed 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, remedial measures are not appropriate.

III. Deletion Procedures

The following procedures were followed before the proposed partial deletion of this Site from the NPL: (1) The RI has shown that the 3.45 acres of the Motor Wheel Disposal Site poses no significant threat and therefore, remedial measures are not appropriate; (2) the State of Michigan has concurred with the proposed deletion decision; (3) 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 the commencement of a 30-day dissenting public comment period on EPA's Direct Final Action for Partial Deletion; and, (4) all relevant documents have been made available for public review in the local Site information repositories. EPA is requesting only dissenting comments on the Direct Final Action for Partial Deletion.

For partial deletion of the Site, EPA's Regional Office will accept and evaluate public comments on EPA's Final Notice. If necessary, the Agency will prepare a Responsiveness Summary, responding to each significant comment submitted during the public comment period. As stated in section I above, deletion or partial deletion of the Site from the NPL does not itself create, alter, or revoke any individual's rights of obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Partial Site Deletion

Motor Wheel is a 24-acre site located on the northeast edge of the City of Lansing within the NE ¼,SW ¼, section 3 of Lansing Township (T.4N., R.2W.), Ingham County, Michigan. The Site is bordered by abandoned Michigan Central Railroad tracks to the west and north, by the W.R. Grace & Co. plant (formerly Michigan Fertilizer Company) to the south, and by the Lansing/Lansing Township boundary to the east.

The property was used by Motor Wheel Corporation as a disposal site for industrial wastes from 1938 until about 1978. The types of disposed wastes included, solid and liquid industrial wastes, including paints, solvents, liquid acids and caustics, sludges and other wastes. Wastes were disposed of on the property in tanks, barrels, and seepage pond areas for off-site disposal.

In December of 1982 there was a removal of three 10,000 gallon tanks and their contents, and degraded fill material from several locations on the Site. At the Motor Wheel Disposal Site, the RI has shown that the 3.45 acres are no threat to public health or the environment. The three tanks and approximately 800 cubic yards of contaminated soil and fill surrounding them, and approximately 350 cubic yards of fill material containing an unknown number of drums, were disposed of off site.

All operations at the Site were discontinued in 1987. The entire Site is currently inactive. MSV & Associates, which purchased the Site in 1978 and mined sand and gravel in the northeast portion of the property until 1987, is the current owner of the property. The key surface feature of the Site, the sand and gravel pit extending over the northern portion of the Site, is the result of earlier quarrying activities. The pit area, excavated to a depth of 50 feet, has relatively steep sided walls and a slope ranging from 2:1 (horizontal:vertical) to near vertical. There are several small ponds in the eastern part of the pit bottom.

Remedial Construction Activities

EPA issued a ROD September 30, 1991 selecting a remedy that includes the following major elements:

- Construction of a landfill cap in the area of waste disposal.
- Construction and operation of a collection system to contain and extract ground water contaminated by Site related hazardous constituents.
- Construction and operation of a treatment plant to treat contaminated ground water prior to surface discharge.

Design of the multimedia cap, which covers the entire fill area is based on the specifications of Michigan Act 64. The cap also meets and exceeds the requirements for a RCRA subtitle C cap. The cap covers about 11.3 acres of waste area including additional backfilled areas which are necessary to maintain the cap's integrity. The capped area totals about 14.9 acres. The capped area is fenced to restrict access. The 3.45 acres are located outside of the capped area. The Site is defined as the parcel of land in the East ½ of the Southwest ¼ of section 3, T4N, R2W, City of Lansing, Ingham County, Michigan; the boundary of said parcel being described as commencing at the South ¼ Corner of section 3, T4N, R2W, Michigan Meridian; thence N 00°00′01″ W, along

the North-South ¼ line of said Section, 1310.21 feet to the centerline of Lake Lansing Road and to the point of beginning; thence S 48°58′00″ W, along the centerline of Lake Lansing Road, 9.46 feet; thence S 89°46′42″ W, along the North line of the Plat of Park Manor Heights, 224,75 feet; thence N 18°44′17″ 100.00 feet; thence N 08°10′31″ W, 7097 feet; thence N 02°35′23″ W, 379.08 feet; thence N 88°30′21″ E, 291.32 feet; thence S 00°00′01″ E, along the North-South ¼ line of said section, 544.16 feet to the point of beginning; said parcel contains the 3.45 acres of land which is intended for deletion.

The ROD, based on information provided in the Remedial Investigation (RI), included a provision for the collection and treatment of contaminated groundwater from an on-site perched aquifer and from the glacial aquifer below and in the near vicinity of the Site. The ROD also indicated the potential for additional remediation to address any contamination which may have entered the bedrock aquifer.

A special notice letter was issued to the PRP's on December 10, 1991. The negotiations which followed the PRP's good faith offer, resulted in an agreement to proceed with a Remedial Design (RD) under an Administrative Order on Consent (May 26, 1992); a letter of intent from PRP's to enter into the negotiated Remedial Action (RA) Consent Decree; and extension of the moratorium to accommodate the Respondents desire to resolve internal allocation issues through arbitration prior to signing the Consent Decree. This agreement also included the PRP's declared intention to continue investigation of water quality in the bedrock aquifer and to address contamination in the bedrock aquifer, if any, in this action. The RA Consent Decree was entered April 22, 1994.

Groundwater investigations conducted in conjunction with pre-design studies indicated a more extensive area of groundwater contamination within the glacial aquifer extending about 7200 feet down gradient from the Site and geologic conditions which showed a potential pathway for migration of contaminants from the glacial to the bedrock aquifer.

An additional investigation of water quality in the bedrock aquifer was also a part of the predesign study. Results of this investigation summarized in The Investigation of the Saginaw Aquifer at the Motor Wheel Disposal Site, November 1996 indicated that levels of some site related contaminants in the bedrock aquifer exceed drinking water standards. On the basis of this information the design of the groundwater collection and treatment system was expanded to accommodate the expected volume from the bedrock aquifer. The RI did not show contaminated groundwater beneath the 3.45 acres.

The RD conducted in accordance with the ROD and the approved RD Work Plan was approved by EPA and the RA was formally initiated by PRP contractors July 25, 1997. All remedial activities were conducted as planned. EPA and the State conducted pre-final inspections. The inspection report includes a description and a schedule for correcting minor construction items by the PRP contractor. EPA and the State determined that the following RA activities were completed according to ROD design specifications:

- Construction of an engineered cap which meets applicable or relevant and appropriate requirements over the on-site waste disposal area;
- Construction of an extraction and collection system to contain groundwater in the perched, glacial and bedrock aquifers which contain site related hazardous constituents;
- Construction of an on-site facility for treatment of contaminated groundwater; and
- Construction of a main system for discharge of treated groundwater.

The groundwater extraction and treatment system began operation November 20, 1997 and is scheduled to continue until cleanup standards have been achieved.

V. Action

EPA, with the State of Michigan concurrence, has determined that no responses are necessary at the 3.45 acres which comprise a portion of the Motor Wheel Disposal Site, and no further CERCLA response is appropriate or necessary in order to provide protection of human health and the environment other than the ongoing inspection, maintenance and monitoring activities. Therefore, EPA is deleting that portion of the Site which is comprised of 3.45 acres from the NPL.

This action will be effective August 21, 2000. However, if EPA receives dissenting comments by July 24, 2000, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

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: June 7, 2000.

Robert Springer,

Acting Regional Administrator, Region 5.

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 Motor Wheel, Inc., Lansing, MI.

[FR Doc. 00–15388 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1819, 1831, and 1852

Miscellaneous Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to revise numbering and ombudsman information as a result of FAC 97–17; revises regulations to indicate that award fee determinations are no longer exempt from the Disputes clause as a result of FAC 97–15; revises regulations to indicate that precontract costs are applicable to awards resulting from broad agency announcements; and makes an editorial correction to other regulations.

EFFECTIVE DATE: June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–17, dated April 25, 2000, revised FAR 16.504 and 16.505, including the requirement to identify the facsimile and e-mail address of agency task and delivery ombudsman.

This final rule revises numbering within NFS 1815, 1816, 1819, and 1852 to reflect the FAC 97–17 changes and update the agency ombudsman information. This final rule also revises sections 1852.216–76 and 1852.216–77 to indicate that award fee determinations are no longer exempt from the Disputes clause as a result of FAC 97–15. Changes unrelated to FAC 97–15 and 97–17 are made to allow precontract costs for awards resulting from broad agency announcements (BAA). The use of precontract costs is currently allowed for sole source contracts, except those resulting in firm fixed-price or fixed-price contracts. Contracts awarded under BAAs are considered competitive based on FAR 6.102(d). However, the award process for BAAs is similar to that for sole source awards since negotiations with the contractor occurs after source selection, rather than prior to selection in the normal competitive contract award process. Because of the selection process under BAAs, it is reasonable to allow the approval of precontract costs. Additionally, an editorial change is made to correct the title of paragraph (i)(3) to section 1815.370.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1815, 1816, 1819, 1831, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1819, 1831, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, 1831, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1815—CONTRACTING BY NEGOTIATION

2. In section 1815.370, revise the title of paragraph (i)(3) to read as follows:

1815.370 NASA source evaluation boards.

* * * * *

(i) * * *

(3) *Evaluation factors and subfactors.* * * *

* * * * *

3. Revise section 1815.7003 to read as follows:

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts. Use the clause with its Alternate I when a task or delivery order contract is contemplated.

PART 1816—TYPES OF CONTRACTS

4. Amend section 1816.504 by adding paragraph (a)(4)(v) to read as follows:

1816.504 Indefinite quantity contracts.

* * * * *

(a)(4)(v) See 1815.7003.

5. Amend section 1816.505 by redesignating paragraph (b)(6) as (b)(5).

PART 1819—SMALL BUSINESS PROGRAMS

6. Amend paragraph (f)(1) in section 1819.201 by removing the words ''Deputy Associate Administrator for Procurement (Code H)'' and inserting the words ''Director of the Contract Management Division (Code HK)'' in its place.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

7. In section 1831.205–32, revise paragraph (1) to read as follows:

1831.205–32 Precontract costs.

(1) Precontract costs are applicable only to—

(i) Sole source awards, except those resulting in firm-fixed price or fixed-price with economic price adjustment contracts; or

(ii) Awards resulting from broad agency announcements.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. In section 1852.215–84, revise the clause and add Alternate I to read as follows:

1852.215–84 Ombudsman.

* * * * *

Ombudsman

June 2000

(a) An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, _____ [Insert name, address, telephone number, facsimile number, and e-mail address]. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Director of the Contract Management Division, at 202–358–0422, facsimile 202–358–3083, e-mail sthomps1@hq.nasa.gov. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the Contracting Officer or as specified elsewhere in this document.

(End of clause)

Alternate I

June 2000

As prescribed in 1815.7003, insert the following paragraph (c):

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

9. In section 1852.216–76, revise the date of the clause; remove the last sentence of paragraph (f)(3); and revise paragraph (g) to read as follows:

1852.216–76 Award Fee for service contracts.

* * * * *

Award Fee for Service Contracts

June 2000

* * * * *

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* * * * *

10. In section 1852.216–77 revise the date of the clause; delete the last sentence of paragraph (c)(3); and revise paragraph (d) to read as follows:

1852.216–77 Award Fee for end item contracts.

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Award Fee for End Item Contracts

June 2000

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(d) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

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[FR Doc. 00–15349 Filed 6–21–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 223, and 224

[Docket No. 000613174–0174–01; I.D. 032399A]

RIN 0648–XA53

Regulations Governing the Taking and Importing of Marine Mammals; Endangered and Threatened Fish and Wildlife; Cook Inlet Beluga Whales

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

ACTION: Notice of determination; status review.

SUMMARY: NMFS received two petitions in March 1999 to list the Cook Inlet (CI), Alaska, stock beluga whales as endangered under the Endangered Species Act (ESA). The most immediate threat to the stock identified by the petitioners was the high level of harvest that was occurring under the Alaska Native exemption of the Marine Mammal Protection Act (MMPA). Since the receipt of the petition to list this species, legislative and management actions have been taken to reduce the subsistence harvest to levels that will allow the beluga whale stock to recover. NMFS has evaluated the factors cited in the petitions, the best available scientific information, and management actions that have occurred since the receipt of the petition to list the stock. NMFS has determined that listing the Cook Inlet stock of beluga whales under the ESA is not warranted at this time.

DATE: Effective: June 22, 2000.

ADDRESSES: Requests for copies of this determination should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle, Office of Protected Resources, (301) 713–2322, ext. 105, Mr. Brad Smith, Alaska Regional Office-Anchorage, (907) 271–3023, or Mr. Michael Payne, Alaska Regional Office-Juneau, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

Prompted by a sharp decline in the estimated abundance of CI beluga whales between 1994 (653 animals) and 1998 (347 animals), a reduction of nearly 50 percent, NMFS initiated a status review of the CI beluga whale stock on November 19, 1998 (63 FR 64228). In the status review, NMFS evaluated the present status of CI beluga whales and made recommendations regarding a designation as depleted under the MMPA and listing as threatened or endangered under the ESA.

The comment period on the status review, which was initiated at the same time that workshops were convened to review beluga whale stocks throughout Alaska, extended from November 19, 1998, through January 19, 1999. The workshops were held by the Alaska Beluga Whale Committee (November 16–17, 1998) and the Alaska Scientific Review Group (November 18–20, 1998), a body established under the MMPA to provide scientific advice regarding marine mammals to NMFS and the U.S. Fish and Wildlife Service (FWS).

NMFS received two petitions in March 1999 to list CI beluga whales as endangered under the ESA. One petition requested an emergency listing under section 4(b)(7) of the ESA and the designation of critical habitat. Both petitions requested immediate promulgation of regulations to govern the subsistence harvest. NMFS determined that the petitions contained substantial scientific or commercial information indicating that the petitioned actions may be warranted (64 FR 17347, April 9, 1999).

To ensure that the status review was comprehensive and based on the best available scientific information, the comment period was followed by a NMFS-sponsored workshop on March 8–9, 1999, in Anchorage, Alaska, that reviewed relevant scientific information on this stock. At this workshop, NMFS received additional public comments and recommendations. The abstracts of presentations from this workshop are summarized in a NMFS report (NMFS, 1999) and are available to the public.

Following these reviews and taking into account the best information available at that time, NMFS proposed designating the CI stock of beluga whales as depleted on October 19, 1999 (64 FR 56298). NMFS also conducted a public hearing on November 22, 1999, on the proposed designation of the CI stock of beluga whales as depleted under the MMPA. NMFS issued a final rule on May 31, 2000, (65 FR 34590) designating CI beluga whales as depleted under the MMPA based on its determination that the stock is below its Optimum Sustainable Population (OSP) level.

NMFS had not made a final decision on the ESA petitions at the time of the depleted determination. The ESA petitions have now been reviewed in light of the best available scientific information. This review considered the significant legislative and management actions that have occurred since NMFS received the petitions.

Recent Conservation Actions

Prior to the receipt of the petitions, NMFS, Alaska Region, Protected Resources Division, recommended to the Regional Administrator (in a memorandum dated February 23, 1999) that NMFS seek legislative action to prohibit the sale of CI beluga products under the subsistence provisions of the MMPA and/or impose a moratorium on the hunting of CI beluga whales in 1999. The recommendation included advice that NMFS designate the stock as depleted under the MMPA or list it as threatened or endangered under the ESA. These recommendations were based on the then unsustainable level of the subsistence harvest and the fact that no regulations were in place to restrict the harvest because the harvest was believed to be the most important factor linked to the decline of the stock. The MMPA and ESA provide a specific process for limiting Alaska Native subsistence harvest. This process begins with the designation of a stock as depleted under the MMPA or listing as threatened or endangered under the ESA.

Results of the 1998 surveys were not completed at the date of the Division's memorandum. Because the stock was declining and there was no immediate mechanism to limit the harvest, the Protected Resources Division recommended that NMFS consider a proposed listing under the ESA.

The following events had a significant bearing on NMFS' determination not to list CI beluga whales as endangered or threatened under the ESA:

(1) Congress passed legislation to prohibit the taking of CI beluga whales for Native subsistence use unless authorized by a cooperative agreement between NMFS and affected Alaska Native organizations (ANOs). On May

21, 1999, President Clinton signed the legislation into effect as Public Law 106–31. Pub. L. 106–31 established an enforceable mechanism to control the harvest, which was the only factor found to be directly linked to the decline. Prior to this law, the Federal government could not restrict the harvest, and a Native Alaskan could have harvested beluga whales from Cook Inlet without the approval of any local tribal authority of any local tribal authority or governing body The legislation remains in effect until October 1, 2000. As a result of this legislation, there was no harvest in 1999.

(2) NMFS completed analyses of the 1994–1998 survey data. The results of the abundance estimates from surveys conducted 1994–1998 were 653 (CV = 0.43) in June 1994, 491 (CV = 0.44) in July 1995, 594 (CV = 0.28) in June 1996, 440 (CV = 0.14) in June 1997, and 347 (CV = 0.29) in June 1998. Subsequent analyses indicated a 71–percent probability that a 40–percent decline in abundance occurred between June 1994 and June 1998 surveys. These data provided the necessary scientific support to designate the CI beluga whale stock as depleted under the MMPA. NMFS has determined that CI beluga whales are depleted and has started the process under the MMPA to regulate the harvest.

(3) NMFS completed the analyses of the 1999 abundance survey data. The population estimate for CI beluga whales in 1999, in which there was no subsistence harvest, was 357 whales. This estimate is consistent with the results of simulation modeling for the stock in which there was no harvest. Although preliminary, these results suggest that controlling the harvest may be an effective mechanism to promote recovery of the stock. Results after 3–5 years of controlling the harvest would provide more conclusive evidence of recovery.

(4) On December 10, 1999, NMFS conducted a scoping meeting as part of a process under the National Environmental Policy Act (NEPA) to consider the environmental impacts of a Federal program to promote recovery of this depleted stock. After the scoping meeting, NMFS assessed the potential impacts to CI beluga whales caused by human-related activities ongoing in Cook Inlet, including the subsistence harvest of CI beluga whales by Alaskan Natives. Because the CI beluga whale stock is depleted, NMFS believes that any federally approved harvest plan would constitute a major action subject to the requirements of NEPA and, therefore, could not be completed until an Environmental Impact Statement (EIS) has been prepared. NMFS is preparing an EIS that assesses the impacts of various anthropogenic activities on CI beluga whales and their habitat. The draft EIS includes a discussion of the cumulative impacts of these activities on CI beluga whales. Following the completion of the final EIS and the procedure under the MMPA to limit subsistence harvest, NMFS will publish a final rule to regulate the subsistence harvest.

NMFS must ensure that future harvests are sustainable and do not cause the further decline of the CI beluga whale stock. Pub. L. 106–31, limiting subsistence harvest to that occurring under a cooperative agreement between an affected ANO and NMFS, expires on October 1, 2000. Therefore, NMFS must have one or more mechanisms in place to regulate this take prior to the next harvest season. In the absence of any action by NMFS to regulate the harvest, the future of this harvest, and the CI stock of beluga whales, would be uncertain.

Definitions

Endangered and Threatened Species: Section 3(6) of the ESA defines an endangered species as '' * * *any species which is in danger of extinction throughout all or a significant portion of its range * * *'' Section 3(19) defines the term threatened species as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

''Species'' under the ESA: Section 3(15) of the ESA defines species broadly as '' * * *any subspecies of fish or wildlife or plants and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.''

Summary of Comments Received during the Status Review

Comment 1: One of the commenters focused directly on the current size of the population and questioned whether any other marine mammal has a population estimate as low as that for CI beluga whales and is not listed as endangered under the ESA.

Response: No other population of marine mammals is as small as the CI beluga stock and is not listed under the ESA. Although NMFS is concerned with the low abundance of the stock, abundance alone does not necessarily mean that the stock is in danger of extinction.

Historical abundances of CI beluga have been reported from as few as 500 to as many as 2,000, and NMFS believes there may have been 1,000–1,300 whales in the early to mid-1980s. Thus, the stock would have been reduced to about 25 to 35 percent of its historical abundance. The population consequences of such a decline are much less substantial than those for other small populations, such as North Atlantic right whales, which were reduced to less than 10 percent of their historical abundance.

Population growth is not well documented for CI beluga; however, there is some evidence that reproduction in the stock has not been compromised. As discussed later in this document, the population consists of a large proportion of juvenile whales, and the age of sexual maturity has apparently decreased in recent years. These observations indicate that CI beluga whales have the reproductive capacity to sustain population growth. Furthermore, the 1999 abundance estimate suggests that the population may be increasing, rather than decreasing, as a result of controlling the harvest.

Comment 2: The Marine Mammal Commission (Commission) noted that, under criteria developed by the International Union for the Conservation of Nature and Natural Resources (IUCN), CI beluga whales would be classified as ''endangered'' or ''critically endangered''.

Response: The IUCN criteria are all based upon characteristics of the population and do not include a consideration of the adequacy of existing regulatory mechanisms as is required under the ESA. Under the IUCN criteria, CI beluga would qualify as ''endangered'' only if the decline were continuing. The major factor related to the decline of CI beluga whales has been stopped under Federal law and is not likely to revert to unsustainable levels in the near future.

Furthermore, under IUCN criteria, the stock would be classified as ''vulnerable'' if there were fewer than 1,000 whales. At 1,000 animals, the CI beluga stock would likely be within its OSP levels under the MMPA, perhaps at or near its carrying capacity. Thus, if the stock numbered 1,000 whales, NMFS would consider the stock as small, isolated, and healthy, but IUCN would characterize it as '' * * *facing a high risk of extinction in the wild in the medium-term future * * *''. Although the IUCN criteria are appropriate to identify species that may need conservation measures, they do not include the full range of factors that are included in the ESA; therefore, they are not appropriate for a determination of the status of a stock under the ESA.

Comment 3: The Commission stated that NMFS should consider how listing criteria have been used in the past and noted that NMFS listed the Guadalupe fur seal population as threatened when that population numbered between 1,200 and 1,500 individuals and was producing about 200 pups annually.

Response: The ESA listing criteria have to be applied to each situation individually. For some factors, NMFS reached similar conclusions about the two populations: (1) In neither case was the habitat considered to be adversely modified or diminished; (2) both had been reduced by human exploitation; and (3) there were adequate regulatory mechanisms in both cases.

The Commission noted that the fur seal stock was more abundant than CI beluga whales when the fur seals were listed. However, the fur seal stock was reduced by commercial exploitation in the 1700s and 1800s from a historical abundance, estimated to be 30,000 individuals, to very low numbers. The population was only about 6 percent of its historical abundance when it was listed in 1985, and it had been growing slowly since it was re-discovered in 1954.

On the other hand, CI beluga are probably about 25 to 35 percent of their historical abundance (as noted above). The large proportion of young whales in the stock indicates that reproduction has not been compromised. The 1999 abundance estimate is preliminary evidence that the stock is increasing. Therefore, NMFS believes that CI beluga are less likely to go extinct or to become endangered than Guadalupe fur seals were when they were listed in 1985.

Evaluation of ESA Factors Affecting the Species

NMFS and FWS issued a joint policy for listing, delisting and reclassifying species under the ESA (61 FR 4722, February 7, 1996). The policy outlines three elements to be considered in deciding the status of a possible distinct population segment as endangered or threatened under the ESA: (1) 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 ESA criteria for listing.

Under the first element, the petitioners argue that the CI beluga whale population is discrete because it is markedly separated from other populations of the same species.

NMFS Response: NMFS concurs with this statement. Of the five stocks of beluga whales in Alaska, the CI stock is considered to be the most isolated, based on the degree of genetic differentiation between the CI stock and the four other stocks (O'Corry-Crowe, et al., 1997). This study suggests that the Alaska peninsula may be an effective barrier to genetic exchange.

Under the second element, NMFS must determine whether the population segment persists in an ecological setting that is unique and whether the loss of the discrete population would result in a significant gap in the range of the species. The petitioners assert that CI beluga whales are in a unique ecological setting (Cook Inlet) and are the only population of beluga whales in Alaska that are completely subarctic (south of the Alaska peninsula). Furthermore, they stated that the loss of the stock would create a significant gap in the range of the species.

NMFS Response: NMFS concurs with this assessment. The CI beluga whales are the only population of beluga whales that inhabit the Gulf of Alaska, and the genetic data show little or no mixing with other population segments. Therefore, the loss of the CI population segment would result in the complete loss of the species in the Gulf of Alaska with little likelihood of immigration from other population segments into Cook Inlet.

Therefore, based on the best available scientific information available to NMFS, the only supportable conclusion that can be reached (as recommended by the petitioners) is that CI beluga whales are a ''distinct population segment'' and, therefore, a species under section 3(15) of the ESA.

Under the third element of the joint NMFS/FWS policy, if a population segment is discrete and significant, its evaluation for an endangered or threatened status will be primarily based on a review of the factors enumerated in ESA section 4(a) after taking into account conservation efforts implemented pursuant to section 4(b)(1)(A).

Regarding CI beluga whales, section 4(a) of the ESA states that the Secretary of Commerce (Secretary) shall, by regulation promulgated in accordance with subsection (b), determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Section 4(b)(1)(a) further states that the Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices within any area under its jurisdiction or the high seas. The ''Recent Conservation Actions'' section of this document discussed efforts to protect CI beluga whales. The following sections of this document discuss the status of CI beluga whales with respect to the five factors included in the ESA.

A. The Present or Theatened Destruction, Modificatin, or Curtailment of Habitat or Range

The petitioners state that the current distribution of the CI population of beluga whales is reduced from historic levels and that all current descriptions of the species' range are largely limited to Cook Inlet. They cite the summary of survey data by Rugh et al. (In press), which states that in recent years a reduction has occurred in incidental sightings in the Gulf of Alaska, and a reduction has occurred in sightings in lower Cook Inlet and offshore areas of upper Cook Inlet. From this they inferred that the range of the species has been curtailed.

NMFS Response: A significant part of the habitat for this species has been modified by municipal, industrial and recreational activities in Upper Cook Inlet. Each of these activities (discussed later in this document), either individually or cumulatively, are of concern to NMFS. However, the data do not support a conclusion that the range of CI beluga whales has been diminished by these activities.

Cook Inlet beluga whales occupy the same range that they have always occupied. The information by Rugh et al. (In press) indicates that the summer occurrence of CI beluga whales has shifted to the upper inlet in recent decades whereas, historically, they were also found in the lower inlet during mid- to late-summer. There are many alternative hypotheses for the underlying cause of the change in distribution. For example, the overall population reduction in recent decades may have resulted in CI beluga whales inhabiting only the preferred feeding

areas within the range (i.e., the upper inlet). Therefore, the change in distribution does not necessarily reflect an adverse modification of the lower inlet. No indication exists that the range has been, or is threatened with being, modified or curtailed to an extent that appreciably diminishes the value of the habitat for both survival and recovery of the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners discussed overharvest of CI beluga whales under the section on overutilization for commercial purposes. Although they recognized that this criterion focuses on commercial use of a species, the petitioners stated that distinguishing between whales killed primarily for subsistence and whales killed as part of a subsistence hunt and sold commercially is impossible.

NMFS Response: NMFS agrees that both forms of mortality are relevant to this discussion. However, the subsistence provisions of the MMPA allow a limited sale of edible products from marine mammals to be sold in Alaska Native villages, which include Anchorage, or for Alaska Native consumption. Therefore, although overharvest is of serious concern, NMFS has included the response on the overharvest issue in the analysis of other natural or man-made factors that affect the stock.

NMFS recognizes that even the limited sale allowed under the subsistence provisions of the MMPA may provide an economic incentive for one or more Alaska Natives to supply beluga products within Anchorage. Such a sale may help meet the cultural demand for traditional foods among the 20,000 or more Alaska Natives that reside in Anchorage. A successful long-term conservation strategy must address the sale of edible beluga products in Anchorage.

Although there was a commercial or sport (recreational) harvest of beluga whales in CI prior to enactment of the MMPA, none has existed since 1972. The only taking of beluga whales in Cook Inlet for scientific purposes is non-lethal and has no more than a negligible impact on the stock. NMFS is not aware of any taking for educational purposes in recent years that may have had an effect on the stock. Therefore, this factor is not causing the stock to be in danger of extinction, nor is it likely to do so in the foreseeable future.

C. Disease or Predation

Disease: The petitioners discuss the susceptibility of beluga whales to disease and suggest that very little is known on this subject matter specific to CI beluga whales.

NMFS Response: NMFS concurs that very little is presently known about the effects of disease on CI beluga whales. However, a considerable amount of information exists on the occurrence of diseases in CI beluga whales, and other beluga whale populations, and the effects of these diseases on the species.

Bacterial infection of the respiratory tract is one of the most common diseases encountered in marine mammals. Bacterial pneumonia, either alone or in conjunction with parasitic infection, is a common cause of beach stranding and death (Howard et al., 1983). From 1983 to 1990, 33 percent of stranded beluga whales in the St. Lawrence estuary (n = 45 sampled) were affected by pneumonia (Martineau et al., 1994).

Populations of beluga whales in Alaska appear relatively free of ectoparasites (Klinkhart, 1966, Hazard, 1988). Endoparasitic infestations are more common in beluga whales. Several species of endoparasites have been identified in beluga whales including populations found in Alaska and Canada (Klinkhart, 1966). Necropsies conducted on CI beluga whales have found heavy infestations in some adult whales. Approximately 90 percent of CI whales examined have had kidney parasites. Although extensive damage has been associated with this infection, whether this results in functional damage to the kidney (Burek, 1999a) is unclear. Stomach parasites are also present in CI beluga whales. However, these infestations have not been considered extensive enough to have caused clinical problems.

Parasites and the potential for diseases occur in CI beluga whales. Despite the considerable pathology that has been done on this species, nothing indicates that the occurrence of parasites or disease has had a measurable impact on their survival and health. Therefore, the factor related to disease does not support listing this population as threatened or endangered under the ESA.

Natural Predation: Killer whales are the only non-human predator of beluga whales in Cook Inlet. The petitioners state that the potential for significant impacts on the CI beluga whale population by killer whales cannot be ruled out given recent changes in prey availability to killer whales throughout the Gulf of Alaska (referring to declines in pinniped populations in the Central and Western Gulf of Alaska since the mid 1970s). The petitioners suggest that even a small increase in predation could result in population decline or impede recovery.

NMFS Response: The number of killer whales visiting the upper inlet appears to be small. However, predation by killer whales on CI beluga whales was considered by some commenters to be a mortality factor that may have contributed to the CI beluga whale declines in recent years. NMFS has received reports of killer whales in Turnagain and Knik Arms, between Fire Island and Tyonek, and near the mouth of the Susitna River. Native hunters have recently reported killer whales along the tide rip that extends from Fire Island to Tyonek (Huntington, 1999) and in Kachemak Bay.

No quantitative data exist on the level of removals from this population due to killer whale predation or its impact; however, killer whale pods prey selectively on salmon or marine mammals, including beluga whales, in Cook Inlet. During a killer whale stranding in Turnagain Arm in August 1993, one observer reported that a killer whale regurgitated pieces of beluga flesh. A potential dietary shift may account for some of the more recent sightings of killer whales in Cook Inlet.

On the other hand, pods of killer whales also feed on salmon, a prey of beluga whales. Therefore, seeing killer whales near beluga whales in the inlet does not necessarily imply that they are searching for beluga whales.

Assessing the impact of predation by killer whales on CI beluga whales is difficult. Anecdotal reports often highlight the more sensational, mortalities on beluga whales due to killer whales, thereby overemphasizing their impact. Further, these reports are from the early 1980s when beluga whales were more abundant. Consequently, they are of minimal value in evaluating current impacts to the population of beluga whales in Cook Inlet.

The loss of a few beluga whales could impede recovery, as suggested by the petitioners. However, in order for killer whale predation to be a significant factor in the observed decline in the beluga population, total mortality due to predation would have to be near the level of recruitment in the population. The literature and stranding records indicate that natural mortality in the CI beluga whale population does not exceed levels considered normal for other small cetacean populations. Therefore, predation by killer whales is not likely having a significant impact on the recovery of the CI beluga whale population.

Disease and predation occur in the CI beluga population and may affect

reproduction and survival. The best available information, however, indicates that these factors are not causing the stock to be threatened or endangered.

D. The Inadequacy of Existing Regulatory Mechanisms

The most immediate concerns by the petitioners were (1) the level of mortality as a result of subsistence harvest, and (2) the inability of NMFS, at the time of the petition, to control this harvest. The petitioners stated that the MMPA is inadequate to protect CI beluga whales. They further stated that under the MMPA, NMFS can pursue a co-management agreements with the tribes in the Cook Inlet region. However, the petitioners note, such an agreement provides no additional legal authority to NMFS to prosecute violations of the MMPA. According to the petitioners, even with a co-management agreement in place, neither NMFS nor the affected ANO can enforce its recommendations if hunters choose not to comply. Therefore, the petitioners suggested, such an agreement would not regulate non-local hunters nor restrict the sale of muktuk (whale skin, with blubber attached, used for food) in Anchorage. The petitioners stated that a co-management agreement was unlikely to reduce the Native hunt to sustainable levels and concluded that listing the CI population under the ESA was necessary to ensure complete compliance with agreed upon harvest limits, improve the monitoring of the harvest, and eliminate the sale of muktuk.

NMFS Response: Management of the CI beluga whale stock could be achieved through voluntary and cooperative efforts within a traditional Native community or through a co-management agreement. Prior to Pub. L. 106–31, no area-wide tribal authorities applied to all the Native Alaskans residing in Anchorage or the harvesting of CI beluga whales. For this reason, NMFS believes that the petitioners were correct in stating that a co-management agreement, without an enforceable regulatory mechanism, would not have provided the level of authority necessary to restrict the harvest to sustainable levels. Therefore, NMFS believes that the recovery of this stock requires not only the authority of a co-management agreement but also a Federal authority to protect and conserve CI beluga whales.

NMFS disagrees with the petitioners' statement that only through listing the CI population of beluga whales under the ESA can NMFS ensure complete compliance with agreed upon harvest limits, improve the monitoring of the harvest, and eliminate the sale of muktuk. On May 31, 2000, NMFS designated this stock as depleted under the MMPA. The depletion finding is the first step in the MMPA process for regulating the harvest. Under this process, annual harvest levels could be agreed upon through a co-management agreement and enforced, if necessary, through Federal regulations and tribal ordinances.

The process for regulating subsistence take of species listed under the ESA essentially mirrors the process for regulating of depleted species under the MMPA. Therefore, listing the stock under the ESA would not provide a better mechanism than under the MMPA to ensure compliance with harvest limits.

The petitioners further stated that Congress intended protections under the ESA to be applied in conjunction with protections under the MMPA because a marine mammal found to be threatened or endangered under the ESA is automatically listed as depleted under the MMPA.

NMFS Response: NMFS agrees that threatened or endangered marine mammals are protected under both the MMPA and the ESA. The MMPA states that marine mammals that are listed as threatened or endangered under the ESA are considered depleted under the MMPA. The ESA does not include a provision that requires a depleted marine mammal stock to be listed as threatened or endangered.

On at least two previous occasions, NMFS has designated stocks of marine mammals as depleted because these stocks were below OSP, but determined that the stocks were not threatened or endangered. NMFS was petitioned in 1991 to designate the eastern spinner dolphin and the northern offshore stock of spotted dolphin in the eastern tropical Pacific Ocean as depleted under the MMPA and to list them as threatened under the ESA. On October 19, 1992, NMFS published a determination that listing the eastern spinner dolphin under the ESA was not warranted and, on August 26, 1993, published a final rule designating the eastern spinner dolphin as depleted under the MMPA. Following a review of new information on the offshore spotted dolphin stock structure, NMFS designated the northeastern stock of offshore spotted dolphins (a smaller component of the northern offshore aggregation) as depleted on November 1, 1993. On January 7, 1993, NMFS issued a finding that the listing of northern offshore spotted dolphins as a threatened species under the ESA was not warranted. In both cases existing regulatory mechanisms were found to be adequate to allow the stock to rebuild and, thus, to prevent the stock from becoming endangered or threatened.

The existing regulatory mechanism is adequate to control the harvest of CI beluga whales to sustainable levels. To continue an adequate regulatory mechanism to restrict the harvest beyond October 1, 2000, NMFS would have to promulgate such regulations, or Congress would have to extend the special legislation that currently restricts the harvest. As discussed in other sections of this document, no other factor has been identified as having a significant adverse effect on the stock. Also as noted in other sections of this document, existing regulatory mechanisms are believed adequate to address future economic development in the area. Therefore, NMFS believes that an inadequate regulatory mechanism has not caused the stock to become in danger of extinction, nor is it likely to do so in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Stochastic Events: The petitioners stated that the population was currently so small that stochastic (random) events may cause the stock to decline to extinction. Their example related to strandings. The Commission also noted that the population was small and recommended that NMFS include an analysis of whether a listing as endangered or threatened is warranted simply because of risks posed by stochastic events.

NMFS Response: The analysis of strandings is discussed in the next section of this document. Breiwick and DeMaster (1999) examined the effects of stochastic events on the population dynamics of small populations of whales that are subjected to subsistence harvest. They used an individual-based model with stochastic birth and death rates to model populations subjected to harvest. They varied underlying intrinsic rates of increase from 0.025 to 0.049 and reported no extinctions in populations with no environmental stochasticity, even when these populations were subjected to harvest rates of up to 5 percent. When maximum environmental stochasticity (20 percent reduction in survival every 10 years) and the lower level intrinsic rate of increase (0.025) were used, no populations went extinct although populations harvested at a 3 percent level declined during 75 to 100 years of simulation. The results of the simulations indicate that CI beluga

whales are not in danger of extinction or likely to become endangered in the foreseeable future due to stochastic events.

Stranding Events: The petitioners asserted that the population was so small that it was vulnerable to all natural sources of mortality, such as disease, predation, and stranding. They further asserted that a large stranding could occur that would kill most or all of the remaining beluga whales.

NMFS Response: NMFS estimates that over 590 whales have stranded (both individually and as groups) in upper Cook Inlet since 1988. Mass stranding events have most commonly occurred along Turnagain Arm and have often coincided with extreme tidal fluctuations (''spring tides'') and involved both adult and juvenile beluga whales.

Beluga whale mortalities have been observed during these stranding events. A 1996 mass stranding of approximately 60 beluga whales in Turnagain Arm resulted in the death of four adult whales. Five deaths resulted from another stranding of approximately 75 whales in August of 1999.

Catastrophic mortality (the deaths of a large number, such as 50 or more whales) due to a mass stranding event was not considered in simulations of the CI beluga stock for purposes of the status review. Such mortality could significantly impede recovery if it occurred; however, such catastrophic mortality has never been reported. Although mass strandings have occurred, only 9 whales died from a total of 135 whales included in the two mass strandings in 1996 and 1999. Mass stranding events are not believed to be a factor that has caused, or had a significant role in, the decline of this stock to depleted levels. Therefore, strandings, either individual or mass, have not caused the stock to be in danger of extinction nor are they likely to do so in the foreseeable future.

Subsistence Harvest: The petitioners stated that overutilization of beluga whales was undisputedly occurring. They further stated that the 1994–1997 levels of harvest were unsustainable.

NMFS Response: NMFS agrees with these statements. The history of harvest estimates from the years 1987–1999 will be included in the draft EIS and varied between zero and about 20 whales per year. These estimates, however, are considered underestimates because Alaska Native hunters and others stated that many whales were not reported or that the struck-and-lost rate was too low.

NMFS estimated that the average annual harvest between 1995 and 1998 was 78 whales. While subjected to this level of harvest, the stock has declined at an average rate of 15 percent per year from 1994 to 1998.

NMFS has been working with the Cook Inlet Marine Mammal Council (CIMMC) to develop a co-management agreement to conserve CI beluga and co-manage subsistence use of them. CIMMC is an ANO that represents several Alaska Native tribal governments in the CI area. Because NMFS and CIMMC had not entered into a co-management agreement under Pub. L. 106–31, no harvest was conducted in 1999. NMFS and CIMMC have, however, negotiated an agreement that would allow the harvest of a single whale after July 1, 2000.

The harvest estimates from 1995–1997 and the abundance estimates from 1994–1998 clearly indicate that the harvest was unsustainable prior to restriction in 1999. Furthermore, the subsistence harvest can account for the decline of the stock during that interval. Therefore, NMFS agrees that a failure to restrict the subsistence harvest would likely cause CI beluga whales to become in danger of extinction in the foreseeable future.

The petitioners stated that a depleted finding would allow NMFS to initiate rulemaking to limit the subsistence harvest of CI beluga whales, but harvest restrictions would not adequately address the problems facing CI beluga whales.

NMFS Response: NMFS disagrees that limiting the subsistence harvest would not adequately address the problems facing beluga whales in Cook Inlet. The subsistence harvest of these whales accounts for the observed decline in the stock since 1994. As indicated in the following discussion of anthropogenic factors that may affect beluga habitat, no other activity has had a known significant adverse effect on the stock or would cause the CI beluga whales to become in danger of extinction or likely to become endangered in the foreseeable future.

Other Natural or Manmade Activities: The petitioners identified the following activities or sources of potential threat to the CI beluga stock: commercial fisheries interactions with beluga whales; oil spills; other pollutants, contaminants (toxins such as Polychlorinated Biphenyls (PCBs), pesticides, heavy metals, hydrocarbons); predation from killer whales; noise from oil and gas development with associated seismic activity, drilling and refineries, airplanes (Anchorage Airport) and vessels; prey availability; research; and vessel traffic including commercial (whale watching) boat traffic. The petitioners assert that potential impacts from these activities on CI beluga whales, their prey, and the marine environment may be direct (e.g., lower survival rates) or indirect (e.g., loss of access to habitat or food resources).

NMFS Response: NMFS recognizes that municipal, commercial, and industrial activities are of concern and may affect the water quality and substrate in the inlet. However, no indication exists that these activities have adversely impacted beluga whales, including a quantitative impact on the beluga whale population. The best available information (as discussed in the following sections) indicates that these activities, alone or cumulatively, have not caused the stock to be in danger of extinction and are not likely to do so in the foreseeable future.

Commercial Fishery Interactions with Beluga Whales: State and Federally permitted commercial fisheries for shellfish, groundfish, herring and salmon occur in the waters of Cook Inlet, and have varying likelihoods of interacting with beluga whales due to differences in gear type, timing, and location of the fisheries. Interactions include entanglements, injuries, or mortalities occurring incidental to fishing operations.

Reports of marine mammal injury or mortality incidental to commercial fishing operations are obtained from the existing literature, fisheries reporting programs, and observer programs. During 1990–93, certain fisheries were required to participate in a logbook reporting program, which provided information regarding fishing effort, interactions with marine mammals and the outcome (deterred, entangled, injured, killed) of the interactions. Data from this program were difficult to interpret (Young et al. 1993) and tended to underestimate actual incidental mortality rates (Credle et al., 1994).

The logbook program was replaced by the 1994 MMPA amendments with a fisher self-reporting program, in which all commercial fishers are required to notify NMFS of injuries or mortalities to marine mammals occurring during the course of commercial fishing. This program became effective in 1995 and is currently in operation. In general, however, fewer reports have been received under this program than expected, given the results of the previous logbook reporting program and results from observer programs. Thus, annual mortality rates derived from these programs should be considered minimum estimates (Hill and DeMaster, 1999).

A number of fisheries occurring in or near the inlet present little, if any,

chance of catching beluga whales. These fisheries are classified in Category III under the MMPA (65 FR 2448, April 26, 2000) because NMFS has determined that there is only a remote likelihood that they would kill or seriously injure any marine mammal incidental to their operations. These fisheries were classified in Category III fisheries during the period 1990 through 1994 and were not required to participate in the logbook program. Since 1995, when the existing reporting system required the reporting of all injuries of marine mammals incidental to fishing operations, none of these fisheries have reported incidental mortality or injury of marine mammals. In addition, no interactions between beluga whales and northern Gulf of Alaska groundfish trawl, longline or pot fisheries were reported by federal observers during 1990–99 (Hill and DeMaster, 1999).

The largest fisheries, in terms of participant number and landed biomass in Cook Inlet, are the salmon drift and set gillnet fisheries concentrated in the central and northern districts of upper Cook Inlet, where beluga whales are most likely to be found in the spring and summer (Rugh et al., In press). Times of operation change depending upon management requirements. In general the drift gillnet fishery operates from late June through August, and the set gillnet fishery during June through September.

The only reports of beluga whale mortality caused incidental to commercial salmon gillnet fishing in Cook Inlet are found in the literature prior to the observer programs and reporting systems required by the MMPA. Murray and Fay (1979) stated that salmon gillnet fisheries in Cook Inlet caught five beluga whales in 1979. An incidental take rate by commercial salmon gillnet fisheries in the Inlet was estimated at three to six beluga whales per year during 1981–83 (Burns and Seaman, 1986). Neither report, however, differentiated between the set and drift gillnet fisheries.

There have been no recent reports of beluga whales in Cook Inlet being killed or injured incidental to commercial fishing operations. No reports of injuries or mortalities incidental to salmon drift or set gillnet fishing were reported during the 1990–91 logbook reporting program, and none have been included in the reporting system in place since 1995.

To address the heightened concern in Cook Inlet and verify the results from the self-reporting system, NMFS placed observers in the salmon drift gillnet fishery and the upper and lower inlet set gillnet fishery in 1999. Observers were deployed on the first drift gillnet opening of June 28. Limited set gillnet fisheries were operating in the upper Cook Inlet on June 7, but observers were not placed until June 27. Thus, fishing effort associated with approximately 239 of 11,300 deliveries was unobserved during this period. Observers were placed on drift vessels during each of the eight regular and nine corridor-only fishing periods, and during emergency order extended fishing periods.

In 141 net-days (in which a net is fished at least 6 hours in a 24-hour period) in the drift gillnet fishery, observations were made of 744 sets and/or hauls of 102 different vessels for a total of 845 hours observation time. In 256 net-days within the set gillnet fishery, 1,450 observations were made of soaks and/or hauls of 275 different vessels, totaling 1,545 hours of observation time.

Marine mammals were observed within 300 m of a net by observers 43 times (about 6 percent of the observations) for drift gillnet sets, and 107 times (about 7 percent of the observations) for set gillnet effort. Of these, only three sightings were of beluga whales, each from an observer at a set gillnet sight in upper Cook Inlet. The beluga whales were not observed within 10 m of any net (i.e., within a distance categorized as an ''interaction'') in the drift (35 individual marine mammals observed) or set (78 individual marine mammals observed) gillnet fisheries. Three marine mammals were observed entangled in nets, none of which were beluga whales.

Personal-use gillnet fisheries also occur in Cook Inlet, and have been subjected to many changes since 1978 (Ruesch and Fox, 1999), as summarized in Brannian and Fox (1996). The most consistent personal-use fishery is the use of single 10-fathom gill nets for salmon in the Tyonek Subdistrict of the Northern District (Ruesch and Fox, 1999). Personal-use gill nets have also been allowed within waters approximately 1.5 miles (2.4 km) of the Kasilof River. In 1995, personal-use gill nets were allowed in most areas open to commercial salmon set gillnet fishing. Most of this area was closed to personal gill net use in 1996. Personal-use salmon set gillnet fisheries are also found in the Port Graham subdistrict of lower Cook Inlet. NMFS is unaware of any beluga whales injured or killed in the Cook Inlet personal use/subsistence gillnet fisheries.

In summary, beluga whales apparently were caught in fishing nets from 1979 to 1983. None have been included in fisher self-reports since the late 1980s. Furthermore, in the fisheries in which observers were placed since 1990 (including those for which mortality was reported in the early 1980s), no beluga whales have been observed entangled in nets or close enough to a net to be described as an interaction. NMFS considers that the set and drift gillnet fisheries may occasionally cause mortality and serious injury of marine mammals; however, there is a remote likelihood that other fisheries operating in CI will kill or seriously injure a marine mammal incidental to their operations. Because no CI beluga have been reported or observed to have been killed or seriously injured incidental to the gillnet fisheries, the working estimate for mortality incidental to fishing operations would be that no beluga have been killed in CI since 1990. None of the more than 590 beluga whales that have stranded in CI were entangled in fishing gear; therefore, the stranding data support the working estimate of no incidental mortality. Therefore, based upon the best available information, NMFS does not believe that mortality incidental to commercial fishing operations is having, or has had, a significant impact on the CI beluga whale stock.

Oil Spills: Oil production, refining, and shipping occur in Cook Inlet. Therefore, oil and other hazardous substances may be spilled and, thus, impact the CI beluga whale stock. The Outer Continental Shelf Environmental Assessment Program estimated that 21,000 barrels of oil were spilled in the Inlet between 1965 and 1975, and 10,000 barrels were spilled from 1976 to 1979 (MMS, 1996). In July, 1987, the tanker *Glacier Bay* struck an unchartered rock near Nikiski, Alaska, discharging an estimated 1,350 to 3,800 barrels of crude oil into the inlet (USCG, 1988). Beluga whales are commonly found in the area of this spill.

There are no data available that describe behavioral observations or deleterious effect of these spills on beluga whales nor that accurately predict the effects of an oil spill on beluga whales. Some generalizations, however, can be made regarding impacts of oil on individual whales based on present knowledge.

An oil spill could result in a beluga whale contacting or ingesting the oil or suffering respiratory distress from hydrocarbon vapors. The spill may also contaminate food sources or displace the whales from feeding areas. Whales could be affected through residual oil from a spill even if they were not present during the oil spill. The most likely effects of oil would be irritation of the respiratory membranes and

absorption of hydrocarbons into the bloodstream (Geraci, 1990).

If an oil spill were concentrated in open water (e.g. within tide rips), a beluga whale might inhale enough vapors from a fresh spill to affect its health. No reliable data exist on the effects of petroleum vapor inhalation on cetaceans; however, inhalation of vapors in excess of 10,000 ppm is fatal to humans (Ainsworth, 1960; Wang and Irons, 1961). Inhalation of petroleum vapors can cause pneumonia in humans and animals due to large amounts of foreign material (vapors) entering the lungs (Lipscomb et al., 1994). Although pneumonia was not found in sea otters that died after the *Exxon Valdez* oil spill, inhalation of vapors was suspected to have caused interstitial pulmonary emphysema (accumulation of bubbles of air within connective tissues of the lungs). Crude oil evaporation rates are greatest during the first few days after an oil spill (Meilke, 1990).

Whales may also contact oil as they surface to breathe, but the effects of oil contacting skin are largely speculative. Experiments in which bottlenose dolphins were exposed to petroleum products showed transient damage to epidermal cells, and that cetacean skin presents a formidable barrier to the toxic effects of petroleum (Bratton et al., 1993). Geraci and St. Aubin's (1985) investigations found that exposure to petroleum did not make a cetacean vulnerable to disease by altering skin microflora or by removing inhibitory substances from the epidermis.

Geraci (1990) reviewed a number of studies pertaining to the physiologic and toxic impacts of oil on whales and concluded no evidence exists that oil contamination had been responsible for the death of a cetacean. Cetaceans observed during the *Exxon Valdez* oil spill in Prince William Sound made no effort to alter their behavior in the presence of oil (Harvey and Dahlheim, 1994; Loughlin, 1994).

Following the *Exxon Valdez* oil spill, daily vessel surveys of Prince William Sound were conducted from April 1 through April 9, 1989, to determine the abundance and behavior of cetaceans in response to the oil spill (Harvey and Dahlheim, 1994). During the nine surveys, 80 Dall's porpoise, 18 killer whales, and two harbor porpoise were observed. Oil was observed on only one individual, which had oil on the dorsal half of its body and appeared stressed due to its labored breathing pattern. A total of 37 cetaceans were found dead during and after the oil spill, but cause of death could not be linked to exposure to oil (Loughlin, 1994). Dalheim and Matkin (1994) reported 14 killer whales missing from a resident Prince William Sound pod over a period coincident with the *Exxon Valdez* oil spill. They noted that nearly all resident killer whales likely swam through heavily oiled sections of the sound and that the magnitude of that loss was unprecedented. Dalheim and Matkin concluded a correlation existed between the loss of these whales and the spill, but they could not identify a cause-and-effect relationship.

Toxicity of crude oil decreases with time as the lighter, more harmful, aromatic hydrocarbons, such as benzene, evaporate. Acute chemical toxicity (lethal effects) of the oil is greatest during the first month following a spill. Sublethal effects may be observed in surviving birds, mammals, and fish for years after the spill. Sublethal and chronic effects include reduced reproductive success, blood chemistry alteration, and weakened immunity to disease and infections (Spies et al., 1996).

Contaminated food sources and displacement from feeding areas may also occur as a result of an oil spill. Over a 3-month period, Caldwell and Caldwell (1982) fed 335 ml of hydraulic oil to bottlenose dolphins. The dolphins did not reject the fish containing oil capsules. They were necropsied after the experiment, and no lesions attributable to oil were detected.

These studies indicate that an oil spill could have an effect on beluga whales if one were to occur. However, no significant impact on beluga whales can be attributed to oil spills or production in CI despite high levels of oil production, refining, and transport within the inlet and its watershed. Therefore, at current levels of activity, oil and gas exploration and development are not expected to have a significant impact on the CI beluga stock.

The oil and gas industry has a history of compliance with the MMPA and ESA for their operations in Alaska, and the MMPA provides a regulatory regime to ensure that the taking of marine mammals incidental to commercial activity would have no more than a negligible impact on marine mammals. Furthermore, the MMPA provisions that establish this regime include a requirement that the activity must not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. Consequently, there is an adequate regulatory mechanism to address future expansion of the oil and gas industry in Cook Inlet.

Other Pollutants: The principle sources of pollution in the marine environment are (1) discharges from municipal waste-water treatment systems; (2) discharges from industrial activities that do not enter municipal treatment systems (petroleum and seafood processing); (3) runoff from urban, mining, and agricultural areas; and (4) accidental spills or discharges of petroleum and other products. Natural and man-made pollutants entering the inlet are diluted and dispersed by the currents associated with the tides, estuarine circulation, wind-driven waves and currents (MMS,1996).

Pollutants may be classified as chemical, physical, and biological. Chemical pollutants include organic and inorganic substances. The decomposition of organic substances uses oxygen and, if enough organic material is present, the concentration of oxygen could be reduced to levels that would threaten or harm oxygen-using inhabitants of the water column.

The discharge of soluble inorganic substances may change the pH or the concentration of trace metals in the water, and these changes may be toxic to some marine plants and animals. Physical pollutants include suspended solids, foam, and radioactive substances. Suspended solids may inhibit photosynthesis, decrease benthic activity, and interfere with fish respiration. Foam results from surface active agents and may cause a reduction in the rate of oxygen-gas transfer from the atmosphere into the water. Biological pollutants may promote waterborne disease by adding pathogens to the receiving waters or may stimulate excessive biological growth.

i. Produced Waters: Produced waters constitute the largest source of man-made substances discharged into the waters of Cook Inlet. The characteristics of the produced waters, as well as other discharges, except drilling muds and cuttings described in this section, are based on information obtained during the Cook Inlet Discharge Monitoring Study, conducted between April 10, 1988, and April 10, 1989 (EBASCO Environmental, 1990a; 1990b). These waters are part of the oil/gas/water mixture produced from the wells and contain a variety of dissolved substances. Also, chemicals are added to the fluids as part of various activities including water-flooding; well work-over, completion, and treatment; and the oil/water-separation process. Before being discharged into Cook Inlet, produced waters pass through separators to remove oil and gas. The treatment process removes suspended oil particles from the waters, but the effluent contains dissolved hydrocarbons or those held in colloidal

suspension (Neff and Douglas, 1994). Although the discharge of produced waters is an issue of concern, the toxicity of produced waters, as indicated in the monitoring study, ranged from only slightly toxic to practically nontoxic (to shrimp) and would not, therefore, be expected to impact beluga whales.

ii. Drilling Muds and Cuttings: A general permit issued by the Environmental Protection Agency (EPA) authorizes the discharge of approved generic drilling muds and additives into waters of Cook Inlet. Drilling muds consist of water and a variety of additives; 75 to 85 percent of the volume of most drilling muds currently used in Cook Inlet is water (Neff, 1991).

When released into the water column, the drilling muds and cuttings discharges tend to separate into upper and lower plumes (Menzie, 1982). The upper plume contains the solids and water-soluble components that separate from the material of the lower plume and are kept in suspension by turbulence.

The discharge of drilling muds at surface ensures dispersion and limits the duration and amount of exposure to organisms (NRC, 1983). Most of the solids in the discharge, >90 percent, descend rapidly to the sea floor in the lower plume. The sea floor area in which the discharged materials are deposited depends on the water depth, currents, and material particle size and density (NRC, 1983). In most Outer Continental Shelf areas, the particles are deposited within 500 ft below the discharge site; however in Cook Inlet, which is considered to be a high-energy environment, the particles are deposited in an area that is >500 ft below the discharge site (NRC, 1983). Small particles of drilling mud (several centimeters in diameter) also may settle to the sea floor immediately following a discharge but would disperse within a day.

Since 1962, 546 wells have been drilled in Cook Inlet. One Continental Offshore Stratigraphic Test well and 11 exploration wells were drilled in Federal waters and 75 exploration and 459 development and service wells were drilled in State waters, mainly in upper Cook Inlet (State of Alaska, AOGCC, 1993). From 1962 through 1970, 292 wells were drilled, including 62 for exploration and 230 for development and service (State of Alaska, AOGCC, 1993). From 1971 through 1993, the number of wells drilled per year has ranged from 3 to 20, with an annual average of about 11.

The toxicity of the muds used to drill 39 production wells in Cook Inlet between August 1987 and February 1991 ranged from 1,955 to >1,000,000 ppm for a marine shrimp (Neff, 1991). Concentration levels >10,000 ppm are considered practically nontoxic and between 1,000 and 10,000 ppm are slightly toxic. The percentages of the wells with toxicities >10,000 ppm was 89 percent of the total number. Therefore, 89 percent of the muds from this production were considered non-toxic to shrimp. Given the results of this study, the toxicity levels of production muds do not likely impact beluga whales.

iii. Heavy Metals and Organic Compounds: NMFS has obtained biological samples from CI beluga whales under protocols developed for the Alaska Marine Mammal Tissue Archival Project. From these collections, selected tissues have been analyzed for PCBs and trace elements, including heavy metals in liver and kidneys. As has been found for beluga whales from other regions in Alaska, Canada, and Greenland, the CI beluga whales were found to have relatively high concentrations of mercury, selenium, and silver in their livers. These levels are much higher than one finds in ringed seals, harbor seals, bowhead whales, and walrus in Alaska. However, as compared to other Alaskan beluga whale stocks (Eastern Chukchi Sea and Eastern Beaufort Sea), the levels of these three metals, as well as cadmium, were much lower in the Cook Inlet animals (Becker et al., in press). These elements accumulate in liver tissue and increase with age of the animal. The uptake and bioaccumulation of these elements are determined by many factors, and the diet of the animal plays a major role (Becker et al., In press).

Concentrations of PCBs and chlorinated pesticides were found to be lower in the blubber of beluga whales from CI than from beluga whales from Point Lay (Eastern Chukchi Sea stock) and Point Hope (Eastern Beaufort Sea stock), Alaska. Generally, CI beluga whales are ''cleaner'' than other beluga whale populations throughout the Arctic and the eastern United States. A comparison of tissue concentrations of persistent organic contaminants, heavy metals, and other elements between CI beluga whales and other beluga whales in North America confirms that the CI animals are distinct from other populations and stocks of this species. The CI animals had much lower concentrations of PCBs and chlorinated pesticides than those which have been reported from the Eastern Beaufort Sea and Eastern Chukchi Sea stocks. Due to the lower concentrations of PCBs and chlorinated pesticides in CI beluga whales, their effects on the animals' health may be less significant for CI animals than for the other beluga whale stocks.

iv. Municipal Wastes and Urban Runoff: Ten communities currently discharge treated municipal wastes into Cook Inlet. Wastewater entering these plants may contain a variety of organic and inorganic pollutants, metals, nutrients, sediments, and bacteria and viruses. Of these, the Municipality of Anchorage's John M. Asplund Treatment Center, English Bay, Port Graham, Seldovia, and Tyonek use only primary treatment, and Eagle River, Girdwood, Homer, Kenai, and Palmer use secondary treatment. The maximum permitted wastewater discharge for Anchorage is 44 million gallons per day (GPD), and that for other communities ranges from 10 thousand to 1.6 million GPD. The EPA is currently in the process of re-issuing the Asplund facility discharge permit.

For Anchorage, the effluent limitations requested for the daily discharge of organic material, such as sewage (often reported as Biological Oxygen Demand (BOD)), and total suspended solids in the wastewater are 90,100 pounds per day (lb/d) and 57,000 lb/d, respectively. Based on the daily maximums presently permitted for these ten communities, they could release about 16.38 million pounds of BOD and 13.82 million pounds of suspended solids into CI annually.

Determining the impact of municipal discharges on the beluga whale stock is not possible. The rivers entering Knik Arm alone carry an estimated 20 million tons of sediment annually (Gatto, 1976). Therefore, the suspended loading that naturally occurs in the extreme upper inlet parallels that discharged by the Municipality of Anchorage. The impact of the sediment loading by discharges on beluga whales is not known. Given the relatively low levels of contaminants found in CI beluga whale tissues, municipal discharge levels are not believed to be having a significant impact on the beluga whale population.

Noise: Upper Cook Inlet is one of the most industrialized and urbanized regions of Alaska. As such, noise levels may be high. The petitioners recognized this as a factor that might cause beluga whales in Cook Inlet to avoid using parts of their available habitat due to noise levels. The common types of noises in upper Cook Inlet include sounds from vessels, aircraft, construction equipment (e.g., diesel generators, bulldozers, and compressors) and from activities such as pile-driving.

Any sound signal in the ocean is detectable by marine mammals only if the received level of the sound exceeds a certain detection threshold (Richardson et al., 1995). If the sound signal reaching a marine mammal is weaker than the background noise level, it may not be detected. This concept is important in understanding the effects of noise on whales in at least two areas: (1) The audibility of an industrial noise is dependent in part on the background (ambient) noise levels, and (2) as industrial noises add to the level of background noise, they may prevent or diminish the effectiveness of communication among whales or between whales and their environment.

Considering the depth of the animal being exposed to noise is also important. The noise level from a source when measured within 3 ft (1 m) of the surface is significantly lower than the noise level when measured at depths of 16 to 33 ft (5 to 10 m). For example, a marine mammal at the surface will experience a received-noise level approximately 30 dB less than the level for an animal at the same distance from the source, but at a depth of 33 ft (10 m).

A noise of sufficient intensity must also be in the range of frequencies that beluga whales can hear. Their peak hearing is within the range of about 10,000 to 90,000 Hz (Richardson et al., 1995). Noises outside, but near, this range can be heard but not as well as those within the range.

i. Aircraft Noise: Richardson et al., (1995) and Richardson and Malme (1993) provided summaries on aircraft sound in water. The surface area of sound transmission from air to water is described by a cone where the apex of the cone is the aircraft, and the cone has an aperture of 26 degrees. In general, underwater noise from aircraft is loudest directly beneath the aircraft and just below the water's surface, and sound levels from the same aircraft are much lower underwater than the sound levels in air. The duration of the noise is short because noise is generally reflected off the water surface at angles greater than 13 degrees from vertical. Helicopters tend to be noisier than fixed-wing aircraft. The amount of noise entering the water depends primarily on aircraft altitude, sea surface conditions, water depth, and bottom conditions (Richardson et al., 1995).

Monitoring results of aircraft noise levels are complicated due to variables that are inherent in such analyses, including monitoring equipment averaging times, aircraft types and operations (i.e., power setting, propeller pitch, altitude changes), meteorological conditions, and aircraft altitude. There are no data on the level of received sound that disturb or do not disturb toothed whales (Richardson et al., 1995). The response of beluga whales to airplanes and helicopters varies with social context, distance from the aircraft, and aircraft altitudes. Because the underwater noise generated by an aircraft is greatest within the 26 degree cone directly beneath the craft, whales often react to an aircraft as though startled, turning or diving abruptly when the aircraft is directly overhead. Richardson et al., (1995) reports beluga whales not reacting to aircraft flying at 500 m, but, when the aircraft was at lower altitudes (150–200 m) the whales dove for longer periods and sometimes swam away. Feeding beluga whales were less prone to disturbance. NMFS aerial surveys are normally flown at an altitude of 150 m, using fixed-wing single- and twin-engine aircrafts. Beluga whales are rarely observed to react to even repeated overflights at this altitude.

The main approaches to the Anchorage International Airport, Elmendorf Air Force Base, and Merrill Field are at least partially over the upper Inlet, including Knik Arm. Commercial and military jet airplanes often fly over these waters at relatively low altitudes. Despite this traffic, beluga whales are common to these same waters and are often observed directly under the approach corridors off the north end of International Airport and the west end of Elmendorf Air Force Base.

ii. Ship and Boat Noise: Ships and boats create high levels of noise both in frequency content and intensity level, and this noise can be detected at great distances. High-speed vessels tend to be much noisier than slow-speed vessels. Small commercial ships are generally diesel-driven, and the highest 1/3-octave band is in the 500 to 2,000 Hz range. Tugs can emit high levels of underwater noise at low frequencies. Small outboard motors, such as those commonly used for recreation in the upper Inlet, typically produce noise at much higher frequencies (e.g. 6300 Hz) and may have the highest potential to interfere with beluga whales.

iii. Noise from Offshore Drilling and Production: Sound produced by oil and gas drilling and production in Cook Inlet may be a significant component of the noise in the local marine environment. Gales (1982) summarized noise from eleven production platforms. The strongest tones from four production platforms were at very low frequencies (between 4 and 38 Hz).

Various studies and observations suggest that beluga whales are relatively unaffected by these activities. Belugas are regularly seen near drill sites in Cook Inlet (Richardson et al., 1995:282; McCarty 1981). Stewart et al., (1982) reported that beluga whales in Snake River, Alaska, did not appear to react strongly to play-backs of oil industry-related noise at levels up to 60 dB above ambient. Stewart, Awbrey, and Evans (1983) conducted similar playback experiments in Nushagak Bay, Alaska, in 1983 and found that beluga whale movement and general activity were not greatly affected, especially when the source of the noise was constant.

Beluga whales did swim faster and respiration rates sometimes increased within 1.5 km of the sound projector. During playback experiments in the Beaufort Sea, migrating beluga whales approached the sound projector and showed no overt reactions until within 200–400 meters, even though the noise was detectable by hydrophone up to 5km away (Richardson et al., 1990, 1991). Richardson et al. (1995) observed these results may be an example of the degree to which beluga whales can adapt to repeated or on-going man-made noise when it is not associated with perceived negative consequences.

iv. Noise from Seismic Geophysical Exploration: Geophysical exploration in CI for oil and gas deposits is often accomplished using boat-based seismic survey. Seismic surveys produce some of the loudest noises in the marine environment. These surveys use compressed air to generate short, intense bursts of underwater energy that may propagate for great distances. The noise produced by these surveys is at very low frequencies, often less than 100 Hz, which is below the optimum hearing range of beluga whales.

Higher frequencies are absorbed in water more than lower frequencies. Seismic sound propagation is also dependent on bottom structure, and soft substrates such as those found in the upper inlet absorb sound better than hard, reflective material. Finally, seismic sound is poorly transmitted through shallow waters, such as exists near the mouths of the Susitna River. Therefore, seismic exploration in the upper inlet may be poorly transmitted through the water and may have little direct impact on beluga whales. However, seismic sound may be very loud, with some sound energy at higher frequencies that overlap the peak auditory range of the beluga whale. Beluga whales would likely hear, and may react to, an active seismic vessel in certain areas and under certain conditions. Presently, no data exist to

characterize the noise from seismic exploration in Cook Inlet. NMFS observed beluga whales in Cook Inlet approximately 20 nmi from an active seismic vessel in June 1995, and reported no reactions (Moore et al., In press).

v. Summary of the Impacts of Noise on CI Beluga Whales: Because sound is a critical sense to beluga whales, high levels of noise may have significant and adverse effects. However, evaluation and prediction of human-made noise impacts on marine mammals is difficult. Estimating acoustic environmental impact on animals requires interpretation and integration of results from many disciplines including, but not limited to, the study of how sound waves interact with the environment (physical acoustics), how animals hear sounds (anatomy and physiology), and how animals use sounds for behaviors such as communicating, navigating, and finding food (bio-acoustics and behavioral ecology).

One of the most obvious behavioral responses to industrial noise is to avoid the area by swimming away from or detouring around the noise source. Two other behavioral responses, habituation and sensitization, also are important when discussing the potential reactions of beluga whales to multiple exposures to a noise stimulus.

Habituation refers to the condition in which repeated experiences with a stimulus that has no important consequence for the animal leads to a gradual decrease in response. Richardson et al., (1995) provided examples of beluga whales becoming habituated to noise from frequent vessel traffic in the St. Lawrence River and to salmon fishing boats in Bristol Bay. Elsewhere, beluga whales have been observed to tolerate large vessel traffic (e.g., in the St. Lawrence River), and intensive commercial fishing vessel activity (in Bristol Bay). Beluga whales are commonly found immediately adjacent to the Port of Anchorage during summer months, often very near containerships and tugs which are docking, maneuvering, or underway.

Sensitization refers to the situation in which the animal shows an increased behavioral response over time to a stimulus associated with something that has an important consequence for the animal. Although whales tend to show little response to vessels that move slowly and are not heading toward them (Richardson et al., 1995), beluga whales will often leave an area in which vessel noise is related to hunting (Sergeant and Brodie 1975; Huntington, 1999). Native hunters in Cook Inlet have also reported that beluga whales actively avoid approaching skiffs powered by outboard motors, particularly during the summer and fall. Many researchers report that beluga whales commonly flee from fast and erratically moving small boats.

The variable response that beluga whales show to vessels indicates that these whales (1) are not disturbed by such activity, (2) habituate to such activity, (3) or (from Blane, 1990) continue to use some areas for feeding and traveling because these areas are critical to their survival. If the last alternative is actually the case, then the whales' lack of avoiding areas where vessel traffic routinely occurs should not be interpreted as the whales being undisturbed.

Beluga whales did not abandon an area within upper Cook Inlet even when they were being hunted and pursued (Shelden, 1995). A large group of beluga whales remained in or near the mouth of the Little Susitna River for several weeks during June of 1999. During this period, many small motor boats sport fishing for chinook salmon moved between Anchorage and the Little Susitna river.

CI beluga whales appear to display a strong fidelity to certain sites. They are similar in this respect to the Bristol Bay stock of beluga whales. It is generally believed in western and northern Alaska, however, that modernization of coastal communities, with its associated noise, is causing beluga whales to pass farther from shore and to abandon traditional sites (Burns and Seaman, 1986).

To what extent, if any, noise in the Cook Inlet area has had an effect on the current distribution or trends of these animals is not clear. Over the long-term, disturbance from noise, if it keeps belugas from foraging sites, could have an effect which would be expressed as a lower productivity rate due to low level, or chronic, stress symptoms that would inhibit successful foraging. However, no indication exists that this is happening. Given the fidelity of these whales to specific foraging sites in the upper inlet, the need to prey on available forage is apparently stronger than the impacts of potential disturbance from noise, or other factors, in those locations. Such site fidelity has also been witnessed in other whale populations.

Commercial Harvest: Klinkhart (1966) reported that a commercial harvest for beluga whales occurred in Cook Inlet in the 1930s. This harvest took about 100 beluga whales. These whales were netted in the Beluga River, and used for meat and oil. Guided sport hunting for CI beluga whales was also popular during the 1960s (Anchorage Daily Times, 1965); however, there is no information on the level of this harvest. These activities have not had an impact on CI beluga whales in recent decades.

Ship Strikes: The presence of beluga whales in and near river mouths entering upper Cook Inlet predisposes them to strikes by high speed watercraft associated with sport and commercial fishing and general recreation. The mouths of the Susitna and Little Susitna River in particular are areas where such vessel traffic and whales commonly occur. NMFS enforcement agents investigated a report of a jet skier approaching and striking belugas in Knik Arm in 1994. A stranded beluga whale examined in 1999 had an injury consistent with an old propeller injury (Burek, 1999b). Data are not available to quantify the impact of vessel strikes on the CI stock of beluga whales, but vessel strikes are not believed to have a significant impact on the population.

Tourism: Tourism is a growing component of the state and regional economies, and wildlife viewing is an important component of this activity. Many tour buses routinely stop at several wayside sites along Turnagain Arm in the summer, where beluga whales are often seen.

Presently no vessel-based commercial whale watching ventures operate in upper Cook Inlet. However, the popularity of whale watching and the close proximity of the activity, and beluga whales, to Anchorage suggests such operations may begin in the near future. Should whale watching operations develop in CI, NMFS plans to monitor them.

Prey Availability: Beluga whales actively feed in the upper inlet where prey species concentrate. The arrival of beluga whales into the northern Inlet coincides with the eulachon migration. Soon after the eulachon migration, salmon out-migrations and the first chinook salmon spawning runs begin.

NMFS biologists sampled stomachs from subsistence-harvested whales and found that many contain salmon and eulachon. Native hunters' observations indicate that the whales' distribution in Cook Inlet is dependent upon fish runs.

NMFS placed a radio transmitter on an adult beluga whale in 1999, and this animal remained in or near the mouth of the Little Susitna River for several weeks between May and June in 1999. This whale was observed swimming among a group of approximately 90 beluga whales. This group moved into the central region of the upper Inlet and into Knik Arm during the times coho salmon were returning to the Little Susitna River.

Several commenters stated their belief that fish runs have declined dramatically within Cook Inlet during the last decade, and that this decline has caused fewer beluga whales to visit the upper Inlet. Native observations (Huntington, 1999) also suggest that severe declines in fish runs have occurred in Cook Inlet during the past few years. Huntington reported that these changes resulted in a redistribution of the beluga whales and the subsequent decline of beluga whales in Cook Inlet. The available evidence, however, shows little trend in the size of fish runs and, in some cases, contradicts these observations.

Several waterways entering CI are monitored for anadromous fish migrations by the Alaska Department of Fish and Game (ADFG), and NMFS reviewed salmon escapement for selected species for three such index streams, the Yentna, Little Susitna, and Kenai Rivers (Fox and Shields, 2000).

Sockeye returns to the Yentna River fluctuate from 1981 through 1999, but no trend is apparent. The returns for 1997 through 1999 are above average for the entire period, but decline from a peak in 1997 to lower levels in 1998 and 1999.

Sockeye returns to the Kenai River are relatively consistent from 1978 through 1999, with the later years having slightly larger runs than early in the reporting period. Returns showed peaks in 1987 and 1989, which were much higher than any other year in the reporting period. The harvest of sockeye salmon in the last 10 years has exceeded the 44-year average harvest.

Coho returns to the Little Susitna River show an increasing trend from 1986 through 1991 and a decline from 1993 through 1999. The escapements in 1998 and 1999 were higher than in 1986 and 1987.

Other prey species may be important to CI beluga whale, but there are little quantitative data to evaluate stock abundance and trends. Herring occur in concentrations and are rich in lipids (high caloric value). During a study of salmon smolts within the upper Inlet, juvenile herring (ages 0 and 1) were the most consistently caught species, and were second in abundance of all species encountered (Moulton, 1994). Historically, the herring run along the western side of lower CI has supported a local commercial fishery for herring roe. In 1999, the roe fishery was closed due to declining herring biomass, which ADFG estimated as 6,000 to 13,000 tons (ADFG, 1999b).

Eulachon also migrate into rivers within CI. A commercial venture to harvest eulachon in the lower Susitna River operated in 1999. The fishery was limited to 50 tons (ADFG, 1999a) and achieved this level of harvest rapidly.

The available information does not provide a clear quantitative assessment on trends of fish stocks in CI. However, observations by NMFS scientists and Alaska Natives provide some indication of the abundance and availability of food to CI beluga whales. From records on stranded whales, NMFS scientists have noted a large proportion of gray (juvenile) beluga whales in the stock. Huntington (1999) reported that Alaska Native hunters and elders also stated that the majority of whales are gray and that CI beluga whales are becoming sexually mature when gray, which is not the normal pattern.

If the population were food-stressed, the expected population response would be for calf survival to be decreased and for the age of sexual maturity to be delayed. The higher proportion of juvenile whales and the decreased age of first reproduction, as indicated by the observation that gray beluga whales are producing calves, suggest that nutrition is not limiting the population.

Discussion

The ESA instructs the Federal government to conduct a review of the status of the species and include efforts by any state or foreign nation to protect such species within any area under its jurisdiction or the high seas. NMFS conducted such a status review of CI beluga whales to determine whether the population should be listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

NMFS conducted annual surveys of the Cook Inlet beluga whale between 1994 and 1998. The results show a sharp decline in estimated abundance, with the 1998 estimate (347 animals) nearly 50 percent lower than the 1994 estimate (653 animals).

The mean subsistence harvest level of CI beluga whales from 1995 through 1998 was 77 whales per year. There was no harvest in 1999, and NMFS is working with CIMMC to authorize the harvest of one whale in 2000. The harvest, which has been identified as the only factor that can account for the observed decline of the CI beluga stock, is being controlled through Pub. L. 106–31 and will be controlled through regulatory mechanisms that are available under the MMPA. The Pub. L. 106–31 will expire on October 1, 2000, and the protection will stop unless the legislation is extended or NMFS issues regulations that provide a long-term limitation on the harvest to promote recovery of the stock.

In simulation modeling efforts, NMFS scientists have demonstrated that the stock is not likely to continue to decline if the harvest is controlled. Breiwick and DeMaster (1999) showed that a stock with at least 300 individuals and a positive intrinsic growth rate, like that of beluga whales, would not go extinct due to stochastic events.

Using a logistic model with productivity values taken from the current CI beluga stock assessment report and an assumed carrying capacity of 1,300 whales, NMFS compared the rates of population growth using no harvest and a harvest of 2 whales per year. The no-harvest model indicated that the stock would be expected to double in about 2 decades. The latter model predicted that the harvest of 2 whales per year would have a negligible impact on the stock (i.e., such a harvest regime would not cause a significant delay in recovery compared to the no-harvest model).

The habitat of the stock has not been, nor is it likely to be, destroyed, modified or curtailed in sufficient extent to cause the stock to be in danger of extinction. The stock has not been overutilized for commercial, recreational, scientific or educational purposes. The effects of disease or predation are not well documented but are believed to be minimal. There is an adequate regulatory mechanism to control the subsistence harvest, which is the only factor that can account for the observed decline, through October 1, 2000. In addition, the MMPA provides an adequate mechanism to ensure that future commercial activity in CI would have no more than a negligible impact on the stock. Other natural or manmade factors (subsistence harvest) have affected the stock's continued existence; however, the current (since 1999) level of harvest would not have a significant adverse impact on the continued existence of CI beluga whales.

Determination

Based on the best available scientific information, NMFS has determined that the CI beluga whale population has declined to a level that is considered depleted under the MMPA. However, after taking into account the information summarized above, NMFS has determined that the stock is not in danger of extinction nor is it likely to become so in the foreseeable future. Therefore, NMFS has determined that listing CI beluga whales under the ESA is not warranted at this time.

NMFS remains concerned about the status of the CI beluga population and

will continue to include the population on the list of candidate species under the ESA. Furthermore, NMFS will continue to monitor the abundance and population trend of the stock and will re-evaluate its status as needed.

References

A complete list of all cited references is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of NEPA. See NOAA Administrative Order 216–6.

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final action is exempt from review under Executive Order 12866.

Executive Order 13132—Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with State and local government agencies in the course of assessing the status of CI beluga whales. State and local governments have expressed support for the conservation of this stock of beluga whales. Dialogue with State and local agencies included an exchange and discussion of scientific information regarding beluga whales, factors that may be affecting them, and their status under the ESA and MMPA.

Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This action does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this action.

Nonetheless, NMFS took several steps to inform affected tribal governments and solicit their input during development of this determination and addressed their input within announcement of the determination. One tribal government and CIMMC, an ANO representing several tribes within Cook Inlet, formally commented on the status review. NMFS discussed the status of the CI beluga whale stock with CIMMC and other tribally-authorized ANOs prior to and during the status review and plans to continue working with local tribally-authorized ANOs to develop and implement an effective program to control the harvest of CI beluga whales and promote recovery of the stock.

Dated: June 15, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 65, No. 121
Thursday, June 22, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN 3206–AJ12

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to implement provisions authorizing Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel.

DATES: Written comments will be considered if received no later than August 21, 2000.

ADDRESSES: Send or deliver written comments to Carol J. Okin, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael J. Mahoney, (202) 606–0830 (FAX 202–606–0390).

SUPPLEMENTARY INFORMATION: Public Law 101–510 (National Defense Authorization Act for Fiscal Year 1991), section 1206, amends subchapter VII of 5 U.S.C. chapter 53, by adding a new section 5379. This section authorizes agencies to establish a program under which they may agree to repay all or part of an outstanding federally insured student loan to facilitate the recruitment or retention of highly qualified employees.

The repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain those for whom the Government has a special need. The Federal Employees Pay Comparability Act of 1990 authorized agencies to pay recruitment and relocation bonuses, retention allowances, and to set pay above the minimum step of the grade for individuals with superior qualifications. Under Public Law 101–510, agencies may also pay for academic training leading to a degree. (Final regulations were published on May 7, 1992, at 57 FR 19515.) When considering monetary incentives as a recruitment or retention tool, agencies should carefully weigh the relative advantages and disadvantages of each of these pay authorities.

The student loan repayment law specifies that OPM prescribe regulations containing standards and requirements which would assure uniformity among agency programs.

The proposed regulations require the head of each agency to establish an internal plan that designates agency officials with authority to review and approve payments. This plan must also establish (1) agency criteria for authorizing payments and determining the amount of the payment, (2) procedures for making payments to the lender (or holder of the loan), (3) a system for selecting employees to receive loan repayment benefits that takes into account merit system principles, particularly the principle to treat employees and applicants fairly and equitably, (4) requirements for service agreements, and (5) documentation and recordkeeping requirements to support effective internal accountability and external oversight to ensure that merit principles have been followed. Outlined below are the key elements of the student loan repayment law and OPM implementation requirements.

Loans Qualifying for Repayment

The repayment authority is limited to student loans authorized by the Higher Education Act of 1965 and the Public Health Service Act. These are federally insured loans made by educational institutions or banks and other private lenders. The Higher Education Act covers guaranteed student loan programs such as Stafford Loans, Supplemental Loans for Students, PLUS loans and Consolidation Loans, as well as Perkins Loans (formerly called the National Direct Student Loan Program). Loans covered under the Public Health Service Act include the Nursing Student Loan Program, the Health Profession Student Loan Program, and the Health Education Assistance Loan Program.

Employees Covered

Student loan repayment benefits may be offered to candidates to whom an offer of employment has been made, or to current employees of the agency. However, employees who are, or will be, occupying positions outside the General Schedule are excluded from receiving repayment benefits, as are those in positions excepted from the competitive service because of their confidential, policy-determining, policy-making, or policy-advocating character. (These are generally referred to as Schedule C positions, and positions to which individuals are appointed by the President.)

Payment Limitations

Repayments from an agency to an individual employee may not exceed $6,000 in a calendar year, with an overall lifetime maximum of $40,000 per employee. Each agency will make direct lump sum payments on behalf of the employee to the holder of the loan. The agency will notify the holder, on behalf of the employee, that the lump sum payment is to be applied to the unpaid balance. Loan payments may not be considered as part of basic pay. Agencies may not reimburse employees for payments the employees made prior to entering into an agreement with the agency. Loan repayments are discontinued if the terms of the service agreement are not met. OPM has received a ruling from the Internal Revenue Service (IRS) addressing the employee's tax liability for the loan payments. According to the IRS, loan payments must be reported as taxable income and applicable taxes withheld at the time each or any payment is made. These withholdings could have a significant impact on an employee's paycheck during the pay period in which the loan repayment is made. Agencies should make employees aware of their tax obligation at the outset. Agencies are required to report the amount of the loan repayments, as well as any FICA related taxes or income taxes that have been withheld, on a Form W–2. Agencies should contact the IRS, Assistant Chief Counsel for Income Tax and Accounting for more specifics regarding the tax implications of loan payments. OPM will be working with IRS to develop further guidance relating to the implementation of student loan repayments prior to the approval of the final regulations.

Employee Service Requirement

An employee selected to receive repayment benefits must agree in writing to remain with the agency for a specified period, not less than 3 years, unless involuntarily separated. If used as a recruitment incentive, the specified period for service requirement begins when the employee enters on duty. If used for retention purposes, the agency must specify when the period is to begin. In either case, the service requirement must be stated in the service agreement. If the involuntary separation is for misconduct, or the employee leaves voluntarily prior to satisfying the service agreement, the employee must repay the agency which had been paying the benefit the amount of any benefits received. The law further stipulates how this money will be recovered when the employee fails to repay the required amount and how agencies will credit the money to their appropriation accounts. Repayment by the employee may not be required if the employee leaves voluntarily to enter into the service of another agency, unless the losing agency informs the employee that payments must be returned. The agency may also waive its right of recovery in the interest of equity.

Selection Procedures

Agencies must select employees to receive benefits in accordance with merit principles.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 537

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to add part 537 to Title 5, Code of Federal Regulations, as follows:

PART 537—REPAYMENT OF STUDENT LOANS

Sec.

537.101 Purpose.
537.102 Definitions.
537.103 Agency loan repayment plans; higher level review and approval.
537.104 Employee eligibility.
537.105 Criteria for payment.
537.106 Procedures for making loan payments.
537.107 Service agreements.
537.108 Loss of eligibility for loan payment benefits.
537.109 Employee reimbursements to the Government.
537.110 Records.

Authority: 5 U.S.C. 5379

§ 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, which authorizes agencies to establish a program under which they may agree to repay all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified professional, technical, or administrative personnel.

§ 537.102 Definitions.

In this part:

Agency has the meaning given that term in 5 U.S.C. 4101(l) subparagraph (A), (B), (C), (D), or (E).

Employee has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which—

(a) Is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character; or

(b) Is not subject to the General Schedule established under 5 U.S.C. chapter 53, subchapter III.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law for the position to which the employee will be newly appointed, or is currently holding (or in the case of an employee entitled to grade or pay retention, the employee's retained rate of pay), before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or law enforcement geographic adjustments under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency of not less than 3 years, in return for payments toward a student loan previously taken out by the employee.

Student loan means—

(a) A loan made, insured, or guaranteed under parts B and E of title IV of the Higher Education Act of 1965; or

(b) A health education assistance loan made or insured under part C of title VII of the Public Health Service Act, or under part B of title VIII of that Act.

§ 537.103 Agency loan repayment plans; higher level review and approval.

(a) *Agency loan repayment plans.* Before repaying any student loans under this part, the head of an agency must establish a student loan repayment plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve student loan repayments;

(2) The situations in which the loan repayment authority may be used;

(3) Criteria that must be met or considered in authorizing loan repayments, including criteria for determining the size of a payment;

(4) Procedures for making loan payments;

(5) A system for selecting employees to receive repayment benefits that ensures fair and equitable treatment;

(6) Requirements for service agreements (including a basis for determining the length of service to be required if greater than the statutory minimum) and provisions for recovering any amount outstanding from an employee who fails to complete the period of employment established under a service agreement and for waiving such amount; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action taken in each case.

(b) *Higher level review and approval.*

(1) Except as provided in paragraph (b)(2) of this section, each determination to repay all or part of a student loan, including the amount to be paid, must be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, a higher level official may establish criteria in advance based on identification of qualifications typically possessed by high quality candidates for a specific position or other similar positions, and authorize the recommending official to offer loan repayment benefits (in an amount within a pre-established range) to any high quality candidate without further review or approval.

§ 537.104 Employee eligibility.

In accordance with the other provisions of this part and 5 U.S.C. 5379, an agency may authorize loan repayments to recruit or retain—

(a) Temporary employees who are serving on appointments leading to conversion to term or permanent appointments; or

(b) Term employees with at least 3 years left on their appointment ; or

(c) Permanent employees.

§ 537.105 Criteria for payment.

(a) *Written determination.* Loan payments made under this part must be based on a written determination that, in the absence of such payments, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position. All determinations must be made on a case-by-case basis.

(b) *Determination for recruitment.* Each determination for recruitment purposes (including the amount to be paid) must be made before the employee actually enters on duty in the position for which he or she was recruited.

(c) *Determination for retention.* Payments authorized in order to retain an employee must be based upon a written determination that the high or unique qualifications of the employee or special need of the agency for the employee's services makes it essential to retain the employee, and that, in the absence of such payments, the employee would be likely to leave for employment outside the Federal service. This determination must be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission.

(d) *Factors to be considered.* In determining whether student loan repayments should be authorized, and in determining the amount of such payments, an agency must consider the following factors, as applicable in the case at hand:

(1) The success of recent efforts to recruit high quality candidates for similar positions (or those with qualifications similar to the ones possessed by the employee), including indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(2) Labor market factors that may affect the ability of the agency to recruit high quality candidates for similar positions now or in the future;

(3) Special qualifications or education needed for the position;

(4) The cost of training already given the employee and of training that would be needed by a new employee; and

(5) The practicality of using other recruitment and retention incentives such as the superior qualifications appointment authority provided by § 531.203(b) of this chapter, the authority to pay a recruitment bonus under part 575, subpart A of this chapter, or retention allowances under part 575, subpart C of this chapter.

(e) *Selecting employees.* When selecting employees to receive loan repayment benefits, agencies must adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

§ 537.106 Procedures for making loan payments.

(a) *Conditions for payments.* Payments will be at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned. Payments may be applied only to the indebtedness outstanding at the time the agency and the employee enter into an agreement, and may not begin before the employee enters on duty with the agency. Repayment benefits must be in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(b) *Loans to be repaid.* Before authorizing loan payments, an agency must verify with the holder of the loan that the employee has an outstanding student loan that qualifies for repayment under this part. An agency may repay more than one loan as long as the loan payments do not exceed the limits set forth in paragraph (c) of this section.

(c) *Size of payments.* In determining the size of the loan payments, an agency should take into consideration the value the employee has to the agency, and how far in advance the agency can commit funds. If budgetary considerations are an issue, agencies may pay a specified amount for the first year, with the option of renewing this commitment in subsequent years, funds permitting. This type of arrangement should be part of the initial agreement with the employee. The amount paid by the agency is subject to all the following maximum limits:

(1) $6,000 per employee per calendar year; and

(2) A lifetime aggregate of $40,000 per employee.

(d) *Employee responsibility.* The employee will be responsible for making loan payments on the portion of the loan(s) that continues to be the responsibility of the employee. The employee will also be responsible for any income tax obligations resulting from the loan payments.

§ 537.107 Service agreements.

(a) Before any loan payments may be made, an agency must require that the employee sign a written agreement to complete a specified period of employment with the agency and to repay loan benefits as required by § 537.109. This agreement may also specify any other conditions of employment the agency feels is appropriate, such as, but not limited to, the employee's position and the duties they are expected to perform, work schedule, or level of performance.

(b) The minimum period of employment to be established under a service agreement must be 3 years, regardless of the amount of loan repayment authorized.

§ 537.108 Loss of eligibility for loan payment benefits.

(a) An employee receiving loan payment benefits from an agency will be ineligible for continued benefits from that agency if the employee:

(1) Separates from the agency; or

(2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the head of the agency; or

(3) Violates any of the conditions of the service agreement.

(b) For the purpose of applying paragraph (a) of this section in the case of an employee covered by an appraisal system established under part 430, subpart B, of this chapter, the employee's most recent rating of record must be at least level 3 (''Fully Successful'').

§ 537.109 Employee reimbursements to the Government.

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement will be indebted to the Federal Government and must repay the amount of any student loan repayment benefits the employee received from the agency.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the agency terminates before the employee completes the

period of employment specified in the service agreement because:

(1) The employee is separated involuntarily on account of misconduct; or

(2) The employee leaves the agency voluntarily.

(c) If an employee fails to reimburse the agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and Subpart K of part 550 of this chapter, or through the appropriate provisions governing debt collection if the individual is no longer a Federal employee.

(d) Paragraph (a) of this section does not apply when the employee fails to complete a period of employment established under a service agreement because:

(1) The employee is involuntarily separated for reasons other than misconduct; or

(2) The employee leaves the agency voluntarily to enter into the service of any other agency, unless repayment is otherwise specified in the service agreement.

(e) The head of an agency may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest.

(f) Any amount repaid, or recovered from, an employee under this section will be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited will be merged with other sums in such account and will be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

§ 537.110 Records.

Each agency must keep a record of each determination made under this part and make such records available for review upon request from OPM. These records may be destroyed after 3 years or after the program has been formally evaluated by OPM (whichever comes first).

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG34

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24 and NUHOMS®–52B Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear West (TN West), Inc., Standardized NUHOMS®–24P and –52B cask system (NUHOMS® storage system) listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance (CoC), No. 1004. Amendment No. 2 will make two main changes: it will update the Technical Specifications' fuel qualification tables to reflect additional fuel parameters; and it will allow storage of burnable poison rod assemblies (BPRAs) in model 24P of the NUHOMS® storage system, along with the spent fuel. Amendment No. 2 will also revise and renumber several of the conditions in the CoC to reflect the NRC's new standard format for CoCs. However, no technical changes to the CoC's conditions will be made by this amendment. This amendment will allow holders of power reactor operating licenses to store spent fuel in the TN West NUHOMS® storage system, as amended, under a general license.

DATES: Comments on the proposed rule must be received on or before July 24, 2000.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000 are also available electronically at the NRC Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC's Public Document Room reference Staff at (202) 634–3273 or toll free at 1–800–397–4209, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie P. Bush-Goddard, Ph.D., telephone (301) 415–6257, e-mail, SPB@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

Procedural Background

Because the NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on September 5, 2000. However, if the NRC receives significant adverse comments on the direct final rule by July 24, 2000, then the NRC will publish a withdrawal of the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d—48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.
Initial Certificate Effective Date: January 23, 1995.
Amendment No. 1 Effective Date: April 27, 2000.
Amendment No. 2 Effective Date: September 5, 2000.
SAR Submitted by: Transnuclear West, Inc.
SAR Title: Transnuclear West, Inc., ''Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel''.
Docket Number: 72–1004.
Certificate Expiration Date: January 23, 2015.
Model Number: Standardized NUHOMS®–24P and NUHOMS®–52B.

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–15543 Filed 6–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG55

List of Approved Spent Fuel Storage Casks: VSC–24 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Pacific Sierra Nuclear Associates (PSNA) VSC–24 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to the Certificate of Compliance (CoC). Amendment No. 2 will revise the Technical Specifications and CoC regarding welding and nondestructive examination of welds, the method for determining cask drain time during loading, the minimum temperature for moving the loaded multi-assembly sealed basket (MSB), artificial thermal loads other than spent fuel that may be used to obtain temperature data, and the maximum permissible air outlet temperature. In addition, the amendment includes changes to the Technical Specifications and CoC to correct typographical errors and to make other minor clarifications and changes. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the VSC–24 cask system, as amended, under a general license.

DATES: Comments on the proposed rule must be received on or before July 24, 2000.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website *(http://ruleforumllnl.gov).* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov).*

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, telephone (301) 415–6195, e-mail, GEG1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the Direct Final Rule published in the rules section of this **Federal Register**.

Procedural Background

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on September 5, 2000. However, if the NRC receives significant adverse comments on the direct final rule by July 24, 2000, then the NRC will publish a notice to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub.

L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. Section 72.214, Certificate of Compliance (CoC) 1007 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1007.

Initial Certificate Effective Date: May 7, 1993.

Amendment Number 1 Effective Date: May 30, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

SAR Submitted by: Pacific Sierra Nuclear Associates.

SAR Title: Final Safety Analysis Report for the Ventilated Storage Cask System.

Docket Number: 72–1007.

Certificate Expiration Date: May 7, 2013.

Model Number: VSC–24.

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–15541 Filed 6–21–00; 8:45 am]

BILLING CODE 7590–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF17

Administrative Review Process; Prehearing and Posthearing Conferences

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to amend a portion of our regulations on social security and supplemental security income which currently state that an administrative law judge (ALJ) may decide to hold a prehearing or posthearing conference in your case. We are proposing to amend these rules to provide that we may designate an attorney adviser in our Office of Hearings and Appeals (OHA) to conduct a formal prehearing or posthearing conference when requested by an ALJ. We are also proposing to amend our rules to include procedures to govern the informal prehearing conference that we may hold with you. We are proposing these rules in order to improve our hearings process by standardizing and increasing the efficiency of our procedures for holding prehearing and posthearing conferences.

DATES: To be sure your comments are considered, we must receive them no later than August 21, 2000.

ADDRESSES: Comments should be submitted to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703; sent by telefax to (410) 966–2830; sent by e-mail to regulations@SSA.gov; or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3632 or TTY 1–800–988–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

We generally use a four step administrative review process to decide claims for Social Security benefits under title II of the Social Security Act (the Act) and for Supplemental Security Income (SSI) benefits under title XVI of the Act. If you are not satisfied with our initial determination, you may request that we reconsider it. If you are not satisfied with our reconsidered determination, you may request an ALJ hearing. If you are not satisfied with the ALJ's decision, you may request that the Appeals Council review it. Generally, you must complete these steps and receive our final decision before you may request judicial review of the decision in the Federal courts.

On August 30, 1999, we announced a prototype involving a combination of modifications to the procedures we follow in determining disability (64 FR 47218). At that time, we also announced that we were making several changes to improve the hearing step of the administrative review process. We noted that we were going to streamline case processing, make structural changes in the management organization of our hearing offices, and make improvements in our automation and data collection. We also noted that we would implement a ''national workflow model'' that combines prehearing activities, a standardized prehearing conference, and processing-time benchmarks for various tasks (64 FR at 47219).

We are making changes in the hearing process as part of our Hearings Process Improvement (HPI) initiative. Under HPI, we are trying to make our hearing process more timely, more efficient and more customer-focused. The report on this initiative is available as an SSA publication, ''The Hearings Process Improvement Initiative: Delivering Better Service for the 21st Century'' (SSA Pub. No. 01–016). We also made this report available on our Internet site at http://www.ssa.gov/reports/hpi.

Under our HPI initiative, we distinguish between informal and formal prehearing conferences. Informal conferences will be a relatively routine part of our prehearing activities. We will hold these conferences to develop additional evidence and information that may be needed to ensure that cases are ready for a hearing when they are assigned to an ALJ. We will hold formal prehearing conferences more rarely and only at the request of an ALJ.

We currently conduct developmental activities similar to those involved in the informal conferences under the Commissioner's general, administrative

authority to manage and direct the ALJ hearing process and to assign ALJs to cases. Under our current process, staff personnel in our hearing offices conduct a variety of prehearing activities, including working with claimants and their representatives, by telephone and in person, to develop additional evidence and information and to prepare the claim for a hearing.

We conduct all of the procedures in the administrative review process, including the ALJ hearing and any conferences we hold in connection with the hearing, in an informal, nonadversarial manner. The term ''formal,'' as used in our HPI initiative and in these proposed rules to refer to certain conferences, is not intended to imply that we will conduct these conferences in an adversarial manner.

Explanation of Proposed Rules

We are proposing to amend our regulations at 20 CFR §§ 404.961 and 416.1461 to set forth the rules we will follow when we hold informal prehearing conferences. We believe that these informal conferences will standardize the best developmental practices our hearing offices currently use in the period before we appoint an ALJ to hold a hearing and decide a case.

Our hearing office staff may hold informal prehearing conferences with you or your representative for several reasons. We may hold an informal conference to decide if there is any existing evidence that we should get before the hearing. We may also hold an informal conference to clarify an issue or issues in your case. If you do not have a representative, we may also hold an informal conference to advise you about your right to representation and to determine if you want to get a representative. We expect that these informal conferences will be held by either attorney advisers or paralegal analysts in our hearing offices. We may hold these informal conferences instead of, or in addition to, any other activities that we do in our hearing offices to develop the evidence in your claim.

We will usually hold an informal prehearing conference by telephone. However, we may also hold the informal conference in person or by videoconference if we decide it is more efficient to do so. We may hold the conference with you, you and your representative, or just your representative. We will reach agreement with you, directly or through your representative, regarding the time, place and purpose of the conference. We may arrange a conference by telephone, in person, or in writing. At the conference, we may consider matters in addition to those that were agreed to in arranging the conference, if the persons participating in the conference agree to consider the additional matters.

If you do not have a representative and you tell us at an informal conference that you want a representative, we will give you a list of groups in your community that can help you find a representative. If you do not wish to be represented, we will explain what that means to you. You can, of course, get a representative at any time after the conference, even if you have stated at the conference that you do not want a representative at your hearing. If we hold an informal conference and you do not have a representative, we will not use the conference to make any kind of agreements with you about your case.

We intend to record the information we get at the informal conference by a report of contact that we will include in your claims file. We may also record it by any other means that we decide accurately reflects the information.

We are also proposing in these rules to amend §§ 404.961 and 416.1461 to allow an attorney adviser, in certain circumstances, to hold any formal prehearing or posthearing conference that we might conduct in your case after it has been assigned to an ALJ. The management officials in the hearing office would designate an attorney adviser to hold a conference if you have appointed a representative, and the ALJ requests that we designate an attorney adviser to hold a prehearing or posthearing conference.

Under the HPI initiative, we are trying to improve how we prepare cases before they are assigned to an ALJ for a hearing, and to ensure that cases are ready for a hearing when they are assigned to an ALJ. However, we expect that there will still be occasions when the ALJ will decide that a formal prehearing conference should be held. Although we may use it to develop additional evidence or information, we expect that the primary purpose of the formal prehearing conference will be to clarify or narrow an issue or issues in the case.

We currently hold formal posthearing conferences infrequently, and expect to hold them less frequently under the HPI initiative, which should increase our ability to ensure that cases are ready for hearing when the hearing is held. However, we believe we should provide authority for management officials to designate an attorney adviser to hold a formal posthearing conference in instances in which the ALJ believes that such a conference would expedite the decision and requests the hearing office to designate an attorney adviser to hold the conference.

Sections 404.961 and 416.1461 currently state that an ALJ may decide to hold a prehearing or posthearing conference to expedite the hearing or the decision, and that the ALJ will hold the conference. We are proposing in these rules to specify that, at an ALJ's request, an attorney adviser designated by a hearing office may hold a formal prehearing or posthearing conference. The attorney adviser designated by the hearing office to hold these formal prehearing or posthearing conferences may be an attorney adviser whose position in the hearing office is that of a Senior Attorney Adviser, or an attorney adviser who occupies the managerial position in the hearing office of Processing Group Supervisor or Hearing Office Director.

We have long interpreted the provisions of §§ 404.961 and 416.1461 as allowing a ''designee'' of the ALJ to conduct a prehearing or posthearing conference for the ALJ. However, under the procedures we are establishing, management officials in the hearing office will designate an attorney adviser to hold a prehearing or posthearing conference when an ALJ requests that an attorney adviser hold a formal conference. Thus, while the attorney adviser will conduct the prehearing or posthearing conference for the ALJ, the attorney adviser would not be the ALJ's designee.

We do not intend, however, that management officials in the hearing office will be able to designate an attorney adviser to hold a prehearing or posthearing conference if an ALJ has not requested that an attorney adviser hold a conference. The ALJ may personally hold a prehearing or posthearing conference any time the ALJ does not want an attorney adviser to hold the conference, or whenever the hearing office might decline to designate an attorney adviser to hold the conference.

Current §§ 404.961 and 416.1461 allow an ALJ to hold a prehearing or posthearing conference with an individual who does not have an appointed representative. Although it is generally our practice to hold a formal prehearing or posthearing conference only with a claimant's appointed representative, there are circumstances in which ALJs find it helpful to hold a conference with an individual who is not represented. This occurs most frequently when an unrepresented claimant who has previously not responded to our efforts to make contact arrives at the time and place we have scheduled for his or her hearing (in a notice of hearing mailed to the

individual's last known address). In these circumstances, and with the agreement of the claimant, the ALJ may postpone the hearing and hold a prehearing conference in order to talk with the individual about the available evidence and the question of representation.

We are not proposing in these rules to change the authority ALJs currently have to hold prehearing or posthearing conferences personally with an individual who does not have a representative. We believe there will always be some circumstances in which an ALJ can appropriately use that authority to facilitate the hearing or the decision. However, because an attorney adviser's duty of impartiality is not guaranteed to the same extent as that of an ALJ, we are proposing in these rules to specify that we will not designate an attorney adviser to hold a formal prehearing or posthearing conference with you if you are not represented. We believe that the different choices that individuals make about whether to appoint a representative warrant differences in our procedures for having attorney advisers hold formal prehearing and posthearing conferences, and that having different procedures will not result in unfair treatment of any claimants.

We are also proposing that the attorney adviser who conducts a formal prehearing or posthearing conference will have authority to reach agreements with your representative during a formal prehearing or posthearing conference. Any agreements made by the attorney adviser will be subject to approval by the ALJ. The proposed rules do not give the attorney adviser authority to take sworn testimony or to examine or cross-examine witnesses at a conference.

We will give you advance written notice of the time, place and purpose of any formal conference, including a conference conducted by telephone, unless you and any other parties to the hearing tell us in writing that you do not want written notice of the conference. We will mail any required written notice of the conference to you and your representative at least 7 days before the conference, unless we have already gotten the written notice to you in another way. We will provide written notice in advance of the conference even if, as will frequently be the case, the written notice confirms arrangements for the conference that we have already made with you by telephone. These proposed notice requirements clarify the existing notice requirements that apply under current §§ 404.961 and 416.1461 when an ALJ decides that prehearing or posthearing conference should be held.

Current §§ 404.961 and 416.1461 do not specify how we may hold a prehearing or posthearing conference or how we will make a record of a conference. We are proposing in these rules to specify that we may hold a formal prehearing or posthearing conference by telephone, in person, or by videoconference. We intend that the formal conference will be tape recorded, or recorded in another manner that accurately reflects the information we get at the conference, in order to make a record of any agreements or actions resulting from the conference.

Sections 404.961 and 416.1461 currently provide that the ALJ will state all agreements and actions resulting from the conference in an order, and that any stated agreements and actions become binding parts of the hearing record if the parties to the hearing do not object. We are proposing to clarify these provisions to explain that the ALJ will issue an order about the conference only if the conference has resulted in one or more actions or agreements. We are also proposing to amend these rules to specify that any objections to an ALJ's order must be in writing and that the ALJ will rule on any objections to the order. These changes will standardize our procedures in this respect.

We expect that the changes we are proposing in these rules will increase our efficiency by standardizing the practices we follow when we hold informal prehearing conferences and any formal prehearing and posthearing conferences that we may need. The changes we are proposing will also increase our ability to treat individual claimants consistently.

The proposed changes will not adversely affect an individual's right to a hearing before an ALJ. Failure or refusal to participate in a prehearing conference is not now, and will not be under these proposed rules, a basis for dismissing a request for hearing. A request for hearing may be dismissed only under the circumstances specified in our regulations at 20 CFR §§ 404.957 and 416.1457. Similarly, failure or refusal to participate in a posthearing conference will not adversely affect your right to a hearing decision, which the ALJ is required to issue in accordance with §§ 404.953 and 416.1453.

Other Changes

We are also proposing to rewrite §§ 404.961 and 416.1461 in plain language. We are doing this consistent with the President's memorandum of June 1, 1998 (63 FR 31885), which states that each agency should write its rules in plain language. By rewriting the rules in plain language, we do not intend to make any substantive changes in the existing provisions of §§ 404.961 and 416.1461, beyond those we are proposing to make here.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su—docs/aces/aces140.html.* It is also available on the Internet site for SSA (i.e., SSA Online): *http://www.ssa.gov/.*

Clarity of the Proposed Rules

In addition to your substantive comments on these proposed rules, we invite your comments on how to make the rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72

and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart J of part 404 and subpart N of part 416 of chapter III of Title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.961 is revised to read as follows:

§ 404.961 Prehearing and posthearing conferences.

(a) *What are the types of conferences that we may hold?* We may hold a prehearing or posthearing conference. There are two types of prehearing conferences, an informal prehearing conference and a formal prehearing conference. There is only one type of posthearing conference, a formal posthearing conference. We explain the different types of conferences in the remaining paragraphs of this section.

(b) *When may we decide to hold an informal prehearing conference?* We may decide on our own, at your request, or at the request of any other party to the hearing, to hold an informal prehearing conference. We may hold an informal prehearing conference to clarify an issue or issues in your claim, or to decide whether more evidence is needed. If you do not have a representative, we may hold an informal prehearing conference to tell you about your right to representation and to determine if you want a representative. We may also hold an informal prehearing conference for any other reason that we decide is appropriate.

(c) *How will we hold an informal prehearing conference?* (1) We may hold an informal prehearing conference with you or your representative, or with other parties to the hearing, or the representative(s) of those parties.

(2) If we hold an informal prehearing conference, we will generally hold it by telephone. However, we may also decide to hold the conference with you or your representative in person or by videoconference. We will reach agreement with you, directly or through your representative, regarding the time, place and purpose of the conference. We may arrange a conference by telephone, in person, or in writing. At the conference, we may consider matters in addition to those that were agreed to in arranging the conference, if the persons participating in the conference agree to consider the additional matters. We will record the information that we get at the conference by any method that we decide accurately reflects the information.

(3) If you do not have a representative, we will explain your right to representation, and give you a list of groups in your community that can give you help in finding a representative. If you state at the conference that you do not want a representative, you may still be represented if you decide at any time that you want a representative at your hearing.

(4) If you do not have a representative, we will not make any agreements with you at the informal prehearing conference.

(d) *When may we decide to hold a formal prehearing conference?* After we assign a case to an administrative law judge, the administrative law judge may decide on his or her own, at your request, or at the request of any other party to the hearing, to hold a formal prehearing conference. If the administrative law judge decides to hold a formal prehearing conference, he or she may conduct it, or may request that an attorney adviser designated by the hearing office conduct it. We will not designate an attorney adviser to hold a formal prehearing conference if you do not have a representative. Only an administrative law judge may hold a formal prehearing conference with you if you do not have a representative.

(e) *How will we hold a formal prehearing conference?* We will hold a formal prehearing conference by telephone, in person, or by videoconference. The administrative law judge or the attorney adviser designated by the hearing office will determine the appropriate method. The administrative law judge or the attorney adviser designated by the hearing office will give you and any other parties to the hearing advance written notice of the time, place, and purpose of the conference, unless you and any other parties state in writing that you do not want written notice of the conference. We will mail a required written notice to you at least seven days before the date of the conference, unless we have already gotten the written notice to you in another way. The administrative law judge may enter into agreements with your representative at the conference. The attorney adviser designated by the hearing office may enter into agreements with your representative at the conference, which are subject to the approval of the administrative law judge under paragraph (g) of this section. We will make a record of the formal prehearing conference by any method that we decide accurately reflects the information we get at the conference.

(f) *May we consider other matters at the formal prehearing conference?* At the formal prehearing conference, the administrative law judge, or an attorney adviser designated by the hearing office to hold the conference, may consider matters in addition to the ones that we stated in the notice, if you and the other parties to the hearing agree in writing.

(g) *What will we do after a formal prehearing conference?* If we hold a formal prehearing conference that results in one or more agreements or actions, the administrative law judge will issue an order to state all of the agreements and actions that resulted from the conference. If an attorney adviser designated by the hearing office has held the conference, any agreements made by the attorney adviser are subject to approval by the administrative law judge. The agreements and actions in the administrative law judge's order will become binding on all the parties to the hearing and be made part of the hearing record, unless you or another party to the hearing objects in writing to the administrative law judge's order and the administrative law judge rules favorably on your objection.

(h) *When will we hold a posthearing conference?* If the administrative law judge decides that it is necessary, he or she may hold a posthearing conference. If the administrative law judge decides to hold a posthearing conference, he or she may conduct it, or may request that it be conducted by an attorney adviser designated by the hearing office. If we hold a posthearing conference, we will

apply the rules in paragraphs (e) through (g) of this section.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

3. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

4. Section 416.1461 is revised to read as follows:

§ 416.1461 Prehearing and posthearing conferences.

(a) *What are the types of conferences that we may hold?* We may hold a prehearing or posthearing conference. There are two types of prehearing conferences, an informal prehearing conference and a formal prehearing conference. There is only one type of posthearing conference, a formal posthearing conference. We explain the different types of conferences in the remaining paragraphs of this section.

(b) *When may we decide to hold an informal prehearing conference?* We may decide on our own, at your request, or at the request of any other party to the hearing, to hold an informal prehearing conference. We may hold an informal prehearing conference to clarify an issue or issues in your claim, or to decide whether more evidence is needed. If you do not have a representative, we may hold an informal prehearing conference to tell you about your right to representation and to determine if you want a representative. We may also hold an informal prehearing conference for any other reason that we decide is appropriate.

(c) *How will we hold an informal prehearing conference?* (1) We may hold an informal prehearing conference with you or your representative, or with other parties to the hearing, or the representative(s) of those parties.

(2) If we hold an informal prehearing conference, we will generally hold it by telephone. However, we may also decide to hold the conference with you or your representative in person or by videoconference. We will reach agreement with you, directly or through your representative, regarding the time, place and purpose of the conference. We may arrange a conference by telephone, in person, or in writing. At the conference, we may consider matters in addition to those that were agreed to in arranging the conference, if the persons participating in the conference agree to consider the additional matters. We will record the information that we get at the conference by any method that we decide accurately reflects the information.

(3) If you do not have a representative, we will explain your right to representation, and give you a list of groups in your community that can give you help in finding a representative. If you state at the conference that you do not want a representative, you may still be represented if you decide at any time that you want a representative.

(4) If you do not have a representative, we will not make any agreements with you at the informal prehearing conference.

(d) *When may we decide to hold a formal prehearing conference?* After we assign a case to an administrative law judge, the administrative law judge may decide on his or her own, at your request, or at the request of any other party to the hearing, to hold a formal prehearing conference. If the administrative law judge decides to hold a formal prehearing conference, he or she may conduct it, or may request that an attorney adviser designated by the hearing office conduct it. We will not designate an attorney adviser to hold a formal prehearing conference if you do not have a representative. Only an administrative law judge may hold a formal prehearing conference with you if you do not have a representative.

(e) *How will we hold a formal prehearing conference?* We will hold a formal prehearing conference by telephone, in person, or by videoconference. The administrative law judge or the attorney adviser designated by the hearing office will determine the appropriate method. The administrative law judge or the attorney adviser designated by the hearing office will give you and any other parties to the hearing advance written notice of the time, place, and purpose of the conference, unless you and any other parties state in writing that you do not want written notice of the conference. We will mail a required written notice to you at least seven days before the date of the conference, unless we have already gotten the written notice to you in another way. The administrative law judge may enter into agreements with your representative at the conference. The attorney adviser designated by the hearing office may enter into agreements with your representative at the conference, which are subject to the approval of the administrative law judge under paragraph (g) of this section. We will make a record of the formal prehearing conference by any method that we decide accurately reflects the information we get at the conference.

(f) *May we consider other matters at the formal prehearing conference?* At the formal prehearing conference, the administrative law judge, or an attorney adviser designated by the hearing office to hold the conference, may consider matters in addition to the ones that we stated in the notice, if you and the other parties to the hearing agree in writing.

(g) *What will we do after a formal prehearing conference?* If we hold a formal prehearing conference that results in one or more agreements or actions, the administrative law judge will issue an order to state all of the agreements and actions that resulted from the conference. If an attorney adviser designated by the hearing office has held the conference, any agreements made by the attorney adviser are subject to approval by the administrative law judge. The agreements and actions in the administrative law judge's order will become binding on all the parties to the hearing and be made part of the hearing record, unless you or another party to the hearing objects in writing to the administrative law judge's order and the administrative law judge rules favorably on your objection.

(h) *When will we hold a posthearing conference?* If the administrative law judge decides that it is necessary, he or she may hold a posthearing conference. If the administrative law judge decides to a hold a posthearing conference, he or she may conduct it, or may request that it be conducted by an attorney adviser designated by the hearing office. If we hold a posthearing conference, we will apply the rules in paragraphs (e) through (g) of this section.

Dated: June 9, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–15645 Filed 6–21–00; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6717–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Colorado, Montana, South Dakota, Utah, Wyoming; Control of Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve the Colorado, Montana, South Dakota,

Utah, and Wyoming State Plans for control of air emissions from existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The plans provide for implementation and enforcement of the Emissions Guidelines applicable to each existing HMIWI for which construction was commenced on or before June 20, 1996. In the Final Rules section of this **Federal Register**, EPA is approving the State's Plans, as a direct final rule without prior proposal because the Agency views these as a noncontroversial actions and anticipates no adverse comments. A detailed rationale for the approvals 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 action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for detailed descriptions of the Colorado, Montana, South Dakota, Utah, and Wyoming State Plans.

DATES: We must receive comments on this proposed rule by July 24, 2000.

ADDRESSES: Send written comments to: Richard R. Long, EPA Region 8, Office of Air and Radiation (8P–AR), 999 18th Street, Suite 500, Denver, Colorado 80202.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: EPA Region 8 offices, 999 18th Street, Suite 500, Denver, Colorado 80202. Please contact Meredith Bond at (303) 312–6438 before visiting the Region 8 office.

Copies of the State documents relevant to this action are available for public inspection at the respective State offices:

1. *Colorado*—Air Pollution Control Division, Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

2. *Montana*—Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, Montana 59620–0901.

3. *South Dakota*—Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

4. *Utah*—Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114–4820.

5. *Wyoming*—Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Meredith Bond, EPA Region 8, Air and Radiation Program, at the above address, telephone (303) 312–6438.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What Action is EPA Taking Today?
B. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

A. What Action Is EPA Taking Today?

In this action, we are proposing to approve the Colorado, Montana, South Dakota, Utah, and Wyoming State Plans for control of air emissions from existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The plans provide for implementation and enforcement of the Emissions Guidelines applicable to each existing HMIWI for which construction was commenced on or before June 20, 1996.

B. 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: June 2, 2000.

Rebecca W. Hanmer,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–15293 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AZ 025–MWIb; FRL–6717–8]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arizona; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Arizona State Plan for implementing the emissions guidelines applicable to existing hospital/medical/infectious waste incinerators (HMIWIs). The Plan was submitted by the Arizona Department of Environmental Quality (ADEQ) for the State of Arizona to satisfy requirements of sections 111(d) and 129 of the Federal Clean Air Act. In the Final Rules section of this **Federal Register**, EPA is approving the Arizona State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by July 24, 2000.

ADDRESSES: Written comments should be addressed to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the documents relevant to this proposed rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted State Plan are also available for inspection at the following location: Air Quality Division, Arizona Department of Environmental Quality, 3033 N. Central Avenue, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Dated: June 5, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–15289 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NC–FORS–T5–2000–01b; FRL–6712–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; Forsyth County (NC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes full approval of the operating permit program of Forsyth County, North Carolina. In the final rules section of this **Federal Register**, EPA is approving the County's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. An explanation for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by July 24, 2000.

ADDRESSES: Address comments to Kim Pierce, Regional Title V Program Manager, Operating Source Section, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of the County's submittals and other supporting documentation relevant to this action are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA, Region 4, at (404) 562–9124.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the final rules section of this **Federal Register**.

Dated: June 8, 2000.

Phyllis P. Harris,

Acting Regional Administrator, Region 4.

[FR Doc. 00–15291 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6717–6]

Hawaii; Tentative Determination on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination on application of Hawaii for final authorization, public meeting, public hearing and public comment period.

SUMMARY: Hawaii has applied for final authorization of its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Hawaii's application and made the tentative decision that Hawaii's hazardous waste management program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program subject to the limitations on its authority retained by EPA in accordance with RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA). Hawaii's application for final authorization is available for public review and comment. EPA will hold a public meeting to discuss Hawaii's hazardous waste program with interested persons and a public hearing to solicit comments on the application.

DATES: A public meeting is scheduled for July 25, 2000. A public hearing is scheduled for July 27, 2000. We must receive all written comments on Hawaii's final authorization application by the close of business on August 4, 2000.

ADDRESSES: Send written comments to Rebecca Smith, WST–3, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco 94105–3901. You can view and copy Hawaii's application during normal business hours at the following locations: EPA Region 9, Library, 75 Hawthorne Street, San Francisco, CA 94105–3901, Phone number: (415) 744–1510; or U.S. EPA Region 9 Pacific Islands Contact Office (PICO), 300 Ala Moana Blvd., Room 5–152, Honolulu, HI 96850, Phone number: (808) 541–2721; or Hawaii Department of Health (HDOH), Solid and Hazardous Waste Branch, 919 Ala Moana Blvd., Room 212, Honolulu, HI 96814, Phone number: (808) 586–4226; or HDOH, Environmental Management Division, 79–7595 Haukapila Street, Kealakekua, HI 96750 (at the old Kona Hospital), Phone number: (808) 322–7011; or HDOH, Environmental Health Facility, 1582 Kamehameha Avenue, Hilo, HI 96720, Phone number: (808) 933–0917; or HDOH, Maui District Health Office, 54 High Street, Wailuku, HI 96793, Phone number: (808) 984–8230; or HDOH, Kauai District Health Office, 3040 Umi Street, Lihue, HI 96766, Phone number: (808) 241–3323.

FOR FURTHER INFORMATION CONTACT: Rebecca Smith at the above address and (415) 744–1510.

SUPPLEMENTARY INFORMATION:

A. Why Are State Programs Authorized?

Section 3006 of RCRA allows EPA to authorize State hazardous waste management programs to operate in the State in lieu of the Federal hazardous waste management program subject to the authority retained by EPA in accordance with RCRA. EPA grants authorization if the Agency finds that the State program (1) is ''equivalent'' to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)). EPA regulations for final State authorization appear at 40 CFR part 271.

B. What has EPA Tentatively Decided on Hawaii's Application for Authorization?

The EPA has reviewed Hawaii's application and has tentatively determined that it meets all of the statutory and regulatory requirements established by RCRA. Also, prior to submitting its application on May 5, 1999, Hawaii solicited public comment and held a public hearing. Therefore, we are proposing to grant Hawaii final authorization to operate its hazardous waste management program subject to the authority retained by EPA under RCRA. Hawaii will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its program application, subject to the limitations of RCRA, including HSWA. New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Hawaii, including issuing permits, until the State is granted authorization to do so.

In accordance with section 3006 of RCRA and 40 Code of Federal Regulations (CFR) 271.20 (d), the Agency will hold a public hearing on its tentative decision on July 27, 2000 at 7 p.m. at Kawananakoa Intermediate School Cafetorium, 49 Funchal St., Honolulu HI 96813. Prior to the hearing, the Agency will hold a public meeting on July 25, 2000 at 5 p.m. at Kawananakoa Intermediate School Cafetorium, 49 Funchal St., Honolulu, HI 96813 to provide information about the state's program and to answer questions from the public. The public may also submit written comments on EPA's tentative determination until August 4, 2000. Copies of Hawaii's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

The EPA will consider all relevant public comments on its tentative decision received at the hearing or submitted in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Hawaii. The EPA expects to make a final decision on whether or not to approve Hawaii's program by September 21, 2000 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. What Will be the Effect of a Final Decision To Grant Authorization?

The effect of a final decision to grant authorization is that persons in Hawaii that are subject to RCRA will have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not delegable. Hawaii continues to have enforcement responsibilities under its state law to pursue violations of its hazardous waste management program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements (including state-issued statutes and regulations that are authorized by EPA and any applicable federally-issued statutes and regulations) and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

A final decision to grant authorization will not impose additional requirements on the regulated community because the regulations for which Hawaii will be authorized are already effective, and will not be changed by such final decision.

D. What Rules are We Proposing To Authorize In Lieu of The Federal Requirements?

On May 5, 1999, Hawaii submitted a final complete program application, seeking authorization in accordance with 40 CFR 271.3. We are proposing to grant Hawaii final authorization for the hazardous waste program submitted. State hazardous waste management requirements that are either equivalent to or more stringent than the corresponding federal requirements will become part of the authorized State program.

In developing its hazardous waste management program, Hawaii adopted almost verbatim the federal hazardous waste regulations found in 40 CFR Parts 260—266, 268, 270, 273 and 279, effective through May 6, 1998. EPA cannot delegate the Federal requirements at 40 CFR 268.5, 268.6, 268.42(b) and 268.44. Hawaii did not adopt these requirements, but reserved those sections of its regulations. EPA will continue to implement those requirements. Upon authorization, the State's hazardous waste management rules that are either equivalent to or more stringent than the corresponding federal rules will apply in lieu of the federal rules. The applicable rules are identified below.

Federal hazardous waste requirements	Analogous state authority
40 CFR Parts 260—266, 268, 270, 273, 279 through May 6, 1998.	Hawaii Administrative Rules (HAR) 11–260 to 11–266, 11–268, and 11–270, adopted June 18, 1994, revised March 13, 1999; and HAR 11–273 and 11–279 adopted March 13, 1999..

Hawaii did not adopt certain rulemaking petition procedures from 40 CFR part 260, subpart C, *i.e.,* 40 CFR 260.20, 260.21, 260.22, 260.30, 260.31, 260.32 and 260.33, which address what to include in petitions requesting modifications under 40 CFR parts 260 through 266, 268 and 273, petitions for an equivalent testing method, petitions to exclude the waste produced at a particular facility, petitions that certain recycled materials not be classified as a solid waste and therefore not a hazardous waste, and petitions that a particular enclosed device be classified as a boiler. Adoption of these rulemaking petition procedures is not required for RCRA authorization. However, under HAR 11–260–42, any petitions granted by the EPA under 40 CFR 260.22 to exclude the waste of a particular facility in Hawaii must be adopted by a Hawaii rule to be effectively excluded from State regulation, which requirement is more stringent than the federal program.

Hawaii has established a shorter permit term of five years instead of ten years, which is more stringent than the federal program. Hawaii will review hazardous waste land disposal permits three years instead of five years after issuing them, which is also more stringent than the federal program; however, Hawaii currently has no such facilities. Hawaii's provision under HAR 11–271–15(e) establishing a maximum time period of 180 days for the State's action on a permit application will sunset as soon as Hawaii obtains federal authority for its hazardous waste program because the federal regulations that Hawaii adopted do not specify a time period.

Hawaii did not adopt 40 CFR 261.4(b)(5) and therefore treats drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy, as hazardous waste, which is broader in scope than the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although you must comply with these requirements in accordance with state law, they will not be RCRA requirements under the authorized program.

Hawaii requires persons who transport, market or recycle used oil or used oil fuel to obtain a permit from the Hawaii Department of Health, which is broader in scope than the federal

program. Hawaii included a requirement that any person who imports hazardous waste from a foreign country or from a state into Hawaii must submit specific information in writing to the State within 30 days after the waste arrives. This requirement is broader in scope than the federal program. Additionally, Hawaii requires annual reports of transporters, processors, re-refiners and marketers, in addition to the RCRA required biennial reports, in order to allow the State to track legitimate handlers of used oil and thus better locate illegal handlers, which requirement is broader in scope than the federal program.

In summary, EPA considers the following State requirements to be more stringent than the Federal requirements:

- HAR 11–264–1082(c)(4)(ii), because the State must separately approve any alternative treatment method approved by EPA under 40 CFR 268.42(b) granted for a tank, surface impoundment or container; and
- HAR 11–270–50(a) and (d), because the State limits hazardous waste permits to five years (the federal limit is 10 years), and landfill permits to three years (the federal limit is five years).

These requirements will be part of Hawaii's authorized program and will be federally enforceable.

EPA considers that the following State requirements go beyond the scope of the federal program. EPA cannot enforce requirements that are broader in scope than the federal program. Broader in scope requirements will not be part of the authorized program. Although you must comply with these requirements in accordance with state law, they will not be RCRA requirements under the authorized program.

- HAR 11–261–4(b)(5), because the State does not exempt drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy from regulation;
- HAR 11–262–60 and HAR 11–262–61, because the State adds the requirement that any person who imports hazardous waste from a foreign country or from any state into Hawaii must submit specified information in writing within 30 days after the waste arrives in the State;
- HAR 11–279–90 to HAR 11–279–95, because the State requires that persons who transport, market or recycle used oil or used oil fuel obtain a State permit; and
- HAR 11–279–48, 57 and HAR 11–279–76, because the State requires annual reports of used oil transporters, processors, re-refiners, and marketers.

E. How Will the State Enforce Compliance With the Rules?

Section 3006(b) of RCRA requires that the State provide adequate enforcement of compliance with the hazardous waste management requirements in order to receive authorization. We have tentatively determined that Hawaii can adequately enforce compliance with its hazardous waste management regulations. Hawaii's enforcement authorities include the power to issue, modify, suspend or revoke permits; collect information and enter and inspect the premises of persons who handle hazardous wastes; assess administrative penalties or initiate action in court for penalties or injunctive relief; issue abatement and corrective action orders; and pursue criminal violations. Hawaii's enforcement provisions are located at Hawaii Revised Statute (HRS) Chapter 342J (1993 and Supp. 1998).

F. Who Handles Permits After This Authorization Takes Effect?

Hawaii will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until such permits expire or are terminated. When Hawaii either incorporates the terms and conditions of the Federal permits into State RCRA permits or issues State RCRA permits to those facilities, we will terminate those previously issued EPA permits and rely on the State RCRA permits. We will not issue any new permits or new portions of permits for the authorized provisions after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Hawaii is not yet authorized.

G. What Is Codification and Is EPA Codifying Hawaii's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program 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 M for this authorization of Hawaii's program until a later date.

H. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of 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. 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 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 as defined in the Executive Order. 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 Hawaii's proposal to be authorized for requirements of the hazardous waste management 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 Hawaii in lieu of the equivalent Federal program provisions previously implemented by EPA. 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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a state program.

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 consults with those governments, 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 E.O. 13084 because it does not significantly or uniquely affect any communities of Indian tribal governments. There are no Indian tribes in Hawaii.

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. No. 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.

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: June 9, 2000.

James Sayer,

Acting Regional Administrator, Region IX.

[FR Doc. 00–15297 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6717–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to delete the 3.45 acres of the Motor Wheel Disposal Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 of the National 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 has determined that this portion of the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting 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. 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 July 24, 2000.

ADDRESSES: Comments may be mailed to Heather Nelson, Remedial Project Manager, or Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repositories at the following locations: U.S. EPA Region 5, Administrative Records, 77 W. Jackson Boulevard, Chicago, Il 60604 (312) 886–0900; and the Lansing Public Library, Reference Section, 401 Capital Ave., Lansing, MI 48933.

FOR FURTHER INFORMATION CONTACT: Heather Nelson, Remedial Project Manager, at (312) 353–0685 or Gladys Beard Associate Remedial Project Manager at (312) 886–7253, written correspondence can be directed to either Ms. Nelson or Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

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: June 7, 2000.

Robert Springer,

Acting Regional Administrator, Region V.

[FR Doc. 00–15389 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 65, No. 121

Thursday, June 22, 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

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 20, 2000, at the Bureau of Land Management, 1717 Fabry Road SE, Salem, Oregon. The meeting will begin at 9 a.m. and end at 4 p.m. Agenda items to be covered include (1) Information sharing among PAC members; (2) BLM/OHV strategy; (3) Pacific Coast Initiative; (4) Willamette Restoration Initiative; and (5) Coast Range Association long rotation forestry. Two fifteen-minute open public forums are scheduled at 11:30 a.m. and 3:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to the Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: June 12, 2000.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 00–15803 Filed 6–21–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of public meetings related to the Sierra Nevada Forest Plan Amendment Draft Environmental Impact Statement (DEIS). Public meetings will provide information on the document, opportunities for discussion, dialogue and consideration of how the alternatives address the five problem areas, including old forest ecosystems and associated species; aquatic, riparian and meadow ecosystems; fire and fuels management; noxious weeds; and lower westside hardwood ecosystems. Meetings will take place in cities near Sierra Nevada forests, as well as Los Angeles, San Francisco Bay area, and Sacramento. The meeting schedule is attached.

SUMMARY: The Draft EIS to amend Sierra Nevada Forest Plans was released on May 2, 2000 and is open for public comment until August 11, 2000. The Sierra Nevada Framework for Conservation and Collaboration is an effort by the USDA Forest Service to better integrate the latest science and a collaborative approach into national forest management. The EIS will allow the forest service to update forest plans for the 11 national forests in the Sierra Nevada and Modoc Plateau. The Draft EIS proposes 7 action alternatives to address five problem areas.

Requesting Copies of the DEIS and Submitting Comments

The DEIS is available in 4 formats: a printed summary (40 pages); a printed 3-volume set of the full draft EIS, appendices and maps (1500 pages); compact disk (CD); or downloadable at www.r5.fed.us/sncf. To request hardcopies or a CD, write (Subject: SNFP Request): USDA Forest Service—CAET, Sierra Nevada Framework Project, PO Box 7669, 200 E. Broadway, Room 301, Missoula Mt 59807. Email: mailroom_wo_caet@fs.fed.us. Fax: (460) 329–3021.

Review and Comments on the DEIS may be sent to the above address (Subject: SNFP Comments)

FOR FURTHER INFORMATION CONTACT: Please see the USDA Forest Service, World Wide Web site www.r5.fs.fed.us/sncf or contact USDA Forest Service, Sierra Nevada Framework Project, Room 419, 801 I Street, Sacramento, Ca 95814; phone number 916–492–7554; TTY via PacBell relay (800) 735–2929.

THE FOLLOWING IS THE CURRENT LIST OF SIERRA NEVADA FOREST PLAN AMENDMENT DEIS PUBLIC MEETINGS

[Revised June 12, 2000]

Date	Time	Location	Address	Contact	Meeting Format
June 20, 2000	1:30 pm	Madera CA	Madera County Board of Supervisors, 209 W. Yosemite.		Board of Supervisors.
June 21, 2000	7:00–9:00 pm	El Dorado CA	Union Mine High School Cafeteria, 6530 Koki Lane.	Contact: Frank Mosbacher (530) 622–5061	Info/comment.
June 22, 2000	6:30–9:00 pm	Oakhurst CA	Oakhurst Community Center Building Road 425B.	Contact: Sue Exline (559) 297–0706	Information.
June 24, 2000	9:00 am–1:00 pm	Los Angeles CA	LA River Center, 570 W Ave 26, Ste 100	Contact: SNFP (916) 492–7554	Info/comment.
June 24, 2000	9:00–11:00 am	Sonora CA	Sonora Oaks Best Western, Hess Ave. and Hwy 108.	Contact: John Maschi, (209) 532–3671	Information.
June 27, 2000	2:00 pm	Fresno CA	Fesno County Board of Supervisors, 2281 Tulare St.		Board of Supervisors.
June 29, 2000	6:30–9:00 pm	Prather CA	Pineridge/Kings River District Office, Hwy 168.	Contact: Sue Exline (559) 297–0706	Information.
July 10, 2000	3:00–9:30 pm	Porterville CA	Veteran's Building 190 W. Olive Ave	Contact: Julie Allen, (559) 784–1500 ext. 1160.	Info/comment.
July 11, 2000	5:00–9:00 pm	Chester, CA	Wildwood Center, 366 Meadowbrook Loop	Contact: Carrie Christman (530) 257–2151	Info/comment.
July 12, 2000	6:30–9:00 pm	Alturas CA	USDA Conference Room	Contact: Nancy Gardner (530) 233–8713	Comment.
July 12, 2000	5:00–9:00 pm	Susanville	Lassen Nat'l Forest Supervisor's Office, 2550 Riverside Dr.	Carrie Christman (530) 257–2151	Info/comment.
July 13, 2000	5:00–9:00 pm	Fall River Mills CA	Hat Creek Ranger District Conference Room	Carrie Christman (530) 257–2151	Info/comment.
July 13, 2000	5:00–9:30 pm	Lake Isabella CA	Kern River Veteran's Hall/Senior Center 6405 Lake Isabella Blvd.	Contact: Julie Allen, (559) 784–1500 ext. 1160.	Info/comment.
July 17, 2000	6:30–9:00 pm	Bishop CA	Our Lady of Perpetual Help Catholic Church	Contact: Nancy Upham (760) 873–2427	Info/comment.
July 24, 2000	1:00–3:00 pm	Carson City NV	Library	Contact: Christie Kalkowski (775) 355–5311	Comment.
July 24, 2000	6:00–8:00 pm	Minden NV	Western Nevada Community College	Contact: Christie Kalkowski (775) 355–5311	Comment.

THE FOLLOWING IS THE CURRENT LIST OF SIERRA NEVADA FOREST PLAN AMENDMENT DEIS PUBLIC MEETINGS—Continued

[Revised June 12, 2000]

Date	Time	Location	Address	Contact	Meeting Format
July 25, 2000	6:30–9:00 pm	Mammoth Lakes CA	Community Center	Contact: Nancy Upham (760) 873–2427	Info/comment.
July 25, 2000	6:00–8:00 pm	Markleeville CA	Turtle Rock Co. Park	Contact: Christie Kalkowski (775) 355–5311	Comment.
July 25, 2000	6:30–9:00 pm	Oakhurst CA	Oakhurst Community Center Bulding, Road 425B.	Contact: Sue Exline (559) 297–0706 skexline@fs.fed.us.	Comment.
July 26, 2000	6:30–9:00 pm	Clovis CA	Veterans Memorial Building, 5th and Hughes-Veterans Room.	Contact: Sue Exline (559) 297–0706 skexline@fs.fed.us.	Comment.
July 26, 2000	6:00–8:00 pm	Bridgeport CA	Memorial Hall 100 Sinclair St	Contact: Christie Kalkowski (775) 355–5311	Info/comment.
July 27, 2000	6:00–8:00 pm	Reno NV	McKinley Arts & Cultural Center	Contact: Christie Kalkowski (775) 355–5311	Comment.
July 27, 2000	6:30–9:00 pm	Prather CA	Pineridge/Kings River District Office, Hwy 168.	Contact: Sue Exline (559) 297–0706	Comment.
July 29, 2000	9:00am–1:00 pm	Sacramento CA	Convention Center, 1400 J St	Contact: Gail Wright, (916) 492–7549	Reporting on public comment.
July TBA		San Francisco Bay Area.			Info/comment.

Kent P. Connaughton,

Sierra Nevada Framework Project Director.

[FR Doc. 00–15771 Filed 6–21–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on the Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of a U.S. Business Enterprise

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (Form BE–13) and the Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person (Form BE–14) obtain initial data on new foreign direct investment in the United States. The survey collects identification information on, and limited financial and operating data for, the U.S. entity being established or acquired and identification information on the new foreign owner. The data are needed to measure the amount of new foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

The survey is being revised to add an item to the BE–13 Supplement C–Exemption Claim, to collect the industry of the affiliate for which the Claim is filed. This industry code will be based on the new North American Industry Classification System (NAICS), which was recently adopted for use on the BE–13 survey. The proposed change will enhance the quality of the published data by providing information on the industries in which to classify the operations of exempt affiliates; however, it will not have a material effect on the average burden imposed on respondents. No other revisions are being proposed to the BE–13 or the BE–14 at this time.

II. Method of Collection

The BE–13 survey must be filed by every U.S. business with over $3 million of assets or 200 or more acres of U.S. land that is acquired to the extent of 10 percent or more, or is established, by a foreign investor. A BE–13 Supplement C–Exemption Claim must be filed for transactions that do not meet either of the reporting thresholds. The BE–13 is a one-time report that must be filed within 45 days of the acquisition or establishment. The BE–14 is filed by a person who assists in a covered investment transaction, such as a real estate broker or attorney, or who enters into a U.S. joint venture with a foreign person. Its purpose is to provide BEA with the name and address of the newly established or acquired U.S. company, so that a BE–13 form can be mailed to it for completion.

III. Data

OMB Number: 0608–0035.

Form Number: BE–13/BE–14.

Type of Review: Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Responses: 1,200 annually.

Estimated Time Per Response: 1½ hours.

Estimated Total Annual Burden: 1,800 hours.

Estimated Total Annual Cost: $54,000 (based on an estimated reporting burden of 1,800 hours and an estimated hourly cost of $30).

IV. Request for Comments

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 has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: June 16, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–15739 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan: Notice of Extension of Time Limits for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limits of the preliminary results of the antidumping duty administrative review on static random access memory semiconductors from Taiwan. The review covers five producers/exporters of the subject merchandise to the United States. The period of review is April 1, 1999, through March 31, 2000.

EFFECTIVE DATE: June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776 or Irina Itkin at (202) 482–0656, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, the Department is extending the time limit for completion of the preliminary results until April 30, 2001.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3))A)) and 19 CFR 351.213(h)(2).

Dated: June 16, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–15843 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061900A]

Foreign Fishing Vessels Operating in Internal Waters

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

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6066, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Dickinson, Office of Sustainable Fisheries, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910, (301–713–2337).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 306(c) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended by section 112(c) of the Sustainable Fisheries Act (Public Law 104–297), requires that foreign fishing vessels operating in internal U.S. waters report the tonnage and location of fish received from vessels of the United States. NOAA uses the information collected to properly allocate the reported receipts of fish to the area(s) from which the fish were caught, and to ensure that all transfers of fish from U.S. vessels to foreign vessels are accounted for in monitoring quotas and for resource assessment and statistical reporting purposes.

II. Method of Collection

Reports may be submitted by fax or by electronic or regular mail.

III. Data

OMB Number: 0648–0329.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 6.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 36.
Estimated Total Annual Cost to Public: $420.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–15853 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061900B]

Antarctic Marine Living Resources Conservation and Management Measures

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

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 21, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6066, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robin Tuttle, Office of Science and Technology, International Science Coordination & Analysis Division (F/ST3), 1315 East West Highway, Room 12643, Silver Spring, Maryland 20910, (301–713–2282).

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to the Antarctic Marine Living Resources Act of 1984, NOAA regulates the harvesting and import of Antarctic marine living resources (AMLR) by U.S. individuals and entities through the issuance of: (1) harvesting and dealer permits for AMLR harvested in the area of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR); and (2) harvesting, transshipment and dealer permits for *Dissostichus* species wherever harvested. NOAA also requires the use of *Dissostichus* catch documents for all harvests and transshipments by U.S. fishing vessel masters and all imports by U.S. dealers. Permits are issued, forms are used, and information collected to implement conservation and management measures adopted by the CCAMLR. Research and data collection plans are required of fishers who propose to undertake new or exploratory fisheries. Plans for finfish surveys are required of researchers intending to take more than 50 tons of CCAMLR finfish during the survey. Entry permits are required of individuals who enter a CCAMLR Ecosystem Monitoring (CEMP) site.

II. Method of Collection

Fishers seeking permits to harvest AMLR species and/or transship *Dissostichus* species submit permit applications to the NMFS. Fishers holding permits and fishing in the Convention Area are required to make periodic radio contact to report on catches of and effort directed at certain AMLR species. Fishers proposing to conduct a new or exploratory fishery are required to submit information describing the operation. Fishers holding permits to harvest and/or transship *Dissostichus* species submit catch documents. Dealers seeking to import AMLR species or re-export *Dissostichus* species submit permit applications to the NMFS. Dealers holding permits submit import tickets within 24 hours of each import. Dealers holding permits to import *Dissostichus* species forward catch documents completed by the masters of vessels harvesting *Dissostichus* species to the NMFS within 24 hours of import. Researchers who anticipate catches of less than fifty tons of AMLR finfish submit a notification of research vessel activity. Researchers who anticipate catches of greater than fifty tons of AMLR finfish submit plans for finfish surveys. Fishers not required to use a vessel monitoring system will provide positional information by radio contact. Persons proposing to enter a CCAMLR CEMP site submit an application for an entry permit and report annually on CEMP site activity.

III. Data

OMB Number: 0648–0194.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations, individuals.

Estimated Number of Respondents: 58.

Estimated Time Per Response: 30 minutes for a permit application for an established fishery; 24 hours (a range of 16–40 hours) for a permit application for a new or exploratory fishery; 12 minutes for an application to transship; 30 minutes for a dealer permit application; 15 minutes for an import ticket; 30 minutes for a permit application to re-export *Dissostichus* species; 15 minutes to complete and provide catch documents to dealers; 3 minutes for a dealer to transmit catch documents for imports; 10 minutes for a dealer to transmit catch documents for re-exports; 2 minutes for radio contacts; and 1 hour for a CEMP site entry application. There is no U.S. research effort underway or planned which will exceed the tonnage figures required for reporting, and no response times are now estimated.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $1,220.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–15854 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060100A]

Marine Mammals; Scientific Research Permit (PHF# 522–1569–00)

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

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Randall S. Wells, Ph.D, Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, has been issued a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813/570–5312)

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: On April 13, 2000, notice was published in the **Federal Register** (65 FR 19878) that a request for a scientific research permit had been submitted by the above-named individual to harass up to 120 Atlantic bottlenose dolphins (*Tursiops truncatus*) annually in Florida waters during the conduct of capture, examination, sampling, marking, and release activities, over a 5-year period. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 7, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–15855 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060800E]

Marine Mammals; File No. 675–1563–01

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Graham A.J. Worthy, [Principal Investigator], Department of Marine Biology, Texas A&M University, 5001 Avenue U, Suite 105, Galveston, Texas 77551, has requested an amendment to scientific research Permit No. 675–1563.

DATES: Written or telefaxed comments must be received on or before July 24, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 675–1563, issued on June 6, 2000 (65 FR 36889) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 675–1563 authorizes the permit holder to capture, mark, sedate, blood/biopsy sample 10 females and 20 pups Northern fur seals (*Callorhinus ursinus*), incidentally harass 60 animals of all ages, and accidentally kill up to 2 seals on the Pribilof Islands for a one-year period.

The permit holder requests amendment to take by capture and sample, bleach mark an additional five female seals, increase accidental mortality to five, attach VHF radio tags to all females over a three-year period, and to incidentally harass, annually, up to 13,000 animals of all ages.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 16, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–15856 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651–AB20

Notice of Roundtable on Computer-Implemented Business Method Patent Issues

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of roundtable on computer-implemented business method patent issues.

SUMMARY: As part of the recently announced business method patent initiative, the United States Patent and Trademark Office (USPTO) is holding a roundtable, the purpose of which is to discuss the history behind computer-implemented business method patents and to identify ways to improve the USPTO's current examination approach to computer-implemented business method patent applications. Members of the public are invited to attend the roundtable, or to participate as a panelist in the roundtable discussion, on the topics outlined in the supplementary information section of this notice, or other related topics. Individuals who are not selected, or do not wish to apply for selection as panelists may request to attend the discussion as an audience member. The roundtable is an opportunity for an informal discussion. Panelists will be asked to provide their individual input; group consensus advice will not be sought.

DATES: The roundtable will be held on Thursday, July 27, 2000, from 9 a.m. to 4:30 p.m. Self-nominations to participate as a panelist and requests for attendance at the roundtable must be received by no later than July 7, 2000.

ADDRESSES:

Location of the Roundtable

The roundtable will be held at the Crystal City Sheraton Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Mailing Address for Self-Nominations and Requests for Attendance

Self-nominations to participate as a panelist and requests for attendance at

the roundtable should be addressed to Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Elizabeth Shaw. Self-nominations may also be submitted by facsimile to (703) 305–7575, or by electronic mail through the Internet to elizabeth.shaw2@uspto.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Lucas by telephone at (703) 305–9300, by facsimile at (703) 305–8885, by electronic mail at jennifer.lucas@uspto.gov, or by mail addressed to Director of the United States Patent and Trademark Office, Box Comments-Patents, Commissioner for Patents, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

Background

The number of patent applications related to computer-implemented business methods in Class 705 grew from 1,300 to 2,600 between FY 1998 and FY 1999. Much of this growth may be attributed to the decision in *State Street Bank & Trust Co.* v. *Signature Financial Group Inc.,* 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998), that held that computer-implemented business methods are eligible for patent protection under 35 U.S.C. 101.

Electronic commerce is an extremely significant component of today's technology-driven economy. While less than one percent of the 290,000 applications filed with the USPTO last year related to computer-implemented business methods in Class 705, computer-implemented business method patents play an important role in this growing industry. In an effort to enhance the quality of the examination of business method patent applications, the USPTO is interested in working together with the software, Internet, and electronic commerce industry to identify ways to improve current business operations and solve business methods-related issues, including access to software-related prior art.

On March 29, 2000, the USPTO announced the business method patent initiative, which includes industry outreach and quality programs. The industry outreach programs are intended to encompass the establishment of a customer partnership with industry, the convening of a roundtable forum, and an effort to obtain industry feedback on prior art issues.

The quality programs encompass steps to enhance the technical training of examiners, revise the examination guidelines and examples, and expand current prior art search activities. This includes a review of mandatory search areas, the establishment of a new second-level review of all allowed applications in Class 705, and an expansion of the sampling size for quality review along with the introduction of a new in-process review of Office actions to focus on field of search and patentability issues involving novelty and nonobviousness.

As part of this initiative, the USPTO invites members of the public to attend the roundtable or to participate as a panelist in the roundtable discussion. Panelists will be asked to provide their individual input. Attendees will be invited to ask questions and provide comments. The intent of this roundtable is to offer an informal forum for a free and open discussion of issues relating to the topics outlined in the supplemental section of this notice. Group consensus advice will be avoided in the roundtable.

Participation as a Panelist in the Roundtable Discussion

The roundtable will be an open forum providing a fair and open opportunity for panelists to discuss major issues related to patent protection for computer-implemented business methods and for the public at large to observe and listen to the discussion, ask questions and provide comments. Panelists will be discussing the topics outlined in the supplemental section of this notice, or other related topics. During the roundtable discussion, the issues addressed by the panelists will be facilitated by a moderator. The USPTO will select panelists from self-nominations based on qualifications that will offer a broad range of expertise and perspectives on the topics listed in the supplemental section. In addition to selection of panelists from the self-nominations, the USPTO may also solicit participation from various members of the patent community and academia. The USPTO would like the panel to include a cross-section of various stakeholders, such as start-up and established e-commerce companies, corporations, attorneys, database managers and creators, academia representatives, and trade associations representatives.

Those interested in participating in the roundtable discussion as a panelist should send their self-nominations to the attention of Elizabeth Shaw, addressed to Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231. Self-nominations must include the participant's name, affiliation, title, mailing address, telephone number, and a short resume reflecting the participant's knowledge of and/or interest in the USPTO business method patent initiative. Facsimile number and Internet mail address, if available, should also be provided. Individuals will be notified of accepted self-nominations by the USPTO approximately one week prior to the date of the roundtable. Non-accepted nominees will also be notified by the USPTO. No one will be permitted to participate as a panelist in the roundtable discussion without prior approval.

Individuals who would like to attend the roundtable discussion as an audience member in the event that they are not selected to participate as a panelist, must include a statement with their self-nomination explicitly requesting attendance. If such a statement is included with the self-nomination, a separate request for attendance is not required. As discussed below, these requests will be honored on a first-come, first-served basis.

Audience Attendance at the Roundtable Discussion

Attendees will be provided with audience-style seating to watch and listen to the panel discussions. Attendees will be given the opportunity to submit questions and comments during the question and answer periods.

Those interested in attending should send their requests for attendance, to the attention of Elizabeth Shaw, addressed to Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231; facsimile (703) 305–7575; or e-mail elizabethshaw2@uspto.gov. Requests for attendance must include the attendee's name, affiliation, title, mailing address, and telephone number. Facsimile number and Internet mail address, if available, should also be provided. Roundtable attendees will be accepted as requests are received. Requests for attendance will be honored on a first-come, first-served basis according to the time and date of receipt of each request. Because of space considerations, approximately 150 members of the public will be accepted as attendees. In order to ensure a broad cross-section of attendees, the USPTO reserves the right to limit the number of attendees from any single organization or law firm. Therefore, organizations and law firms must designate their official representatives. Individuals will be notified of accepted requests for attendance by the USPTO approximately one week prior to the date of the roundtable. Non-accepted

requesters will also be notified by the USPTO. No one will be permitted to attend without prior approval.

Topics for the Roundtable Discussion

The roundtable will begin with an overview and history of computer-implemented business method patents and the *State Street Bank* decision, as well as what is happening today on this issue. This portion will be followed by roundtable discussions on the examination and economic issues surrounding business method patents. The topics to be discussed by the roundtable participants will include:

A. How computer-implemented business method applications are examined.

—Eligibility for patenting
—Novelty and nonobviousness requirements, including automation of known processes

B. The impact of patent protection for computer-implemented business methods on the innovation, evolution and development of electronic commerce.

—Are computer-implemented business method patents encouraging or curbing growth in innovation?
—Are there empirical studies or evidence that support either conclusion?

C. Creation of a business methods prior art database for searching computer-implemented business method patent applications.

—Unique characteristics of business methods prior art
—Types of prior art in the new database and the accessibility of the prior art
—Challenges in creating the business methods prior art database

D. Discussion of the USPTO's Business Method Patent Initiative announced on March 29, 2000.

—Does the initiative adequately address concerns raised about the examination of computer-implemented business method patent applications?
—Are there other issues related to computer-implemented business methods on which the USPTO should be focusing?

Classification Section

It has been determined that this notice is significant for purposes of Executive Order 12866. This notice involves information collection requirements related to the filing and processing of a patent application and which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections have been reviewed and previously approved by the Office of Management and Budget under the following control numbers: 0651–0031 and 0651–0032. The United States Patent and Trademark Office is not resubmitting information collection packages to OMB for its review and approval because the changes under consideration do not affect the information collection requirements associated with the information collections under these OMB control numbers. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: June 16, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–15813 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 16, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and the adjustment for folklore products.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54870, published on October 8, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on June 22, 2000, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	10,026,801 square meters.
300/301	4,788,617 kilograms.
313–O [2]	12,833,569 square meters.
314–O [3]	65,362,978 square meters.
315–O [4]	37,140,992 square meters.
317–O [5]/326–O [6]/617	25,660,549 square meters of which not more than 4,530,430 square meters shall be in Category 326–O.
334/335	270,912 dozen.
336/636	807,170 dozen.
338/339	1,622,948 dozen.
340/640	1,741,313 dozen.
341	1,207,487 dozen.
342/642	458,342 dozen.
345	516,624 dozen.
347/348	2,198,572 dozen.
350/650	151,156 dozen.
351/651	680,360 dozen.
447	18,434 dozen.
613/614/615	25,048,494 square meters.

Category	Adjusted twelve-month limit [1]
618–O [7]	1,863,663 square meters.
625/626/627/628/629–O [8].	29,461,033 square meters.
634/635	365,422 dozen.
638/639	1,813,012 dozen.
641	2,878,610 dozen.
645/646	966,249 dozen.
647/648	3,794,837 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[8] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–15727 Filed 6–21–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 USC 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments, if any.

DATES: Comments must be submitted on or before July 24, 2000.

FOR FURTHER INFORMATION OR A COPY CONTACT: Steven A. Grossman at CFTC, (202) 418–5192; FAX: (202) 418–5529; email: *sgrossman@cftc.gov* and refer to OMB Control No. 3038–0031.

SUPPLEMENTARY INFORMATION: *Title:* Procurement Contracts (OMB) Control No. 3038–0031). This is a request for extension of a currently approved information collection.

Abstract: The information collected consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 9, 2000 (65 FR 26815).

Burden statement: The respondent burden for this collection is estimated to average 4 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collection, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 151.

Estimated number of respondents: 151.

Estimated total annual burden on respondents: 604 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0018 in any correspondence.

Steven E. Grossman, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 16, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–15779 Filed 6–21–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Command Center of the Future will meet to assess current and future operational requirements, deficiencies and vulnerabilities, and recommend a Department of the Navy strategy for developing a next generation Maritime Command and Control Capability. All sessions of the meeting will be devoted to executive sessions that will include discussions and technical examination of information related to current command and control system vunlerabilities; current and projected military command and control requirements; recent operational lessons learned from Pacific theater command centers; and command and control information sources and system requirements for future planned systems. All sessions of the meeting will be closed to the public.

DATES: The meeting will be held on Thursday, June 22, 2000, from 8 a.m. to 5 p.m.; and Friday, June 23, 2000, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lockheed Martin Naval Electronics and Surveillance Systems—Manassas Laboratory, 9500 Godwin Drive, Manassas, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions involving technical examination of information related to current and projected operational requirements, deficiencies and vulnerabilities of the Navy and Marine Corps command and control systems. These discussions will contain classified information that is specifically authorized under criteria

established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance wit 5 U.S.C. App. 2, section 10(d), the Under Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1). Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: June 20, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–15888 Filed 6–21–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Planning and Steering Advisory Committee (PSAC)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The purpose of this meeting is to discuss topics relevant to SSBN security.

DATES: The meeting will be held on July 13, 2000 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Randy Craig, CNO–N875C2, 2000 Navy Pentagon, NC–1, Washington, DC 20350–2000, (703) 604–7392.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, U.S.C.

Dated: June 13, 2000.

James L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–15805 Filed 6–21–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2363–000]

Allied Companies, L.L.C.; Notice of Issuance of Order

June 19, 2000.

Allied Companies, L.L.C. (Allied) submitted for filing a rate schedule under which Allied will engage in wholesale electric power and energy transactions as a marketer. Allied also requested waiver of various Commission regulations. In particular, Allied requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Allied.

On June 9, 2000, pursuant to delegated authority, the Director, Division of Corporate Applicants, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Allied should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Allied is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Allied's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 10, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–15788 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2844–000]

Ameren Services Company; Notice of Filing

June 16, 2000.

Take notice that on June 7, 2000, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Amerada Hess Corporation, Connectiv Energy Supply, Inc. and Allegheny Energy Supply Company, LLC (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Any person desiring to be heard or to protest said application 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 221 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 26, 2000. 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 Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 00–15736 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2843–000]

Cinergy Services, Inc.; Notice of Filing

June 16, 2000.

Take notice that on June 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Florida Power & Light Company (FP&L).

Cinergy and FP&L are requesting an effective date of May 11, 2000.

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 and protests should be filed on or before June 26, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 00–15733 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2391–000]

Doswell Limited Partnership; Notice of Issuance of Order

June 19, 2000.

Doswell Limited Partnership (Doswell) submitted for filing a rate schedule under which Doswell will engage in wholesale electric power and energy transaction as a marketer. Doswell also requested waiver of various Commission regulations. In particular, Doswell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Doswell.

On June 15, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Doswell 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).

Absent a request for hearing within this period, Doswell authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person, provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Doswell's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 00–15792 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2392–000]

Fresno Cogeneration Partners, L.P.; Notice of Issuance of Order

June 19, 2000.

Fresno Cogeneration Partners, L.P. (Fresno) submitted for filing a rate schedule under which Fresno will engage in wholesale electric power and energy transactions as a marketer. Fresno also requested waiver of various Commission regulations. In particular, Fresno requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Fresno.

On June 9, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Fresno 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).

Absent a request for hearing within this period, Fresno is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Fresno's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 10, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order 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. 00–15787 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2306–000]

It's Electric & Gas, L.L.C.; Notice of Issuance of Order

June 19, 2000.

It's Electric & Gas, L.L.C. (It's Electric & Gas) submitted for filing a rate schedule under which It's Electric & Gas will engage in wholesale electric power and energy transactions as a marketer. It's Electric & Gas also requested waiver of various Commission regulations. In particular, It's Electric & Gas requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by It's Electric & Gas.

On June 15, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by It's Electric & Gas 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).

Absent a request for hearing within this period, It's Electric & Gas authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of It's Electric & Gas' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order 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. 00–15791 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2316–000]

NEPA Energy LP; Notice of Issuance of Order

June 19, 2000.

NEPA Energy LP (NEPA) submitted for filing a rate schedule under which NEPA will engage in wholesale electric power and energy transactions as a marketer. NEPA also requested waiver of various Commission regulations. In particular, NEPA requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NEPA.

On June 13, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NEPA should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NEPA authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NEPA's issuances of security or assumption of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 13, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–15790 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1655–000 and ER00–1655–001]

Southern Company Services, Inc.; Notice of Issuance of Order

June 19, 2000.

On February 18, 2000, as amended on May 8, 2000, Southern Company Services, Inc. (SCSI), as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed with the Commission a revised Market-Based Rate Power Sales Tariff and an amended and restated Intercompany Interchange Contract (IIC).

In its filing, SCSI requests authority to include under the amended and restated IIC a new operating company that SCSI is forming, New Operating Company (NewCo).[1] SCSI's filing also requested certain waivers and authorizations for NewCo. In particular, SCSI requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by NewCo. On June 15, 2000, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates And Amended Intercompany Contract As Modified (Order), in the above-docketed proceeding.

The Commission's June 15, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard

[1] SCSI notes that NewCo is subject to regulatory approval from the Securities and Exchange Commission (SEC). However, this approval has not yet been obtained. Upon receipt of SEC approval, SCSI states that a submittal to this Commission will be made to reflect the formal name of NewCo.

or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NewCo 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.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, NewCo are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of NewCo, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NewCo's issuances of securities or assumptions of liabilities * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–15793 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–778–003]

Southern Natural Gas Company; Notice of Proposed Tariff Changes

June 16, 2000.

Take notice that on June 8, 2000, Southern Natural Gas Company (Southern) tendered for filing with the Commission Second Revised Sheet No. 839 which cancels Rate Schedule X–73 to its FERC Gas Tariff, Original No. 2. Southern states that Rate Schedule X–73 contained a transportation and exchange agreement dated September 4, 1979, as amended, between Southern, Columbia Gulf Transmission Company and Columbia Gas Transmission Company. Southern requests that this sheet be effective April 9, 1996, the date of the Commission's order approving the abandonment of the transportation and exchange agreement.

Southern states that this filing is being made in compliance with Part 154 of the Commission's Regulations under the Natural Gas Act.

Southern states that a copy of this filing has been served on the official service list compiled by the Secretary in this proceeding.

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 on or before June 26, 2000. 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).

David P. Boergers,

Secretary.

[FR Doc. 00–15732 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–386–000]

Southern Union Gas Company; Notice of Application

June 16, 2000.

Take notice that on June 9, 2000, Southern Union Gas Company (Southern Union), as a local distribution company with offices at 504 Lavaca Street, Austin, Texas 78701, filed in Docket No. CP00–386–000, an application pursuant to Section 7(c) of the Natural Gas Act, for a limited-jurisdiction blanket certificate pursuant to Section 284.224 of the Commission's Regulations. Southern Union proposes to transport gas in interstate commerce for a limited time for MGI Supply Ltd., Pemex Gas y Petroquimica Basica, to facilitate critical human needs to the City of Juarez, Mexico. Southern Union seeks approval of a rate for this service based on a methodology for calculating a rate filed with the appropriate Texas state regulatory agency for comparable service. This application is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 2000, file with the Federal Energy Regulatory Commission, 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 protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern Union to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–15734 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2469–000]

Williams Flexible Generation, LLC; Notice of Issuance of Order

June 19, 2000.

Williams Flexible Generation, LLC (Williams Flexible) submitted for filing a rate schedule under which Williams Flexible will engage in wholesale electric power and energy transactions as a marketer. Williams Flexible also requested waiver of various Commission regulations. In particular, Williams Flexible requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Williams Flexible.

On June 9, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Williams Flexible should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Williams Flexible authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Williams Flexible's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 10, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 00–15789 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–100–000, et al.]

Entergy Nuclear Indian Point 3, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 14, 2000.

Take notice that the following filings have been made with the Commission:

1. Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear FitzPatrick, LLC

[Docket No. EC00–100–000]

Take notice that on June 7, 2000, Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear Fitzpatrick, LLC tendered for filing an application requesting all necessary authorizations under Section 203 of the Federal Power Act to acquire certain transmission facilities associated with the sale by New York Power Authority of the James A. FitzPatrick Nuclear Power Station and Indian Point 3 Nuclear Power Station.

Copies of this filing have been served on the New York Public Service Commission, Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, Council of the City of New Orleans and on the New York Power Authority.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. The FirstEnergy Operating Companies

[Docket No. ER99–2609–004]

Take notice that on June 9, 2000, The FirstEnergy Operating Companies tendered for filing a compliance refund report pursuant to the Commission's March 16, 2000 Letter Order in this proceeding.

The FirstEnergy Operating Companies state that a copy of the filing has been served on the customers receiving refunds and the public utilities commissions of Ohio and Pennsylvania.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. North American Electric Reliability Council

[Docket No. ER00–2790–000]

Take notice that on June 6, 2000, Consumers Energy Company (CECo), tendered for filing a compliance filing in the above-referenced docket involving the North American Electric Reliability Council's transmission loading relief procedures.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER00–2795–000]

Take notice that on June 9, 2000, Commonwealth Edison Company (ComEd), tendered for filing an amended service agreement to remove the market index rate cap for sales from ComEd to PECO.

ComEd requests waiver of the notice period to grant the amended service agreement an effective date of June 10, 2000 and expedited acceptance of the filing by the Commission.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER00–2781–000]

Take notice that on June 9, 2000 Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an amendment of its Open Access Transmission Tariff to explicitly incorporate the revised transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) and approved by the Commission in Docket No. ER00–1666–000.

CILCO requested the same effective date granted to NERC, March 1, 2000 and therefore respectfully requested waiver of the Commission's notice requirements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Cleco Utility Group Inc.

[Docket No. ER00–2782–000]

Take notice that on June 9, 2000 Cleco Utility Group, Inc., tendered for filing Non-Firm and Short Term Firm Point-to-Point transmission service agreements under its Open Access Transmission Tariff with Western Resources, Inc.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER00–2783–000]

Take notice that on June 9, 2000, Pacific Gas and Electric Company (the Company), tendered for filing a request for termination of the Interim Short Term Coordination Agreement, as amended, between Pacific Gas and Electric Company and Sacramento Municipal Utility District (SMUD), dated July 28, 1998, initially accepted by the Commission on August 28, 1998 and designated as Company Rate Schedule FERC No. 201.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2784–000]

Take notice that on June 9, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Network Service and Network Operating Agreements, establishing Missouri Basin Municipal Power Agency doing business as Missouri River Energy as a Network 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 1, 2000 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: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Lakefield Junction, L.P.

[Docket No. ER00–2785–000]

Take notice that on June 9, 2000, Lakefield Junction, L.P. (Seller), a limited partnership organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Seller's proposed FERC Electric Tariff (Market-Based Rate Tariff); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the Regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is developing a 550MW generating facility in Trimont, Minnesota.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Texas-New Mexico Power Company

[Docket No. ER00–2786–000]

Take notice that on June 9, 2000, Texas-New Mexico Power Company (TNMP) tendered for filing an executed Firm Point-to-Point Service Agreement entered into between TNMP and El Paso Electric Company (EPE).

TNMP and EPE have requested an effective date of May 1, 2000 for capacity and energy sales by TNMP to EPE under this Agreement. Service to be provided under this Agreement is for one month.

A copy of this filing was served upon EPE.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Mississippi Power Company

[Docket No. ER00–2787–000]

Take notice that on June 9, 2000, Mississippi Power Company (MPC), tendered for filing proposed changes to Rates Schedule MRA–18 of FERC Electric Tariff, First Revised Volume No. 1 (Tariff) of Mississippi Power Company. The proposed changes will provide a rate decrease to all customers under the Tariff. In addition, the filing provides for a moratorium on unilateral changes in rates under the Tariff until January 1, 2002.

MPC has requested an effective date of January 1, 2000. The filing also contains corresponding Settlement Agreement and Statement of Consents for each of the customers served under the Tariff.

The rate decrease is being filed as a result of agreements reached between each of the customers under the Tariff and MPC, which agreements are set forth in the separate Settlement Agreement and Statement of Consents between each customer and MPC.

Copies of the filing were provided to each of the customers under the Tariff, to the Mississippi Public Service Commission, and to the Mississippi Public Utilities Staff.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Light Company

[Docket No. ER00–2788–000]

Take notice that on June 9, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission an amendment to CILCO's Open Access Transmission Tariff to put into effect a procedure for establishing a new generation facility connection to CILCO's system.

CILCO requested an effective date of June 12, 2000, for these amendments.

Copies of the filing were served on all affected customers, the Illinois Commerce Commission, and the service list in this docket.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2801–000]

Take notice that on June 9,, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 2 to Supplement No. 12 to the Market Rate Tariff to incorporate a Netting Agreement with Merchant Energy Group of the Americas, Inc. into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of May 31, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Avista Corporation

[Docket No. ER00–2802–000]

Take notice that on June 9, 2000, Avista Corporation (Avista), tendered for filing notice that Rate Schedule FERC No. 109, previously filed with the Federal Energy Regulatory Commission by Avista Corporation, formerly known as The Washington Water Power Company, under the Commission's Docket No. ER97–1483–000 and Rate Schedule FERC No. 92, previously filed with the Federal Energy Regulatory Commission by Avista Corporation, formerly known as The Washington Water Power Company, under the Commission's Docket No. ER97–1252–000 with Sonat Power Marketing (now known as El Paso Merchant Energy, L.P.) is to be terminated, effective June 15, 2000 by the request of El Paso Merchant Energy, L.P. per its letter

dated June 7, 2000. FERC Rate Schedule No. 109 replaced an unsigned tariff previously filed with the FERC in Docket No. ER97–1252–000.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Deepwater Power LLC, B.L. England Power LLC, Indian River Power LLC, Vienna Power LLC, Keystone Power LLC, and Conemaugh Power LLC

[Docket Nos. ER00–2805–000, ER00–2806–000 ER00–2807–000, ER00–2808–000, ER00–2809–000, and ER00–2810–000]

Take notice that on June 9, 2000, Deepwater Power LLC, B.L. England Power LLC, Indian River Power LLC, Vienna Power LLC, Keystone Power LLC, and Conemaugh Power LLC (Sellers), limited liability companies organized under the laws of the State of Delaware, petitions the Commission for an order: (1) Accepting Sellers' proposed FERC Electric Tariffs (Market-Based Rate Tariffs); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Sellers are indirect subsidiaries of Northern States Power Company.

Comment date: June 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The United Illuminating Company

[Docket No. ER00–2804–000]

Take notice that on June 9, 2000, The United Illuminating Company (UI), tendered for filing for informational purposes its report regarding all individual Purchase Agreements, Supplements to Purchase Agreements and related agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period November 1, 1999 through April 30, 2000. UI reports that it entered into the following agreements during this period: PPA Entitlements Transfer Agreement between UI and Enron Power Marketing, Inc. (EPMI), dated as of December 28, 1999; Letter Agreement amending Section 5.1 of the foregoing PPA Entitlements Transfer Agreement, dated December 28, 1999; Letter Agreement between UI and EPMI regarding the sale by UI and the purchase by EPMI of Installed Capability, Operable Capability and other ancillary products and services associated with Millstone Station Unit No. 3 and Seabrook Station, dated as of December 28, 1999; Wholesale Power Supply Agreement between UI and EPMI, dated as of December 28, 1999 (the WPSA); and a Letter Agreement between UI and EPMI relating to a contract for differences based upon the output of UI's nuclear plant interests, dated as of December 28, 1999 (the Nuclear Output Agreement). Public and confidential versions of the WPSA and Nuclear Output Agreement have been submitted for filing, as EPMI has requested confidential treatment of certain information in these agreements.

Comment date: June 30, 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. 00–15731 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–169–000, et al.]

GenPower Dell, LLC, et al.; Electric Rate and Corporate Regulation Filings

June 16, 2000.

Take notice that the following filings have been made with the Commission:

1. GenPower Dell, LLC

[Docket No. EG00–169–000]

Take notice that on June 13, 2000, GenPower Dell, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends to construct an approximate 600 MW natural gas-fired combined cycle independent power production facility in Dell, Arkansas (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. GenPower McAdams, LLC

[Docket No. EG00–170–000]

Take notice that on June 12, 2000, GenPower McAdams, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends to construct an approximate 640 MW natural gas-fired combined cycle independent power production facility in Sallis, Mississippi (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER99–897–002]

Take notice that on June 13, 2000, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing a refund report pursuant to the Commission's March 30, 2000 order in the above-captioned docket regarding refunds under the CSW Operating Companies' open access transmission service tariff.

A copy of this filing has been served on each person designated on the official service list compiled by the

Secretary in this proceeding, each of the affected wholesale customers, and on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New York Independent System Operator, Inc.

[Docket No. ER00–2813–000]

Take notice that on June 13, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing an Inter Control Area Transactions Agreement between it and the PJM Interconnection, LLC, pursuant to which either party may purchase emergency energy.

The NYISO requests an effective date of May 1, 2000 and waiver of the Commission's notice requirements.

A copy of this filing was served upon the NYISO, PJM and upon the electric utility regulatory agencies in New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and the District of Columbia.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER00–2814–000]

Take notice that on June 13, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed Dynamic Scheduling Agreement (Agreement) with Commonwealth Edison Company, in its Wholesale Merchant Function (WMD) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests that the Commission substitute the Agreement with WMD for the unexecuted agreement previously filed under the OATT in Docket No. ER00–940–000 on December 29, 1999.

ComEd requests the same January 1, 2000, effective date for the Agreement that ComEd requested when it submitted the unexecuted agreement with WMD to the Commission in Docket No. ER00–940–000. This Agreement is being substituted for the unexecuted agreement currently on file, and therefore ComEd seeks waiver of the Commission's notice requirements.

Copies of this filing were served on WMD.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Wheelabrator Shasta Energy Company Inc.

[Docket No. ER00–2815–000]

Take notice that on June 13, 2000, Wheelabrator Shasta Energy Company Inc. (Shasta Energy), a corporation organized under the laws of the State of Delaware, petitioned the Commission for: (1) Acceptance of Shasta Energy's proposed Rate Schedule FERC No. 2; (2) waiver of the 60-day notice requirement and certain requirements under Subparts B and C of Part 35 of the Regulations; and (3) the blanket approvals normally accorded sellers permitted to sell at market-based rates. Shasta Energy is an indirect subsidiary of Wheelabrator Technologies Inc.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2816–000]

Take notice that on June 13, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Long-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Entergy Services, Inc. (EMO).

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER00–2817–000]

Take notice that on June 13, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and NewEnergy, Inc.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER00–2818–000]

Take notice that on June 13, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the ''Entergy Operating Companies'') tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and El Paso Merchant Energy, L.P.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Madison Gas and Electric Company

[Docket No. ER00–2819–000]

Take notice that on June 13, 2000, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Conectiv Energy Supply, Inc., Inpower Marketing Corp.

MGE requests this agreement be effective the date the agreement was filed with the FERC. MGE is requesting this in order to enable the parties to commence transactions and capture the economic benefits of the service as soon as possible.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Indianapolis Power & Light Company

[Docket No. ER00–2820–000]

Take notice that on June 13, 2000, Indianapolis Power & Light Company (IPL), tendered for filing service agreements executed under IPL's Open Access Transmission Tariff and an index of customers.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Valley Electric Corporation

[Docket No. ER00–2822–000]

Take notice that on June 13, 2000, Ohio Valley Electric Corporation (OVEC), tendered for filing Modification No. 13 (Mod. No. 13), dated as of May 24, 2000, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named with the agreement as ''Sponsoring Companies'' (the ''Inter-Company Power Agreement''). The Inter-Company Power Agreement bears the designation ''Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.''

Mod. No. 13 is part of an arrangement intended to make additional electricity available to OVEC's Sponsoring Companies during the summer of 2000 and to provide the United States Department of Energy with payments in exchange for its release of a portion of its entitlement of such electricity.

OVEC has requested that the changes to the Inter-Company Power Agreement become effective as of June 1, 2000.

Copies of the filing were served upon Allegheny Energy Supply Company, L.L.C., Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, The Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Utilities Commission Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: July 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cleco Utility Group, Inc.

[Docket No. ES00–44–000]

Take notice that on June 12, 2000, Cleco Utility Group, Inc. submitted a filing pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term indebtedness in an amount not to exceed $150 million over a two year period.

Comment date: July 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Wolverine Power Supply Cooperative., Inc.

[Docket No. ES00–45–000]

Take notice that on June 14, 2000, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an application pursuant to Section 204 of the Federal Power Act seeking authorization to enter into a loan agreement with the National Rural Utilities Cooperative Finance Corporation under which Wolverine would assume up to $20,000,000 in long-term debt.

Wolverine also requests an exemption from the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Comment date: July 7, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions 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. 00–15786 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Projects Nos. 2060–005, 2084–020, 2320–005, and 2330–007 and Project No. 2869–007, New York]

Erie Boulevard Hydropower L.P. and Village of Potsdam; Notice of Availability of Draft Multiple Project Environmental Assessment

June 16, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff has reviewed the applications for new license for the Carry Falls, Upper Raquette River, Middle Raquette River, and the Lower Raquette River Hydroelectic Projects, and the application for amendment of exemption for the Potsdam Water Power Project, located on the Raquette River in St. Lawrence County, New York, and has prepared a draft multiple project Environmental Assessment (DEA) for the projects. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Carry Falls Project No. 2060–005'', ''Upper Raquette River Project No. 2084–020'', ''Middle Raquette River Project No. 2320–005'', ''Lower Raquette River Project No. 2330–007'', and/or ''Potsdam Water Power Project No. 2869–007'', as appropriate, to all comments. For further information, please contact Charles T. Raabe at (202) 219–2811.

David P. Boergers,

Secretary.

[FR Doc. 00–15737 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene and Protests

June 16, 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 License.

b. *Project No:* 11128–012.

c. *Date Filed:* May 9, 2000.

d. *Applicant:* Odell Hydroelectric Company.

e. *Name of Project:* Brooklyn.

f. *Location:* The project is located on the Upper Ammonoosuc River in Northumberland, Coos County, New Hampshire. The project does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory Cloutier, Odell Hydroelectric Co., C/O Powerhouse Systems, Inc., 80A Elm Street, Lancaster, NH 03584, (603) 788–9892.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and or motions:* July 14, 2000.

All documents (original and eight copies) should be filed with: David P.

Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the Project Number (11128–012) on any comments or motions filed.

k. *Description of Filing:* Odell Hydroelectric Company (Odell) applied to surrender the Brooklyn Project license. Odell states that, due to the deregulated electric utility market, it has been unable to get an electric rate that supports the economics of the project. Odell maintains that the dam and areas within the project boundary have been unchanged by licensing because no actual construction has been completed as part of the project.

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. The application may be viewed on the web at 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.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline 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.

David P. Boergers,

Secretary.

[FR Doc. 00–15738 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Regarding Electronic Publication of Notices

June 16, 2000.

Take notice that effective June 21, 2000, the Commission will begin making notices public electronically on a continuous basis on the Commission's Issuance Posting System (CIPS).

Currently the Office of the Secretary, regularly posts copies of notices daily at 10 a.m., 3 p.m., and 4:30 p.m. on bulletin boards outside of the Public Reference Room.

Since the Commission has implemented an electronic document handling system for notices, the Commission now has the capability of making notices public electronically on CIPS on a continuous basis throughout the work day. In the past, notices were not added to CIPS until after the paper copy was posted on a bulletin board.

In order to provide notices to the public in a more timely manner, effective June 21, 2000, notices will be added to CIPS on a continuous basis throughout the day instead of awaiting the paper posting hours. The Secretary will continue to post paper copies of notices at 10:00 a.m., 3:00 p.m., 4:30 p.m., and when necessary after 5 p.m.

This announcement applies only to notice and not to any other Commission issuances.

David P. Boergers,

Secretary.

[FR Doc. 00–15785 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 16, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed in the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. CP00–65–000; 5/26/00; Clifford G. Day.

2. P–8282; 6/08/00; Rafael Montag.

David P. Boergers,

Secretary.

[FR Doc. 00–15735 Filed 6–21–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[IL201; FRL–6720–3]

Adequacy Status of Chicago, IL Submitted Ozone Rate of Progress Plan Budget for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that in a letter dated May 23, 2000, EPA found that the motor vehicle emissions budget in the Chicago, Illinois ozone nine percent rate of progress plan and supplemental information, submitted on December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, is adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Chicago can use the motor vehicle emissions budget for volatile organic compounds for the year 1999 from the submitted ozone nine percent rate of progress plan for future conformity determinations. This budget is effective July 7, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments already received will be available at EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA. Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on May 23, 2000, stating that the motor vehicle emissions budget in the Chicago, Illinois submitted ozone nine percent rate of progress plan for 1999 is adequate. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memorandum titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 12, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 00–15717 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140285; FRL–6591–6]

Access to Confidential Business Information by Logistics Management Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Logistics Management Institute (LMI) of McLean, Virginia access to information which has been submitted to EPA under sections 4, 5, 8, and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA under TSCA section 12(b), occurred as a result of an approved waiver dated April 6, 2000, which requested granting LMI immediate access to this Section of TSCA CBI. This waiver was necessary to allow LMI to repair a database containing 12(b) export notices.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to ''those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA).'' 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.''

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

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/.

III. What Action is the Agency Taking?

Under contract number GS–35F–4041G, contractor LMI of 2000 Corporate Ridge Road, Mclean, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) by providing compatible and integrated databases that have the quality, accessibility, availability and maintainability for the workflow applications developed to support OPPT processes.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–4041G, LMI will require access to CBI submitted to EPA under sections 4, 5, 8, and 12 of TSCA to perform successfully the duties specified under the contract.

LMI personnel will be given access to information submitted to EPA under sections 4, 5, 8, and 12 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 8, and 12 of TSCA that EPA may provide LMI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

LMI will be authorized access to TSCA CBI at EPA Headquarters only, in accordance with the EPA *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under this contract may continue until March 31, 2004.

LMI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 8, 2000.

Allan S. Abramson,

Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 00–15720 Filed 6–21–00 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6719–9]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., app 2) notification is hereby given of open meetings of the Environmental Laboratory Advisory Board (ELAB).

DATES: The meetings will be held on June 26, 2000 from 5 p.m. to 6 p.m. (EDT) and on June 28, 2000, from 1:30 p.m. to 5 p.m. (EDT).

ADDRESSES: The meetings will be held at the Radisson Fort Magruder Inn and Conference Center, 6945 Pocahontas Trail, Williamsburg, Virginia (1–800–333–3333) in conjunction with the Sixth Annual Meeting of the National Environmental Laboratory Accreditation Conference.

SUPPLEMENTARY INFORMATION: At the June 26, 2000 meeting the Board will host an Open Forum where Board member Roxanne Robinson will present a comparison of the ISO 25 and ISO 17025 laboratory accreditation standards and the public will be given an opportunity to bring up issues that they would like the Board to address.

At the June 28, 2000 meeting, the Board will review the minutes from its May 11, 2000 meeting, discuss the work being conducted by its subcommittees, and discuss any new issues that may be brought to the Board's attention. The current committees include: Performance Based Measurement System, Regulatory Consistency, Third Party Assessors, NELAC Scope of Accreditation/Fields of Testing, NELAC/ISO Consistency, Quality Control Standards, and NELAC White Paper. In addition, the Board will discuss the efforts to address the problem the Department of Transportation regulations present to the shipment of environmental sample by air.

The meetings are open to the public and time will be allotted for public comment. Written comments are encouraged and should be directed to David Friedman; USEPA; 1300 Pennsylvania Avenue, NW. (8101R), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Friedman; Designated Federal Officer; US Environmental Protection Agency; 1300 Pennsylvania Avenue, NW, (8101R); Washington, DC 20460. If questions arise, please contact Mr. Friedman by phone at (202) 564–6662, by facsimile at (202) 565–2432 or by email at friedman.david@epa.gov.

Dated: June 12, 2000.

Henry L. Longest II,

Deputy Assistant Administrator for Management, Office of Research and Development.

[FR Doc. 00–15718 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30494A; FRL–6590–5]

Plant-Pesticide Bt Cry1F Corn; Registration Application; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice extends the comment period of the Agency's May 5, 2000 notice announcing receipt of an 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: Comments, identified by the docket control number OPP–30494, must be received on or before July 24, 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–30494 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8715; fax number: (703) 308–7026; e-mail address: mendelsohn.mike@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/. 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–30494. 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 your comments through the mail, in person, or electronically. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–30494 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 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–30494. 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 listed 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. 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. Background

A. What Action is EPA Taking?

EPA is extending the comment period for the Agency's May 5, 2000 notice (65 FR 26199) (FRL–6555–7), announcing receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered product. These applications had previously been reported as seed increase registration applications on November 26, 1999 (64 FR 66474) (FRL–6390–3). The applicants have subsequently modified their application to request full commercial use. Notice of receipt of these applications does not imply a

decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. File Symbol: 68467-E. Applicant: Mycogen Seeds, c/o Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. Product name: Mycogen Brand Bt Cry1F Corn. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

2. File Symbol: 29964-G. Applicant: Pioneer Hi-Bred International, Inc., 7250 NW 62nd Avenue, P.O. Box 552, Johnston, Iowa 50131-0552. Product name: Pioneer Brand Bt Cry1F Corn. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

B. What is the Agency's Authority for Taking this Action?

Section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 12, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–15722 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50869; FRL–6592–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 910W46, CM #2, Arlington, VA, (703) 605–0515, e-mail: reynolds.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. 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. EUP

EPA has issued the following EUP:

524–EUP–91. Issuance. Monsanto Company, 700 Chesterfield Parkway North, St. Louis, MO 63198. This experimental use permit allows the use of 60.7 grams of the insecticidal *Bacillus thuringiensis* Cry1Ac protein in seeds shipped containing the plant-pesticide (*Bacillus thuringiensis* Cry1Ac protein and the genetic material for its production (Vector PV–GMBT01 and Vector PV–GMBT02) in soybean) on 61.3 acres of soybean to evaluate the control of soybean looper, stem borer, and velvetbean caterpillar. The program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Mississippi, Missouri, North Carolina, and Tennessee. The experimental use permit is effective from May 25, 2000 to May 31, 2001. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review this EUP are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: June 12, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–15721 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6720–5]

Proposed Settlement Agreement, Application of Labor Standards Provision in the Clean Water Act State Revolving Fund program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment and notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is seeking comment on a proposed settlement agreement between the Agency and the Building and Construction Trades Department, AFL/CIO (Building Trades) which would resolve a matter now pending before the Department of Labor's Wage and Hour Division Administrator. Under the proposed settlement agreement, EPA would prospectively apply the Davis-Bacon Act's prevailing wage rate requirements in the Clean Water State Revolving Fund (CWSRF) program established in title VI of the Federal Water Pollution Control Act, as amended (more commonly known as the Clean Water Act (CWA)), 33 U.S.C. 1381—1387, in the same manner as they applied before October 1, 1994.

Title VI of the CWA authorizes EPA to award grants to capitalize state revolving funds from which states, in turn, award loans and other types of assistance for the construction of publicly owned treatment works and other water quality projects. Appropriations for the CWSRF program were authorized only through fiscal year 1994, but Congress has continued to

appropriate funds for the program each year since.

CWA section 602(b)(6) required publicly owned treatment works funded with CWSRF assistance ''directly made available by [capitalization grants]'' that were ''constructed in whole or in part before fiscal year 1995'' (emphasis added) to comply with the requirements of a number of other CWA provisions. Among the provisions was CWA section 513, which applies Davis-Bacon Act requirements to treatment works for which grants are made under the CWA.

EPA interpreted the language of CWA section 602(b)(6) as limiting the application of the Davis-Bacon Act and other requirements to CWSRF-funded treatment works projects ''constructed in whole or in part before fiscal year 1995'', and, in an August 8, 1995, memorandum, announced that these requirements would not apply to CWSRF-assisted projects that begin construction on or after October 1, 1994 (the beginning of Fiscal Year 1995). Two years later, the Building and Construction Trades Department (''Building Trades''), AFL–CIO, asked the Department of Labor's Wage and Hour Division (''DOL'') to rule that the requirements of the Davis-Bacon Act continue to apply to treatment works projects funded with CWSRF loans under CWA title VI. The Building Trades argued that the Davis-Bacon Act requirement applied to CWSRF-funded projects as long as Congress appropriated funds for the program. EPA responded in opposition to the Building Trades request for ruling.

EPA has closely considered the relationship of CWA section 513 and CWA section 602(b)(6) and the arguments of the Building Trades in its request for ruling. While the Agency's position to date rests on a reasonable legal interpretation, EPA is now persuaded of the appropriateness of the view that CWA section 513 imposes a continuing, independent obligation on the Agency to ensure that Davis-Bacon Act requirements apply to any grants made under the CWA for treatment works, including capitalization grants made under title VI of the CWA. The language of CWA section 602(b)(6) does not relieve the Agency of this obligation. Furthermore, as a matter of policy, the Agency has determined that prevailing wage rate requirements applicable to federally-assisted construction projects should continue to apply to federally-assisted treatment works construction in the CWSRF program.

Consequently, EPA and the Building Trades are proposing to enter into the settlement agreement published with this notice. Under the agreement, EPA would include a condition in all capitalization grant agreements entered into between the Agency and the states on or after January 1, 2001, requiring the states to ensure that the requirements of section 513 of the CWA will be applied to publicly owned treatment works receiving CWSRF assistance in the same manner as they were applied before October 1, 1994. In exchange for EPA's commitment, Building Trades would agree not to pursue any further action on this matter before DOL or any other Federal administrative agency, or in litigation.

For a period of forty-five (45) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from any persons. A public meeting to discuss this proposed settlement agreement will also be held on Thursday, July 13, 2000, from 2 to 4 PM, at the Washington Plaza Hotel, 10 Thomas Circle, Washington, DC EPA may withdraw from the proposed settlement agreement, or withhold its agreement, if these comments or consultations taking place with state and local government representatives, disclose considerations that indicate that entering into the settlement agreement would be inappropriate, improper or inconsistent with the requirements of the CWA.

Written comments should be sent to Geoff Cooper, Finance and Operations Law Office, Office of General Counsel (2377A), U.S. Environmental Protection Agency, 12th and Pennsylvania Avenue, NW., Washington, DC 20460 (or they may be e-mailed to cooper.geoffrey@epamail.epa.*gov*.) Questions about the July 13, 2000, public meeting should be addressed to Angela Cracchiolo, Office of Wastewater Management, Office of Water (4204), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (or they may be e-mailed to cracchiolo.angela@epamail.epa.*gov*.)

Dated: June 14, 2000.

Gary S. Guzy,

General Counsel.

Proposed Settlement Agreement

Whereas, title VI of the Federal Water Pollution Control Act, as amended (more commonly known as the Clean Water Act (CWA)), 33 U.S.C. 1381—1387, authorizes the Environmental Protection Agency (EPA) to make grants to states to capitalize Clean Water State Revolving Funds (CWSRF), from which the states, in turn, make loans and other types of assistance for the construction of publicly owned treatment works and other water quality projects and activities;

Whereas, section 602(b)(6) of the CWA, 33 U.S.C. 1382(b)(6), requires states to ensure that publicly owned treatment works ''constructed in whole or in part before fiscal year 1995 with CWSRF funds directly made available by'' capitalization grants comply with sixteen provisions of the CWA, including section 513 of the CWA, 33 U.S.C. 1372, which applies Davis-Bacon Act requirements to treatment works for which grants are made under the CWA;

Whereas, EPA has not required states to ensure that publicly owned treatment works that began construction on or after October 1, 1994, with CWSRF assistance will comply with the requirements identified in section 602(b)(6) of the CWA, including the requirements of the Davis-Bacon Act;

Whereas, the Building and Construction Trades Department, AFL–CIO, (Building Trades), challenged this position and requested a ruling by John R. Fraser, Acting Administrator of the Department of Labor's (DOL) Wage and Hour Division, that the requirements of the Davis-Bacon Act continued to apply to the construction of publicly owned treatment works receiving CWSRF assistance as long as Congress appropriates funds for grants under title VI of the CWA.

Whereas, Congress has continued to appropriate funds for grants to states for their CWSRF programs under the CWA;

Whereas, EPA replied in opposition to the Building Trades request for ruling;

Whereas, EPA published this settlement agreement in the Federal Register along with a request for the public to comment on whether EPA should again apply section 513 of the CWA to treatment works projects assisted with CWSRF funds directly made available by capitalization grants, and consulted with state and local government officials on the terms of this agreement;

Whereas, EPA has carefully considered the comments received on the **Federal Register** Notice and the comments provided by state and local governments during the consultation process;

And Whereas, EPA and the Building Trades have determined that it is in the public interest to resolve this matter expeditiously;

It is therefore agreed that,

1. EPA will issue a memorandum to its Regional Water Division Directors directing them to include a condition in all capitalization grant agreements entered into between EPA and the states under title VI of the CWA, on or after January 1, 2001, requiring the states to

ensure that the requirements of section 513 of the CWA will be applied to publicly owned treatment works receiving CWSRF assistance under those agreements in the same manner as section 513 requirements were applied before October 1, 1994.

2. The grant condition will require states to ensure that the requirements of section 513 of the CWA, and no other requirements identified in section 602(b)(6) of the CWA, will apply only to publicly-owned treatment works that are funded with funds ''directly made available by'' grants under title VI of the CWA, as that phrase is defined at 40 CFR 35.3105(g).

3. The grant condition will be included in all capitalization grant agreements entered into between EPA and the states under title VI of the CWA on or after January 1, 2001;

4. The Building Trades and EPA will submit this agreement to the Administrator of the Wage and Hour Division, DOL, with a joint request to dismiss the administrative proceeding on the Building Trades Department's request for ruling.

5. The Building Trades will not pursue any further action on the matter hereby resolved in this settlement agreement, either before DOL or any other Federal administrative agency, or in litigation.

6. In the event that EPA does not accomplish one or more of the items specified in Paragraphs 1, 2 and 3 above, the Building Trades sole remedy will be to reinstitute its request for ruling before the DOL.

7. Nothing in the terms of this agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principles of administrative law.

8. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to bind the respective parties to the terms of this settlement agreement. This settlement agreement will be deemed to be executed when it has been signed by the representatives of the parties below.

Agreed:

Gary S. Guzy,

General Counsel, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, D.C. 20460.

Edward C. Sullivan,

President, Building and Construction Trades Department, AFL–CIO, American Federation of Labor/Congress of Industrial Organizations, 1155 Fifteenth Street, N.W., 4th Floor, Washington, D.C. 20005–2707.

[FR Doc. 00–15719 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6721–1]

Notice of Availability of Letter From EPA to the State of Wisconsin Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of a June 13, 2000 letter written from Region 5 of the Environmental Protection Agency (EPA) to the State of Wisconsin finding that certain provisions adopted as part of the State's water quality standards and National Pollutant Discharge Elimination System (NPDES) permits program are inconsistent with section 118(c) of the Clean Water Act (CWA) and 40 CFR part 132. EPA's findings are described in the June 13, 2000 letter to Wisconsin. The letter also expresses EPA's belief that, with the exceptions of those inconsistencies, Wisconsin has otherwise adopted requirements that are consistent with the remainder of 40 CFR part 132. EPA invites public comment on all aspects of that letter, particularly on the findings in the letter and on the course of action that EPA proposes to take if the State fails to adequately address EPA's findings.

DATES: Comments must be received in writing by August 7, 2000.

ADDRESSES: Written comments on EPA's findings as described in the June 13, 2000 letter may be submitted to Mery Jackson-Willis, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: jackson-willis.mery@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mery Jackson-Willis, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone her at (312) 886–3717.

Copies of the June 13, 2000 letter described above is available upon request by contacting Ms. Jackson-Willis. That letter and materials submitted by the State in support of its submission that EPA relied upon in preparing that letter (i.e., the docket) are available for review by appointment at: EPA, Region 5, 77 W Jackson Boulevard, Chicago, Illinois (telephone 312–886–3717); and the Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, Wisconsin (telephone: 608–267–2621). To access the docket material in Chicago, call Ms. Mery Jackson-Willis at (312) 886–3717 between 8 a.m. and 4:30 p.m. (central time) (Monday-Friday); in Wisconsin, call Mr. Robert Masnado at (608) 267–7662 between 8 a.m. and 4:30 p.m. (central time).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR Part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 & 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

EPA reviewed the submittals from Wisconsin for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA determined that certain parts of Wisconsin's submittal are inconsistent with the requirements of the CWA or 40 CFR Part 132 and will be subject to EPA disapproval if not corrected. On June 13, 2000, in a letter from EPA Region 5 to the Wisconsin Department of Natural Resources, EPA described in detail those provisions determined to be inconsistent with the Guidance and subject to disapproval if

not remedied by the State. The inconsistencies relate to the following components of the State's submittal in conformance with section 118(c) of the CWA and 40 CFR Part 132: aquatic life and human health criteria, antidegradation, variances, total maximum daily loads, the procedures for evaluating the need for permit limits on specific chemicals, the procedures for evaluating the need for limits on whole effluent toxicity, water quality based effluent limits below the level of quantification, and compliance schedules. Based on our review to date, EPA believes that, with the above exceptions, the submittal by Wisconsin is consistent with the Guidance. Today, EPA is soliciting public comment regarding all aspects of its June 13, 2000 letter. In particular, EPA solicits comments on the provisions identified in the June 13, 2000 letter as being inconsistent with the CWA and the Guidance, on EPA's proposed course of action if Wisconsin fails to remedy those inconsistencies, and on EPA's belief that the remainder of Wisconsin's submittal is consistent with the Guidance. EPA's letter to Wisconsin also describes the provisions of the Guidance that EPA would identify in a final rule as applying to discharges in the Great Lakes Basin in Wisconsin if the identified inconsistencies are not addressed by the State. EPA may decide to identify in such a rule the provisions described in EPA's letter to the State, or other relevant provisions of the Guidance that EPA determines upon completion of this process to be appropriate. EPA broadly solicits comment regarding what provisions of the Guidance would be appropriate for EPA to identify in such a rule.

During the next 90 days, EPA intends to continue working with Wisconsin to address the inconsistencies identified in the June 13, 2000 letter. If Wisconsin fails to remedy any of the inconsistencies identified in the letter, EPA will publish a notice in the **Federal Register** identifying the disapproved elements and the corresponding portions of Part 132 that will apply to waters within the Great Lakes Basin in Wisconsin.

Dated: June 13, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–15830 Filed 6–21–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2417]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

June 15, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 7, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding Multiple Address Systems (WT Docket No. 97–81).

Number of Petitions Filed: 3.

Subject: 1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers (CC Docket No. 98–137).

Number of Petitions File: 1.

Subject: Local Compensation and Broadband Reporting (CC Docket No. 99–301).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–15705 Filed 6–21–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Report No. 2418; Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

June 16, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS Inc. (202) 857–3800. Oppositions to these petitions must be filed by July 7, 2000 (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Establishment of a class A Television Service (MM Docket No. 00–10).

Number of Petitions Filed: 15.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–15773 Filed 6–21–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 10, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Charles Asher Rosebrough, III, and Nancy King Rosebrough, both of Graham, Texas; to retain voting shares of First Graham Bancorp, Inc., Graham, Texas, and thereby retain voting shares of First National Bank, Graham, Texas.

Board of Governors of the Federal Reserve System, June 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15821 Filed 6–21–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Michael Robert Reese, Appleton, Wisconsin; to retain voting shares of Fox River Valley Bancorp, Inc., Appleton, Wisconsin, and thereby indirectly retain voting shares of First Business Bank of Fox River Valley, Appleton, Wisconsin.

Board of Governors of the Federal Reserve System, June 16, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15701 Filed 6–21–00; 8:45 am]

BILLING CODE 6210–01–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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 July 17, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. Cumberland Bancshares, Inc., Hartsville, Tennessee; to acquire 51 percent of the voting shares of Academy Bank (in organization), Lebanon, Tennessee.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Amana Bancshares, Inc., Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Amana Bank (in organization), Dearborn, Michigan.

Board of Governors of the Federal Reserve System, July 16, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15702 Filed 6–21–00; 8:45 am]

BILLING CODE 6210–01–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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 July 19, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Pilot Grove Savings Bank ESOP, Pilot Grove, Iowa and Pilot Bancorp, Inc., Pilot Grove, Iowa; to acquire 100 percent of the voting shares of Farmers Savings Bank, Mount Pleasant, Iowa

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Commfirst Bancorporation, Inc., South Sioux City, Nebraska; to acquire 100 percent of Robuck, Inc., South Sioux City, Nebraska.

Board of Governors of the Federal Reserve System, June 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15822 Filed 6–21–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

National Institutes of Health

Draft Public Health Action Plan to Combat Antimicrobial Resistance

AGENCIES: Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of a document for public comment entitled ''Draft Public Health Action Plan to Combat Antimicrobial Resistance.'' This Action Plan provides a blueprint for comprehensive and coordinated efforts of Federal agencies

in addressing the emergence of antimicrobial resistance.

DATES: Comments must be submitted in writing on or before August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Draft Public Health Action Plan to Combat Antimicrobial Resistance should be made to the Office of Health Communication, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Mailstop C–14, 1600 Clifton Road, Atlanta, GA 30333; fax: 404–639–5489; or e-mail: *ncid@cdc.gov*; or Internet URL: *http://www.cdc.gov.drugresistance/actionplan/*.

ADDRESSES: Comments on the Draft Public Health Action Plan to Combat Antimicrobial Resistance should be submitted to the Office of Health Communication, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Mailstop C–14, 1600 Clifton Road, Atlanta, GA 30333; fax: 404–639–5489; e-mail: *aractionplan@cdc.gov*; or Internet URL: *http://www.cdc.gov.drugresistance/actionplan/*.

SUPPLEMENTARY INFORMATION: Antimicrobial resistance is an emerging public health threat that has been identified as an important priority by the Institute of Medicine and other expert bodies and is the subject of several proposed Healthy People 2010 goals relative to Infectious Diseases. In late 1998, CDC, FDA, and NIH recognized the need for better coordination and stimulation of the Federal response to this threat. In addition, in December of 1998, Senators William Frist and Edward Kennedy held a roundtable discussion on antimicrobial resistance, and a hearing was held in February 1999. Shortly thereafter, an Interagency Task Force on Antimicrobial Resistance was created to develop a Public Health Action Plan to Combat Antimicrobial Resistance. The Task Force is co-chaired by CDC, FDA, and NIH, and includes the Health Care Financing Administration, the Health Resources and Services Administration, Agency for Healthcare Research and Quality, the Department of Agriculture, the Department of Defense, the Department of Veterans Affairs, and the Environmental Protection Agency.

The Draft Public Health Action Plan to Combat Antimicrobial Resistance, Part I focuses on domestic issues. Since AR transcends national borders and requires a global approach to its prevention and control, Part II of the plan, to be developed subsequently, will identify actions that more specifically address international issues. The Plan includes a summary and a list of issues, goals, and 87 action items addressing four focus areas: Surveillance, Prevention and Control, Research, and Product Development. For each action item, ''coordinator'' and ''collaborator'' agencies/departments and timelines are specified. The Interagency Task Force will monitor, and if necessary, update the Plan, during the coming years.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention (CDC).

Ruth Kirschstein,

Acting Director, National Institutes of Health (NIH).

Jane E. Henney,

Commissioner, Food and Drug Administration (FDA).

[FR Doc. 00–15847 Filed 6–21–00; 8:45 am]

BILLING CODE 4160–18–P 4140–01–P 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00055]

Surveillance for Invasive Fungal Infections in Transplant Recipients; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for surveillance for invasive fungal infections among transplant recipients. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Immunization and Infectious Disease. For the conference copy of ''Healthy People 2010,'' visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to conduct active, prospective surveillance to estimate the incidence and describe the epidemiology of opportunistic invasive fungal infections (OI's) in bone marrow/stem cell and solid organ transplant recipients, and to establish through this surveillance, a network of bone marrow/stem cell and solid organ transplant centers.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and implement a plan to network transplant medical centers to conduct surveillance for invasive fungal infections. This network should consist of multiple centers with large numbers of transplants performed per year (a minimum of 100 to 200 bone marrow/stem cell per center a year and a minimum of 200 solid organ transplants per year) to have adequate estimates of the incidence of various invasive fungal OIs (a total transplant population of at least 5000 per year (*i.e.* 10 to 20 centers)).

b. Design a network that will consider centers of various sizes and affiliations and includes centers from various U.S. regions to ensure representativeness.

c. Develop a work plan to manage surveillance activities at the different transplant centers.

d. Design a strategy for the participating medical centers to report every case of invasive fungal OI's that occurs in any of their transplant recipients, even if not hospitalized.

e. Design a data collection form for reporting each individual incident case of invasive fungal OI in a transplant recipient.

f. Develop a standardized protocol for surveillance for invasive fungal infections in stem cell/bone marrow and solid organ transplant recipients.

g. Analyze findings and publish as necessary.

2. CDC Activities

a. Provide technical assistance in the development of a data collection form.

b. Provide periodic laboratory confirmation of identified isolates, and pathology confirmation of available diagnostic tissues, as needed and appropriate.

c. Assist with data management and statistical support to analyze the surveillance data, as needed.

d. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double spaced pages printed on one side, with one inch margins and unreduced font.

F. Submission and Deadline

Letter of Intent (LOI)

In order to assist CDC in planning the evaluation of applications submitted under this Program Announcement, all parties intending to submit an application are requested to submit an LOI to inform CDC of their intention to do so. The LOI should include (1) name and address of institution and (2) name, address, and telephone number of contact person. Notification can be provided by facsimile, postal mail, or Email.

On or before July 15, 2000, submit the letter of intent to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available in the application kit.

On or before July 31, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

Extent to which applicant demonstrates a clear understanding of the purpose, and objectives of the focus area being addressed. Extent to which applicant demonstrates that the proposed project addresses the purpose.

2. Capacity (45 points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from participating non-applicant organizations, individuals, *etc.*, and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (45 points total)

a. Extent to which applicant describes measurable and time-phased objectives of the proposed project which are consistent with the purpose of the focus area being addressed. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities for the specific programmatic focus area being addressed. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are feasible, appropriate, and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant clearly describes collaboration with CDC and/or others during various phases of the project. (25 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

d. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

5. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semi-annual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the ''Where to

Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.'' To receive additional written information and to request an application kit, call 1–888–GRANTS (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone Number: 770–488–2753; Email Address: gcg4@cdc.gov.

For program technical assistance, contact: Rana A. Hajjeh, M.D., National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephone Number: 404–639–4753; E-mail Address: rfh5@cdc.gov.

Dated: June 16, 2000.

Henry S. Cassell, III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–15769 Filed 6–21–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State Human Services System.

OMB No.: New Collection.

Description: Collect Data from States to Provide Updated Information on what systems software each State has created in the area of State Systems which effect TANF, CW, OCSE and Child Care Projects.

Respondents: 54 States and Territories.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey	54	4	1	216

Estimated Total Annual Burden Hours: 216.

In compliance with the requirements of Section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June, 15, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–15844 Filed 6–21–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Temporary Deferment of Activities Relating to Certain Biologics Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Biologics Evaluation and Research (CBER) will be converting its current biologics license application (BLA) data base system into a new data base system. During the period required for this conversion, the agency will temporarily defer certain submissions subject to CBER review and approval, and the review period, if any, on pending submissions will be suspended. FDA plans to temporarily defer action on submissions related to BLA's, product license applications (PLA's), establishment license applications (ELA's), and any related correspondence. FDA is also requesting that sponsors voluntarily refrain from filing the affected submissions during this period. FDA estimates that the deferment period will be about 1 month.

FOR FURTHER INFORMATION CONTACT: Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–2000.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*) and section 351 of the Public Health Service Act (42 U.S.C. 262), CBER is responsible for

receiving, reviewing, evaluating, and taking appropriate action on a variety of submissions concerning various regulated products, including: (1) Investigational new drug applications (IND's) and investigational device exemption applications (IDE's) for certain products for which CBER has been assigned responsibility; (2) BLA's, PLA's, and ELA's submitted for biological products; and (3) new drug applications (NDA's), premarket approval applications (PMA's), and premarket notifications (510k's) for which CBER has been assigned responsibility.

In an effort to upgrade CBER's data base and tracking system for license applications, CBER is converting to a new data base system starting in June 2000. Because of this conversion, CBER will be unable to start work or continue work on certain pending submissions and reports until conversion to the new system is ready; therefore, FDA plans to temporarily defer action on certain submissions subject to CBER review and approval, including BLA's, PLA's, ELA's, and related correspondence. Other submissions subject to CBER review and approval, including IND's, NDA's, 510k's, PMA's, or IDE's will not be affected by the conversion and temporary deferment. FDA is requesting that applicants voluntarily refrain from filing the affected submissions during the conversion period, which will begin on June 26, 2000, and is expected to continue until July 20, 2000. CBER will try to complete the conversion and begin processing submissions sooner than the specified timeframe. Confirmation of the resumption of normal review procedures and any change in this timeframe will be announced on the Internet on CBER's home page at http://www.fda.gov/cber/genadmin.htm.

FDA anticipates that this period will be about 1 month or less. Although FDA will continue to accept mail during this period, affected submissions and related correspondence will neither be officially logged in nor will review of affected submissions or related correspondence begin. Any review period will not begin until the conversion is completed and CBER review functions resume. CBER will attempt to keep the mail in the order of the day received. When work resumes, the mail will be handled in the order in which it was received. Also, the review periods on pending submissions will be suspended during the conversion period. The action due date for all pending submissions will be extended by the length of the actual deferment. CBER will attempt to minimize the period during which regular procedures are suspended.

Persons who may be affected by this temporary deferment should call the contact person listed above or CBER's Office of Communication, Training, and Manufacturer's Assistance at 301–827–2000 with any questions regarding the conversion.

Dated: June 14, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–15554 Filed 6–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10008]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This collection of information will be used to determine items eligible for payment as new technology within the ambulatory payment classification (APC) system as well as items eligible for the transitional pass-through payment provision as required by section 201 of the BBRA. Without this information, HCFA would be unable to determine eligible items for transitional pass-through or new technology payments; therefore being unable to make additional payments to hospitals for a period of 2 to 3 years as required by the BBRA of 1999. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by the Balanced Budget Refinement Act of 1999 (Section 201(b)). Without this information, HCFA would not be able to properly implement the requirements set forth in the statute.

HCFA is requesting OMB review and approval of this collection by July 6, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 3, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;

Title of Information Collection: Recognition of New Technology/Pass-Through Items Under the Prospective Payment System for Hospital Outpatient Services;

Form No.: HCFA–10008 (OMB# 0938–NEW);

Use: This information is necessary to determine items eligible for payment as new technology within the ambulatory payment classification (APC) system as well as items eligible for the transitional pass-through payment provision as required by section 201 of the BBRA. This collection will enable HCFA to implement those special payment provisions.;

Frequency: On Occasion;

Affected Public: Business or other for-profit;

Number of Respondents: 500;

Total Annual Responses: 500;

Total Annual Hours: 1,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone

number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by July 3, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan (HCFA–10008), Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: June 15, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–15800 Filed 6–21–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10006]

Notice; Correction

SUMMARY: In the **Federal Register** issue of Tuesday, June 6, 2000, make the following correction:

Correction

In the **Federal Register** issue of Tuesday, June 6, 2000, Volume 65: FR Doc. 00–14263, on page 35947, the fourth sentence of the first paragraph in column 1 (beginning ''Prior to that time'') should be deleted and replaced with the following sentence: ''Prior to that time, we must send a State Medicaid Directors letter soliciting applications and have sufficient time to review all applications adequately.''

Dated: June 8, 2000.

Victoria Quigley,

Acting Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–15799 Filed 6–21–00; 8:45 am]

BILLING CODE 4120–03–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, Comparative Medicine.

Date: July 25, 2000.

Time: 8:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonina Blvd., Gaithersburg, MD 20878.

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 20892–7965, (301) 435–0810.

(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: June 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15756 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Notice of Closed 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 Heart, Lung, and Blood Institute, Special Emphasis Panel, Clinical Research Curriculum Awards (K30s)

Date: July 11–12, 2000.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924 (301) 435–0277.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, In Vitro Inactivation of Viruses in Blood Components.

Date: July 20, 2000.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eric H. Brown, PhD Scientific Review Administrator, NIH/NHLB/DEA Review Branch, Rockledge Building II, Suite 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301/435–0299, browne@gwgate.nhlbi.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15757 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed 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/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: NIDCR Special Grants Review Committee, Standing Review Committee, NIDCR.

Date: June 22–23, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: William J. Gartland, PhD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15740 Filed 6–21–00; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 18, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (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.

(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: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15741 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–64, Review of R13 Grant.

Date: June 26, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–49, Review of R44 Grants.

Date: July 11, 2000.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–51, Review of R44 Grant.

Date: July 25, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–70, Review of R44 Grants.

Date: July 28, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, Scientific Review Administrator, 4500 Center Drive,

Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 00–71, Review of R21 Grants.

Date: August 17, 2000.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2373.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15742 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 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 Institute of General Medical Sciences Special Emphasis Panel.

Date: July 7, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Arthur L. Zachary, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–2886, zacharya@nigms.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Initiative for Minority Student Development.

Date: July 17–19, 2000.

Time: 8 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact person: Michael A. Sesma, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Bldg., Room1AS19H, 45 Center Drive, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15745 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closing Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 10–11, 2000.

Time: 7:30 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 31, 2000.

Time: 2 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lillian M. Pubols, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15746 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 15, 2000.

Time: 10:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Rockville, MD 20852, 301–443–2926, (Telephone Conference Call).

Contact Person: Ronald Suddendorf, Scientific Review Administrator, Extramural

Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 12, 2000.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Eckardt, SBIR Coordinator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–6107, meckardt@willco.niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 19, 2000.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 12, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15750 Filed 6–21–00; 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 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee.

Date: June 15–16, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Norman Chang, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892.

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: June 13, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15751 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 14, 2000.

Time: 8:30 AM to 1 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Gaithbersburg, Washington Room, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Vassil S. Georgiev, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAD, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(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: June 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15752 Filed 6–21–00; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–4(04).

Date: June 23, 2000.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Boulevard, II Democracy Plaza, Bethesda, Maryland 20892, (Telephone Conference Call).

Contact Person: William E. Elzinga, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 647, 6707

Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

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: June 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15753 Filed 6–21–00; 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, Review of a Grant Application on Social Isolation, Health and the Aging Process.

Date: June 15, 2000.

Time: 7 pm to 11 pm.

Agenda: To review and evaluate grant applications.

Place: Chicago Hilton & Towers, 17 East Monroe 6th floor, Chicago, IL 60603.

Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel Review of Alzheimer's Disease Pilot Clinical Trial Applications.

Date: June 23, 2000.

Time: 12 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7210 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of a Grant Application on Micronutrients, Stroke and Cognition in Aging Process.

Date: July 20, 2000.

Time: 7 pm to 11 pm.

Agenda: To review and evaluate grant applications.

Place: Boston Park Plaza Hotel and Towers, 4 Arlington Street, Boston, MA 02116.

Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, 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: June 9, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15754 Filed 6–21–00; 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 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 Environmental Health Sciences Special Emphasis Panel—Conference Grants.

Date: June 26, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

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. 93.113, 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: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15759 Filed 6–21–00; 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 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 Child Health and Human Development Initial Review Group Medical Rehabilitation Research Subcommittee.

Date: June 26, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz Carlton, Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

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: June 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15760 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel Clinical Trials Collaborations for Nursing Research (NR–00–03).

Date: July 12, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15761 Filed 6–21–00; 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 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 on Drug Abuse Special Emphasis Panel, Phase II SBIR: ''Production of an Economical Supply of Delta–9–THC''.

Date: June 30, 2000.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric Zatman, contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National institutes of health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

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: June 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15763 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 3, 2000, 4 p.m. to April 3, 2000, 7 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on April 3, 2000, 65 FR 17519.

The meeting will be held on July 11, 2000, 2 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15743 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 15, 2000, 8:30 a.m. to June 16, 2000, 5 p.m., Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on June 7, 2000, 65 FR 36154–36156.

The starting time of the meeting has been changed to 8 a.m. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15744 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 18, 2000, 1 p.m. to June 18, 2000, 4 p.m., Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington,

DC 20007 which was published in the **Federal Register** on June 7, 2000, 65 FR 36154–36156.

The meeting times have been changed to 5 p.m.–7 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15747 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 18, 2000, 4 p.m. to June 18, 2000, 5:30 p.m., Delta Chelsea Hotel, 33 Gerrard Street West Toronto, Ontario, ON 000000 which was published in the **Federal Register** on June 7, 2000, 65 FR 36154–36156.

The meeting times have been changed to 6 p.m.–7 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15748 Filed 6–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Nutrition Study Section, June 19, 2000, 8:30 a.m. to June 20, 2000, 4 p.m. Delta Chelsea Hotel, 33 Gerrard Street, West Toronto, Ontario, ON 000000 which was published in the **Federal Register** on June 7, 2000, 65 FR 36156–36159.

The starting time of the meeting has been changed to 8 a.m. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15749 Filed 6–21–00; 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: June 23, 2000.

Time: 12 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.

Date: June 26–27, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Phoenix Park Hotel, 520 N. Capital Street, N.W., Washington, DC 20001.

Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

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: June 27, 2000.

Time: 8:30 AM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

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: Cardiovascular Sciences Integrated Review Group, Pharmacology Study Section.

Date: June 28–29, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 2007.

Contact Person: Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

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: June 28, 2000.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@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: Cardiovascular Sciences Integrated Review Group, Hermatology Subcommittee 2.

Date: June 28–29, 2000.

Time: 8:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, (301) 435–1177, friedj@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: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.

Date: June 28–30, 2000.
Time: 8:30 AM to 12:00 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.
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: June 28, 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: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@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: June 28, 2000.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.
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: June 28, 2000.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@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: June 28–30, 2000.
Time: 7 p.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Newark International Airport, Newark, NJ 07114.
Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, 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 review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 28, 2000.
Time: 8:30 PM to 10:30 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: The Watergate Hotel, 2650 Virginia Ave., NW, Washington, DC 20037.
Contact Person: P.C. Huang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 02892, 301–435–2477, huangpc@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: June 28, 2000.
Time: 12 PM to 1 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Bethesda, MD 20017.
Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@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: Cardiovascular Sciences Integrated Review Group, Cardiovascular Study Section.
Date: June 29–30, 2000.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW, Washington, DC 20008.
Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, (301) 435–1212, johnsong@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: June 29–30, 2000.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: The Westin Grand Hotel, 2350 M Street, NW, Washington, DC 20037.
Contact Person: Marjam G. Behar, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.
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: June 29–30, 2000.
Time: 8 AM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: The Madison Hotel, 15th and M. Streets, NW, Washington, DC 20005.
Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.giv.
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: Cell Development and Function Integrated Review Group, Cell Development and Function 6.
Date: June 29–30, 2000.
Time: 8 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.
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: June 29–30, 2000.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.
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: June 29–30, 2000.
Time: 8:30 A.M. to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Wyndham Bristol Hotel, Washington, DC 20037.
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.
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: June 29–30, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, Bethesda, MD 20017.
Contact Person: Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@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: June 29–30, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joe Marwah, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 29–30, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.
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: Genetic Sciences Integrated Review Group, Genome Study Section.
Date: June 29–30, 2000.
Time: 9:00 AM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Ave, NW, Washington, DC 20037.
Contact Person: P.C. Huang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 02892, 301–435–2477, huangpc@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: June 29, 2000.
Time: 1:30 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Catharine L. Wingate, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892.
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: June 30, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 30, 2000.
Time: 8:30 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Jerry L. Klein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 30, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.
Contact Person: Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM–3.
Date: June 30, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: David M. Monsees, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 30, 2000.
Time: 10:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee Center for Scientific Review Special Emphasis Panel.

Date: June 30, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 30, 2000.

Time: 1:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

(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: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15755 Filed 6–21–00; 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: June 26, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave, NW, Washington, DC 20037.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitiations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 28, 2000.

Time: 9:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave, NW, Washington, DC 20037.

Contact Person: P.C. Huang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, (301) 435–2477, huangpc@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: June 28, 2000.

Time: 2:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Ave, NW, Washington, DC 20037.

Contact Person: P.C. Huang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2205, MSC 7890, Bethesda, MD 20892, (301) 435–2477, huangpc@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: July 5, 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: Camilla E. Day, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc#csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 5, 2000.

Time: 5 PM to 7 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton—Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, sipej@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 5–6, 2000.

Time: 7 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton—Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, spej@csr.nih.gov.

(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: June 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15758 Filed 6–21–00; 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: June 23, 2000.
Time: 1:30 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.
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: June 25–26, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175, bakerh@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: June 25, 2000.
Time: 7:00 PM to 11:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.
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 Integrated Review Group, Radiation Study Section.
Date: June 26–28, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW, Washington, DC 20008.
Contact Person: Paul K. Strudler, Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435-1716.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.
Date: June 26–27, 2000.
Time: 8:00 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Holiday Inn, Gaithersburg, MD 20879.
Contact Person: Daniel F. McDonald, Scientific Review Adminstrtator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and fundig cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 26–27, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section-8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@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: June 26, 2000.
Time: 8:00 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@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: June 26–27, 2000.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: June 26–27, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, 15th St. & Pennsylvania Ave, NW, Washington, DC 20005.
Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 26, 2000.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.
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 Integrated Review Group, Metabolic Pathology Study Section.
Date: June 26–28, 2000.
Time: 8:30 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
Contact Person: Marcelina B. Powers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.
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: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.
Date: June 26–27, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.
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: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: June 26–27, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contract Person: Gopa Rakhit, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, rakhitg@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: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.
Date: June 26–27, 2000.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.
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: June 26–27, 2000.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.
Contact Person: Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.
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: June 26–27, 2000.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: GW University Inn, 834 New Hampshire Avenue, NW., Washington, DC 20037.
Contact Person: Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.
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: June 27–28, 2000.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.
Contact Person: Daniel R. Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.
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: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.
Date: June 27–28, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.
Contact Person: David M. Monsees, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, (301) 435–0684, monsees@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: June 27, 2000.
Time: 2:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@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: June 27, 2000.
Time: 3:00 PM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.
Contact Person: Eugene Vigil, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.
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: June 27, 2000.
Time: 3:00 PM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place; NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Robert T. Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892 (301) 435–1195.
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: June 14, 2000.

LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–15766 Filed 6–21–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently of 65 FR 20477, April 17, 2000, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the retitling of the Office of Bioengineering and Bioimaging in the Office of the Director, National Institutes of Health, as the Office of Bioengineering, Bioimaging, and Bioinformatics.

Section N–B, Organization and Functions, is amended as follows: Under the heading Office of Bioengineering, Bioimaging (NAC, formerly HNAC), replace the title with: Office of Bioengineering, Bioimaging, and Bioinformatics (NAC, formerly HNAC).

Dated: May 25, 2000.

Ruth Kirschstein,
Acting Director, National Institutes of Health.

[FR Doc. 00–15762 Filed 6–21–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Wednesday, July 12, 2000, Time 6 p.m. to 8 p.m.

Address: Hugh Moore Park, On the Canal Boat, Park entrance off of Lehigh Drive. Easton, PA 18045. Telephone: 610–861–9345 for additional information.

The agenda for the meeting will focus on implementation of the Management Act Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: June 16, 2000.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 00–15770 Filed 6–21–00; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council (Council); Meeting Announcement

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Council will meet at 1 p.m., July 14, 2000, to select North American Wetlands Conservation Act (NAWCA) proposals for recommendations to the Migratory Bird Conservation Commission. The meeting is open to the public.

DATES: July 14, 2000, 1 p.m.

ADDRESSES: The meeting will be held in the Bessborough Hotel, 601 Spadina Crescent East, Saskatoon, Saskatchewan, Canada. The Council Coordinator is located at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: David A. Smith, Council Coordinator, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to, and final funding approval by, the Migratory Bird Conservation Commission. Proposals require a minimum of 50 percent non-Federal matching funds.

Dated: June 8, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Srvice.

[FR Doc. 00–15764 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET, GP0–0249; OR–55655]

Notice of Proposed Withdrawal, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 17,056.18 acres of public lands and 680 acres of non-federal lands, if acquired, to protect the Diamond Craters Outstanding Natural Area and Area of Critical Environmental Concern. This notice closes the public lands for up to two years from surface entry and mining. The public lands will remain open to mineral leasing.

DATES: Comments must be received by July 25, 2000.

ADDRESSES: Comments should be sent to the Burns District Manager, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon 97738.

FOR FURTHER INFORMATION CONTACT: Skip Renchler, BLM, Burns District Office, 514–573–4443.

SUPPLEMENTARY INFORMATION: On May 22, 2000, a petition/application was approved allowing the Bureau of Land Management to consider withdrawing the Diamond Craters Outstanding Natural Area and Area of Critical Environmental Concern from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The application includes lands previously withdrawn by Public Land Order 5822 on January 22, 1981, as described in the **Federal Register** Volume 46, page 6947, and the following additional lands:

Willamette Meridian

Federal Lands

T. 28 S., 31 E.,
Sec. 36, SE¼NE¼, NE¼SE¼.
T. 28 S., R. 32 E.,
Sec. 36 W½.

Non-Federal Lands

T. 28 S., R. 31 E.,
Sec. 36, SE¼SE¼.
T. 28 S., R. 32 E.,
Sec. 16, E½;
Sec. 36, W½NE¼, NW¼, SW¼.
The lands described above aggregate 1,080 acres in Harney County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the District Manager, Burns District at the above address on or before July 25, 2000.

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 lands will be segregated as specified above unless the application is denied, canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of vegetative resources other than the mining laws.

Dated: June 9, 2000.

Robert D. DeViney, Jr.,

Chief, Branch Realty and Records Services.

[FR Doc. 00–15781 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–00–1220–QX]

Call for Nominations for the Bureau of Land Management's California Desert District Advisory Council

SUMMARY: The Bureau of Land Management's California Desert District is soliciting nominations from the public for five members of its District Advisory Council to serve the 2001–2003 three-year term. Council members

provide advice and recommendations to BLM on the management of public lands in southern California. Nominations will be accepted through Thursday, August 31, 2000. The three-year term would begin January 1, 2001.

The five positions to be filled include:

- One environmental protection representative;
- One renewable resources representative representing grazing interests;
- One elected official representing local or county government;
- Two public-at-larger representatives.

Council members are appointed to serve an initial 3-year term, and may be nominated for reappointment for an additional three-year term. Five council members are completing their second 3-year term and retire December 31, 2000.

The California Desert District Advisory Council is comprised of 15 private individuals who represent different interests and advise BLM officials on polices and programs concerning the management of approximately 11 million acres of public land in southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Council members serve without compensation except for reimbursement of travel expenditures incurred in the course of their duties.

Section 309 of the Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of BLM administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act (FACA), which requires nominees appointed to the council be balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and BLM will try to find qualified representatives from areas throughout the California Desert District. The District covers portions of eight counties, and includes 10.7 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

Any group or individual may nominate a qualified person, based upon their education, training, and knowledge of BLM, the California Desert, and the issues involving BLM-administered public lands throughout southern California. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominees; work and home addresses and telephone numbers, fax number, and E-mail addresses; a biographical sketch that includes the nominee's work and public service record; any applicable outside interests or other information that demonstrates the nominee qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and council. Nominees may contact the BLM California Desert District External Affairs staff at (909) 697–5220 or write to the address below and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. Advisory Council members are appointed by the Secretary of the Interior, generally in late January or early February.

Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District, 6221 Box Spring Boulevard, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: BLM California Desert District External Affairs: Doran Sanchez, (909) 697–5220.

Dated: June 16, 2000.

Tim Salt,

District Manager.

[FR Doc. 00–15768 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–034–00–1040–DB: GPO–0254]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the North Folk Malheur River Landscape Area Management Project in Malheur, Harney and Grant Counties, OR

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the North Fork River Landscape Area Management Project in Malheur, Harney and Grant Counties, Oregon and notice of scoping.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Vale District, Malheur Resource Area, will be preparing an EIS on the impacts of various management activities and associated projects in the North Fork Malheur River geographic area. Resource values and management activities include: livestock grazing, recreation, forest management, special status and Threatened and Endangered species, wildlife habitat, Wilderness Study Areas, Areas of Critical Environmental Concern, Wild and Scenic Study River, Native America concerns and cultural resources.

DATES: Written comments on the initial scoping process will be accepted until September 1, 2000. A public scoping meeting will be held from 7 to 9 p.m. on June 29, 2000 at the Juntura Grade School, W 6th Street, Juntura, Oregon. Additional meetings will be considered as appropriate.

SUPPLEMENTARY INFORMATION: The project area includes the drainages of the Little Malheur and North Fork Malheur Rivers. The area consists of approximately 126,000 acres of public lands located between Juntura and Ironside, Oregon. The southern boundary is U.S. Highway 20 between Jonesburo, Oregon and the Harney County line. The northwest boundary is the boundary between BLM lands and the Malheur National Forest. The Malheur Resource Area will be examining this area, assessing current management activities, developing recommendations for future management activities and analyzing the potential for projects. Projects may include, but are not limited to, range improvements, vegetation manipulation, recreational developments, forest health enhancement, watershed restoration and wildlife habitat enhancement. The no action alternative will also be analyzed in this document.

The Tentative Project Schedule Is as Follows:

File Draft EIS—February 2001,
File Final EIS—July 2001,
Record of Decision—September 2001.

The Bureau of Land Management's scoping process for the EIS will include:

(1) Identification of issues to be addressed,

(2) Identification of viable alternatives,

(3) Notifying interested groups, individual and agencies to determine level of participation and obtain additional information concerning issues to be addressed in the EIS.

ADDRESSES: Comments should be sent to Roy Masinton, Field Manager, Malheur Resource Area, Vale District, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Tom Dabbs, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, (541) 473–3144.

Roy L. Masinton,

Field Manager, Malheur Resource Area.

[FR Doc. 00–15807 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1430–ET; CARI 02685]

Opening of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order number 5043 expired on April 19, 1981. However, the lands, withdrawn by that order, were never opened pursuant to 43 CFR 2091.6.

EFFECTIVE DATES: June 22, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886, 916–978–4675.

SUPPLEMENTARY INFORMATION:

1. Public Land Order number 5043, as revoked in part by Public Land Order number 5656, withdrew approximately 6,757 acres from all forms of appropriation under the public land laws, including the mining laws. Public Land Order number 5043 terminated on April 19, 1981, under its own terms. Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the following lands are hereby opened to the operation of the public land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws:

(a). San Bernardino Meridian

T. 11 S., R. 11 E.,
Secs. 2, 4, 10, 12, and 14;
Sec. 16, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Secs. 22, 24, and 26.

The areas described aggregate approximately 5,477 acres of federally owned lands.

(b). San Bernardino Meridian

T. 11 S., R. 11 E.,
Secs. 23 and 25.

The areas described aggregate approximately 1,280 acres of non-federally owned lands.

2. The lands described above in paragraph 1(a) are federally owned lands that are withdrawn from both surface entry and mining by two overlapping withdrawals and those lands will not be opened to either surface entry or mining. Consequently, the opening, insofar as it affects those lands, is a record clearing action only.

3. The lands described above in paragraph 1(b) are non-federally owned lands that were conveyed out of public ownership on August 11, 1919 by a railroad patent. Consequently, the opening, insofar as it affects those lands, is a record clearing action only.

Dated: June 15, 2000.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 00–15767 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–EU; COC–44105, COC–57166, COC–35470]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: COC–44105—Recreation and Public Purpose Classification. The following public lands are classified as suitable for lease under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 *et. seq.,* and the regulations thereunder 43 CFR 2740 and 2912. The public lands involved are segregated from the public land laws including the general mining laws, except for the R&PP Act. The purpose of the classification is to segregate the DeWeese Reservoir recreation site managed by the Colorado Division of Wildlife in conjunction with the DeWeese State Wildlife Area, from conflicting applications and proposals.

Sixth Principal Meridian, Custer County, Colorado

T. 21 S., R. 72 W.,
Sec. 20, SE¼SE¼
Sec. 21, W½SW¼
Sec. 28, NW¼NW¼
Sec. 29, Lots 1, 2

Consisting of approximately 241.44 acres.

COC–57166—The following lands were segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act, on February 29, 1996. Upon publication of this notice in the **Federal Register**, this segregation, as it affects these lands only, will be amended to allow for exchange under Section 206 of the Federal Land Policy and Management Act (FLPMA), as amended by the Federal Land Exchange Facilitation Act (FLEFA) or sale under section 203 of FLPMA. This amendment affects lands in the area of the City of Longmont's water transmission line and will allow for conveyance to the City of Longmont.

Sixth Principal Meridian, Boulder County, Colorado

T. 3 N., R. 71 W.,
Sec. 11: S½NE¼SE¼SW¼,
W½NW¼SE¼SW¼,
SE¼NW¼SE¼SW¼,
N½N½SW¼SE¼SW¼,
NE¼NE¼SE¼SE¼SW¼,
SW¼SW¼SE¼SE¼
Sec. 13: S½NE¼ of lot 1, NW¼ of lot 1,
S½N½NE¼ of lot 1
Sec. 14: N½N½ of lot 1, S½NE¼ of lot 1

Consisting of approximately 49.85 acres.

COC–35470—The following lands were segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act, on September 6, 1985. Upon publication of this notice in the **Federal Register**, this segregation, as it affects these lands only, will be amended to allow for exchange to the City and County of Denver acting by and through its Board of Water Commissioners under Section 206 of the Federal Land Policy and Management Act (FLPMA), as amended by the Federal Land Exchange Facilitation Act (FLEFA).

Sixth Principal Meridian, Boulder County, Colorado

T. 1 S., R. 71 W.,
Tracts 49, 54, 60, 61, 65, 143, 144

Consisting of approximately 283.72 acres.

The lands are not needed for Federal purposes. These actions are consistent with current BLM land use planning and would be in the public interest.

DATES: Interested parties may submit comments on this action on or before August 3, 2000. Please reference the applicable serial number in all correspondence. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become final.

ADDRESSES: Royal Gorge Field Office Manager, Bureau of Land Management, 3170 E. Main St., Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT: COC–44105, David Hallock, Realty Specialist BLM, 719–269–8536; COC–57166, Jan Fackrell, Realty Specialist BLM, 719–269–8525; COC–35470, Stu Parker, Realty Specialist BLM, 719–269–

8546; Royal Gorge Field Office, 3170 E. Main St., Canon City, CO 81212.

Levi D. Deike,

Associate Field Office Office Manager.

[FR Doc. 00–15808 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–ET; CACA 2642 01]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: This document corrects a legal description contained in the notice of proposed withdrawal published in the **Federal Register** of April 12, 2000, regarding the Desert Tortoise Natural Area. This correction includes the legal description of three lots that were inadvertently omitted in the original notice.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–978–4675 or Janet Eubanks, BLM California District Office, 909–697–5376.

Correction

In the notice of proposed withdrawal, FR Doc. 00–9022, beginning on page 19793 in the issue of April 12, 2000, make the following correction:

On page 19794, in the second column, the legal description for sec. 5 of T. 32 E., R. 38 E., is corrected to read

> Sec. 5, lots 15, 28, 31, 41, 49, 51, 99, 103, 113, 119, 136, 142, 170, 179, 191, 193, 200, 218, 220, and 223 of Tract No. 2714, as per map filed December 7, 1962 in Book 13 Pages 94 to 98, inclusive of maps in the office of the county recorder of said county.

Dated: June 10, 2000.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 00–15784 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection survey.

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR) to conduct a new survey on ''Labor Migration and the Deepwater Oil Industry.'' We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments by August 21, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. 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 rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the 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: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Survey-Labor Migration and the Deepwater Oil Industry.

OMB Control Number: 1010–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition.

The OCS Lands Act (at 43 U.S.C. 1346, Environmental Studies) instructs the Secretary of the Interior to conduct studies to establish environmental information as he deems necessary and to monitor the human, marine, and coastal environments. The purpose of the studies is to provide time-series and data trend information which can be used to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studied and monitored, and to design experiments to identify the causes of such changes. This authority and responsibility are among those delegated to MMS.

MMS proposes to conduct a survey to examine the consequences of international labor on four port communities in southern Louisiana. The information collected will aid MMS in understanding the impact of foreign labor on the well-being of communities in southern Louisiana. The scientific information is needed to understand the concerns, fears, and desires of communities with respect to OCS activities, and it is necessary for successful operation of the OCS oil and gas program in the region.

Questions in the survey will address the respondent's historical ties to the oil and gas industry; current views about his/her community, impact of the presence of foreign-born immigrants in the four communities, and background and household information.

Responses are voluntary. No proprietary or items of a sensitive nature will be collected.

Frequency: This will be a one-time data collection activity.

Estimated Number and Description of Respondents: Approximately 200 randomly selected households in each of the four communities (800 respondents).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: Approximately 25 minutes per survey for the primary data collection effort. Follow-up discussions, when held, will average approximately 20 minutes. The total annual burden is estimated at 340 hours (333 hours for primary survey + 7 hours for follow-up conversations).

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no non-hour cost burdens to the respondents.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide

notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Dated: June 12, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–15801 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability for a Draft General Management Plan Amendment/Environmental Impact Statement, Dry Tortugas National Park, Monroe County, FL

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service (NPS) has prepared a Draft General Management Plan Amendment/ Environmental Impact Statement (DGMPA/EIS) that evaluates five alternatives for Dry Tortugas National Park. The document describes and analyzes the environmental impacts of a proposed action, three action alternatives and a no-action alternative. When approved, the plan will guide management actions during the next 15–20 years. This document was completed in cooperation with the Florida Keys National Marine Sanctuary, National Oceanic and Atmospheric Administration. However, the National Park Service planning document and process are separate from the Marine Sanctuary's process and document.

DATES: There will be a 60-day public review period for comment on the draft document which will begin when the Environmental Protection Agency (EPA) publishes their notice in the **Federal Register.**

ADDRESSES: Public reading copies of the DGMPA/EIS will be available for review at the following locations:

- Everglades National Park, 40001 State Road 9336, Homestead;
- Offices of Florida National Marine Sanctuary at 216 Ann Street, Key West; 5550 Overseas Highway, Marathon; and 95200 Overseas Highway, Key Largo;
- Miami-Dade Public Library, Homestead Branch, 700 N. Homestead boulevard, Homestead;
- Collier County Public Library, 650 Central Avenue, Naples; and
- St. Petersburg Public Library, 3745 9th Avenue North, St. Petersburg.

SUPPLEMENTARY INFORMATION: Notice of the availability of the final document will be published in the **Federal Register.** Subsequently, notice of an approved Record of Decision will be published in the **Federal Register** not sooner than 30 days after the final document is distributed. The official responsible for the decision is the Regional Director, Southeast Region, National Park Service; the official responsible for implementation is the Superintendent, Dry Tortugas National Park.

In order to facilitate the review process, public meetings will be held from 3 p.m. to 8 p.m. in the following Florida locations:

- Homestead Senior High School, S.E. 12th Avenue, Homestead—June 12;
- Comfort Inn Executive Suites, 3860 Toll Gate Boulevard, Naples—June 13;
- University of South Florida at St. Petersburg, Campus Activities Center, 2nd Street and 6th Avenue South, St. Petersburg—June 14;
- The Sombrero Country Club, 4000 Sombrero Boulevard, Marathon—June 21;
- Holiday Inn Beach Side, 3841 North Roosevelt Boulevard, Key West—June 22.

A public meeting also will be held in Washington, DC from 2 p.m. to 5 p.m. in the first floor HCHB Auditorium of the U.S. Commerce Building on July 11, 2000.

For the convenience of the public, these meetings will be held jointly with the Florida Keys National Marine Sanctuary, National Oceanic and Atmospheric Administration. Detailed information for each public meeting will be published in local and regional newspapers in advance, broadcast via radio and television stations, and listed on the park's Webpage. Dry Tortugas National Park management and planning officials will attend all sessions to present the draft document, to receive oral and written comments, and to answer questions.

Comments on the DGMPA/EIS should be received (or transmitted by e-mail) no later than 60 days after publication of EPA's **Federal Register** notice. Written comments may be submitted to Superintendent Richard G. Ring, Everglades National Park and Dry Tortugas National Park, 40001 State Road, 9336, Homestead, Florida 33034 or e-mailed to *jeffery_scott@nps.gov.*

All comments received will be available for public review at Everglades National Park. If individuals submitting comments request that their name and/ or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, NPS will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

In addition, the document will be posted on the Dry Tortugas National Park Webpage (*www.nps.gov/drto/).* A limited number of printed copies will be available on request.

FOR FURTHER INFORMATION CONTACT: Jeffery Scott, Supervisory Community Planner, Everglades National Park, 40001 State Road 9336, Homestead, Florida 33034, (Phone: 305–242–7706; FAX: 305–242–7711; email: *jeffery_scott@nps.gov).*

Dated: June 14, 2000.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 00–15729 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and Fort Baker Plan, Golden Gate National Recreation Area, Marin County, California; Notice of Approved Record of Decision

SUMMARY: Pursuant to § 102 (2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service (NPS) has prepared the Fort Baker Plan and

Final Environmental Impact Statement (EIS) and approved a Record of Decision. This decision amends the 1980 Golden Gate National Recreation Area General Management Plan (GMP) as it pertains to Fort Baker, in accord with the ''Proposed Action'' alternative described and analyzed in the Fort Baker Plan Draft and Final EIS. The U.S. Department of Defense will transfer Fort Baker lands still under military ownership in 2001 to the NPS. The express intent of the selected Plan is to transform Fort Baker from a military installation to a new unit of the National Park System through a series of coordinated actions consistent with the National Park mission. The Fort Baker Plan Draft EIS was issued in October 1998 for a 60-day public review and comment period, and the Final EIS was released in October 1999. The 30-day no action period concluded on December 5, 1999.

Project Background

In general, Public Law 92–589 established the Golden Gate National Recreation Area (GGNRA) so as to preserve for public use and enjoyment many outstanding natural, historic, scenic, and recreational values, as well as to maintain needed recreational open space deemed scarce in the urban environment. In particular, and according to 16 USC 460bb(2), ''* * * the easterly half of Fort Baker in Marin County, California shall remain under the jurisdiction of the Department of the Army. When the property is determined by the Department of Defense to be in excess of its needs, it shall be transferred to the jurisdiction of the Secretary for purposes of this Act.''

In 1995, the remaining military land at Fort Baker was determined to be excess to the needs of the military by the Department of Defense's Base Realignment and Closure Committee and was required to be transferred to the NPS, consistent with Public Law 92–589, by the year 2001.

The Fort Baker site includes a Historic District listed on the National Register of Historic Places, a marina and waterfront area, and open space, scenic, and natural areas including habitat for the federally listed endangered mission blue butterfly. The NPS must provide for the reuse of Fort Baker as a new unit of the National Park System consistent with the requirements of Public Law 92–589, and with the Organic Act of 1916 which established that:

> The fundamental purpose of all units of the National Park Service is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

In keeping with these authorities, § 1.2 of the Final EIS stated that the over-arching purpose of the conservation planning and environmental impact analysis process was to identify: (i) A program and types of uses that would be accommodated in historic buildings and would generate adequate revenue for building rehabilitation and preservation; (ii) Public use improvements, including new construction and removal of buildings, landscape treatments, trails, parking, circulation, and locations and patterns of use; (iii) Waterfront improvements; (iv) Opportunities for habitat restoration; and (v) An approach to the protection, rehabilitation and maintenance of the historic and natural resources.

Alternatives Considered

Three ''action'' alternatives and a ''no-action'' alternative were analyzed in the Draft and Final EIS. The ''action'' alternatives were developed and refined through a public, three-year conservation planning and environmental impact analysis process and included, in addition to the selected action (described in the Draft and Final EIS as the Proposed Action), a 1980 GMP Alternative and an Office and Cultural Center Alternative.

The *Selected Action* envisions preserving historic structures and natural features through selection of compatible uses and rehabilitation, restoration and other site improvements. A conference and retreat center is to be created in historic buildings around the parade ground and in the adjacent nonhistoric Capehart area. This essential facility will be the smallest possible, economically viable complex capable of fulfilling Plan objectives (and will be designed to be compatible with the setting).

The Bay Area Discovery Museum is to be retained and expanded into historic buildings and new, compatibly designed structures within its campus. The Coast Guard Station will also be retained, and could accept a modest expansion for meeting-training space or staff quarters. The historic boat shop is to be used as a public center with meeting and program space, and supporting visitor amenities. The marina is to be converted to a public (non-membership) facility serving up to 60 boats through a combination of moorings-slips for day or overnight use. Docks are to be provided for the Coast Guard to use for mooring of disabled rescued boats, and for other NPS programs.

Restoration or enhancement of over 40 acres of natural habitat, including habitat for the federally endangered mission blue butterfly will be accomplished. The wooden bulkhead along the waterfront is to be removed and the beach restored, with an adjoining 6 acres of meadow, a picnic area and boardwalk. Fishing pier improvements include fish-cleaning stations, railings and benches. The batteries and other fortification structures are to be stabilized, preserved and interpreted (Battery Cavallo will be subject to a separate plan and environmental analysis). An NPS visitor center is to be established and an interpretive trail created from Lime Point along the waterfront, continuing as the San Francisco Bay Trail to East Road, Battery Duncan and the chapel.

The *GMP Alternative* was derived from the 1980 GMP. Key elements included: conference center to accommodate 350 people; a 200-bed youth hostel and artists-in-residence program in historic buildings around the Parade Ground; a 700-car parking lot serving a Marin Headlands shuttle (on a site created by removing 23 nonhistoric structures); and separate NPS maintenance facility and visitor center. The Bay Area Discovery Museum and Coast Guard Station would be retained with no features added. Historic boat shop and marina use would be similar to the Selected Action, with 50 slips provided for short-term public mooring. Historic fortifications would be preserved, and an environmental study and overnight campsite established near Battery Cavallo. Waterfront treatments would also be similar, though a more urban landscape is envisioned and a ferry landing would be installed at the fishing pier.

Under the *Office and Cultural Center Alternative,* the historic Parade Ground buildings would be used for offices, meeting and program space, performance space, and restaurant/food service space. Some nonhistoric residential structures would be used for residences, and others would be removed to provide parking for the center. The Bay Area Discovery Museum and Coast Guard expansion would be the same as under the Selected Action. The marina would be retained with both long-term and some short-term public mooring provided and public program and activity space provided in the boat shop. Treatment of the waterfront, fishing pier, open space, natural habitats and historic fortifications would be the same as under the Selected Action.

The *No Action Alternative* would continue existing management. Minimal

repairs to existing historic structures, infrastructure and other facilities would occur. Historic residential buildings would be leased for residential use, and other historic buildings would remain vacant with minimal repair. No restoration of the cultural landscape (or beach and waterfront area) and no new mission blue butterfly habitat work would be undertaken. Although visitor use effects (traffic, air emissions, etc.) could be lower under this alternative, benefits of the other ''action'' alternatives associated with habitat restoration, preservation and restoration of historic resources and the cultural landscape, recreational use and enjoyment by the American public, and beneficial visual effects would not occur.

Public Involvement

Following the 1995 closure announcement, the NPS initiated a public planning effort to develop concepts for future use and preservation of the site and its resources. Beginning December 1995, a framework for the planning process was developed in consultation with local planning agencies and the public, and then presented to the GGNRA Advisory Commission in January 1996 for additional comment.

The public scoping phase was formalized through a notice published in the **Federal Register** on August 19, 1997. The scoping phase included an evaluation of the 1980 GMP so as to refine goals and objectives for a new Fort Baker Plan. The original vision for land uses and programs was reviewed within the context of current site conditions and new recreational and educational uses which were emerging. The originally envisioned land uses were scaled back, and some uses eliminated, with the intent of more effectively protecting the site's resources.

A Notice of Intent to prepare an EIS was published in the **Federal Register** on May 4, 1998. Over 50 public meetings, workshops, site tours, and hearings were held over the course of the EIS process. Thousands of public notices, planning updates and public input surveys were distributed to foster active public participation in developing and evaluating alternatives for the Fort Baker Plan. Various management concepts were assessed, and three ''action'' alternatives were carried forward for detailed evaluation in the EIS. Opportunities for public participation were also afforded through Draft EIS meetings, open houses, and presentations. Planning updates and opportunities for public comment were also provided at more than 10 publicly noticed meetings of the GGNRA Advisory Commission.

During the 60-day public review period for the Draft EIS, 127 letters, e-mail messages, and oral comments at the November 18, 1998 GGNRA Advisory Commission were received. The NPS reviewed all comments, and integrated many of the public's recommendations into the Final EIS. Additional analysis of issues of concern and new or/and more refined mitigation measures were developed and included in the Final EIS in response to public comment.

The Final EIS was released on October 15, 1999, with over 200 copies distributed to interested members of the public and other agencies (it was available in paper and electronic format and posted on the park's website). The EPA notice of filing for the Final EIS appeared in the November 5, 1999 **Federal Register**, marking the beginning of the required 30-day no action period.

During this phase, an overview of the Final EIS was presented on November 16, 1999 to the GGNRA Advisory Commission. Of 28 people who provided oral comments, 20 people favored the Proposed Action and the public planning process used by the NPS to develop and refine the Fort Baker Plan EIS. Speakers included individuals and representatives of the National Parks and Conservation Association, the National Trust for Historic Preservation, Marin Heritage, and the Bay Area Discovery Museum. Six people, including the chair of the Sausalito Citizens' Task Force for Fort Baker, opposed the retreat and conference center component, and expressed concerns related to traffic and potential effects upon the character of the site and its resources. One representative of the Tomales Bay Association supported development of a youth hostel (included in the GMP Alternative).

In addition, ten letters and 15 e-mail messages expressed opinions regarding the Fort Baker Plan. Four of the letters were in general support of the public planning process and/or the Proposed Action. The San Francisco Bay Conservation and Development Commission acknowledged consistency with the San Francisco Bay Plan. The City of Sausalito expressed concerns for potential impacts of the proposed plan and various compliance issues. The local sanitary district concurred with the EIS analysis and conclusions regarding wastewater capacity but requested that the existing agreement for these services at Fort Baker (and NPS future rights to such services) be revisited. The e-mail messages primarily expressed opposition to the conference and retreat center component, mostly based upon size. One message expressed concern related to bicycle safety. Post card mailings in support and in opposition to the plan were also received during the 30-day no action period.

After the 30-day no action period concluded several letters, as well as postcards and e-mail messages similar to those described above were received. All submittals received during the entire conservation planning and environmental impact analyis process are addressed in the Record of Decision.

Basis for Decision

The environmentally preferred alternative was the Proposed Action. The maximum potential environmental impacts of new uses and site improvements, as analyzed in the in EIS, were limited based upon build-out of a 350-room retreat and conference center. However, in the Record of Decision the NPS commits to soliciting the smallest possible, economically feasible retreat and conference center proposal that fulfills objectives of the Fort Baker Plan.

During the conservation planning and environmental impact analysis process, the NPS, working with the public, established goals and objectives that were used as a framework for evaluating potential new uses and site improvements at Fort Baker. These were developed based on NPS policy, the 1980 GMP, public input, current knowledge about the site, and an understanding of Fort Baker's national park qualities. The Purpose and Need (§ 1.3 of the EIS) addressed the following goals: (i) Promote the National Park mission; (ii) Achieve sustainability; (iii) Retain and relate to the site's special qualities; (iv) Promote public access; (v) Minimize environmental impacts; (vi) Retain and complement permanent site tenants and other GGNRA sites and programs.

The basis for the decision to select the ''Proposed Action'' is its ability to most successfully maximize all the goals and objectives disclosed at the beginning of the conservation planning and environmental impact analysis process. The Selected Action provides the most desirable combination of promoting the National Park mission and public use, while preserving the site's resources and contemplative atmosphere and minimizing environmental effects including traffic.

Measures To Minimize Harm

Numerous practical mitigation measures to minimize or avoid potential adverse effects of the Selected Action are identified. As a result of public collaboration in developing the Fort Baker Plan, new measures were developed and safeguards initially noted in the Draft EIS were refined to be more stringent in the Final EIS. One of the new stipulations relates to the size of the proposed retreat and conference center—in response to public concern about the 350 room maximum size evaluated, the NPS is now committed to working with the public in soliciting the smallest possible, economically viable retreat and conference center proposal that fulfills Plan objectives. Additional mitigations recommended by the public or other agencies, or developed by the NPS in response to issues of local concern, were added in the Final EIS. In total, more than 70 mitigation measures have been included.

Moreover, the NPS is committed to seeking and implementing innovative approaches to reduce long-term dependence on automobile use at Fort Baker, to working cooperatively with other agencies to seek regional solutions to transportation challenges in the areas surrounding Fort Baker, and to engaging in studies to reduce or eliminate parking and uncontrolled automobile traffic within Fort Baker. The NPS is specifically committed to working with the City of Sausalito, the Marin County Congestion Management Agency, the Golden Gate Bridge, Highway and Transportation District, Caltrans, and the Metropolitan Transportation Commission.

Copy of Complete Decision Available

The synopsis provided above addresses only some of the considerations made in selecting, as the final Fort Baker Plan, the alternative identified as the ''Proposed Action'' in the Draft and Final EIS. Effecting the Fort Baker Plan will not impair park resources or values. Indeed, acting upon this Plan will significantly enhance the site's natural and cultural resources. A copy of the Record of Decision may be requested from the Superintendent, Golden Gate National Recreation Area, Building 201, Ft. Mason, San Francisco, CA 94123 (or may be obtained via www.nps.gov/goga). The Superintendent is responsible for plan implementation.

Dated: June 15, 2000.

James R. Shevock,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–15730 Filed 6–21–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–414]

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for review and clearance of a questionnaire to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by July 5, 2000.

EFFECTIVE DATE: June 16, 2000.

PURPOSE OF INFORMATION COLLECTION: The questionnaire is for use by the Commission in connection with investigation No. 332–414, Competitive Assessment of the U.S. Large Civil Aircraft Aerostructures Industry, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the House Committee on Ways and Means (the Committee). The Commission expects to deliver the results of its investigation to the Committee by June 13, 2001.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* 1.

(2) *Title of form: U.S.* Producers Questionnaire—Competitive Assessment of the U.S. Large Civil Aircraft Aerostructures Industry.

(3) *Type of request:* new.

(4) *Frequency of use:* single data gathering (scheduled for 2000).

(5) *Description of respondents:* U.S. firms that produce aerostructures.

(6) *Estimated number of respondents:* 12.

(7) *Estimated total number of hours to complete the forms:* 240.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the form and supporting documents may be obtained from Peder Andersen (USITC, telephone no. (202) 205–3388). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: June 16, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15692 Filed 6–21–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–72]

Extruded Rubber Thread

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the Act).

SUMMARY: Following receipt of a petition properly filed on June 5, 2000, on behalf of North American Rubber Thread, Fall River, MA, the Commission instituted investigation No. TA–201–72 under section 202 of the Act to determine whether extruded rubber thread is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general

[1] For purposes of this investigation, extruded rubber thread is defined as vulcanized rubber thread, obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm (which is 0.007 inch or 140 gauge) to 1.42 mm (which is 0.056 inch or 18 gauge) in diameter. Such extruded rubber thread is classified in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispostive.

application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on September 6, 2000, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on October 24, 2000. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before August 28, 2000, and October 16, 2000, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on August 31, 2000 and October 19, 2000, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearings are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearings.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is August 29, 2000; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. 2252(a)(6)(B), is October 17, 2000. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is September 13, 2000; that for filing posthearing briefs on remedy is October 31, 2000. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before September 13, 2000, and pertinent to the consideration of remedy on or before October 31, 2000. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.

Issued: June 15, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15693 Filed 6–21–00; 8:45 am]

BILLING CODE 7120–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–417]

Advice on Providing Additional GSP Benefits for Sub-Saharan Africa

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: June 15, 2000.

SUMMARY: Following receipt of a request on May 22, 2000, from the United States Trade Representative (USTR), the Commission instituted Investigation No. 332–417, Advice on Providing Additional GSP Benefits for Sub-Saharan Africa, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

As requested by USTR pursuant to section 332 (g) of the Tariff Act of 1930 and in accordance with sections 503(a)(1)(B), 503(e) and 131(a) of the Trade Act of 1974, as amended (1974 Act), the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the elimination of U.S. import duties under the Generalized System of Preferences (GSP) for 1,897 articles from potential beneficiary sub-Saharan African countries.

As requested by USTR, the Commission will assume that the benefits of the GSP would continue to apply to imports that normally would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act (an exemption from the application of the competitive need limits for the beneficiary sub-Saharan African countries is provided for in section 503(c)(2)(D) of the 1974 Act).

As requested by USTR, the Commission expects to submit its report by October 2, 2000. The Commission will publish shortly thereafter a public version of the report, deleting the information that has been classified by USTR or which the Commission considers to be confidential business information.

FOR FURTHER INFORMATION CONTACT: Industry information may be obtained from Robert Wallace (202–205–3458), Melani Schultz (202–205–3436), or Kim Freund (202–708–5402) of the Office of Industries and on legal aspects from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

In her letter to the Commission, the USTR noted that the Trade Policy Staff Committee, pursuant to legislation, has determined to institute an investigation and request the advice of the Commission on the designation of certain articles as eligible articles under the GSP only for countries designated as beneficiary sub-Saharan African countries for purposes of the GSP program. On May 18, 2000, the President signed legislation amending the GSP provisions under the 1974 Act for beneficiary sub-Saharan African countries (Pub. L. 106–200, 114 Stat. 251) (Trade and Development Act of 2000'for the GSP-related provisions, see subtitle B of title I of the Act). The legislation permits the President to provide the 48 potential beneficiary sub-Saharan African countries with GSP duty-free treatment for any article described in section 503(b)(1)(B) through (G) of Title V of the 1974 Act, which identifies categories of ''import-sensitive articles'' excluded from GSP eligibility, if, after receiving advice from the Commission, the President determines that such articles are not import-sensitive in the context of imports from beneficiary countries. The items identified for consideration of GSP eligibility for sub-Saharan African countries exclude sections 503(b)(1)(A) and 503(b)(2) of Title V of the Trade Act of 1974, relating to textiles and apparel, and agricultural products over tariff-rate quotas. The articles for which the Commission will provide probable economic effect advice are as follows:

(B) Watches, except those that will cause material injury to watch or watch band strap or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(C) Import-sensitive electronic articles;

(D) Import-sensitive steel articles;

(E) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel;

(F) Import-sensitive semimanufactured and manufactured glass products; and

(G) Any other articles which the President has determined to be import sensitive in the context of GSP.

As requested by USTR, the Commission will provide its probable economic effect advice in terms of the 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTS) providing for the above referenced articles. Many of these articles are already designated as eligible for GSP for least developed beneficiary countries. A list of the articles by HTS subheadings and a list of the 48 potential beneficiary countries in sub-Saharan Africa are available from the Office of the Secretary or may be obtained from the Commission's Internet site at *http://www.usitc.gov.*

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 27, 2000, and continuing on July 28, 2000, if necessary. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., July 7, 2000. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 18, 2000. The deadline for filing post-hearing briefs or statements is 5:15 p.m., August 3, 2000. In the event that, as of the close of business on July 7, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after July 7, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on August 3, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

GSP, sub-Saharan Africa, tariffs, and imports.

Issued: June 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15694 Filed 6–21–00; 8:45 am]

BILLING CODE 7120–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–422]

In the Matter of Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof; Notice of Issuance of General Exclusion Order; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission, having previously determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation, has issued a general exclusion order, and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–

3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on June 17, 2000, based on a complaint by Moen Incorporated of Ohio. 64 FR 32522. Moen's complaint alleged unfair acts in violation of section 337 in the importation and sale of certain two-handle centerset faucets and escutcheons, and components thereof. The complaint alleged that five respondents had infringed a U.S. design patent held by complainant Moen. The five respondents named in the investigation were Foremost International Trading, Inc. of East Hanover, New Jersey (Foremost); Chung Cheng Faucet Co. Ltd. of Taiwan (Chung Cheng); Hometek International Group of Illinois (Hometek); Stuhlbarg International Sales Company Inc. d.b.a. Sisco, Inc. of Rancho Dominguez, California (Sisco); and Lota International Co. Ltd. of the People's Republic of China (Lota).

On October 6, 1999, the Commission determined not to review an ID terminating the investigation as to Hometek on the basis of a consent order. On December 29, 1999, the Commission issued a notice that an ID granting complainant's motion for partial summary determination that it had satisfied the economic prong of the domestic industry requirement had become the determination of the Commission. An evidentiary hearing before the ALJ was held December 13–15, 1999, with complainant, respondents Foremost and Chung Cheng, and the Commission investigative attorney (IA) participating. On February 1, 2000, the Commission determined not to review an ID terminating the investigation as to respondents Sisco and Lota on the basis of consent orders.

On March 17, 2000, the ALJ issued his final ID, finding a violation of section 337 by Foremost and Chung Cheng, the two remaining respondents. The ALJ also issued his recommendations on remedy and bonding. The ALJ recommended that the Commission issue a general exclusion order directing that faucets that infringe the '466 patent be excluded from entry into the United States. He also recommended a 264 percent bond during the period of Presidential review.

No party filed a petition for review of the ID.

After examining the record in the investigation, the Commission determined not to review the ID, and requested written submissions on remedy, the public interest, and bonding.

The Commission received written submissions from Moen and the IA that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of the bond that should be imposed during the 60-day Presidential review period.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of two-handle centerset faucets and escutcheons that infringe U.S. Letters Patent Des. 347,466. The Commission also determined that the public interest factors enumerated in subsection (d) of section 337 do not preclude the issuance of the aforementioned general exclusion order, and that the bond during the Presidential review period shall be in the amount of 264 percent of the entered value of the articles in question.

Copies of the Commission's orders, the public version of the ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.45–210.51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45–210.51.

Issued: June 19, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15820 Filed 6–21–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 11, 2000, and published in the **Federal Register** on February 22, 2000, (65 FR 35), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methadone-intermediate (9254), a basic class of controlled substance listed in Schedule II.

The firms plans to bulk manufacture methadone-intermediate for formulation into finished pharmaceuticals.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of B.I. Chemicals, Inc. to manufacture methadone-intermediate is consistent with the public interest at this time. DEA has investigated B.I. Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 7, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–15691 Filed 6–21–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56226), Chirex Technology Center, Inc., DBA Chirex Cauldron, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine and its salts for product development.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Chirex Technology Center, Inc., DBA Chirex Cauldron to manufacture amphetamine is consistent with the public interest at this time. DEA has investigated the firm to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 7, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–15688 Filed 6–21–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 30, 2000, Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethorphine (except HC1) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 24, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 8, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–15687 Filed 6–21–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 10, 1999, Salsbury Chemicals, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100) and by letter dated March 14, 2000, for registration to bulk manufacture methylphenidate (1724), basic classes of controlled substances listed in Schedule II.

The firm plans to manufacture amphetamine and methylphenidate for distribution as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 2000.

Dated: June 7, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcemnt Administration.

[FR Doc. 00–15690 Filed 6–21–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 31, 2000, and by letter dated April 14, 2000, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacturer the listed controlled substance for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 21, 2000.

Dated: June 7, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–15689 Filed 6–21–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

June 14, 2000.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 30, 2000. A copy of this ICR, with applicable supporting documentation, my be obtained by calling the Department of Labor Clearance Officer, Ira Mills on (202) 219–5905.

Comments and questions about the ICR listed below should be submitted to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, D.C. 20503 (202) 395–7316), and received on or before Monday, June 26, 2000. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Department of Labor, Veterans' Employment and Training Service.

Title: Federal Contractor Veterans' Employment Report VETS–100.

OMB Number: 1293–0005.

Frequency: Annually.

Affected Public: Business or other for-profit; not for-profit institutions.

Number of Respondents: 194,580.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 97,290.

Total Burden Cost: $0.

Description: The Federal Contractor Veterans' Employment Report VETS–100, administered by the U.S. Department of labor, is used to facilitate Federal contractor and subcontractor reporting of their employment and new hiring activity. Title 38 U.S.C. Section 4212 (d) requires the collection of information from entities holding contracts of $25,000 or more with Federal departments or agencies to report annually on (a) the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era and the number who are other veterans who served on active duty during a war or a campaign or expedition for which a campaign badge has been authorized; (b) the total number of employees hired during the report period and of those, the number of special disabled, the number who are veterans of the Vietnam era, and the number who are other veterans; and the maximum and minimum number of employees employed by the contractor at each hiring location.

Ira L. Mills,

Departmental Clearance Office.

[FR Doc. 00–15795 Filed 6–21–00; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 15, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz (202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King (202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment and Training Administration (ETA).

Title: Benefit-Cost Analysis of the Self-employment Assistance Program (SEA) for the United States Unemployment Insurance Program.

OMB Number: 1205–0New.

Form Number: N/A.

Affected Public: Individuals or households.

Frequency: On Occasion.

Number of Respondents: 1,200.

Total Annual Responses: 1,200.

Estimated Time Per Response: 15 Minutes.

Total Burden: 300 Hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected is necessary to perform the benefit-cost analysis of the Self-employment Assistance Program. This study will assess impacts of the program on society, employers, participants, non-participants, and the government sectors. This study also will show how the states serve SEA participants and the use of funds allocated to the program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–15796 Filed 6–21–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 7, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued

NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Federal Communications Commission, Office of Managing Director, (N9–173–00–6, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing accumulated by the Office of Managing Director. Included are electronic copies of records relating to such matters as formal hearings before the Commission, rule-making proceedings, budget estimates and justifications, agency publications, and Commission meetings. This schedule follows Model 2 as described in the SUPPLEMENTARY INFORMATION section of this notice. Recordkeeping copies of these files are included in Disposition Job Numbers NC1–173–82–2, NC1–173–82–6, NC1–173–83–1, NC1–173–85–6, N1–173–87–2, N1–173–87–7, N1–173–90–4, and N1–173–91–2.

Dated: June 15, 2000.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–15713 Filed 6–21–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; 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: Advisory Committee for Computer and Information Science and Engineering (1115).

Date and Time: July 6–7, 2000—8:30–5:00 p.m. each day.

Place: Room 1150, NSF, and 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Michael Evangelist, Division Director, Computer-Communication Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1910.

Minutes: Meeting minutes may be obtained by contacting the person listed above.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: July 6—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal year of the Computer-Communications Research Division.

Open: July 7—To assess the results of NSF program investments in the Computer-Communications Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 19, 2000.

Karen York,

Committee Management Officer.

[FR Doc. 00–15823 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–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 and time: July 25–26, 2000; 8:00 a.m.–5:00 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Technology Engineering ''New Technologies for the Environment'' 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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15832 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date/Time: July 20,2000; 8 a.m. to 5 p.m.

Place: Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Robert M. Wellek and Thomas Chapman, Program Directors, Division of Chemical and Transport Systems, Room 525, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1371.

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 New Technologies for the Environment proposals as part of the selection process for awards.

Reason for Closing: The proposal 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 proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15830 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date/Time: July 21, 2000; 8 a.m. to 5 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Geoffrey Prentice, Program Director, Division of Chemical and Transport Systems, Room 525 National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1371.

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 New Technologies for the Environment proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data; such as salaries, and personal information concering 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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15831 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities; 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 Experimental & Integrative Activities (1193).

Date and Time: June 29, 2000, 8 a.m.–5 p.m.

Place: Room 130, National Science Foundation 4201 Wilson Blvd. Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Anthony Maddox, CISE Educational Innovation, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Educational Innovation proposals submitted in response to the program announcement (NSF 00–33).

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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15833 Filed 6–21–00; 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: July 10, 2000, 8:30 a.m. to 5 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Filbert J. Bartoli, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate XYZ on a Chip proposals submitted in response to the program announcement (NSF 00–15).

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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15824 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–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 (No. 1189).

Date and Time: July 14, 2000; 8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: William Weigand, Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals received under the XYZ on a Chip Initiative (Announcement Number NSF 00–15), 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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15825 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92—463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: July 14, 2000, 8 a.m.–5:30 pm.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Kamalakar Rajurkar, Program Director, Manufacturing Machines, and Equipment, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate XYZ-On-a-Chip proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15826 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport 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 Chemical and Transport Systems (1190).

Dates/Time: July 14, 2000; 8:00 a.m. to 5:00 p.m.

Place: Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria K. Burka, Program Director, Division of Chemical and Transport Systems, Room 525, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1371.

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 New Technologies for the Environment proposals as part of the selection process for awards.

Reason for Closing: The proposal 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 proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15827 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–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 and Time: July 17–18, 2000; 8 a.m.–5 p.m.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: William Weigand, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Technology Engineering ''New Technologies for the Environment'' 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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15828 Filed 6–21–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; 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 Undergraduate Education (1214) Course, Curriculum, and Laboratory Improvement Program (CCLI).

Date/Time: July 17–20 and July 24–27, 2000; 8 a.m. to 5 p.m.

Place: Rooms 381 (Headquarters Room) Doubletree Hotel, 300 Army-Navy Drive, Arlington, VA 22202..

Type of Meeting: Closed.

Contact Person: Drs. Susan H. Hixson, Herbert H. Levitan and Myles G. Boylan, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1667/9..

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CCLI 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 individual 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: June 19, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–15829 Filed 6–21–00; 8:45 am]

BILLING CODE 1555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the proposed rule requirements to be submitted:

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Operator License Eligibility and Use of Simulation Facilities in Operator Licensing and Simulation Facility Certification.

3. *The form number if applicable:* NRC Form 474.

4. *How often the collection is required:* One-time basis for initial simulation facility certification and quadrennially thereafter.

5. *Who will be required or asked to report:* Holders of and applicants for facility power operating licenses and individual operators' licenses.

6. *An estimate of the number of responses:* 70 simulation facility licensees.

7. *The estimated number of annual respondents:* 18.

8. *An estimate of the total number of hours needed annually to complete the proposed rule requirement or request:* 120 hours per response for a total burden reduction of 2,160 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 55, ''Operators' Licenses,'' of the NRC's regulations, specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing and requalification of operators for nuclear reactors, as necessary to promote public health and safety. The proposed rule would allow applicants for reactor operator and senior reactor operator licenses to fulfill a portion of the experience prerequisites by manipulating a plant-referenced simulator as an alternative to use of the actual plant. In addition, the proposed rule would remove current requirements for certification of simulator facilities and routine submittal of simulator performance test reports to the NRC for review.

A copy of the proposed supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 24, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0018 and 3150–0138), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 16th day of June 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–15777 Filed 6–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1097 (which should be mentioned in all correspondence concerning this draft guide), is titled ''Fire Protection for Operating Nuclear Power Plants.'' This guide is being developed to provide a comprehensive fire protection guidance document and to identify the scope and depth of fire protection that the NRC staff has determined to be acceptable for operating nuclear plants.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by August 10, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@NRC.GOV. Electronic copies of this draft guide, under Accession Number ML003711848, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, <WWW.NRC.GOV>. For information about the draft guide and the related documents, contact Mr. E.A. Connell at (301) 415–2838; e-mail EAC@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to

the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 14th day of June 2000.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 00–15778 Filed 6–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. SSD 99–27; ASLBP No. 00–778–06–ML]

GRAYSTAR, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* CLI–00–10, 51 NRC __ (June 13, 2000); *see also* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) A single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: GRAYSTAR, Inc., Suite 103, 200 Valley Road, Mt. Arlington, NJ 07856.

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by GrayStar, Inc. (GrayStar). The request was filed in response to a May 24, 2000 NRC staff letter denying GrayStar's April 12, 1999 application for registration of its Model GS–42 source design and the Model 1 irradiator.

The Presiding Officer in this proceeding is Administrative Judge G. Paul Bollwerk, III. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Frederick J. Shon has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Bollwerk and Shon in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge G. Paul Bollwerk, III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Administrative Judge Frederick J. Shon, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Issued at Rockville, Maryland, this 16th day of June 2000.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–15776 Filed 6–22–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 22, 2000 (65 FR 32133). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1, 2000, and April 30, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during April 2000.

Schedule B

No Schedule B authorities were established or revoked during April 2000.

Schedule C

The following Schedule C authorities were established during April 2000.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective April 10, 2000.

Confidential Assistant to the Administrator, Animal Plant and Health Inspection Service. Effective April 13, 2000.

Confidential Assistant to the Administrator, Agricultural Research Service. Effective April 20, 2000.

Staff Assistant to the Director, Office of Communications. Effective April 20, 2000.

Special Assistant to the Administrator, Food and Safety Inspection Service. Effective April 28, 2000.

Department of the Army (DOD)

Assistant for Public Liaison to the Secretary of the Army. Effective April 10, 2000.

Department of Commerce

Confidential Assistant to the Under Secretary for Oceans and Atmosphere. Effective April 18, 2000.

Senior Advisor to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration. Effective April 18, 2000.

Department of Defense

Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs). Effective April 6, 2000.

Defense Fellow to the Special Assistant to Secretary of Defense for White House Liaison. Effective April 24, 2000.

Confidential Assistant to the Deputy Secretary of Defense. Effective April 28, 2000.

Department of Education

Special Assistant to the Assistant Secretary, Office of Civil Rights. Effective April 3, 2000.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective April 6, 2000.

Confidential Assistant to the Senior Advisor to the Secretary. Effective April 14, 2000.

Confidential Assistant to the Director of Scheduling and Briefing, Office of the Secretary. Effective April 14, 2000.

Confidential Assistant to the Deputy Secretary. Effective April 20, 2000.

Secretary's Regional Representative, Region V, Chicago, IL to the Deputy Assistant Secretary. Effective April 28, 2000.

Department of Energy

Public Affairs Specialist to the Director, Office of Public Affairs. Effective April 13, 2000.

Special Assistant to the Director, Office of Scheduling and Advance. Effective April 20, 2000.

Special Assistant to the Assistant Secretary, Office of Environment, Safety and Health. Effective April 25, 2000.

Department of Labor

Secretary's Representative Kansas City, MO to the Associate Director. Effective April 14, 2000.

Department of State

Public Affairs Specialist to the Assistant Secretary, Bureau of Public Affairs. Effective April 10, 2000.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective April 25, 2000.

Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs. Effective April 25, 2000.

Department of Transportation

Special Assistant to the Assistant Secretary for Transportation Policy. Effective April 7, 2000.

Department of the Treasury

Director of Strategic Planning, Scheduling and Advance to the Chief of Staff. Effective April 28, 2000.

Small Business Administration

Regional Administrator to the Assistant Administrator, Field Operations. Effective April 7, 2000.

U.S. Chemical Safety and Hazard Investigation Board

Special Assistant to the Board Member. Effective April 28, 2000.

U.S. International Trade Commission

Senior Economist to the Commissioner. Effective April 13, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–15794 Filed 6–21–00; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–07953]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rio Algom Limited, Common Shares, No Par Value, and Associated Common Share Purchase Rights)

June 15, 2000.

Rio Algom Limited (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, no par value, and associated Common Share Purchase Rights (referred to collectively herein as the ''Securities''),[3] from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company, which is based in Toronto, Ontario, and whose Securities are listed in Canada on the Toronto Stock Exchange, has effected a new listing for its Securities on the New York Stock Exchange (''NYSE''). Trading in the Securities on the NYSE commenced, and was concurrently suspended on the Amex, at the opening of business on June 8, 2000. The Company's Registration Statement on Form 8–A with respect to the NYSE listing became effective on June 1, 2000. The Company has obtained a listing of its Securities on the NYSE in hopes of, among other things, increasing the potential liquidity for its Common Shares.

On February 16, 2000, the Company's board of directors approved a resolution authorizing the withdrawal of the Securities from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex would not object to such withdrawal, pending its final approval by the Commission. In the light of the new listing of the Securities on the NYSE, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Securities from listing and registration on the Amex.

The Company has stated that its application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect upon the Securities' continued listing and registration on the NYSE under Section 12(b) of the Act.[4]

Any interested person may, on or before July 7, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–15728 Filed 6–21–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 87*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Common Share Purchase Rights currently trade together with, and are evidenced by, the associated Common Shares.

[4] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.20–3(a)(1).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 24, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Home Loan Application.

No's: 5C, 739.

Frequency: On Occasion.

Description of Respondents: Individual Victims who seek Federal Assistance in a Declared Disaster.

Annual Responses: 53,975.

Annual Burden: 80,963.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–15704 Filed 6–21–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3264]

State of Florida

Broward County and the contiguous counties of Collier, Dade, Hendry, and Palm Beach in the State of Florida constitute a disaster area due to damages caused by heavy rains that occurred on May 12, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 14, 2000 and for economic injury until the close of business on March 13, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	In percent
For physical damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 326406 for physical damage and 9H5400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 13, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–15703 Filed 6–21–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507), SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of the publication of this notice. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notice. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Internet Retirement Insurance Benefit (IRIB) Application—0960–0618. SSA intends to offer its customers another way to apply for retirement insurance benefits. Currently, applicants for retirement insurance benefits complete an SSA–1 by telephone or in person with the assistance of an SSA employee. The IRIB application will enable individuals to complete the application on their own electronically over the Internet. The information collected will be used by SSA to determine entitlement to retirement insurance benefits. SSA plans to implement the IRIB application nationally later this year. The respondents are individuals who apply for retirement insurance benefits over the Internet.

Number of Respondents: 139,308.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 46,436 hours.

SSA Address

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: June 15, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–15712 Filed 6–21–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

Bureau for International Narcotics and Law Enforcement Affairs

(Public Notice 3339)

International Demand Reduction Program (IDR)

AGENCY: Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the International Demand Reduction program (IDR) in 1978 to assist foreign countries to mobilize public and private sectors in effective support of national narcotic control policies and programs. The program was enhanced in 1990 to assist foreign countries with the development of self-sustaining prevention, education, and treatment programs. The goal of the program is to enhance foreign political determination to combat illegal drug abuse and convince governments to dedicate sufficient resources to effectively fight this problem.

The IDR program has been modified to include the participation of non-Federal agencies (e.g., universities, non profit organizations) in the design and implementation of research and evaluation studies on these programs. This component of the IDR program has a timeframe of 2000–2003.

DATES: Strict deadlines for submission to the FY 2000 process are: Full proposals must be received at INL no later than Friday, July 28. Letters of intent will not be required. We anticipate that review of full proposals will occur during August 2000 and funding should begin during September of 2000 for most approved projects. September 25, 2000 should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified

of their status within 6 months of submission deadline. All proposals must be submitted in accordance with guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW, Washington, D.C. 20520, Attn: Linda Gower.

FOR FURTHER INFORMATION CONTACT: Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775, or Thom Browne at above address, TEL: 202–736–4662, FAX: 202–647–6962.

Once the RFA deadline has passed, DOS staff may not discuss competition in any way with applicants until the proposal review process has been completed.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by agencies/programs outside the Federal government, for a period of up to three years. Actual funding levels will depend upon availability of funds. Current plans are for up to a total of $700,000 per year for one-three years to be available for two new IDR awards. The funding instrument for this award will be a grant or a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, is not required by this program. No proposal should exceed a total yearly cost of $ 350,000.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act, as amended

Program Objectives

The goal of the IDR program is to enhance foreign political determination to combat illegal drug abuse and convince governments to dedicate sufficient resources to effectively fight this problem.

The program objectives of the IDR program are: (1) Strengthen the ability of host nations to conduct more effective demand reduction efforts on their own; (2) encourage drug producing and transit countries to invest resources in drug awareness, demand reduction, and training to build public support and political will for implementing counter-narcotics programs; (3) improve coordination of, and cooperation in, international drug awareness and demand reduction issues involving the U.S., donor countries and international organizations; and (4) utilize accomplishments in the international program to benefit U.S. demand reduction services at home.

Program Priorities

The FY 2000 IDR Program Announcement invites program assessment and evaluation design proposals for selected international demand reduction programs in the following areas:

(1) Program assessment to identify best practices, common (cross cultural) program elements, and lessons learned from organizations in selected countries that developed effective programs which serve youth involved in or at-risk of becoming involved in drug-related violence; and

(2) Program assessment to identify best practices, common (cross cultural) program elements, and lessons learned from organizations in selected countries that developed effective drug treatment/after care programs.

For the purpose of this announcement, projects providing services for youths at-risk for drug-related violence in Colombia, Sicily, the United States, and South Africa will be the focus of the ''best practice'' program assessment. The proposed project should involve four phases—an initial gathering of background information; field work in the selected countries to obtain information from public organizations and NGOs; training and technical assistance, as necessary, to strengthen anti-violence programs in target foreign countries only; and report generation that summarizes findings by country and across countries/sites.

For the purpose of this announcement, projects providing drug treatment and after care services for adult and juvenile populations in Latin America, Southeast Asia, and Europe will be the focus of the ''best practice'' program assessment. Applicants should budget for separate, two-week fact finding trips as follows: three trips to Europe and four trips each to Latin America and Southeast Asia. INL will identify specific countries/programs to visit after grant award. The proposed project should involve four phases—an initial gathering of background information, field work in the selected countries to obtain information from public organizations and NGOs, report generation that summarizes findings by country and across countries/sites, and a descriptive report that highlights accomplishments/results for foreign treatment programs established from INL-funded training from 1990 to the present. This information will be collected during the field works finding trips outlined above.

Any grant applicants who will be working with counterpart research institutions/universities to implement the proposed assessment or evaluation programs may sub-grant or sub-contract services to assist in fulfilling program objectives.

Eligibility

Eligibility is limited to non-Federal agencies and organizations. Applicants are urged to seek collaboration with counterpart research institutions/universities. *Experience of U.S. evaluators related to conducting demand reduction-related training and technical assistance and/or program assessments/evaluations in international settings, though not required, is helpful.* Universities and non-profit organizations are included among entities eligible for funding under this announcement. Direct funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address Program Priorities identified above and meet the following evaluation criteria:

(1) *Relevance (15%):* Importance and relevance to the goal and objectives of the IDR program identified above.

(2) *Methodology (20%):* Adequacy of the proposed approach and activities, including development of relevant evaluation methodologies, research protocols, training curricula, project milestones, and final products.

(3) *Readiness (25%):* Relevant history and experience in conducting program evaluations, assessments, and training in the program priority areas identified above, strength of proposed evaluation/assessment/training teams, past performance record of applicants.

(4) *Linkages (25%):* Connections to existing demand reduction or correctional agencies in target countries outlined in Program Priorities above, in addition to previous program assessment/evaluation/training experience in these countries.

(5) *Costs (15%):* Adequacy/efficiency of the proposed resources; appropriate share of total available resources.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency experts. The panel's

recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program managers as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers will: (a) Ascertain which proposals meet the objectives, fit the criteria posted; (b) select the proposals to be funded; (c) determine the total duration of funding for each proposal; and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Program descriptions must be limited to 20 pages (numbered), not including budget, personnel vitae, letters of support and all appendices, and should be limited to funding requests for one to three years duration. Federally mandated forms are not included within the page count. (3) Proposals should be sent to INL at the above address. (4) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) *Signed title page:* The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which project area is being addressed. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) *Prior program evaluation experience:* A summary of prior demand reduction-related program evaluation experience should be described, including evaluations/assessments related to program priorities identified above and/or conducted in foreign countries. Reference to each prior program evaluation award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, project objectives, proposed evaluation/assessment methodology, relevance to the goal and objectives of the IDR program, and the program priorities listed above. Benefits of the proposed project to U.S. demand reduction/violence reduction efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposal work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including figures and other visual materials, must not exceed 20 pages of length.

(5) *Budget:* Applicants must submit a Standard form 424 (4–92) ''Application for Federal Assistance,'' including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs.'' The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included (*i.e.,* salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment, supplies, contractual, and indirect costs). Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding sub-grantee costs, if applicable, and submit a copy of your most recent A–110 audit report.

(6) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Applicants are also hereby notified of the following:

1. *Non procurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Non-procurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. *Drug Free Workplace*—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Government Wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for sub-grants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure Form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular No.

A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions,'' and 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL IDR program. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: June 15, 2000.

Thomas M. Browne Jr.,

Deputy Director, Office of Europe, NIS, and Training, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.

[FR Doc. 00–15834 Filed 6–21–00; 8:45 am]

BILLING CODE 4710–17–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Invitation for Public Comment From FTAA Committee of Government Representatives on the Participation of Civil Society

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative is providing notification that the Committee of Government Representatives on the Participation of Civil Society (Committee), established by the 34 countries participating in the negotiations for a Free Trade Area of the Americas (FTAA), has issued an invitation for public comment on trade matters related to the FTAA process.

FOR FURTHER INFORMATION: The invitation for public comment and a cover sheet identifying information to be included with submissions to the Committee have been posted on the official FTAA website (*www.ftaa-alca.org*) and are reproduced below. The FTAA website also contains background information regarding the FTAA process, including the Committee's report of November 1999 to the FTAA Trade Ministers and the Toronto and San Jose Ministerial Declarations. Any questions concerning the FTAA negotiations should be addressed to the agency's Office of Western Hemisphere Affairs at (202) 395–5190.

SUPPLEMENTARY INFORMATION:

1. Background on the FTAA Negotiations

Miami Summit of the Americas. On December 11, 1994, President Clinton and the 33 other democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on a Free Trade Area of the Americas (FTAA) no later than the year 2005 and to achieve concrete progress toward that objective by the end of the century. The Miami Declaration of Principles and Plan of Action announced the agreements reached by the leaders at the first Summit of the Americas. With respect to the FTAA, the Plan of Action states in part:

> We will strive to maximize market openness through high levels of discipline as we build upon existing agreements in the Hemisphere. We will also strive for balanced and comprehensive agreements, including among others: Tariffs and non-tariff barriers affecting trade in goods and services; agriculture; subsidies; investment; intellectual property rights; government procurement; technical barriers to trade; safeguards; rules of origin; antidumping and countervailing duties; sanitary and phytosanitary standards and procedures; dispute resolution; and competition policy.

The Plan of Action also states:

> Free trade and increased economic integration are key factors for sustainable development. This will be furthered as we strive to make our trade liberalization and environmental policies mutually supportive, taking into account efforts undertaken by the GATT/WTO and other international organizations. As economic integration in the Hemisphere proceeds, we will further secure the observance and promotion of worker rights, as defined by appropriate international conventions. We will avoid disguised restrictions on trade, in accordance with the GATT/WTO and other international obligations.

San Jose Ministerial. The 34 Western Hemisphere ministers responsible for trade met on March 19, 1998 in San Jose, Costa Rica. At the San Jose meeting, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided recommendations on the structure, objectives, principles, and venues of the negotiations. The trade ministers proposed the creation of nine negotiating groups and three non-negotiating committees and groups, including the Committee of Government Representatives on the Participation of Civil Society. They also established the Trade Negotiations Committee (TNC) to guide the work of the negotiating groups, to decide on the overall

architecture of the FTAA agreement and to address institutional issues.

Trade ministers also reiterated that the FTAA negotiations will take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action with a view to ''contributing to raising living standards, to improving the working conditions of all people in the Americas and to better protecting the environment.''

The San Jose Ministerial Declaration, as well as the Miami Declaration, can be accessed through the official FTAA website (*www.ftaa-alca.org*).

Santiago Summit of the Americas. On April 18–19, 1998, President Clinton and his 33 counterparts initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which included the establishment of nine negotiating groups to be guided by the principles and objectives agreed by the ministers in San Jose.

The nine negotiating groups established by the FTAA countries are responsible for the following areas of the negotiations: (1) Market access; (2) investment; (3) services; (4) government procurement; (5) dispute settlement; (6) agriculture; (7) intellectual property rights; (8) subsidies, antidumping and countervailing duties; and (9) competition policy. In addition to the nine negotiating groups, three non-negotiating committees and groups were established. They are: (1) The Consultative Group on Smaller Economies; (2) the Committee of Government Representatives on the Participation of Civil Society; and (3) the Joint Government-Private Sector Committee of Experts on Electronic Commerce. The negotiating groups and non-negotiating committees and groups began meeting in September 1998.

Toronto Ministerial Meeting. On November 3–4, 1999, the FTAA ministers met in Toronto to review the progress made by the negotiating groups during the first phase of the negotiations and to determine the next steps to be taken in the FTAA process. The ministers in Toronto expressed approval of the progress made by the negotiating groups and directed them to begin preparing draft texts of their respective chapter, to be completed by the next meeting of FTAA ministers in April 2001. The Toronto Declaration has been posted on the official FTAA website (*www.ftaa-alca.org*).

2. FTAA Committee of Government Representatives on the Participation of Civil Society

At the 1998 meeting in San Jose, the trade ministers jointly recognized and welcomed the interests and concerns expressed by a broad spectrum of interested non-governmental parties in the hemisphere and encouraged these and other parties to provide their views on trade matters related to the FTAA negotiations. In order to facilitate this process, the ministers agreed to establish the Committee of Government Representatives on the Participation of Civil Society. The TPSC published a **Federal Register** notice on July 29, 1998 (63 FR 40579) requesting comments on the operation of the Committee, which was mandated to receive, analyze, and report on the full range of comments received from civil society from throughout the hemisphere. At its first meeting in October 1998, the Committee approved an open invitation soliciting views from the hemisphere's public. The open invitation was placed on the FTAA website and countries agreed to use national mechanisms to disseminate the invitation further. In the United States, the invitation was disseminated through a variety of means, including press releases, letters to advisory committees and public meetings.

Prior to the Toronto Ministerial Meeting, the Committee prepared a report for the Ministers describing the submissions it received from the public. This report has been published on the official FTAA website (www.ftaa-alca.org.). Executive summaries of the submissions have also been published on the Department of State website (www.state.gov/www/issues/economic/current_issues.html).

3. Invitation for Public Comments

The Committee has issued a second invitation to the public for comments on the FTAA process. The U.S. Government encourages the widest participation in this public comment process and will ensure that U.S. negotiators review all submissions for consideration in the ongoing FTAA negotiations. The invitation is an important part of our effort to ensure that the views of the public receive consideration in the FTAA negotiating process. The comments received by the Committee will form the basis for the Committee's next report to the FTAA Trade Ministers.

The invitation has been posted on the official FTAA website *(www.ftaa-alca.org),* along with a cover sheet detailing information that must be included with all submissions to the Committee. Those persons wishing to submit comments must comply with the requirements listed in the invitation, particularly those contained in paragraph 4, and include a completed cover sheet with each submission. Both the invitation and the cover sheet are reproduced below. The deadline for receipt of comments is September 30, 2000.

Peter F. Allgeier,

Associate United States Trade Representative for the Western Hemisphere.

Open Invitation to Civil Society in FTAA Participating Countries

1. During the Fifth Trade Ministerial Meeting held in Toronto on November 4, 1999, the Ministers Responsible for Trade of the Hemisphere welcomed the report of the Committee of Government Representatives on the Participation of Civil Society, which presents a range of views received from individuals and organizations in the hemisphere. The Trade Ministers reaffirmed their commitment to the principle of transparency in the negotiating process and to conducting their negotiations in such a manner as to broaden public understanding and support for the FTAA.

2. They stressed the fact that the Committee was established as a mechanism to fulfill this commitment and to obtain ongoing input from Civil Society on trade matters relevant to the FTAA through written submissions, using the San Jose Declaration as the frame of reference. They also requested that the Committee present a report outlining the full range of reviews received for their consideration at the next Ministerial meeting scheduled to be held in Buenos Aires in April 2001.

3. The Committee acknowledges the submissions received in response to its first ''Open Invitation to Civil Society'' and thanks all those organizations and individuals who took the time and effort to contribute their views. In consideration of its mandate, and in order to obtain ongoing input from civil society on trade matters relevant to the FTAA, using the San Jose Declaration as the frame of reference, the Committee extends this invitation, as of April 10, to Civil Society to express their views in writing, by mail, fax, e-mail or courier.

4. In order to be considered, each submission must:

- Identify the person(s) and/or organization(s), with their address, that is/are presenting the point of view.
- Refer to the trade matters related to the FTAA process, using the Ministerial Declarations of San Jose and Toronto as the frame of reference;
- Be in concise written form, in one of the official FTAA languages (Spanish, English, French, Portuguese);
- Be prefaced by the information requested in the *cover sheet* attached to this document and that is available on the FTAA web site (http://www.ftaa-alca.org);
- Include an executive summary of no more than two pages, including reference to the trade matters it refers to and the way the

views contribute to the FTAA process, as stipulated in the Ministerial Declaration of San Jose;

- Be sent directly to the Chair of the Committee of Government Representatives on the Participation of Civil Society, at the following address: c/o Tripartite Committee (REf. Civil Society), Economic Commission for Latin American and the Caribbean (ECLAC), 1825 K Street NW, Suite 1120, Washington, D.C. 20006, Fax: (202) 296–0826, e-mail: socs@eclac.org.

5. The Commission will prepare its next report to Ministers on the basis of submissions determined to confirm with paragraph 4 of this invitation and that are received up to September 30, 2000.

FTAA—COMMITTEE OF GOVERNMENT REPRESENTATIVES ON THE PARTICIPATION OF CIVIL SOCIETY

Cover Sheet

Names(s)	
Address	
Organization(s) (if applicable)	
Country(ies)/Region(s)	

Number of Pages		Language	

ISSUES ADDRESSED (CHECK ALL THAT APPLY)

Agriculture		Subsidies, Antidumping and Countervailing Duties	
Competition Policy		Civil Society	
Dispute Settlement		Electronic Commerce	
Government Procurement		Smaller Economies	
Intellectual Property Rights		The FTAA Process	
Investment		Other:	
Market Access			
Services			
Executive Summary—2 pages maximum—(see Open Invitation):			

[FR Doc. 00–15660 Filed 6–21–00; 8:45 am]
BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. OST–2000–7538]

Notice of Test Plan for Determining Potential for Interference from Ultra-Wideband Devices (UWB) to Global Positioning System (GPS) Receivers; Review and Comment

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: Since the potential for interference from certain ultra-wideband (UWB) parameters has been determined through preliminary analyses and tests, the Department of Transportation has sponsored a more rigorous test to evaluate the potential for interference to Global Positioning System (GPS) receivers from UWB devices. The Department invites comments on this test plan.

DATES: Comments should be submitted in written form July 24, 2000.

ADDRESS: Send comments to: Department of Transportation, Office of the Secretary Radionavigation & Positioning Staff, P–7, Room 10315, 400 Seventh Street, SW., Washington, DC 20590 Attn: GPS–UWB Comments.

FOR FURTHER INFORMATION CONTACT: Sally L. Frodge, (202) 366–4894.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) is considering placing UWB devices under Part 15 of the FCC Regulations under Title 47 of the Code of Federal Regulations and modifying these rules accordingly. The FCC released on May 11, 2000, a Notice of Proposed Rule-Making (NPRM), ''In the Matter of Revision of Part 15 of the

Commission's Rules Regarding Ultra-Wideband Transmission Systems''. The FCC has proposed ''* * * permitting the operation of ultra-wideband (UWB) technology on an unlicensed basis'' citing ''* * * enormous benefits for public safety, consumers and businesses'' (http://www.fcc.gov/Bureaus/Engineering_Technology/News_Releases/2000/nret0006.html). The FCC has stated that test results are encouraged and can be submitted through October 30, 2000.

The term ''ultra-wideband'' by definition refers to any radiated waveform whose fractional bandwidth is greater than 25%. There are many technologies that fit this broad definition; of particular interest is a group of technologies known as ''impulsive systems''. Such systems utilize short radio frequency (RF) pulses with pulse durations on the order of nanoseconds that result in bandwidths that can be on the order of several Gigahertz. Some current UWB impulsive system designs and devices have fractional bandwidths that can exceed 100%. Such systems could intentionally radiate energy into restricted bands (defined in Part 15) that include aeronautical safety-related systems, including GPS and other sensitive systems.

This test plan describes an initial phase of testing that selects the metric of accuracy performance and GPS signal reacquisition time. Aviation receivers meeting published specifications will be used in the accuracy measurement phase; a land receiver will be used for the reacquisition testing. A GPS simulator provides the GPS input and the UWB parameters are provided by a prototype UWB waveform generator where the various UWB waveform parameters can be varied independently in a controlled manner. These metrics were considered appropriate for the first phase of testing.

Obtaining a copy for comment. The Department will consider written comments for incorporation into the test plan. To obtain a copy of this test plan, contact Ms. Veronica Pannell at (202) 366–0353 or write to: Department of Transportation, Office of the Secretary Radionavigation & Positioning Staff, P–7, Room 10315, 400 Seventh Street SW, Washington, DC 20590.

Dated: June 15, 2000.

Joseph Canny,

Deputy Assistant Secretary for Navigation Systems Policy.

[FR Doc. 00–15812 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 17–19, 2000, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Department of Transportation, NASSIF Building, 400 7th Street, SW., Conference Rooms 6332–6336, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, Terminal and En Route Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app.2), notice is hereby given of a meeting of the ATPAC to be held July 17 through July 19, 2000, at the Department of Transportation, NASSIF Building, 400 7th Street, SW., Conference Rooms 6332–6336, Washington, DC. The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates from subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 14, 2000. The next quarterly meeting of the FAA ATPAC is planned to be held from October 2–5, 2000, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 8, 2000.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 00–15809 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport (PBIA) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 24, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce V. Pelly, Director of Airports of the Palm Beach County, Department of Airports at the following address: Palm Beach County, Department of Airports, Building 846, Palm Beach International Airport, West Palm Beach Florida 33406.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County, Department of Airports under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 24. The application may be

reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at PBIA under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 14, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Palm Beach County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 30, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–05–C–00–PBI.

Level of the proposed PFC: $3.00.

Proposed charged effective date: December 1, 2000.

Proposed charge expiration date: November 30, 2005.

Total estimated net PFC revenue: $37,324,000.

Brief description of proposed project(s): Construct Concourse ''B'' Expansion, Baggage Improvements and Rehabilitation, Construct Taxiway ''A'' and Canal Relocation, Construct Perimeter Road, Terminal Signage, Rehabilitate Cabin Air System (Terminal), Acquire Noise Land within 65–69 DNL, Expand Terminal Concourse ''C''

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County, Department of Airports.

Issued in Orlando, Florida on June 14, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–15810 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The information collection package describes the nature of the information collection and its expected burden.

DATES: Comments must be submitted on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: James Ware, (202) 366–2019, Office of Real Estate Services, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

Type of Request: New information collection, OMB Number 2125–XXXX.

Abstract: The Federal Highway Administration (FHWA) issued a notice of proposed rulemaking on December 24, 1998, and a final rule for the Right-of-Way Program on December 21, 1999, that revised the rules governing the use of Federal-aid funds for right-of-way acquisition, property management, and project development. The regulation reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the state level. The State Right-of-Way Manuals have been used through the years to describe how the State Departments of Transportation (STD) plan to perform real estate acquisition, property management, and maintain the integrity of the highway and related transportation systems. These manuals will need to be revised to reflect the revisions contained in the FHWA final rule. The STDs will be required to update their manuals to reflect the changes in Federal requirements for programs administered under Title 23 U.S.C., and to submit their manuals to FHWA for approval.

Estimated Total Annual Burden: 4,000 total hours for the STDs in the 50 States, the District of Columbia and Puerto Rico.

Frequency: Each State will submit its updated Right-of-Way manual to FHWA for approval by January 1, 2001, and afterwards will certify at five-year intervals that the manual represents its current procedures or submit an updated manual.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 Attention: DOT Desk Officer. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: June 16, 2000.

James Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 00–15845 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Constantine, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to US–131 from the Indiana Toll Road to M–60 including a potential western by-pass of the Village of Constantine in St. Joseph County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Programs and Environmental Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880, ext. 41 or Mr. Paul Wisney, Manager, Design Division, Michigan Department of

Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–1905.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), the Indiana Toll Authority and the Indiana Department of Transportation is preparing an Environmental Impact Statement (EIS) for proposed Improvements to US–131 from the Indiana Toll Road to M–60.

US–131 is used as a primary route for commercial truck traffic destined for major urban areas in western Michigan and northern Indiana. A high volume of trucks, approximately 14% of the average daily traffic, currently use US–131. Problems associated with this high volume of truck traffic include congestion, pedestrian crossing conflicts, and vibration and noise impacts, particularly within the Village of Constantine's registered historic district.

A one-mile wide planning corridor will serve as the base within which future improvement alternatives will be developed. This one-mile wide planning corridor was identified during a previous public hearing and corridor location study conducted by MDOT. The US–131 Improvement Study area is generally bounded by the Indiana Toll Road (80/90) to the south, M–60 to the north, US–131 to the east and Blue School and Schafeer Roads to the west.

A wide range of transportation improvement alternatives will be analyzed within the recommended study corridor. Alternatives will range from a ''no action'' alternative up to and including a limited access freeway facility. Proposed transportation improvements will focus on utilizing the existing US–131 right-of-way where possible. The entire process of determining a preferred alternative is expected to take approximately two years.

A scoping document will be prepared describing the proposed action to solicit comments from appropriate federal, state, and local agencies. Citizen involvement is also being solicited throughout this process. A public hearing will be held on the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: June 13, 2000.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 00–15804 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on March 9, 2000 [65 FR 12614–12615].

DATES: Comments must be submitted on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: William Holden at the National Highway Traffic Safety Administration, (NTS–32), 202–366–4800, 400 Seventh Street, SW., Room 6124, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Driver Register (NDR).

OMB Number: 2127–0001.

Type of Request: Extension of a currently approved collection.

Abstract: The purpose of the National Driver Register is to assist states and other authorized users in obtaining information about problem drivers. State motor vehicle agencies submit and use the information for driver licensing and driver improvement purposes. Other authorized users obtain the information for transportation safety purposes.

Affected Public: State, Local, Government officials inquiring information for transportation safety purposes.

Estimated Total Annual Burden: 1852.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on June 16, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–15698 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 20, 2000 [65 FR 15034–15035].

DATES: Comments must be submitted on or before July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Mazyck at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–32), 202–366–4809. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Part 544—Insurer Reporting Requirements—Motor Vehicle Theft Law Enforcement Act of 1984.

OMB Number: 2127–0547.

Type of Request: Extension of a currently approved collection.

Abstract: Purpose of 544 is to reduce the cost of vehicle ownership by reducing the cost of comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicles. Insurance companies and rental/leasing companies are required, annually, to provide information to the Secretary of Transportation (NHTSA).

Affected Public: Businesses and other-for-profit institutions, (insurance companies and rental/leasing companies) insuring motor vehicles.

Estimated Total Annual Burden: 68,325.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on June 16, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–15697 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7387]

Notice of Receipt of Petition for Decision That Nonconforming 1996–2000 Audi A4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996–2000 Audi A4 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–2000 Audi A4 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 24, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1996–2000 Audi A4 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1996–2000 Audi A4 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996–2000 Audi A4 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1996–2000 Audi A4 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996–2000 Audi A4 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence.* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301

Fuel System Integrity, and 302 *Flammability of Interior Materials.*

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word ''Brake'' for the international ECE warning symbol on the markings for the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that the entire instrument cluster will be replaced with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lamps; (c) installation of a high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inspection of all vehicles and replacement of the passenger side rearview mirror with a U.S.-model component on vehicles that are not already so equipped.

Standard No. 114 *Theft Protection:* inspection of all vehicles and installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly, on vehicles that are not already so equipped.

Standard No. 118 *Power Window Systems:* inspection of all vehicles and installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder belts at the front and rear outboard designated seating positions and with a lap belt at the rear center designated seating position, and that these components are self-tensioning and release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles and installation of reinforcing door beams on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 19, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–15848 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7511]

Notice of Receipt of Petition for Decision That Nonconforming 1997–2000 Porsche 911 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997–2000 Porsche 911 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997–2000 Porsche 911 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 24, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1997–2000 Porsche 911 passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1997–2000 Porsche 911 passenger cars that were manufactured

for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997–2000 Porsche 911 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1997–2000 Porsche 911 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997–2000 Porsche 911 passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1997–2000 Porsche 911 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 198 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarket/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of all Model Year 2000 vehicles to ensure compliance with the upper interior head impact phase-in, and replacement of all components that are not identical to U.S.-model components. Petitioner states that the 1997 through 1999 Model year vehicles conform to the standard in all respects.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, and with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR 565.

Additionally, the petitioner states that non-U.S. certified 1997–2000 Porsche 911 passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541 and that a U.S.-model anti-theft device will be installed on vehicles that are not already so equipped.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: June 19, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–15849 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7512]

Notice of Receipt of Petition for Decision That Nonconforming 2000 BMW 5 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 BMW 5 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 BMW 5 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 24, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 2000 BMW 5 Series passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 2000 BMW 5 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 BMW 5 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 2000 BMW 5 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 BMW 5 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 2000 BMW 5 Series passenger cars comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model tail-lamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's seating position or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single push button in both front designated seating positions, with combination lap and shoulder restraints which release by means of a single push button in both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing door beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 2000 BMW 5 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541 and that a U.S.-model anti-theft device will be installed on vehicles that are not already so equipped.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition

will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 19, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–15850 Filed 6–21–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7436]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

DATES: These decisions are effective as of June 22, 2000.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 19, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–99–6353

Nonconforming Vehicle: 1992–1999 Honda Accord
Substantially similar U.S.-certified vehicle: 1992–1999 Honda Accord
Notice of Petition published at: 64 FR 56833 (October 21, 1999)
Vehicle Eligibility Number: VSP–319

2. Docket No. NHTSA–99–6352

Nonconforming Vehicles: 1987–1995 Nissan Pathfinder
Substantially similar U.S.-certified vehicles: 1987–1995 Nissan Pathfinder
Notice of Petition published at: 64 FR 56832 (October 21, 1999)
Vehicle Eligibility Number: VSP–316

3. Docket No. NHTSA–99–6039

Nonconforming Vehicles: 1994–1999 Mercedes-Benz C Class
Substantially similar U.S.-certified vehicles: 1994–1999 Mercedes-Benz C Class
Notice of Petition published at: 64 FR 42758 (August 5, 1999)
Vehicle Eligibility Number: VSP–331

4. Docket No. NHTSA–99–6038

Nonconforming Vehicles: 1998–1999 Audi A6
Substantially similar U.S.-certified vehicles: 1998–1999 Audi A6
Notice of Petition published at: 64 FR 42756 (August 5, 1999)
Vehicle Eligibility Number: VSP–332

5. Docket No. NHTSA–99–6351

Nonconforming Vehicles: 1994–1999 Mercedes-Benz E320 Station Wagons
Substantially similar U.S.-certified vehicles: 1994–1999 Mercedes-Benz E320 Station Wagons
Notice of Petition published at: 64 FR 56569 (October 20, 1999)
Vehicle Eligibility Number: VSP–318

6. Docket No. NHTSA–99–6062

Nonconforming Vehicle: 1996 Toyota RAV4
Substantially similar U.S.-certified vehicle: 1996 Toyota RAV4
Notice of Petition published at: 64 FR 43812 (August 11, 1999)
Vehicle Eligibility Number: VSP–328

7. Docket No. NHTSA–99–6081

Nonconforming Vehicles: 1999–2000 Ferrari Modena 360

Substantially similar U.S.-certified vehicles: 1999–2000 Ferrari Modena 360
Notice of Petition published at: 64 FR 44262 (August 13, 1999)
Vehicle Eligibility Number: VSP–327

8. Docket No. NHTSA–99–6350

Nonconforming Vehicles: 1978–1980 Toyota Land Cruiser
Substantially similar U.S.-certified vehicles: 1978–1980 Toyota Land Cruiser
Notice of Petition published at: 64 FR 56564 (October 20, 1999)
Vehicle Eligibility Number: VSP–320

9. Docket No. NHTSA–99–6340

Nonconforming Vehicles: 1991–1992 Toyota Previa
Substantially similar U.S.-certified vehicles: 1991–1992 Toyota Previa
Notice of Petition published at: 64 FR 56380 (October 19, 1999)
Vehicle Eligibility Number: VSP–326

10. Docket No. NHTSA–99–6339

Nonconforming Vehicles: 1990–1992 Audi 100
Substantially similar U.S.-certified vehicles: 1990–1992 Audi 100
Notice of Petition published at: 64 FR 56381 (October 19, 1999)
Vehicle Eligibility Number: VSP–317

11. Docket No. NHTSA–99–6384

Nonconforming Vehicles: 1994 Eagle Vision
Substantially similar U.S.-certified vehicles: 1994 Eagle Vision
Notice of Petition published at: 64 FR 58126 (October 28, 1999)
Vehicle Eligibility Number: VSP–323

12. Docket No. NHTSA–99–6349

Nonconforming Vehicles: 1993–1996 Mercedes-Benz SL Series
Substantially similar U.S.-certified vehicles: 1993–1996 Mercedes-Benz SL Series
Notice of Petition published at: 64 FR 56568 (October 20, 1999)
Vehicle Eligibility Number: VSP–329

13. Docket No. NHTSA–99–6348

Nonconforming Vehicles: 1998–1999 Mercedes-Benz S Class
Substantially similar U.S.-certified vehicles: 1998–1999 Mercedes-Benz S Class
Notice of Petition published at: 64 FR 56566 (October 20, 1999)
Vehicle Eligibility Number: VSP–325

14. Docket No. NHTSA–99–6601

Nonconforming Vehicles: 1990–1991 Toyota MR2
Substantially similar U.S.-certified vehicles: 1990–1991 Toyota MR2
Notice of Petition published at: 64 FR 69585 (December 13, 1999)
Vehicle Eligibility Number: VSP–324

15. Docket No. NHTSA–99–6347

Nonconforming Vehicles: 2000 Harley Davidson FX, FL, and XL motorcycles
Substantially similar U.S.-certified vehicles: 2000 Harley Davidson FX, FL, and XL motorcycles
Notice of Petition published at: 64 FR 56566 (October 20, 1999)
Vehicle Eligibility Number: VSP–321

16. Docket No. NHTSA–99–6383

Nonconforming Vehicles: 1998 Jaguar XK–8
Substantially similar U.S.-certified vehicles: 1998 Jaguar XK–8
Notice of Petition published at: 64 FR 58125 (October 28, 1999)
Vehicle Eligibility Number: VSP–330

17. Docket No. NHTSA–99–6524

Nonconforming Vehicles: 1996 Ford Escort (Nicaragua)
Substantially similar U.S.-certified vehicles: 1996 Ford Escort
Notice of Petition published at: 64 FR 67601 (December 2, 1999)
Vehicle Eligibility Number: VSP–322

18. Docket No. NHTSA–99–6668

Nonconforming Vehicles; 1991 Mercedes-Benz 560SEC
Substantially similar U.S.-certified vehicles: 1991 Mercedes-Benz 560SEC
Notice of Petition published at: 64 FR 73118 (December 29, 1999)
Vehicle Eligibility Number: VSP–333

19. Docket No. NHTSA–99–6525

Nonconforming Vehicles: 1994 Saab 9000
Substantially similar U.S.-certified vehicles: 1994 Saab 9000
Notice of Petition published at: 64 FR 69069 (December 9, 1999)
Vehicle Eligibility Number: VSP–334

20. Docket No. NHTSA–99–6526

Nonconforming Vehicles: 1998–200V Volvo S70
Substantially similar U.S.-certified vehicles: 1998–2000 Volvo S70
Notice of Petition published at: 64 FR 67600 (December 2, 1999)
Vehicle Eligibility Number: VSP–335

21. Docket No. NHTSA–99–6820

Nonconforming Vehicles: 1997–2000 Audi A8
Substantially similar U.S.-certified vehicles: 1997–2000 Audi A8
Notice of Petition published at: 65 FR 5019 (February 2, 2000)
Vehicle Eligibility Number: VSP–337

22. Docket No. NHTSA–2000–6941

Nonconforming Vehicles: 1998 Jeep Wrangler
Substantially similar U.S.-certified vehicles: 1998 Jeep Wrangler
Notice of Petition published at: 65 FR 8759 (February 22, 2000)
Vehicle Eligibility Number: VSP–341

23. Docket No. NHTSA–2000–7002

Nonconforming Vehicles: 1976–1985 Rolls Royce Corniche
Substantially similar U.S.-certified vehicles: 1976–1985 Rolls Royce Corniche
Notice of Petition published at: 65 FR 19040 (April 10, 2000)
Vehicle Eligibility Number: VSP–339

24. Docket No. NHTSA–2000–7112

Nonconforming Vehicles: 1987–1989 Bentley
Substantially similar U.S.-certified vehicles: 1987–1989 Bentley
Notice of Petition published at: 65 FR 19428 (April 11, 2000)
Vehicle Eligibility Number: VSP–340

[FR Doc. 00–15851 Filed 6–21–00; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33882]

Kasgro Rail Corp.—Lease and Operation Exemption—EASX Corporation and Rail Services Corporation

Kasgro Rail Corp., a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from EASX Corporation and Rail Services Corporation and operate (through its Kasgro Rail Lines Division) two branches of rail line totaling approximately 3.5 miles in length in New Castle, Lawrence County, PA. The lines are as follows: (1) the ''New Castle Branch'' which begins at New Castle Branch Monumented Base Line (MBL), at Survey Station 10+00, opposite the former Pittsburgh and Lake Erie Railroad's (P&LE) Main Line MBL Survey Station 2580+10, and extends in a generally northeasterly direction to the former P&LE Valuation Station 146+10; and (2)(a) the ''Big Run Branch'' which begins at P&LE New Castle Branch Baseline of Survey, at Survey Station 84+44, and extends in a generally southwesterly direction to the connection with trackage of CSX Transportation, Inc. (CSXT), and (b) approximately 0.7 miles of rail line known as the ''Sample Spur,'' which begins at Valuation Station 2+00 off of CSXT's main line between Cumberland, MD, and Willard, OH, and continues in a generally northwardly direction to

Valuation Station 40+75.7, where it connects with ISS Railroad, Inc.

The parties report that they intend to consummate the transaction on the effective date of the exemption. The earliest the transaction can be consummated is June 12, 2000, 7 days after the exemption was filed.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33882, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Richard H. Streeter, Esq., Barnes & Thornburg, 1401 Eye Street, NW, Suite 500, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–15679 Filed 6–21–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 24, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1099.

Form Number: IRS Form 8811.

Type of Review: Extension.

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

Description: Form 8811 is used to collet the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 50 min.

Learning about the law or the form—35 min.

Preparing, copying, assembling, and sending the form to the IRS—41 min.

Frequency of Response: Other (One-time for each obligation.)

Estimated Total Reporting/Recordkeeping Burden: 5,110 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 00–15726 Filed 6–21–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Solicitation of Applications for Membership on Customs COBRA Fees Advisory Committee

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

ACTION: General notice.

SUMMARY: This document sets forth amended criteria for membership on the Customs COBRA Fees Advisory Committee and requests that new applications be submitted for membership on the committee. The amended criteria limit membership on the Committee to one U.S. Customs representative and up to eight parties that are directly subject to the payment of COBRA user fees. Also, the amended criteria make clear that a party is ineligible to serve on the Committee if the party serves on another advisory committee chartered by the Department of the Treasury, including any separate bureau, service or other office within the Department of the Treasury. Applications previously received for membership on the Committee will need to be resubmitted for consideration under this document.

DATES: New applications for membership will be accepted until July 24, 2000.

ADDRESSES: Applications should be addressed to Richard Coleman, Trade Compliance Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2–A, Washington, D.C. 20229, Attention: COBRA 2000.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Trade Compliance Team, U.S. Customs Service, 202–927–0563.

SUPPLEMENTARY INFORMATION:

Background

By enactment of Public Law 106–36, the Miscellaneous Trade and Technical Corrections Act of 1999, section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) was amended by adding language which directs the Commissioner of Customs to establish an advisory committee whose membership will consist of representatives from the airline, cruise ship and other transportation industries that may be subject to fees under section 13031.

The Committee, in accordance with the statute, will advise the Commissioner of Customs on issues related to the performance of inspectional services of the United States Customs Service. This advice will include, but not be limited to, issues such as the time periods during which inspectional services should be performed, the proper number and deployment of inspectional officers, the level of fees and the appropriateness of any proposed fee.

In accordance with the direction to create the advisory committee, Customs published a document in the **Federal Register** (65 FR 6254) on February 8, 2000, establishing criteria and procedures for the selection of members on a Customs COBRA Fees Advisory Committee. Customs subsequently decided to amend these criteria principally to limit membership to applicants who are directly subject to COBRA user fees. Customs believes that these parties would be better-suited to serve on the committee. A revised charter for the committee will be duly filed. This document sets forth the

amended criteria from that in the February 8, 2000, document and again solicits applications for this advisory committee.

Structure of Committee

The Committee will consist of one U.S. Customs representative and up to eight industry members, selected to fairly balance the points of view to be represented and functions to be performed. The Deputy Commissioner of the U.S. Customs Service will be the Customs representative and will chair the Committee. The Deputy Commissioner may designate another official to serve in his absence as Acting Chairperson for purposes of presiding over a meeting of the Committee or performing any other duty of the chairperson. Two senior managers representing the Office of Finance and the Office of Field Operations of the U.S. Customs Service will serve as technical representatives to the chairperson. The Committee will be in existence unless, or until, such time as its establishment is repealed by Congress.

Industry Members Sought

Industry members will be selected by the Commissioner of Customs from parties in various sectors of the transportation industry that directly pay COBRA user fees. The parties include operators of any of the following: railways, trucks, barges, commercial cargo vessels, commercial passenger vessels, general aviation, and passenger aircraft.

Whenever possible, the Commissioner will seek to select two members from among passenger aircraft operators and one member each from operators of railways, trucks, barges, commercial cargo vessels, commercial passenger vessels and general aviation. Additional passenger aircraft operators may be selected as members if the other sectors do not have a qualified applicant.

No person who is required to register under the Foreign Agents Registration Act or representative of a foreign principal may serve on the Advisory Committee.

It is noted that certain criteria set forth in the prior notice published soliciting applicants for the Customs COBRA Fees Advisory Committee have been amended. In particular, membership on the Committee is now restricted to parties who directly pay COBRA user fees. Thus, trade associations and similar transportation industry representatives are eliminated from possible membership on the Committee.

Also, the amended criteria make clear that a party who serves on another advisory committee is ineligible for membership on the Customs COBRA Fees Advisory Committee if the other advisory committee is chartered by the Department of the Treasury, including any separate bureau, service or other office within the Department of the Treasury.

Applicants must demonstrate professional or personal qualifications relevant to the purpose, functions and tasks of the Committee. Appointments will be made with the objective of creating a diverse and balanced body with a variety of interests, backgrounds and viewpoints. Accordingly, because members will be selected based on their individual credentials and qualifications, membership on the Committee will be personal to the appointees; members will not be allowed to designate alternates to represent them at Committee meetings.

Members will not be paid compensation, nor will they be considered Federal employees for any reason. No per diem, transportation or other expenses will be reimbursed for the cost of attending meetings of the Committee, regardless of the location.

Meetings

Except when there are special meetings, no more than four meetings will be held during a two-year period, in accordance with the Federal Advisory Committee Act. Regular meetings will be held at six-month intervals. An occasional special meeting may be held at the discretion of the chairperson and the members.

Meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting to the public. In the event of an unavoidable absence of a member at a meeting, even though an alternate may not represent a member, a representative of the member's organization may attend the session as a nonparticipating observer, even if the meeting is closed to the public.

Meetings will generally be held at the U.S. Customs Service Headquarters in Washington, D.C. On occasion, meetings may be held outside of Customs Headquarters, generally at a Customs port.

Terms of Service

Initially, half the members (or as close to half as possible) will be appointed for a term of twelve months and the remainder of the members will be appointed for a term of twenty-four months. For example, should the Committee consist of seven industry members, three will be appointed for a term of twelve months and four will be appointed for a term of twenty-four months. Thereafter, members will serve for a period of twenty-four months. Members who served on the Committee during a prior term or terms are eligible to reapply for membership. However, it is expected that approximately half of the seats on the Committee will be filled with new members.

Applications for Membership

Any interested person wishing to serve on the Customs COBRA Fees Advisory Committee must provide the following: a statement of interest and reasons for application together with a complete professional biography or resume. In addition, applicants must state in their applications that they agree to submit to pre-appointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications, along with a resume. Applications that were previously received for membership on the Committee will need to be resubmitted for consideration under this document.

Dated: June 16, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–15780 Filed 6–21–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities (Committee) will be held on:

Thursday, June 22, 2000: 10 a.m. to 5 p.m.

Friday, June 23, 2000: 9 a.m. to 12 p.m.

The location of the meeting will be 811 Vermont Avenue, NW., Washington, DC, Room 460 on June 22, 2000, and Room 442 on June 23, 2000.

The purpose of the Committee is to advise the Secretary on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of facilities as prescribed under Section 8105 of Title 38, United States Code.

On June 22, the Committee will review the developments in the field of

structural design, as they relate to seismic safety of buildings, and fire safety issues. On June 23, the Committee will vote on structural and fire safety issues for inclusion in VA's standards.

Both meetings will be open to the public. It will be necessary for those wishing to attend to contact Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Facilities Management, Department of Veterans Affairs Central Office (phone 202–565–9370) prior to the meeting.

Dated: June 12, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–15802 Filed 6–21–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Thursday,
June 22, 2000

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6707–2]

RIN 2040–AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a drinking water regulation for arsenic, as required by the 1996 amendments to the Safe Drinking Water Act (SDWA). The proposed health-based, non-enforceable goal, or Maximum Contaminant Level Goal (MCLG), for arsenic is zero, and the proposed enforceable standard, or maximum contaminant level (MCL), for arsenic is 0.005 mg/L. EPA is also requesting comment on 0.003 mg/L, 0.010 mg/L and 0.020 mg/L for the MCL. EPA is listing technologies that will meet the MCL, including affordable compliance technologies for three categories of small systems serving less than 10,000 people. This proposal also includes monitoring, reporting, public notification, and consumer confidence report requirements and State primacy revisions for public drinking water programs affected by the arsenic regulation.

In addition, in this proposal the Agency is clarifying compliance for State-determined monitoring after exceedances for inorganic, volatile organic, and synthetic organic contaminants. Finally, EPA is proposing that States will specify the time period and sampling frequency for new public water systems and systems using a new source of water to demonstrate compliance with the MCLs. The requirement for new systems and new source monitoring will be effective for inorganic, volatile organic, and synthetic organic contaminants.

DATES: EPA must receive public comments, in writing, on the proposed regulations by September 20, 2000. EPA will hold a public meeting on this proposed regulation this summer. EPA will publish a notice of the meeting, providing date and location, in the **Federal Register,** as well as post it on EPA's Office of Ground Water and Drinking Water web site at *http://www.epa.gov/safewater.*

ADDRESSES: You may send written comments to the W–99–16 Arsenic Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; EB–57; Washington, DC 20460; (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review. The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address.

FOR FURTHER INFORMATION CONTACT: Regulatory information: Irene Dooley, (202) 260–9531, email: dooley.irene@epa.gov. Benefits: Dr. John B. Bennett, (202) 260–0446, email: *bennett.johnb@epa.gov* General information about the regulation: Safe Drinking Water Hotline, phone: (800) 426–4791, or (703) 285–1093, email: hotline.sdwa@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

A public water system, as defined in 40 CFR 141.2, provides water to the public for human consumption through pipes or other constructed conveyances, if such system has ''at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.'' A public water system is either a community water system (CWS) or a non-community water system (NCWS). A community water system, as defined in § 141.2, is ''a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.'' The definition in § 141.2 for a non-transient, non-community water system [NTNCWS] is ''a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year.'' EPA has an inventory totaling over 54,000 community water systems and approximately 20,000 non-transient, non-community water systems nationwide. Entities potentially regulated by this action are community water systems and non-transient, non-community water systems. The following table provides examples of the regulated entities under this rule.

TABLE OF REGULATED ENTITIES

Category	Examples of potentially regulated entities
Industry	Privately owned/operated community water supply systems using ground water or mixed ground water and surface water.
State, Tribal, and Local Government	State, Tribal, or local government-owned/operated water supply systems using ground water or mixed ground water and surface water.
Federal Government	Federally owned/operated community water supply systems using ground water or mixed ground water and surface water.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult Irene Dooley, the regulatory information person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Electronic comments must be submitted as a WordPerfect 5.1, WP6.1

or WP8 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WP5.1, WP6.1 or WP8, or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Availability of Docket

The docket for this rulemaking has been established under number W–99–16, and includes supporting documentation as well as printed, paper versions of electronic comments. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket; EB 57; U.S. EPA; 401 M Street, SW; Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Abbreviations Used in This Proposed Rule

>—greater than
≥—greater than or equal to
<—less than
≤—less than or equal to
§ —Section
ACWA—Association of California Water Agencies
AA—activated alumina
As (III)—trivalent arsenic. Common inorganic form in water is arsenite
As (V)—pentavalent arsenic. Common inorganic form in water is arsenate
ATSDR—Agency for Toxic Substances and Disease Registry, U.S. Department of Health & Human Services
ASTM—American Society for Testing and Materials
ASV—anodic stripping voltammetry
AWQC—Ambient Water Quality Criterion
AWWA—American Water Works Association
BAT—best available technology
BFD—Blackfoot disease
BOD—biochemical oxygen demand
BOSC—Board of Scientific Counselors, ORD
CASRN—Chemical Abstracts Service registration number
CCA—chromated copper arsenate
CCR—consumer confidence report
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
CPI—Consumer Price Index
CSFII—Continuing Survey of Food Intakes by Individuals
CV—coefficient of variation=standard deviation divided by the mean × 100
CWS—community water system
CWSS—Community Water System Survey
DBPs—disinfection byproducts
DBPR—Disinfectants/Disinfection By-products Rule
DMA—Di-methyl arsinic acid, cacodylic acid, $(CH_3)_2HAsO_2$
DSMA—Disodium methanearsonate
DWSRF—Drinking Water State Revolving Fund
DNA—Deoxyribonucleic acid
EB—East Tower Basement
EDL—Estimated Detection Limit
EDR—Electrodialysis Reversal
e.g.—such as
EJ—Environmental Justice
EO—Executive Order
EPA—U.S. Environmental Protection Agency
FDA—Food and Drug Administration
FR—Federal Register
FTE—full-time equivalents (employees)
GDP—Gross Domestic Product
GFAA—Graphite Furnace Atomic Absorption
GHAA—Gaseous Hydride Atomic Absorption
GI—gastrointestinal
gw—ground water
HRRCA—Health Risk Reduction and Cost Analysis
IARC—International Agency for Research on Cancer
ICP–MS—Inductively Coupled Plasma Mass Spectroscopy
i.e.—that is
ICP–AES—Inductively Coupled Plasma-Atomic Emission Spectroscopy
IESWTR—Interim Enhanced Surface Water Treatment Rule
IOCs—inorganic contaminants
IRFA—Initial Regulatory Flexibility Analysis
IRIS—Integrated Risk Information System
IX—Ion exchange
K—thousands
kg—kilogram, which is one thousand grams
L—Liter, also referred to as lower case ''l'' in older citations
LC_{50}—The concentration of a chemical in air or water which is expected to cause death in 50% of test animals living in that air or water
LCP—laboratory certification program
LD_{50}—The dose of a chemical taken by mouth or absorbed by the skin which is expected to cause death in 50% of the test animals so treated
LOAEL—Lowest-observed-adverse-effect level
LS—lime softening
LT2ESWTR—Long-Term 2 Enhanced Surface Water Treatment Rule
M—millions
m^3—Cubic meters
MCL—maximum contaminant level
MCLG—maximum contaminant level goal
MDL—method detection limit
Metro—Metropolitan Water District of Southern California
mg—Milligrams—one thousandth of gram, 1 milligram = 1,000 micrograms
mg/kg—milligrams per kilogram
mg/m^3—Milligrams per cubic meter
microgram (μg)—One-millionth of gram (3.5×10^{-8} oz., 0.000000035 oz.)
μg/L—micrograms per liter
M/DBP—Microbial/Disinfection By-product
MMA—Mono-methyl arsenic, arsonic acid, $CH_3H_2AsO_3$
MOS—margin of safety
MSMA—Monosodium methanearsonate
NAOS—National Arsenic Occurrence Survey
NAS—National Academy of Sciences
NAWQA—National Ambient Water Quality Assessment, USGS
NCI—National Cancer Institute
NCWS—non-community water system
NDWAC—National Drinking Water Advisory Council
NELAC—National Environmental Laboratory Accreditation Council
NIRS—National Inorganic and Radionuclide Survey
NIST—National Institute of Standards and Technology
NOAEL—No-observed-adverse-effect level
NODA—notice of data availability
NOEL—No-observed-effect level
NPDWR—National Primary Drinking Water Regulation, OGWDW
NRC—National Research Council, the operating arm of NAS
NTNCWS—non-transient non-community water system
NTTAA—National Technology Transfer and Advancement Act of 1995
NWIS—National Water Information System
O&M—operational and maintenance
OGWDW—Office of Ground Water and Drinking Water
PBMS—Performance-Based Measurement System
PE—performance evaluation, studies to certify laboratories for EPA drinking water testing
P.L.—Public Law
PNR—Public notification rule
POD—point of departure
POE—Point-of-entry treatment devices
POU—Point-of-use treatment devices
ppb—Parts per billion. Also, μg/L or micrograms per liter
ppm—Parts per million. Also, mg/L or milligrams per liter
PQL—Practical quantitation level
PRA—Paperwork Reduction Act
PT—performance testing
PWS—Public water systems
PWSS—Public Water Systems Supervision
RCRA—Resource Conservation and Recovery Act

REFs—relative exposure factors
RFA—Regulatory Flexibility Act
RfD—Reference dose
RIA—Regulatory Impact Analysis
RMCL—Recommended Maximum Contaminant Level
RO—reverse osmosis
RWS—Rural Water Survey
SAB—Science Advisory Board
SBA—Small Business Administration
SBREFA—Small Business Regulatory and Enforcement Flexibility Act, SBA
SDWA—Safe Drinking Water Act of 1974, as amended
SDWIS—Safe Drinking Water Information System
SER—Small Entity Representative for SBREFA
SISNOSE—Substantial impact on a significant number of small entities, SBREFA
SM—Standard Methods for the Examination of Water and Wastewater
SMRs—Standardized mortality ratios, comparing deaths in test areas to deaths in unexposed areas
SSCTs—Small System Compliance Technologies
STP–GFAA—Stabilized Temperature Platform Graphite Furnace Atomic Absorption
SW—Office of Solid Waste publication or test method
SW–846—Solid Waste publication #846, Test Methods for Solid and Hazardous Waste
TC—toxicity characteristic
TDS—total dissolved solids
TNC—transient, non-community
TOC—total organic carbon
µg—Microgram, 1000 micrograms = 1 milligram
UMRA—Unfunded Mandates Reform Act
U.S.—United States
USDA—U.S. Department of Agriculture
USGS—U.S. Geological Survey
USPHS—U.S. Public Health Service
VSL—Value of Statistical Life
WESTCAS—Western Coalition of Arid States
WHO—World Health Organization
WITAF—Water Industry Technical Action Fund
WS—water supply
WTP—Willingness to pay

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I. Summary of Regulation

EPA is proposing an arsenic regulation for community water systems, which are systems that provide piped water to at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents. This proposal will require non-transient, non-community water systems (NTNCWS) to monitor for arsenic and report exceedances of the MCL. The proposed health-based, non-enforceable goal, or Maximum Contaminant Level Goal (MCLG), is zero, based on EPA's revised risk characterization.

EPA evaluated the analytical capability and laboratory capacity, likelihood of water systems choosing treatment technologies for several sizes of systems based on source water properties, and the national occurrence of arsenic in water supplies to determine the proposed Maximum Contaminant Level (MCL). Furthermore, the Agency analyzed the quantifiable and nonquantifiable costs and health risk reduction benefits likely to occur at the treatment levels considered, and the effects on sensitive subpopulations. Based on the determination that the costs for the feasible MCL do not justify the benefits, EPA is proposing an MCL of 0.005 mg/L and requesting comment on 0.003 mg/L, 0.010 mg/L, and 0.020 mg/L. The treatment technologies for large systems are primarily coagulation/filtration and lime softening, while EPA expects that small systems (serving less than 10,000 people) will be able to use ion exchange, activated alumina, reverse osmosis, nanofiltration, and electrodialysis reversal. The effective date will be five years after the final rule comes out for community water systems serving 10,000 people or less, and three years after promulgation for all other community water systems. EPA is proposing that States applying to adopt the revised arsenic MCL may use their most recently approved monitoring and waiver plans or note in their primacy application any revisions to those plans.

The Agency is clarifying the procedure used for determining compliance after exceedances for inorganic, volatile organic, and synthetic organic contaminants in this proposal. Finally, EPA is proposing in this proposal that States will specify the time frame which new systems and systems using a new source of water have to demonstrate compliance with the MCL's including initial sampling frequencies and compliance periods for new systems and systems that use a new source of water for inorganic, volatile organic, and synthetic organic contaminants.

II. Background

A. What Is the Statutory Authority for the Arsenic Drinking Water Regulation?

Section 1401 of the Safe Drinking Water Act (SDWA) requires a ''primary drinking water regulation'' to specify a maximum contaminant level (MCL) if it is economically and technically feasible to measure the contaminant and include testing procedures to insure compliance with the MCL and proper operation and maintenance. In addition, section 1401(1)(D)(i) requires EPA to establish the minimum quality of untreated, or raw, water taken into a public water system. A national primary drinking water regulation (NPDWR) that establishes an MCL also lists the technologies that are feasible to meet the MCL, but systems are not required to use the listed technologies (section 1412(b)(3)(E)(i)). As a result of the 1996 amendments to SDWA, when issuing a NPDWR, EPA will also list affordable technologies for small systems serving 10,000 to 3301, 3300 to 501, and 500 to 25 that achieve compliance with the MCL or treatment technique. EPA can list modular (packaged) and point-of-entry and point-of-use treatment units for the three small system sizes, as long as the units are maintained by the public water system or its contractors. Home units must contain mechanical warnings to notify customers of problems (section 1412(b)(4)(E)(ii)). In section 1412(b)(12)(A) of SDWA, as amended August 6, 1996, Congress directed EPA to propose a national primary drinking water regulation for arsenic by January 1, 2000 and issue the final regulation by January 1, 2001. At the same time, Congress directed EPA to develop a research plan by February 2, 1997 to reduce the uncertainty in assessing health risks from low levels of arsenic and conduct the research in consultation with the National Academy of Sciences, other Federal agencies, and interested public and private entities. The amendments allowed EPA to enter into cooperative agreements for research.

Section 1412(a)(3) requires EPA to propose a maximum contaminant level goal (MCLG) simultaneously with the national primary drinking water regulation. The MCLG is defined in section1412(b)(4)(A) as ''the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.'' Section 1412(b)(4)(B) specifies that each national primary drinking water regulation will specify a maximum contaminant level (MCL) as close to the MCLG as is feasible, with two exceptions added in the 1996 amendments. First, the Administrator may establish an MCL at a level other than the feasible level if the treatment to meet the feasible MCL would increase the risk from other contaminants or the technology would interfere with the treatment of other contaminants (section1412(b)(5)). Second, if benefits at the feasible level would not justify the costs, EPA may propose and promulgate an MCL ''that maximizes health risk reduction benefits at a cost that is justified by the benefits (section 1412(b)(6)).''

When proposing an MCL, EPA must publish, and seek public comment on, the health risk reduction and cost analyses (HRRCA) of each alternative maximum contaminant level considered (section 1412(b)(3)(C)(i)). This includes the quantifiable and nonquantifiable benefits from reductions in health risk, including those from removing co-occurring contaminants (not counting benefits resulting from compliance with other proposed or final regulations), costs of compliance (not counting costs resulting from other regulations), any increased health risks (including those from co-occurring contaminants) that

may result from compliance, incremental costs and benefits of each alternative MCL considered, and the effects on sensitive subpopulations (*e.g.,* infants, children, pregnant women, elderly, seriously ill, or other groups at greater risk). EPA must analyze the quality and extent of the information, the uncertainties in the analysis, and the degree and nature of the risk.

The 1996 amendments also require EPA to base its action on the best available, peer-reviewed science and supporting studies and to present health effects information to the public in an understandable fashion. To meet the latter obligation, EPA must specify, among other things, the methodology used to reconcile inconsistencies in the scientific data for the final regulation (section 1412(b)(3)(B)(v)).

Section 1451(a) allows EPA to delegate primary enforcement responsibility to federally recognized Indian Tribes, providing grant and contract assistance, using the procedures applied to States. Section 1413(a)(1) allows EPA to grant States primary enforcement responsibility for NPDWRs when EPA has determined that the State has adopted regulations that are no less stringent than EPA's. States must adopt comparable regulations within two years of EPA's promulgation of the final rule, unless a two-year extension is justified. State primacy also requires, among other things, adequate enforcement (including monitoring and inspections) and reporting. EPA must approve or deny State applications within 90 days of submission (section 1413(b)(2)). In some cases, a State submitting revisions to adopt a national primary drinking water regulation has enforcement authority for the new regulation while EPA action on the revision is pending (section 1413(c)).

B. What Is Arsenic?

Arsenic is an element that occurs naturally in rocks, soil, water, air, plants, and animals. Arsenic is a metalloid, which exhibits both metallic and nonmetallic chemical and physical properties. The primary valence states for arsenic are 0, −3, +3 and +5. Although arsenic is found in nature to a small extent in its elemental form (0 valence), it occurs most often as inorganic and organic compounds in either the As (III) (+3) or As (V) (+5) valence states. The trivalent forms of inorganic arsenic [As (III) (*e.g.,* arsenite, H_3AsO_3)] and the pentavalent forms [As (V) (*e.g.,* arsenate, $H_2AsO_4^-$, $HAsO_4^{2-}$)] are inorganic species which tend to be more prevalent in water than the organic arsenic species (Irgolic, 1994; Clifford and Zhang, 1994). The dominant inorganic species present in water is largely a function of the pH and the oxidizing/reducing conditions which affects the need for pretreatment and removal effects. Arsenates are more likely to occur in aerobic surface waters and arsenites are more likely to occur in anaerobic ground waters.

C. What Are the Sources of Arsenic Exposure?

1. Natural Sources of Arsenic

There are numerous natural sources as well as human activities that may introduce arsenic into food and drinking water. The primary natural sources include geologic formations (*e.g.,* rocks, soil, and sedimentary deposits), geothermal activity, and volcanic activity. Arsenic and its compounds comprise 1.5–2% of the earth's crust (Welch, personal communication). While concentrations of arsenic in the earth's crust vary, the average concentrations are generally reported to range from 1.5 to 5 mg/kg. Arsenic is a major constituent of many mineral species in igneous and sedimentary rocks. It is commonly present in the sulfide ores of metals including copper, lead, silver, and gold. There are over 100 arsenic-containing minerals, including arsenic pyrites (*e.g.*, FeAsS), realgar (AsS), lollingite ($FeAs_2$, Fe_2As_3, Fe_2As_5), and orpiment (As_2S_3). Geothermal water can be a source of inorganic arsenic in surface water and ground water. Welch *et al.* (1988) identified fourteen areas in the Western United States where dissolved arsenic concentrations ranged from 80 to 15,000 μg/L. In addition, natural emissions of arsenic are associated with forest fires and grass fires. Volcanic activity appears to be the largest natural source of arsenic emissions to the atmosphere (ATSDR, 1998). Arsenic compounds, both inorganic and organic, are also found in food.

2. Industrial Sources of Arsenic

Major present and past sources of arsenic include wood preservatives, agricultural uses, industrial uses, mining and smelting. The human impact on arsenic levels in water depends on the level of human activity, the distance from the pollution sources, and the dispersion and fate of the arsenic that is released. The production of chromated copper arsenate (CCA), an inorganic arsenic compound and wood preservative, accounts for approximately 90% of the arsenic used annually by industry in the United States (USGS, 1998; USGS, 1999). CCA is used to pressure treat lumber, which is typically used for the construction of decks, fences, and other outdoor applications. In addition to wood preservatives, the other EPA-registered use of inorganic arsenic is for sealed ant bait. In the past, agricultural uses of arsenic included pesticides, herbicides, insecticides, defoliants, and soil sterilants. Inorganic arsenic pesticides are no longer used for agricultural purposes; the last agricultural application was voluntarily canceled in 1993 (58 FR 64579, US EPA, 1993b).

Organic forms of arsenic are constituents of some agricultural pesticides that are currently used in the U.S. Monosodium methanearsonate (MSMA) is the most widely applied organoarsenical pesticide, which is used to control broadleaf weeds and is applied to cotton (Jordan *et al.,* 1997). Small amounts of disodium methanearsonate (DSMA, or cacodylic acid) are also applied to cotton fields as herbicides. The Food and Drug Administration regulates other organic arsenicals (*e.g.,* roxarsone and arsanilic acid) used as feed additives for poultry and swine for increased rate of weight gain, improved feed efficiencies, improved pigmentation, and disease treatment and prevention. These additives undergo little or no metabolism before excretion (NAS, 1977; Moody and Williams, 1964; Aschbacher and Feil, 1991).

Arsenic and arsenic compounds (arsenicals) are used for a variety of industrial purposes, including: electrophotography, catalysts, pyrotechnics, antifouling paints, pharmaceutical substances, dye and soaps, ceramics, alloys (automotive solder and radiators), battery plates, optoelectronic devices, semiconductors, and light emitting diodes in digital watches (Azcue and Nriagu, 1994). In addition, burning of fossil fuels, combustion of wastes, mining and smelting, pulp and paper production, glass manufacturing, and cement manufacturing can result in emissions of arsenic to the environment (US EPA, 1998). Arsenic has been identified as a contaminant of concern at 916 of the 1,467 National Priorities List (Superfund) hazardous waste sites (ATSDR, 1998).

3. Dietary Sources

Because arsenic is naturally occurring, the entire population is exposed to low levels of arsenic through food, water, air, and contact with soil. The National Research Council report (NRC, 1999) described in sections III.C. and III.E.3. provides Food and Drug Administration (FDA) ''market basket'' data for total arsenic intake by age

group. NRC assumed that, for fish and seafood, inorganic arsenic is 10% of the total arsenic and that other food contains entirely inorganic arsenic. These assumptions are probably high and conservative for public health protection to avoid underestimating the contributions from food. Table 3–5 in the 1999 NRC report characterizes inorganic arsenic intake from food in the U.S. as being 1.3 µg/day for infants under one year old, 4.4 µg/day for 2-year olds, almost 10 µg/day for 25–30 year-old males, with a maximum of 12.5 µg/day for 60–65 year-old males (females had lower arsenic intake in every age group). MacIntosh et al. (1997) estimated that 785 adults had a mean inorganic arsenic consumption of 10.22 µg/day, with a standard deviation of 6.54 µg/day and a range of 0.36–123.84 µg/day based on semi-quantitative food surveys.

Likewise, the 2 L/day assumption of adult drinking water intake used to develop the MCLG does not represent intake by the average person; rather it represents intake of a person in the 90th percentile. (See Section X.B.1.a. for a description of water consumption for the general population.)

4. Environmental Sources

Internal exposure after skin contact with water or soil containing arsenic or inhalation of arsenic from air is believed to be low. Studies of inorganic arsenic absorption from skin from cadavers estimated 0.8% uptake from soil and 1.9% uptake from water over a 24-hour period (Wester *et al.,* 1993). EPA's arsenic health assessment document for the Clean Air Act (US EPA, 1984) cited respiratory arsenic as being about 0.12 µg/day from a daily ventilation rate of 20 m^3 using a 1981 national average arsenic air concentration of 0.006 µg/m^3. Assuming 30 percent absorption, the daily amount of arsenic from breathing would be 0.03 µg, so air is a minor source of arsenic (50 FR 46936 at 46960; US EPA, 1985b). At this time, EPA is basing health risks on estimates of arsenic exposure from food and water. The Centers for Disease Control and Prevention (CDC) is initiating a study of arsenic intake from bathing. EPA requests comment on whether available data on skin absorption and inhalation indicate that these are significant exposure routes that should be considered in the risk assessment.

D. What is the Regulatory History for Arsenic?

Regulation of arsenic has been the subject of scientific debate that has lasted for decades despite research and scientific review. The controversy has affected policy and regulatory decisions for arsenic in drinking water from low, environmental exposure.

1. Earliest U.S. Arsenic Drinking Water Standards

In 1942 the U.S. Public Health Service first established an arsenic drinking water standard for interstate water carriers at 0.05 mg arsenic per liter (mg/L, or 50 µg/L), as measured with a colorimetric method. The report did not cite any reason for choosing that level, but it defined ''safety of water supplies'' as ''the danger, if any, is so small that it cannot be discovered by available means of observation (US Public Health Service 1943).'' In 1946, the Surgeon General of the U.S. Public Health Service noted that the American Water Works Association had accepted the 1942 drinking water standards, including the arsenic standard (U.S. Public Health Service 1946). In 1962 (U.S. Public Health Service 1962) the U.S. Public Health Service issued more stringent drinking water standards for arsenic of 0.01 mg/L (10 µg/L) for a water supply in 42 CFR 72.205(b)(1) and 0.05 mg/L in 42 CFR 72.205(b)(2) as grounds for rejection of a water supply, as measured by the current edition of Standard Methods for the Examination of Water and Wastewater per 42 CFR 72.207(a).

The Safe Drinking Water Act of 1974 amended the Public Health Service Act and specified that EPA set primary and secondary drinking water standards. On December 24, 1975 (40 FR 59566 at 59570; US EPA, 1975), EPA issued a National Interim Primary Drinking Water Regulation for arsenic in § 141.23(b) of 0.05 mg/L (50 µg/L), effective 18 months later (§ 141.6). Commenters recommended an MCL of 100 µg/L, saying there were no observed adverse health effects (40 FR 59566 at 59576; US EPA, 1975). EPA noted long-term chronic effects at 300–2,750 µg/L, but observed no illnesses in a California study at 120 µg/L. Drinking 2 liters of water a day containing arsenic at 50 µg/L would provide approximately 10% of total ingested arsenic from food and water, estimated to be 900 µg/day. The section on arsenic noted that arsenic has been believed to be a carcinogen ''[s]ince the early nineteenth century * *; however evidence from animal experiments and human experience has accumulated to strongly suggest that arsenicals do not produce cancer. One exception is a report from Taiwan * * *. The text goes on to note occupational skin and lung cancer from arsenic dust and skin cancer in England from drinking water with 12 mg/L. (US EPA, 1976 Appendix A).

2. EPA's 1980 Guidelines

Scientific data at the time the 1980 Ambient Water Quality Guidelines were formulated did not support a safe or ''threshold'' concentration for carcinogens, so EPA's public health policy was

> ''that the recommended concentration for maximum protection of human health is zero. In addition, the Agency presented a range of concentrations corresponding to incremental cancer risks of 10^{-7} to 10^{-5} (one additional case of cancer in populations ranging from ten million to 100,000, respectively) * * * [that did not necessarily represent] an Agency judgement on an 'acceptable' risk level (45 FR 79318 at 79323, US EPA, 1980).''

In the November 28, 1980 **Federal Register** document, using its then current risk assessment approach (assumed toxicity increased as a natural logarithm linear function across species), EPA set the Clean Water Act surface water quality criterion for arsenic at 2.2 nanograms (ng/L) (0.0022 µg/L) at an increased cancer risk of 10^{-6}. The criterion was to prevent skin cancer in humans drinking contaminated water and eating aquatic organisms from those water bodies (45 FR 79318 at 79326). The 1980 **Federal Register** notice indicated that drinking water standards consider a range of factors, including health effects, technological and economic feasibility of removal, and monitoring capability. On the other hand the Clean Water Act criteria of section 304(a)(1) ''have no regulatory significance under the SDWA.'' The Clean Water Act section 304(a)(1) criteria are more similar to the health-based goals of the recommended maximum contaminant levels (now referred to as MCLGs), than to MCLs; and differences in mandates ''may result in differences between the two numbers.'' (45 FR 79318 at 79320; US EPA, 1980). In 1992, the Clean Water Act criterion was recalculated based on the updated cancer risk assessment in EPA's Integrated Risk Information System (IRIS) database, to a level of 0.018 µg/L for arsenic at a 10^{-6} cancer risk (57 FR 60848; US EPA, 1992c).

3. Research and Regulatory Work

The 1980 National Academy of Science (NAS) Volume III of ''Drinking Water and Health'' report encouraged EPA to research whether arsenic is essential for humans, as demonstrated in four studies of mammalian species. The 1983 NAS Volume V report projected that 0.05 mg/kg of total arsenic may be a desirable level for people, and 25 to 50 µg a day may be required (as cited in 50 FR 46936 at 46960; US EPA, 1985b).

In 1983, EPA requested comment on whether the arsenic MCL should consider carcinogenicity, other health effects, and nutritional requirements, and whether MCLs are necessary for separate valence states (*e.g.,* arsenite vs. arsenate) (48 FR 45502 at 45512; US EPA, 1983). On November 13, 1985, EPA proposed (50 FR 46936; US EPA, 1985b) a recommended maximum contaminant level (RMCL), a non-enforceable health goal now known as an MCLG, of 50 μg/L based on the 1983 NAS conclusion that 50 μg/L balanced toxicity and possible essentiality and provided ''a sufficient margin of safety'' (50 FR 46936 at 46960). EPA also requested comment on alternate RMCLs of 100 μg/L based on noncarcinogenic effects (calculated from an animal study and an uncertainty factor of 1000) and 0 μg/L based on carcinogenicity (50 FR 46936 at 46961). EPA chose not to base the proposed RMCL on the animal study because each dose group had only four Rhesus monkeys. Also, at that time, studies had ''not detected increased risks via drinking water in the USA'' (50 FR 46936 at 46960). The 1985 proposed drinking water regulation preamble noted the 1980 excess cancer risk values derived from the ambient water quality criteria were based on skin cancer using the 1968 Tseng *et al.* study (50 FR 46936 at 46961).

The June 19, 1986 amendments to the Safe Drinking Water Act (SDWA; Public Law 99–339) converted the 1975 interim arsenic standard to a National Primary Drinking Water Regulation (section 1412(a)(1)), subject to revision by 1989 (section 1412(b)(1)). Review of the arsenic risk assessment issues caused the Agency to miss the 1989 deadline for proposing a revised NPDWR. As a result of a citizen suit to enforce the deadline, EPA entered into a consent decree providing deadlines for issuing the arsenic rule.

In 1988, EPA's Risk Assessment Forum issued the Special Report on Ingested Inorganic Arsenic: Skin Cancer; Nutritional Essentiality (EPA/625/3–87/013), in part, to evaluate the validity of applying skin cancer data from Taiwanese studies (published in 1968 and 1977) in dose-response assessments in the U.S. As described in the report, the maximum likelihood estimate of risk ranged from 3×10^{-5} to 7×10^{-5} for a 70-kilogram person consuming 2 liters of water per day contaminated with 1 μg of arsenic per liter. Calculated at the 50 μg/L standard, the U.S. lifetime risk of skin cancer ranged from 1×10^{-3} to 3×10^{-3}, which means one to three skin cancers would occur in a group of one thousand people drinking water containing arsenic at 50 μg/L. Existing studies could not determine whether arsenic was an essential nutrient.

After reviewing the scientific evidence for carcinogenicity, EPA's Science Advisory Board (US EPA, 1989a and b) stated in its August 1989 and September 1989 reports that (1) the animal studies suggesting arsenic is an essential nutrient are not definitive; (2) the skin changes seen in hyperkeratosis may not always result in skin cancer; (3) the 1968 Taiwan data demonstrate that high doses of ingested arsenic can cause skin cancer; (4) the Taiwan study is inconclusive to determine cancer risk at levels ingested in the United States (U.S.); and (5) As (III) levels below 200–250 μg per day may be detoxified. SAB recommended that EPA set the MCL using a non-linear dose-response (at some low dose, arsenic would not be toxic). The SAB report recommended that EPA revise the risk assessment based on dose of arsenic to target tissues (the concentration of arsenic that damages tissues, rather than the concentration in water) and consider detoxification.

The SAB also reviewed EPA's April 12, 1991 Arsenic Research Recommendations (US EPA, 1991c). The final report provided SAB's recommendations (US EPA, 1992a) and ''identified research needed to resolve major uncertainties about inorganic arsenic cancer risk'' to evaluate if work could be done in three to five years. It noted that ''important work can be done within the time available. Although the results from this work will not completely resolve any issue, * * * the results will likely significantly improve the Agency's ability to evaluate the risk. * * * through improved knowledge of arsenic metabolism and * * * as a carcinogen.'' The report reflected uncertainty as to whether or not EPA could obtain enough data to regulate arsenic using a non-linear model, which needed more information on how arsenic induces cancer. The group noted that it would take longer than five years to develop an animal model to help understand the toxicity of arsenic. SAB recommended four short-term studies: (a) Investigation of chromosome damage, arsenic metabolites, and the times cells are most susceptible to arsenic, (b) study of human liver capacity to add methyl groups to arsenic, (c) identifying the species in urine in several populations to look for evidence of saturation of methylation enzymes, and (d) comparing methylated arsenic excreted in the U.S., Taiwan, Mexico, and Argentina to consider the effect of nutritional or genetic differences on methylation capacity. However, if time were not a factor, SAB ranked developing an animal model of arsenic-induced cancer as the first priority.

In 1993 SAB reviewed EPA's draft ''Drinking Water Criteria Document on Inorganic Arsenic (US EPA, 1993a).'' In 1995, SAB reviewed the analytical methods, occurrence estimate, treatment technologies, and approach for assigning costs in the regulatory impact analysis (US EPA, 1995). Besides highlighting previous SAB reviews of 1989, 1992, and 1994 on health effects, the 1995 report recommended changes to the practical quantitation limit approach, use of occurrence data, review of technologies, and support for the decision tree, with some reservations.

EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory options. EPA decided in early 1995 to defer the arsenic regulation in order to better characterize health effects and assess cost-effective removal technologies for small utilities.

The 1996 amendments to SDWA included a new statutory deadline for the arsenic regulations, as discussed in section II.A.

E. EPA's Arsenic Research Plan

EPA held a workshop in March 1994 entitled ''Workshop on Developing an Epidemiology Research Strategy for Arsenic in Drinking Water.'' The cover letter to the final report (US EPA, 1997b), dated April 14, 1997, notes that EPA has been using the recommendations to direct its research directions. The report listed ten projects and seventeen conclusions on exposure, endpoints, study design and statistical power, population selection, feasibility of conducting a study in the U.S., international studies, importance of developing biomarkers to measure health effects of arsenic, and animal studies.

In 1995, the Water Industry Technical Action Fund (WITAF) (funded by the American Water Works Association, National Association of Water Companies, Association of Metropolitan Water Agencies, National Rural Water Association, and National Water Resources Association), the AWWA Research Foundation, and the Association of California Water Agencies (ACWA) sponsored an Expert Workshop on Arsenic Research Needs in Ellicott City, MD, May 31–June 2, 1995. The final report (AWWA *et al.*, 1995) identified research projects in mechanisms, epidemiology, toxicology, and treatment. It identified ten high

priority projects which would need over $3 million to fund, eleven medium priority projects needing over $6 million, and ten low priority projects costing over $9 million, that totaled over $19 million in research needs.

Congress recognized the importance of health effects research in regulating arsenic, as demonstrated by the 1996 statutory requirement to develop a research plan within 180 days ''in support of drinking water rulemaking to reduce the uncertainty in assessing health risks associated with exposure to low levels of arsenic * * * (section 1412(b)(12)(A)(ii)). In the research plan EPA recognized that ''[t]he research needs are broader than those that EPA can address alone, and it is anticipated that other entities will be involved in conducting some of the needed research (US EPA, 1998a).'' (See section III.E.1. on industry-funded research and the arsenic research plan (at *www.epa.gov/ORD/WebPubs/final/arsenic.pdf*) for EPA-funded projects.) In December 1996, EPA submitted its draft research plan for peer review by its Board of Scientific Counselors' (BOSC) Ad Hoc Committee, and the committee met in January 1997. The February 1998 Arsenic Research Plan addressed the June 1997 comments from BOSC.

Major areas covered in the research plan included studies to:

- Improve our qualitative and quantitative assessment of the human toxicity of arsenic;
- Understand mechanisms of arsenic toxicity that may aid in extension of the observed human findings when extrapolation is required;
- Measure exposures of the US population to arsenic from various sources (particularly diet) to allow better definition of cumulative exposures to arsenic;
- Refine treatment technologies that may better remove arsenic from water supplies;
- Improve methods for analyzing and monitoring arsenic in drinking water.

EPA also set priorities in the plan and identified projects that met the short term and long term criteria:

Short Term Criteria

1. Will the research improve the scientific basis for risk assessments needed for proposing a revised arsenic MCL by January 1, 2000?

2. Will the research improve the scientific basis for risk management decisons needed for proposinig a revised arsenic MCL by January 1, 2000?

Long Term Criteria

1. Will the research improve the scientific basis for risk assessment and risk management decisions needed to review and develop future MCLs beyond the year 2000?

2. Is the research essential to improving our scientific understanding of the health risks of arsenic?

The research plan included the following priority topics for research under the five major areas of investigation supporting drinking water rulemaking:

Exposure Analysis

- Arsenic speciation and preservation: Improvements in analytical methods to support water treatment decisions.
- Measurement of background exposures to arsenic in U.S. population, particularly inorganic arsenic intake in the U.S. diet.
- Development and evaluation of biomarkers (*e.g.,* species of arsenic in urine) of exposures.
- Development of standard reference material for arsenic in water, food, urine, tissues.

Cancer Effects

- Further study of internal cancers associated with arsenic exposures.
- Dose response data on hyperkeratosis as a likely precursor to skin cancer.
- Research on factors influencing human susceptibility including age, genetic characteristics and dietary patterns.
- Metabolic and pharmacokinetic studies that can identify dose dependent metabolism.
- Mechanistic studies for arsenic-induced genotoxicity and carcinogenicity.

Noncancer Effects

- Development of human dose-response data for hyperkeratosis, cardiovascular disease, neurotoxicity and developmental effects.
- Development of additional health effects and hazard identification data on other non-cancer endpoints such as diabetes and hematologic effects.

Risk Management Research

- Identification of limitations of treatment technologies and impacts on water quality.
- Development of treatment technologies for small water systems.
- Development of data on cost and performance capabilities of various treatment options.
- Consideration of residuals management issues, including disposal options and costs.

Risk Assessment/Characterization

- Development of risk characterizations to provide interim support to States and local communities.
- Development of predictive tools and statistical models for assessing bioavailability, interactions and dose-response as better mass balance data become available.
- Comprehensive assessment of exposure levels and incorporation of data into risk estimates for better characterization of actual risks associated with arsenic exposure.
- Comprehensive assessment of arsenic mode of action provide a greater understanding of biological mechanisms and factors that may impact the shape of a dose response curve.
- Comprehensive assessment of non-cancer risks and consideration of appropriate modeling tools for quantitative estimation of non-cancer risks.
- Comprehensive assessment of human dose-response data for hyperkeratosis, cardiovascular disease, neurotoxicity and developmental effects.

III. Toxic Forms and Health Effects of Arsenic

A. What Are the toxic Forms of Arsenic?

Arsenic exists in several forms which vary in toxicity and occurrence. Accordingly, for this proposed regulation, it is important to consider those forms that can exert toxic effects and to which people may be exposed. For example, the metallic form of arsenic (0 valence) is not absorbed from the stomach and intestines and does not exert adverse effects. On the other hand, a volatile compound such as arsine (AsH_3) is toxic, but is not present in water or food. Moreover, the primary organic forms (arsenobetaine and arsenocholine) found in fish and shellfish seem to have little or no toxicity (Sabbioni *et al.,* 1991). Arsenobetaine quickly passes out of the body in urine without being metabolized to other compounds (Vahter, 1994). Arsenite (+3) and arsenate (+5) are the most prevalent toxic forms of inorganic arsenic that are found in drinking water. However, recovery of identified arsenic species in vegetables, grains and oils has been limited and difficult, so little is known about types of species in these foods (NRC, 1999).

In animals and humans, inorganic pentavalent arsenic is converted to trivalent arsenic that can be methylated (*i.e.,* chemically bonded to a methyl group, which is a carbon atom linked to

three hydrogen atoms) to mono-methyl arsenic (MMA) and di-methyl arsinic acid (DMA), which are organic arsenicals. The primary route of excretion for arsenic metabolites is in the urine. Studies indicate that the organic arsenicals MMA and DMA were hundreds of times less likely to produce genetic changes in animal cells than inorganic arsenicals. Moreover, many studies reported organic arsenicals to be less reactive in tissues, to kill less cells, and to be more easily excreted in urine (NRC, 1999).

B. What Are the Effects of Acute Toxicity?

Inorganic arsenic can exert toxic effects after acute (short-term) or chronic (long-term) exposure. From human acute poisoning incidents, the LD_{50} of arsenic has been estimated to range from 1 to 4 mg/kg (Vallee *et al.,* 1960, Winship, 1984). This dose would correspond to a lethal dose range of 70 to 280 mg for 50% of adults weighing 70 kg. At nonlethal, but high acute doses, inorganic arsenic can cause gastroenterological effects, shock, neuritis (continuous pain) and vascular effects in humans (Buchanan, 1962). Such incidents usually occur after accidental exposures. However, sometimes high dose acute exposures may be self-administered. For example, inorganic arsenic is a component of some herbal medicines and adverse effects have been reported after use. In one report of 74 cases (Tay and Seah, 1975), the primary signs were skin lesions (92%), neurological (*i.e.,* nerve) involvement (51%), and gastroenterological, hematological (*i.e.,* blood) and renal (*i.e.,* kidney) effects (19 to 23%). Although acute or short-term exposures to high doses of inorganic arsenic can cause adverse effects, such exposures do not occur from public water supplies in the U.S. at the current MCL of 50 μg/L. EPA's proposed drinking water regulation addresses the long-term, chronic effects of exposure to low concentrations of inorganic arsenic in drinking water.

C. What Cancers Are Associated With Arsenic?

Inorganic arsenic is a multi-site human carcinogen by the drinking water route. Asian, Mexican and South American populations with exposures to arsenic in drinking water generally at or above several hundred micrograms per liter are reported to have increased risks of skin, bladder, and lung cancer. The current evidence also suggests that the risks of liver and kidney cancer may also be increased following exposures to inorganic forms of arsenic. The weight of evidence for ingested arsenic as a causal factor of carcinogenicity is much greater now than a decade ago, and the types of cancer occurring as a result of ingesting inorganic arsenic have even greater health implications for U.S. and other populations than the occurrence of skin cancer alone. (Until the late 1980s skin cancer had been the cancer classically associated with arsenic in drinking water.) Epidemiologic studies (*e.g.,* of people) provide direct data on arsenic risks from drinking water at exposure levels much closer to those of regulatory concern than environmental risk assessments based on animal toxicity studies.

1. Skin Cancer

Early reports linking inorganic arsenic contamination of drinking water to skin cancer came from Argentina (Neubauer, 1947, reviewing studies published as early as 1925) and Poland (Geyer, 1898, as reported in Tseng *et al.,* 1968). However, the first studies that observed dose-dependent effects of arsenic associated with skin cancer came from Taiwan (Tseng *et al.,* 1968; Tseng, 1977). These studies focused EPA's attention on the health effects of ingested arsenic. Physicians physically examined over 40,000 residents from 37 villages and 7500 residents exposed to 0.017 mg/L arsenic (reference group). The study population was divided into three groups based on exposure to inorganic arsenic (0 to 0.29, 0.30 to 0.59 and ≥0.60 mg of inorganic As/Liter) measured at the village level. A dose- and age-related increase of arsenic-induced skin cancer among the villagers was noted. No skin cancers were observed in the low arsenic reference areas. The 1999 NRC report noted that the ''primary limitation of this study * * * was the lack of detail'' reported, such as grouping individuals into ''broad exposure groups'' (rather than grouping into 37 village exposures). This limits the usefulness of these studies. However, these Tseng reports and other corroborating studies such as those by Albores *et al.* (1979) and Cebrian *et al.* (1983) on drinking water exposure and exposures to inorganic arsenic in medicines (Cuzick *et al.,* 1982) and in pesticides (Roth, 1956) led the EPA, using skin cancer as the endpoint, to classify inorganic arsenic as a human carcinogen (Group A) by the oral route (US EPA, 1984).

2. Internal Cancers

Exposure to inorganic arsenic in drinking water has also been associated with the development of internal cancers. ''No human studies of sufficient statistical power or scope have examined whether consumption of arsenic in drinking water at the current MCL results in an increased incidence of cancer or noncancer effects (NRC, 1999, pg. 7).''

Chen *et al.* (1985) used standardized mortality ratios (SMRs) to evaluate the association between ingested arsenic and cancer risk in Taiwan. (SMRs, ratios of observed to expected deaths from specific causes, are standardized to adjust for differences in the age distributions of the exposed and reference populations.) The authors found statistically significant increased risks of mortality for bladder, kidney, lung, liver and colon cancers. A subsequent mortality study in the same area of Taiwan found significant dose-response relationships for deaths from bladder, kidney, skin, and lung cancers in both sexes and from liver and prostate cancer for males. They also found increases in peripheral and cardiovascular diseases but not in cerebrovascular accidents (Wu *et al.,* 1989). There are several corroborating reports of the increased risk of cancers of internal organs from ingested arsenic including two from two South American countries. In Argentina, significantly increased risks of death from bladder, lung and kidney cancer were reported (Hopenhayn-Rich *et al.,* 1996; 1998). In a population of approximately 400,000 in northern Chile, Smith *et al.* (1998) found significantly increased risks of bladder and lung cancer mortality.

There have only been a few studies of inorganic arsenic exposure via drinking water in the U.S., and most have not considered cancer as an endpoint. People have written EPA asking that the new MCL be set considering that these U.S. studies have not seen increases in cancers at the low levels of arsenic exposure in U.S. drinking water. Optimally, low-exposure arsenic studies involve long-term residency (20–40 years with known drinking water arsenic exposure), access to health records, populations large enough to detect statistically significant increases in cancers and other health endpoints, and limited use of multiple sources of water (bottled, filtered, beverages, food prepared outside the home).

Recently, Lewis *et al.* (1999) conducted a mortality study of a population in Utah whose drinking water contained relatively low concentrations of arsenic (averaged 18–191 μg/L). They reported no significant increase in bladder or lung mortality. They did report a statistically significant dose-response for an increased risk of prostate cancer mortality. Smoking is an established risk factor for bladder and lung cancer, and inorganic arsenic

behaves as a comutagen even though it is not mutagenic alone (NRC, 1999, pg. 200). It is possible that inorganic arsenic potentiates other risk factors for these cancers. This potential role is consistent with the NRC, 1999 view that arsenic's mode of action may be to interfere with cell ''housekeeping'' functions that normally repair genetic damage and ensure that damaged cells die (programmed cell death) rather than reproduce (see section III.D.2. below).

D. What Non-Cancer Effects Are Associated With Arsenic?

A large number of adverse noncarcinogenic effects have been reported in humans after exposure to drinking water highly contaminated with inorganic arsenic. The earliest and most prominent changes are in the skin, *e.g.,* hyperpigmentation and keratoses (calus-like growths). Other effects that have been reported include alterations in gastrointestinal, cardiovascular, hematological (*e.g.,* anemia), pulmonary, neurological, immunological and reproductive/developmental function (ATSDR, 1998).

The most common symptoms of inorganic arsenic exposure appear on the skin and occurr after 5–15 years of exposure equivalent to 700 μg/day for a 70 kg adult, or within 6 months to 3 years at exposures equivalent to 2,800 μg/day for a 70 kg adult (pg. 131 NRC, 1999). They include alterations in pigmentation and the development of keratoses which are localized primarily on the palms of the hands, the soles of the feet and the torso. The presence of hyperpigmentation and keratoses on parts of the body not exposed to the sun is characteristic of arsenic exposure (Yeh, 1973, Tseng, 1977). The same alterations have been reported in patients treated with Fowler's solution (1% potassium arsenite; Cuzick *et al.,* 1982), used for asthma, psoriasis, rheumatic fever, leukemia, fever, pain, and as a tonic (WHO 1981 and NRC 1999).

Chronic exposure to inorganic arsenic is often associated with alterations in gastroenterological (GI) function. For example, noncirrhotic hypertension is a relatively specific, but not commonly found manifestation in inorganic arsenic-exposed individuals and may not become a clinical observation until the patient demonstrates GI bleeding (Morris *et al.,* 1974; Nevens *et al.,* 1990). Physical examination may reveal spleen and liver enlargement, and histopathological examination of tissue specimens may demonstrate periportal fibrosis (Morris *et al.,* 1974; Nevens *et al.,* 1990; Guha Mazumder *et al.,* 1997). There have been a few reports of cirrhosis after inorganic arsenic exposure, but the authors of these studies did not determine the subjects' alcohol consumption (NRC 1999).

Development of peripheral vascular disease (hardening of the arteries to the arms and legs, that can cause pain, numbness, tingling, infection, gangrene, and clots) after inorganic arsenic exposure has also been reported. In Taiwan, blackfoot disease (BFD, a severe peripheral vascular insufficiency which may result in gangrene of the feet and other extremities) has been the most severe manifestation of this effect. Tseng (1977) reported over 1,000 cases of BFD in the arsenic study areas of Taiwan. Less severe cases of peripheral vascular disease have been described in Chile (Zaldivar *et al.,* 1974) and Mexico (Cebrian, 1987). In a Utah study, increased SMRs for hypertensive heart disease were noted in both males and females after exposure to inorganic arsenic-contaminated drinking water (Lewis *et al.,* 1999). These reports link exposure to inorganic arsenic effects on the cardiovascular system.

Studies in Taiwan (Lai *et al.,* 1994) and Bangladesh (Rahman *et al.,* 1998) found an increased risk of diabetes among people consuming arsenic-contaminated water. Two Swedish studies found an increased risk of mortality from diabetes among those occupationally exposed to arsenic (Rahman and Axelson, 1995; Rahman *et al.,* 1998).

Although peripheral neuropathy (numbness, muscle weakness, tremors, ATSDR 1998) may be present after exposure to short-term, high doses of inorganic arsenic (Buchanan, 1962; Tay and Seah, 1975), there are no studies that definitely document this effect after exposure to levels of less than levels (<50 μg/L) of inorganic arsenic in drinking water. Hindmarsh *et al.* (1977) and Southwick *et al.* (1983) have reported limited evidence of peripheral neuropathy in Canada and the U.S., respectively, but it was not reported in studies from Taiwan, Argentina or Chile (Hotta, 1989, as cited by NRC 1999).

There have been a few, scattered reports in the literature that inorganic arsenic can affect reproduction and development in humans (Borzysonyi *et al.,* 1992; Desi *et al.,* 1992; Tabacova *et al.,* 1994). After reviewing the available literature on arsenic and reproductive effects, the National Research Council panel (NRC 1999) wrote that ''nothing conclusive can be stated from these studies.''

Based on the studies mentioned in this section, it is evident that inorganic arsenic contamination of drinking water can cause dermal and internal cancers, affect the GI system, alter cardiovascular function, and increase risk of diabetes, based on studies of people exposed to drinking water well above the current arsenic MCL. EPA's MCL is chosen to be protective of the general population within an acceptable risk range, not at levels at which adverse health effects are routinely seen (see section III.F.7. on risk considerations).

E. What Are the Recent Developments in Health Effects Research?

1. Funding of Health Effects Research

As mentioned earlier in section II.A., Congress recognized that we needed more research to determine the health effects at low levels of arsenic (below the observed health effects and below 50 μg/L). On December 6, 1996, EPA issued a **Federal Register** notice (61 FR 64739; US EPA, 1996e) asking for public comment on four arsenic health research topics to fund research projects with $2 million from EPA appropriations and $1 million in funds raised by water industry groups (US EPA, 1996d). In addition, the Office of Research and Development's (ORD's) Board of Scientific Counselors (BOSC) peer reviewed the draft research topics and the arsenic research plan. In the fall of 1997, EPA and the industry partners funded their respective choices for arsenic research, after having the applications peer reviewed. EPA issued three grants for the following research: Dose Response of Skin Keratoses and Hyper-Pigmentation, Arsenic Glutathione Interactions and Skin Cancer, and Cellular Redox Status. The water industry groups awarded two contracts, studying Contribution of Arsenic From Dietary Sources and Tumor Studies in Mice.

2. Expert Panel on Arsenic Carcinogenicity

As part of the Integrated Risk Information System (IRIS) update effort, EPA sponsored an ''Expert Panel on Arsenic Carcinogenicity: Review and Workshop'' in May 1997 (US EPA, 1997d). The panel evaluated existing data to comment on arsenic's carcinogenic mode of action and the effect on dose-response extrapolations. The panel noted that arsenic compounds have not formed DNA adducts (*i.e.,* bound to DNA) nor caused point mutations. Trivalent inorganic forms inhibit enzymes, but arsenite and arsenate do not affect DNA replication. The panel discussed several modes of action, concluding that arsenic indirectly affects DNA, inducing chromosomal changes. The panel thought that arsenic-induced

chromosomal abnormalities could possibly come from errors in DNA repair and replication that affect gene expression; that arsenic may increase DNA hypermethylation and oxidative stress; that arsenic may affect cell proliferation (cell death appears to be nonlinear); and that arsenic may act as a co-carcinogen. Arsenite causes cell transformation but not mutation of cells in culture. It also induces gene amplification (multiple copies of DNA sequences) in a way which suggests interference with DNA repair or cell control instead of direct DNA damage. The panel noted that all identified modes of action support a nonlinear dose-response curve, that few data supports any one mode as most important, and that more than one mode of action may be operating. At low doses the slope of the dose response would decrease, and at very low doses ''might effectively be linear but with a very shallow slope, probably indistinguishable from a threshold.''

In terms of implications for the risk assessment, the panel noted that risk per unit dose estimates from human studies can be biased either way. For the Taiwanese study, the ''* * * biases associated with the use of average doses and with the attribution of all increased risk to arsenic would both lead to an overestimation of risk (US EPA, 1997d, page 31).'' While health effects are most likely observed in people getting high doses, the effects are assigned to the average dose of the exposure group. Thus, risk per unit dose estimated from the average doses would lead to an overestimation of risk (US EPA, 1997d, page 31).

3. NAS Review of EPA's Risk Assessment

In 1997, at EPA's request, the National Academy of Sciences' (NAS) Subcommittee on Arsenic of the Committee on Toxicology of the National Research Council (NRC) met. Their charge was to review EPA's assessments of arsenic. The NAS/NRC Subcommittee finished their work in March 1999 (The report can be viewed from the National Academy Press website: www.nap.edu/books/0309063337/html/index.html). The detailed discussion of their work is in section III.F. In general, the NRC report confirms and extends concerns about human carcinogenicity of drinking water containing arsenic and offers perspective on dose-response issues and needed research. For the decisions in this regulation, the EPA has relied upon the NRC report as presenting the best available, peer reviewed science as of its completion and has augmented it with more recently published, peer reviewed information. Further work on the risk assessment will also be done before the final rule is issued to analyze the risks of internal cancers. The NRC provided risk numbers for bladder cancer using the Agency's approach. The NRC report noted that ''some studies have shown that excess lung cancer deaths attributed to arsenic are 2–5 fold greater than the excess bladder cancer deaths. * * * (NRC, 1999, pg. 8).'' The NRC recommended that EPA analyze risks of internal cancers both separately and combined. Peer-reviewed quantitative analysis of lung tumor risk is expected to be available for consideration in the final rulemaking. Meanwhile, this proposal, in a ''what if'' analysis (discussed in section X.B), estimates the potential monetary benefits that would result if the lung cancer and bladder cancer risks were the same, which would be the case if the excess lung cancer deaths actually were 2- to 5-fold greater than the excess bladder cancer deaths.

4. May 1999 Utah Mortality Study

EPA scientists conducted an epidemiological study of 4,058 Mormons exposed to arsenic in drinking water in seven communities in Millard County, Utah (Lewis *et al.,* 1999). The 151 samples from their public and private drinking water sources had arsenic concentrations ranging from 4 to 620 μg/L with seven mean (arithmetic average) community exposure concentrations of 18 to 191 μg/L and all seven community exposure medians (mid-point of arsenic values) <200 μg/L. Observed causes of death in the study group (numbering 2,203) were compared to those expected from the same causes based upon death rates for the general white male and female population of Utah. Several factors suggest that the study population may not be representative of the rest of the United States. The Mormon church, the predominant religion in Utah, prohibits smoking and consumption of alcohol and caffeine. Utah had the lowest statewide smoking rates in the U.S. from 1984 to 1996, ranging from 13 to 17%. Mormon men had about half the cancers related to smoking (mouth, larynx, lung, esophagus, and bladder cancers) as the U.S. male population from 1971 to 1985 (Lyon *et al.,* 1994). The Utah study population was relatively small (~4,000 persons) and primarily English, Scottish, and Scandinavian in ethnic background.

While the study population males had a significantly higher risk of prostate cancer mortality, females had no significantexcess risk of cancer mortality at any site. Millard County subjects had higher mortality from kidney cancer, but this was not statistically significant. Both males and females in the study group had less risk of bladder, digestive system and lung cancer mortality than the general Utah population. The Mormon females had lower death rates from breast and female genital cancers than the State rate. These decreased death rates were not statistically significant.

Although deaths due to hypertensive heart disease were roughly twice as high as expected in both sexes, increases in death did not relate to increases in dose, calculated as the years of exposure times the median arsenic concentration. The Utah data indicate that heart disease should be considered in the evaluation of potential benefits of U.S. regulation. Vascular effects have also been reported as an effect of arsenic exposure in studies in the U.S. (Engel *et al.* 1994), Taiwan (Wu *et al.,* 1989) and Chile (Borgono *et al.,* 1977). The overall evidence indicating an association of various vascular diseases with arsenic exposure supports consideration of this endpoint in evaluation of potential noncancer health benefits of arsenic exposure reduction.

5. 1999 Review of Health Effects

Tsai *et al.* (1999) estimated standardized mortality ratios (SMR's) for 23 cancer and non-cancer causes of death in women and 27 causes of death in men in an area of Taiwan with elevated arsenic exposures (Tsai, *et al.,* 1999). The SMRs in this study are an expression of the ratio between deaths that were observed in an area with elevated arsenic levels and those that were expected to occur, compared to both the mortality of populations in nearby areas without elevated arsenic levels and to the national population. Drinking water (250–1,140 μg/L) and soil (5.3–11.2 mg/kg) in the Tsai (1999) population study had high arsenic content. There are, of course, possible differences between the population and health care in Taiwan and the United States; and arsenic levels in the U.S. are not generally as high as they were in the study area of Taiwan. However, the study gives an indication of the types of health effects that may be associated with arsenic exposure via drinking water. The study reports a high mortality rate (SMR > 3) for both sexes from bladder, kidney, skin, lung, and nasal cavity cancers and for vascular disease. Females also had high mortalities for laryngeal cancer.

The SMRs calculated by Tsai (1999) used the single cause of death noted on the death certificates. Many chronic

diseases, including some cancers, are not generally fatal. Consequently, the impact indicated by the SMR in this study may underestimate the total impact of these diseases. The causes of death reported in this study are consistent with what is known about the adverse effects of arsenic. Tsai *et al.* (1999) identified ''bronchitis, liver cirrhosis, nephropathy, intestinal cancer, rectal cancer, laryngeal cancer, and cerebrovascular disease'' as possibly ''related to chronic arsenic exposure via drinking water,'' which had not been reported before. In addition, people in the study area were observed to have nasal cavity and larynx cancers not caused by occupational exposure to inhaled arsenic.

6. Study of Bladder and Kidney Cancer in Finland

Kurttio *et al.* (1999) conducted a case-cohort design study of 61 bladder and 49 kidney cancer cases and 275 controls to evaluate the risk of these diseases with respect to arsenic drinking water concentrations. In this study the median exposure was 0.1 μg/L, the maximum reported was 64 μg/L, and 1% of the exposure was greater than 10 μg/L. The authors reported that very low concentrations of arsenic in drinking water were significantly associated with being a case of bladder cancer when exposure occurred 2–9 years prior to diagnosis. Arsenic exposure occurring greater than 10 years prior to diagnosis was not associated with bladder cancer risk. Arsenic was not associated with kidney cancer risk even after consideration of a latency period.

F. What Did the National Academy of Sciences/National Research Council Report?

1. The National Research Council and Its Charge

Due to controversy surrounding the risk assessment of inorganic arsenic, EPA asked the National Research Council (NRC) to do the following: (1) Review EPA's characterization of potential human health risks from ingestion of inorganic arsenic in drinking water; (2) review the available data on the carcinogenic and noncarcinogenic effects of inorganic arsenic; (3) review the data on the metabolism, kinetics and mechanism(s)/mode(s) of action of inorganic arsenic; and (4) identify research needs to fill data gaps. To accomplish this task, NRC convened a panel of scientific experts with backgrounds in chemistry, toxicology, genetics, epidemiology, nutrition, medicine, statistics and risk assessment. In addition to the general expertise of the panel members, many had conducted research on inorganic arsenic. NRC identified the thirteen scientists with ''diverse perspectives and technical expertise'' that peer reviewed the draft report. The report noted that ''EPA did not request, nor did the subcommittee endeavor to provide, a formal risk assessment for arsenic in drinking water (NRC, 1999).''

2. Exposure

Arsenic is naturally occurring and ubiquitously distributed in the earth's surface. Because of this, the general population is exposed to low levels of arsenic through the food supply. The NRC report provides FDA market basket data for inorganic arsenic intake by age group which, along with similar data for water intake, will permit communication of total exposure estimates of the general population by age group. The assumption is made in the FDA data that, for fish and seafood, inorganic arsenic is 10% of total arsenic. This 10% assumption is acknowledged to be conservative and has been adopted for public health protection so as not to underestimate the contribution from fish and seafood. Likewise, the 2 L/day assumption of adult drinking water intake does not represent intake by the average person; rather it represents intake of a person in the 90th percentile.

3. Essentiality

The NRC report examined the question of essentiality of arsenic in the human diet. It found no information on essentiality in humans and only data in experimental animals suggesting growth promotion (arsenicals are fed to livestock for this reason). Inorganic arsenic has not been found to be essential for human well-being or involved in any required biochemical pathway. Given this and the fact that arsenic occurs naturally in food, consideration of essentiality is not necessary for public health decisions about water.

4. Metabolism and Disposition

Data from humans show that inorganic arsenic is readily absorbed and transported through the body. It has a half-life in the body of approximately four days and is primarily excreted in the urine. If a human is exposed to the inorganic arsenate form (+5 valence), the arsenite will be reduced to arsenite (+3). Some of the arsenite will be sequentially methylated to form monomethylarsonic acid (MMA) and dimethylarsinic acid (DMA). This methylation process decreases acute toxicity and facilitates excretion from the body. Individuals and populations vary in their metabolism of arsenic. Such variations may be due to genetic differences, species and dose of inorganic arsenic ingested, nutrition, disease and possibly other factors. Whether these methylated products (MMA and DMA) play a role in the development of cancer and noncancer endpoints is unknown at the present time (NRC, 1999). The NRC report recommended that experiments be conducted on the factors affecting interspecies differences in inorganic arsenic toxicity including use of human tissue when available.

5. Human Health Effects and Variations in Sensitivity

The NRC panel concluded that there is sufficient evidence that chronic ingestion of inorganic arsenic causes bladder, lung and skin cancers and adverse noncancer effects on the cardiovascular systems, mainly from studies exposed to ''several hundred micrograms per liter. Few data address the degree of cancer risk at lower concentrations of ingested arsenic (NRC, 1999, pg. 130).'' The Utah study (Lewis *et al.,* 1999), published after the NRC report, indicates that cardiovascular effects can occur at lower exposures than those seen in the studies available for the NRC report. At the present time, the NRC report indicates that there is insufficient evidence to judge whether inorganic arsenic can affect reproduction or development in humans. However, inorganic arsenic can pass through the placenta (Concha *et al.,* 1998), and developmental toxicity needs investigation. In animal studies, intraperitoneal (injection into the abdominal cavity) administration of inorganic arsenic can cause malformations, and oral dosing has been reported to alter fetal growth and viability. The NRC report recommended additional studies to characterize the dose-response curve for inorganic arsenic-induced cancer and noncancer health endpoints. They also stated that the reported beneficial effects of inorganic arsenic in animals should be carefully monitored. In addition, the potential effects of inorganic arsenic on human reproduction should be investigated.

There are many factors (genetics, diet, metabolism, health and sex) that may affect a human's response to inorganic arsenic exposure. For example, reduction in methylation of inorganic arsenic methylation can cause humans to retain more arsenic in their tissues. The retention of a greater arsenic load could place a person at a greater risk. The NRC report (1999) recommended that various factors that have the ability

to alter a human's response to inorganic arsenic exposure be carefully examined. Specifically, these studies should focus on the extent of human variability with respect to metabolism, tissue deposition and excretion under different environmental conditions.

Humans are variable in their metabolic processing of inorganic arsenic, and internal dose will vary from person to person because of this as well as because of diet, nutritional status, lifestyle, and health status. Human variability also exists in response characteristics (susceptibility). The full quantitative extent of this variability is not known. For instance, men are more susceptible than women to bladder cancer throughout the world even though bladder cancer rates vary from region to region. We do not know whether arsenic may have a greater effect at different ages (*e.g.,* infants v.s. adults).

6. Modes of Action

Knowledge of a ''mode of action'' means that data are available to describe the key events at the cellular and/or subcellular level that lead to the development of the cancer or noncancer endpoint. A number of potential modes of carcinogenic action have been proposed for arsenic, with varying degrees of supporting data. The key events in the cancer process caused by arsenic exposure are not known. Nevertheless, the data are sufficient to support the conclusion of the NRC report and the EPA 1997 expert panel workshop report that: ''Arsenic exposure induces chromosomal abnormalities without direct reaction with DNA (US EPA, 1997d).''

There is strong evidence against a mode of action for inorganic arsenic involving direct reaction with DNA. One of the hallmarks of direct DNA reactivity is multi-species carcinogenic activity. For arsenic, long-term bioassays for carcinogenic activity in rats, mice, dogs, and monkeys have been uniformly negative (Furst, 1983). The kinds of genetic alterations seen in both *in vivo* and *in vitro* studies of arsenic effects are at the level of loss and rearrangement of chromosomes; these are results of errors of ''cellular housekeeping'' either in DNA repair or in chromosome replication. The NRC and EPA expert panel (US EPA, 1997d) reports examined several lines of evidence for various modes of action that might be operative. These included changes in DNA methylation patterns that could change gene expression and repair, oxidative stress, potentiation of effects of mutations caused by other agents, cell proliferative effects, and interference with normal DNA repair processes. Further examination in both of these reports of dose-response shapes associated with these effects led to the conclusion that they involve processes that have either thresholds of dose at which there would be no response or sublinearity of the dose response relationship (response decreasing disproportionately as dose decreases).

The NRC report concluded: ''For arsenic carcinogenicity, the mode of action has not been established, but the several modes of action that are considered plausible (namely, indirect mechanisms of mutagenicity) would lead to a sublinear dose-response curve at some point below the point at which a significant increase in tumors is observed. * * * However, because a specific mode (or modes) of action has not yet been identified, it is prudent not to rule out the possibility of a linear response.''

The NRC report noted that in certain *in vitro* studies of human and animal cells, genotoxic effects have been shown to occur at submicromolar concentrations of arsenite that are similar to concentrations found in urine of humans ingesting water at the current MCL. This emphasizes the potentially low margin of exposure (health effects observed at concentrations eight times above the MCL) for arsenic in water at the current MCL.

For noncancer effects, inhibition of cellular respiration in mitochondria by arsenic may be the focal point of its toxicity. In addition, inorganic arsenic causes oxidative stress that could play a role in the development of adverse health effects. The NRC report (1999) recommended that biomarkers of inorganic arsenic exposure and cancer appearance be thoroughly studied. Such data might better characterize the dose-response effects of inorganic arsenic at lower exposure levels. For noncancer effects, a greater understanding of arsenic's effects on cellular respiration and subsequent effects of methylation and oxidative stress are needed (NRC, 1999).

NRC recommended several mode of action studies, using biomarkers, to help predict the shape of the dose-response curve for cancer and non-cancer endpoints. NRC concluded that '' * * *Additional epidemiological evaluations are needed to characterize the dose-response relationship for arsenic-associated cancer and non-cancer endpoints, especially at low doses.''

7. Risk Considerations

The NRC study used the results of epidemiological, (*i.e.,* human) studies; research on the mode of action, and information about factors affecting sensitivity to arsenic to project to risks to the U.S. population. The numerical estimation of risk in the NRC report has several features to consider. The range of drinking water levels associated with health endpoints in the available studies is generally hundreds of ppb which is, however, within a factor of 10 of the existing standard of 50 ppb. Because of uncertainty about the shape of the dose-response relationship below this range of observed responses, the NRC report used the approach of the 1996 EPA proposed carcinogen risk assessment guidelines (US EPA, 1996b). For the male bladder cancer deaths which were emphasized in the report, NRC used a lower limit on the dose associated with a 1% (1 in 100) cancer response, and the LED_{01} is estimated to be ~400 ppb. This is a point of departure for extrapolating to exposure levels outside the range of observed data based on inference. Consistent with the proposed revisions to the Guidelines for Cancer Risk Assessment, the report shows both a linear extrapolation and a margin of exposure extrapolation (difference between the point of departure and selected exposure). Because current data on potential modes of action are supportive of sub-linear extrapolations, the linear approach could overestimate risk at low doses. However, EPA believes that within the several-fold range (10x) just below the point of departure, this should make little difference. EPA's scientists note that it makes an increasing difference as dose decreases, and the difference results in an overestimate of risk at lower exposures. With a straight-line extrapolation from the point of departure, the report estimated risk to be 1.0 to 1.5×10^{-3} at the current MCL of 50 ppb and the margin of exposure to be less than 8.

As described further in section X.A., EPA used parts of NRC's risk analysis and applied U.S. water consumption, weights, and estimate of population exposed to arsenic to model the U.S. population risk. In selecting the proposed MCL, EPA considered the uncertainties of the quantitative dose-response assessment for inorganic arsenic's health effects, particularly the possible nonlinearity of the dose-response and multiple cancer risks. Given the current outstanding questions about human risk at low levels of exposure, decisions about safe levels are public health policy judgments.

8. Risk Characterization

In 1983 the National Academy of Sciences (NAS, 1983) defined risk

assessment as containing four steps: hazard identification, dose-response assessment, exposure assessment, and risk characterization. Risk characterization is the process of estimating the health effects based on evaluating the available research, extrapolating to estimate health effects at exposure levels, and characterizing uncertainties. In risk management, regulatory agencies such as EPA evaluate alternatives and select the regulatory action. Risk management considers ''political, social, economic, and engineering information'' using value judgments to consider ''the acceptability of risk and the reasonableness of the costs of control (NAS, 1983).''

Unlike most chemicals, there is a large data base on the effects of arsenic on humans. Inorganic arsenic is a human poison, and oral or inhalation exposure to the chemical can induce many adverse health conditions in humans. Specifically oral exposure to inorganic arsenic in drinking water has been reported to cause many different human illnesses, including cancer and noncancer effects, as described in Section III. The NRC panel (1999) reviewed the inorganic arsenic health effects data base. The panel members concluded that the studies from Taiwan provided the current best available data for the risk assessment of inorganic arsenic-induced cancer. (There are corroborating studies from Argentina and Chile.) They obtained more detailed Taiwanese internal cancer data and modeled the data using the multistage Weibull model and a Poisson regression model. Three Poisson data analyses showed a 1% response level of male bladder cancer at approximately 400 μg of inorganic arsenic/L. The 1% level was used as a Point of Departure (POD) for extrapolating to exposure levels outside the range of observed data.

For an agent that is either acting by reacting directly with DNA or whose mode of action has not been sufficiently characterized, EPA's public health policy is to assume that dose and response will be proportionate as dose decreases (linearity of the extrapolated dose-response curve). This is a science policy approach to provide a public health conservative assessment of risk. The dose-response relationship is extrapolated by taking a straight line from the POD rather than by attempting to extend the model used for the observed range. This approach was adopted by the NRC report which additionally noted that using this approach for arsenic data provides results with alternative models that are consistent at doses below the observed range whereas extending the alternative models below the observed range gives inconsistent results. Drawing a straight line from the POD to zero gives a risk of 1 to 1.5 per 1,000 at the current MCL of 50 μg/L. Since some studies show that lung cancer deaths may be 2- to 5-fold higher than bladder cancer deaths, the combined cancer risk could be even greater. The NRC panel also noted that the MCL of 50 μg/L is less than 10-fold lower than the 1% response level for male bladder cancer. Based on its review, the consensus opinion of the NRC panel was that the current MCL of 50 μg/L does not meet the EPA's goal of public-health protection. Their report recommended that EPA lower the MCL as soon as possible.

IV. Setting the MCLG

A. How Did EPA Approach It?

For the decisions in this regulation, the EPA has relied upon the NRC report as presenting the best available, peer reviewed science as of its completion and has augmented it with more recently published, peer reviewed information. EPA used the 1999 NRC report and other published scientific papers to characterize the potential health hazards of ingested inorganic arsenic. As NRC (1999) noted, DMA may enhance the carcinogenicity of other chemicals, but more data are needed. Based on current knowledge, the organic forms of arsenic in fish and shellfish do not appear to present a significant risk to humans. The overall weight of evidence indicates that the inorganic arsenate and arsenite forms found in drinking water are responsible for the adverse health effects of ingested arsenic. EPA focused its risk assessment on the carcinogenic effects of inorganic arsenic (the forms found in drinking water sources).

A factor that could modify the degree of individual response to inorganic arsenic is its metabolism. There is ample evidence (NRC, 1999) that the quantitative patterns of inorganic arsenic methylation vary considerably and that the extent of this variation is unknown. It is certainly possible that the metabolic patterns of people affect their response to inorganic arsenic.

There are studies underway in humans and experimental animals under the EPA research plan and other sponsorships. Over the next several years these will provide better understanding of the mode(s) of carcinogenic action of arsenic, metabolic processes that are important to its toxicity, human variability in metabolic processes, and the specific contributions of various food and other sources to arsenic exposure in the U.S. These are important issues in projecting risk from the observed data range in the epidemiologic studies to lower environmental exposures experienced from U.S. drinking water.

Until further research is completed, questions will remain regarding the dose-response relationship at low environmental levels. The several Taiwan studies have strengths in their long-term observation of exposed persons and coverage of very large populations (>40,000 persons). Additionally, the collection of pathology data was unusually thorough. Moreover, the populations were quite homogeneous in terms of lifestyle. Limitations in exposure information exist that are not unusual in such studies. In ecological epidemiology studies of this kind, the exposure of individuals is difficult to measure because their exposure from water and food is not known. This results in uncertainties in defining a dose-response relationship. The studies in Chile and Argentina are more limited in extent, (*e.g.,* years of coverage, number of persons, or number of arsenic exposure categories analyzed), but provide important findings which corroborate one another and those of the Taiwan studies.

These epidemiological studies provide the basis for assessing potential risk from lower concentrations of inorganic arsenic in drinking water, without having to adjust for cross-species toxicity interpretation. Ordinarily, the characteristics of human carcinogens can be explored and experimentally defined in test animals. Dose-response can be measured, and animal studies may identify internal transport, metabolism, elimination, and subcellular events that explain the carcinogenic process. Arsenic presents unique problems for quantitative risk assessment because there is no test animal species in which to study its carcinogenicity. While such studies have been undertaken, it appears that test animals, unlike humans, do not respond to inorganic arsenic exposure by developing cancer. Their metabolism of inorganic arsenic is also quantitatively different than humans. Inorganic arsenic does not react directly with DNA. If it did, it would be expected to cause similar effects across species and to cause response in a proportionate relationship to dose. Moreover, its metabolism, internal disposition, and excretion are different and vary across animal and plant species and humans—in test studies and in nature.

Until more is known, EPA will take a traditional, public health conservative approach to considering the potential risks of drinking water containing inorganic arsenic. EPA recognizes that the traditional approach may overestimate risk, as explained in the next section.

B. What Is the MCLG?

EPA concludes that exposure to inorganic arsenic induces cancer in humans. It also is associated with adverse noncancer effects such as hypertension (NRC, 1999). The NRC report stated that ''Data on the modes of action for carcinogenicity can help to predict the shape of cancer dose-response curves below the level of direct observation of tumors. * * * For arsenic carcinogenicity * * * modes of action that are considered most plausible (namely, indirect mechanisms of mutagenicity) lead to a sublinear dose-response at some point below the level at which a significant increase in tumors is observed. However, because a specific mode (or modes) of action has not been identified at this time, it is prudent not to rule out the possibility of a linear response (NRC 1999, pgs. 213–214).'' The expert panel report (US EPA, 1997d, pg. 31) stated: ''* * * for each of the modes of action regarded as plausible, the dose-response would either show a threshold or would be nonlinear. * * * [H]owever, ''the dose response for arsenic at low doses would likely be truly nonlinear—*i.e.,* with a decreasing slope as the dose decreased. However, at very low doses such a curve might effectively be linear but with a very shallow slope, probably indistinguishable from a threshold.'' In the absence of a known mode of action(s), EPA has no basis for determining the shape of a sublinear dose-response curve for inorganic arsenic. As a result, consistent with EPA public health policy, EPA will continue to use a linear dose-response curve for inorganic arsenic effects. Using a linear type of a dose-response curve, EPA is proposing an MCLG of zero. The Agency welcomes comments on setting a nonzero MCLG and submission of data supporting a nonzero MCLG.

C. How Will a Health Advisory Protect Potentially Sensitive Subpopulations?

The NRC report was inconclusive about the health risks to pregnant woman, developing fetus, infants, lactating women, and children. When the Agency completes this rulemaking, it intends to issue a health advisory on arsenic in drinking water, in order to decrease risk to sensitive subpopulations prior to the implementation of the new MCL. The effective date of a revised MCL will be three to five years after the final rule is issued (2004–2006).

A health advisory is a non-regulatory document that supports water providers in their independent decisions on actions to take regarding water contaminants and their communication with the general public. In the health advisory on arsenic the Agency intends to address a precautionary step to protect infants. This step would be to avoid using water containing high levels of arsenic to make up infant formula. The reason for this precaution is that epidemiologic studies indicate that arsenic in drinking water (Lewis *et al.,* 1999) affects the cardiovascular system. While there are no studies of effects of arsenic on human infants, both the cardiovascular system and brain (and its vascular system) continue to develop after birth (Thompson, P.M *et al.* 2000); thus, the effects discussed in this notice on the cardiovascular system raise a concern about potential effects of arsenic on infant development. In large part, causes of cerebrovascular incidents (stroke) in children are not understood except for certain, known associations with organic diseases and genetic diseases. Congenital and acquired heart disease are the most common cause of stroke in children. The current toxicity data on arsenic do not contradict this precautionary view.

D. How Will the Clean Water Act Criterion Be Affected by This Regulation?

EPA is also working to harmonize the human health arsenic criteria for the Clean Water Act (CWA) and the SDWA. The major reason for the present difference (discussed in section II.D.) between the MCL and the Ambient Water Quality Criterion (AWQC) was the result of using separate bases for determining the two standards. The AWQC for arsenic was derived from the risk assessment for arsenic-induced skin cancer, while the current SDWA MCL, adopted in 1975 as a National Interim Primary Drinking Water Regulation, evolved from the U.S. Public Health Service standard dating back to the 1940s. The Agency will use the conclusions of the NRC (1999) report to form the human health basis for both the AWQC and the MCL. However, the CWA and SDWA statutes require that the Agency consider different factors during the derivation of a standard. For example, SDWA requires that the Agency consider: (1) Cost/benefit analyses, including sizes of the public water systems, (2) the level of arsenic that can be analyzed by laboratories on a routine basis, [*i.e.,* the practical quantitation limit (PQL)] and (3) treatment techniques for removing the chemical from the water. On the other hand, the CWA requires the EPA to consider water and fish consumption (including amount of fish eaten, percent lipid in the fish and the bioaccumulation factor for the chemical in the fish), but not cost/benefits, analytical or treatment techniques. Accordingly, developing a AWQC under the CWA may produce a standard that differs from the MCL derived under the SDWA even though both standards are based on the same health endpoint. The Agency will begin work on a new AWQC for arsenic after promulgating the MCL for arsenic.

V. EPA's Estimates of Arsenic Occurrence

One of the key components in the development of the proposed arsenic rule is the analysis of arsenic occurrence in public water supplies, both community water systems (CWS) and non-transient, non-community, water systems (NTNCWS). EPA's national occurrence assessment of arsenic provides a basis for estimating:

(1) The number of systems expected to exceed various arsenic levels;

(2) the number of people exposed to the different levels of arsenic; and

(3) the variability in arsenic levels in water systems among the wells and/or entry points to the distribution system.

EPA uses the estimate of the total number of systems and populations affected in the United States in its cost-benefit analysis. EPA is seeking comment on its analysis of arsenic occurrence in the U.S., as well as requesting additional data.

A. What Data Did EPA Evaluate?

For previous occurrence analyses EPA used four older national arsenic databases: (1) The National Inorganic and Radionuclide Survey (NIRS), conducted from 1984 to 1986, for ground water CWSs; (2) a 1976–1977 National Organic Monitoring Survey (NOMS); (3) a 1978–1980 Rural Water Survey (RWS); and (4) the 1978 Community Water System Survey (CWSS) for surface water CWSs. However, these older databases have several limitations. First, the surveys of surface water systems will not reflect changes in raw water sources which occurred in the last twenty years. Second, filtration treatment added to comply with the Surface Water Treatment Rule (110 54 FR 27486, June 29, 1989) would tend to decrease arsenic exposure, through incidental arsenic removal. Finally, most of the

data were censored (reported as less than the analytical test method detection level or reporting limit, *e.g.,* ''not detected'' or ''<5 μg/L''). NIRS, CWSS, and RWS, respectively, had 93%, 97%, and 90% censored data. This limits the estimation of low level occurrence of arsenic and makes it statistically difficult to extrapolate occurrence with the limited amount of non-censored data. The EPA Science Advisory Board recommended that EPA abandon the older data when sufficient new data become available because of the high percentage of censored data in the older surveys and the difficulty of using highly censored data sets to estimate occurrence (US EPA, 1995). Therefore, with improved analytical techniques for detecting arsenic at lower levels, as low as 0.5 μg/L, and the lower reporting limits in the new data received by EPA, the Agency focused the data evaluation on post-1980 data sources for estimating national occurrence.

Since 1992, EPA OGWDW has received arsenic databases from other EPA offices, States, public water utilities, and associations. EPA combined the compliance monitoring data obtained from States into the ''25 States'' database. The Agency evaluated the databases listed in Table V–1. (Note that EPA's database, the Safe Drinking Water Information System (SDWIS), only records violations of the current arsenic MCL, so it is censored at 50 μg/L.) A more detailed description of the databases and evaluations are presented in the EPA document titled ''Arsenic Occurrence in Public Drinking Water Supplies,'' (US EPA, 2000b).

TABLE V–1.—SUMMARY OF ARSENIC DATA SOURCES

Data source	Reporting level (μg/L)	Number of CWSs	Source water	Water type
25 States[1]	<1 to 10	>19,000	Surface, Ground	finished.
Metro[2]	1	140	Surface, Ground	raw & finished.
NAOS[3]	0.5	<517	Surface, Ground	raw & predicted finished.
USGS[4]	1	not available (20,000 sites).	Ground	raw.
ACWA[5]	0.1 to 1	180 (1,500 samples).	Surface, Ground	finished.
WESTCAS[6]	not available	not available	Ground	finished.

[1] Arsenic compliance monitoring data from community water systems (CWSs) from Alabama, Alaska, Arizona, Arkansas, California, Illinois, Indiana, Kentucky, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Texas, and Utah.

[2] Metropolitan Water District of Southern California (MWDSC, or Metro) 1992–1993 national survey of 140 CWSs serving more than 10,000 people.

[3] 1996 National Arsenic Occurrence Survey (NAOS) funded by the Water Industry Technical Action Fund (WITAF), which includes the following organizations: American Water Works Association, National Association of Water Companies, Association of Metropolitan Water Agencies, National Rural Water Association, and National Water Resources Association.

[4] U.S. Geological Survey (USGS) ambient (raw water) ground water from approximately 20,000 wells throughout the U.S. used for various purposes, including public supply, research, agriculture, industry and domestic supply.

[5] 1993 survey from 180 water agencies, utilities, and cities in southern California, conducted by the Association of California Water Agencies (ACWA).

[6] 1997 Western Coalition of Arid States (WESTCAS) Research Committee Arsenic Occurrence Study which aggregated arsenic data (*e.g.,* median arsenic value for county, city, or provider) from Arizona, New Mexico, and Nevada.

B. What Databases Did EPA Use?

EPA evaluated the databases for representativeness, accuracy and coverage of community water systems in the U.S. EPA determined that the compliance monitoring data from the 25 States (''25-States database'') would establish the most accurate and scientifically defensible national occurrence and exposure distributions of arsenic in public ground water and surface water supplies. Figure V.1 shows the coverage of these States in the U.S. The 25-States database provides more finished water arsenic data, from over 19,000 ground and surface water CWSs, than the other national databases. EPA is interested in finished water data, rather than raw water data, because it indicates the current arsenic levels in water systems after treatment and reflects their customers' level of exposure to arsenic. The 25-States database provides system and individual arsenic data for a significant number of CWSs in each State. The arsenic data can be linked directly to specific water systems by their identification code to obtain additional information in SDWIS, such as population served, system type (e.g., CWS, NTNCWS), source type (e.g., ground water, surface water, purchased water, ground water under the influence), and location. For this reason, EPA chose to use the compliance monitoring data from the States of California, Nevada, New Mexico, and Arizona, rather than the data about these States from ACWA and WESTCAS.

Most of the 25-States data had reporting limits of less than 2 μg/L. In addition, the database includes multiple samples from the water systems over time and from multiple sources within the systems. The multiple samples provide for a more accurate estimate of the arsenic levels in the systems, than a survey with one sample per system. The arsenic compliance monitoring data provides point-of-entry or well data within systems from eight States, which is used for intrasystem variability analysis (discussed in Section V.G). Intrasystem variability analysis provides an understanding of the variation of arsenic levels within a system, from well to well or entry point to entry point.

EPA also received arsenic data from Florida, Idaho, Iowa, Louisiana, Pennsylvania, and South Dakota; however EPA did not include these States in the database. These States either provided data that (1) could not be linked to CWSs; (2) did not indicate if the results were censored or non-censored; (3) were all zero, without providing the analytical/reporting limit; or (4) rounded results to the nearest ten μg/L.

EPA used the USGS and NAOS databases and their occurrence estimates for comparison purposes. In addition, EPA used the NAOS approach to partitioning of the U.S. for its analysis.

We combined State data sets with different data naming conventions, and the database development and data

conditioning process is described in Appendix D–3 of the occurrence support document (US EPA, 2000b). Appendix D–1 identifies who provided the data and data provided for each State in the 25-State database. Appendix D–2 lists the data names we used to develop the national database. We assumed that the data represented compliance sampling, and some States have reportedly provided source water data and compliance data. If you are aware of errors in our data set, please let us know. Also, additional data would reduce the uncertainty of our national occurrence estimate. We encourage commenters to submit arsenic compliance monitoring data sets either from States not already in our data set, more recent data that were not included in the described data sets, or a more official version of compliance data. We will use this information to obtain a more representative national occurrence estimate for the final rule.

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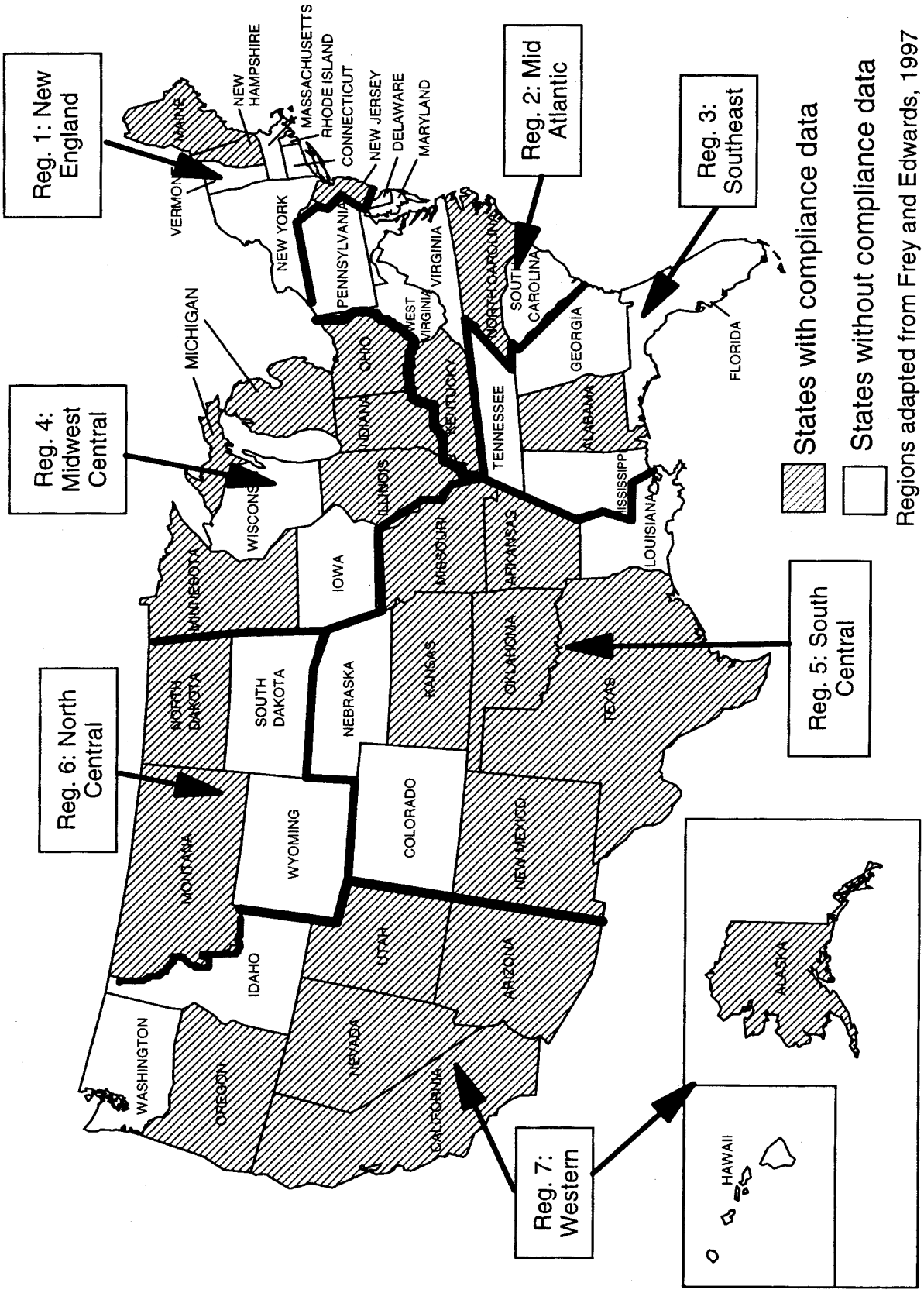
Figure V-1. States with Arsenic Compliance Data in the 7 Regions



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C. How Did EPA Estimate National Occurrence of Arsenic in Drinking Water?

EPA derived the national estimates of arsenic occurrence in three steps: (1) Estimate system means; (2) estimate State distribution of system means; and (3) estimate national distributions of system means.

As discussed in section V.B, EPA determined that the 25-States database would be used for estimating national occurrence. EPA calculated a system average for each water system in its database. When the database provided 5 or more detected (greater than the reporting limit) arsenic samples in a system, we used the method of ''regression on order statistics'' (Helsel and Cohn, 1988) to extrapolate values for the non-detected observations, then calculated the arithmetic mean. When there were 1 to 4 detected values, we substituted half the reporting limit for each non-detected value (less than the reporting limit) and calculated an arithmetic average. When there were no detected values (all samples had non-detected values), we set the arsenic system average as a non-detect at the mode (most frequently occurring) of the reporting limits. As a result, each system has a calculated system mean, either a non-detected or detected value.

In order to estimate the distribution of systems means in a State, EPA aggregated the system means into a single distribution and derived separate estimates of percentage of systems with average arsenic values greater than 2, 3, 5, 10, 15, 20, 25, 30, 40, and 50 μg/L (referred to as exceedance estimates). We developed separate estimates for ground water and surface water systems. Within each State, EPA fit a lognormal distribution to the population of estimated system means, and used the fitted distribution to estimate exceedance probabilities. However, when fitting the lognormal distribution, EPA excluded system means which were estimated to be less than their reporting limit, since these require more extrapolation below the reporting limit and were judged to be less reliable. EPA also did not make exceedance estimates below the most frequently occurring reporting limit or censoring point in each of the States.

To estimate the national distribution of system means, EPA grouped the States into the seven regions developed in the NAOS (Frey and Edwards, 1997). Frey and Edwards derived a natural occurrence factor by weighting detection, number of data points, and higher arsenic values from data in the USGS WATSTORE water quality database and the Metro survey. Then they grouped States into seven regions based on the calculated natural occurrence factors. Figure V.1 is a map of the U.S. with the NAOS regions. With this regional grouping of States, EPA developed separate regional estimates for surface water and ground water systems. In a separate analysis, EPA found the national result from using the NAOS regions to be similar to grouping States into different regions, based on a preliminary examination of generally related exceedance probabilities.

EPA derived each regional estimate by using exceedance estimates from the States with compliance monitoring data in the region, weighted by the number of community water systems in those specific States. For example, we used the exceedance estimates from Montana and North Dakota, weighted by the number of community water systems in those States, to derive the North Central region estimate. Within each region, we estimated the percentages of systems with average arsenic values greater than 2, 3, 5, 10, 15, 20, 25, 30, 40, and 50 μg/L. We then weighted the regional exceedance estimates, by the total number of community water systems in each region (including the number of community water systems in the States without compliance monitoring data) to obtain national estimates of percentages of systems with average arsenic values greater than 2, 3, 5, 10, 15, 20, 25, 30, 40, and 50 μg/L.

EPA believes that separate estimates are not justified for different system sizes. A graphical analysis (''box and whisker'' plots) of the occurrence distributions suggests that in some regions, systems in different size categories do have different mean concentrations. However the differences in means are much smaller than the variability of the observed concentrations. Moreover, the differences do not vary with system size in a consistent way. For example, for ground water systems, arsenic concentrations in the New England Region (NAOS Region 1) decrease as system size increases, while in the Mid-Atlantic and South Central regions (NAOS Regions 2 and 5), arsenic concentrations increase as system size increases. In the four remaining regions, no systematic patterns are evident. For these reasons, and because additional stratification decreases the precision of the estimates, EPA has not developed separate estimates for different system sizes.

The method of substitution that EPA used for non-detected concentrations (described above) is different from the method that water systems use for determining compliance with the MCL: We substituted positive values for non-detects, while for purposes of compliance, non-detected concentrations are treated as zero. Therefore, our estimates of occurrence will be higher on average than those found by water systems monitoring for compliance with the MCL. As a result we might overestimate both the costs and benefits of the proposed MCL. However we believe that our estimate of occurrence is justified, for two reasons. First, it is more accurate (less biased). Second, as the detection limits of analytical methods continue to improve (*i.e.,* lower than 1 μg/L), the difference between the two substitution methods will be small and will occur in the range below the MCL.

D. What Are the National Occurrence Estimates of Arsenic in Drinking Water for Community Water Systems?

Arsenic is found in both ground water and surface water sources. Figure V.1 presents the regions of the United States referred to in this discussion. Table V–2 data indicate that higher levels of arsenic tend to be found in ground water sources (*e.g.,* aquifers) than in surface water sources (*e.g.,* lakes, rivers). The 25-States finished water data also indicate that the North Central, Midwest Central, and New England regions of the United States tend to have low to moderate (2–10 μg/L) ground water arsenic levels, while the Western region tends to have higher levels of ground water arsenic (>10 μg/L) than the other regions. Systems in the other regions of the U.S. may have high levels of arsenic (hot spots), while many systems and portions of the States in the listed regions may not have any detected arsenic in their drinking water.

TABLE V–2.—REGIONAL EXCEEDANCE PROBABILITY DISTRIBUTION ESTIMATES

Region	Percent of systems exceeding arsenic concentrations (μg/L) of:									
	2	3	5	10	15	20	25	30	40	50
Ground Water Systems										
New England	29	21	21	7	4	3	2	2	1	0.7
Mid Atlantic	.....	.....	*0.3	*1	0.3	0.1	0.06	0.03	0.009	0.003
South East	2	1	0.5	0.2	0.1	0.07	0.05	0.04	0.02	.01
Midwest	28	21	14	6	4	2	2	1	.8	0.5
South Central	27	19	10	4	2	1	0.8	0.5	0.3	0.2
North Central	29	21	13	6	4	2	2	1	0.9	0.6
West	42	31	25	12	7	5	4	3	2	1
Surface Water Systems										
New England	11	*8	*9	1.0	0.6	0.4	0.3	0.3	0.2	0.1
Mid Atlantic	.....	.....	*0.1	*0.1	0.01	0.001	0	0	0	0
South East	0.8	0.2	0.03	0.001	0	0	0	0	0	0
Midwest	4	3	1	0.4	0.2	0.1	0.1	0.07	0.05	0.03
South Central	9	4	1	0.3	0.1	0.08	0.05	0.03	0.02	0.01
North Central	20	10	4	0.8	0.2	0.1	0.05	0.02	0.008	0.003
West	19	13	7	3	2	1	0.8	0.6	0.4	0.3

*Estimates at these regions and levels are inconsistent, in that the estimated % exceedances at lower values are smaller than the estimates at higher values. This inconsistency occurs because fewer States were used to estimate % exceedances at lower levels. EPA did not attempt to resolve the inconsistency, but combined the regional distribution into a national distribution which is consistent.

The estimates of the number of CWSs expected to exceed different arsenic levels is based on the distribution of average arsenic concentrations in water systems. Using the data from the 25-States database, EPA estimates that 5.4% of ground water CWSs and 0.7% of surface CWSs have average arsenic levels above 10 μg/L. Similarly, 12.1% and 2.9% of ground water CWSs and surface water CWSs, respectively, have average arsenic levels above 5 μg/L. Tables V–3 and V–4 provide estimates by system size category. The percentage of systems that have average arsenic levels within a specific range does not vary across the system size categories. For example, 2.3% of ground water systems in each of the five system size categories have average arsenic levels in the range of >10 μg/L to 15 μg/L. Therefore, the arsenic exceedance estimates have the same distribution in any system size. These estimates of percent (or probability) of systems that have average arsenic levels within a specific range are multiplied by the number of systems in each size category to derive the number of systems in Table V–3 and V–4.

TABLE V–3.—STATISTICAL ESTIMATES OF NUMBER OF GROUND WATER CWSS WITH AVERAGE ARSENIC CONCENTRATIONS IN SPECIFIED RANGES

System size (population served)	Number of systems with average arsenic concentrations in specified ranges (μg/L; 43,749 systems total)								
	<2.0	>2.0 to 3.0	>3.0 to 5.0	>5.0 to 10.0	>10.0 to 15.0	>15.0 to 20.0	>20.0 to 30.0	>30.0 to 50.0	>50.0
25 to 500	21,325	2,158	2,268	1,960	674	314	287	188	129
501 to 3,300	7,616	771	810	700	241	112	103	67	46
3,301 to 10,000	1,811	183	193	167	57	27	24	16	11
10,001 to 50,000	933	94	99	86	29	14	13	8	6
>50,000	154	16	16	14	5	2	2	1	1
Total	31,840	3,221	3,386	2,927	1,006	468	429	280	192
(% of systems)	(72.8%)	(7.4%)	(7.7%)	(6.7%)	(2.3%)	(1.1%)	(1.0%)	(0.6%)	(0.4%)

Note: Totals may not add up due to rounding of the number of systems to the nearest whole number. Systems serving fewer than 25 people are not included in this table. The estimates in this table do not take into account most treatment in place; in particular most of the systems in the ''>50.0'' column will have treated for arsenic in order to reduce their concentration below 50 μg/L. See text for more details.

In Tables V–3 and V–4, the estimated numbers of systems with mean concentrations above 50 μg/L do not represent the number of systems which are believed to be out of compliance with the current MCL of 50 μg/L; nor do they represent actual systems at all. Rather, they are statistical extrapolations above 50 μg/L, based primarily on data below 50 μg/L. Since most data below 50 μg/L comes from systems which have not treated for arsenic, the ''>50.0'' columns in Tables V–3 and V–4 do not take into account most treatment currently in place. Therefore, the ''>50.0'' columns represent the estimated number of systems which would have mean arsenic concentrations above 50 μg/L if they had not treated for arsenic. By comparison with Tables V–3 and V–4, during the three-year period from September 1994 through August 1997, EPA recorded a total of 14 samples from 10 public water systems in which arsenic concentrations exceeded 50 μg/L.

TABLE V–4.—STATISTICAL ESTIMATES OF NUMBER OF SURFACE WATER CWSS WITH AVERAGE ARSENIC CONCENTRATIONS IN SPECIFIED RANGES

System size (population served)	Number of systems with average arsenic concentrations in specified ranges (μg/L; 10,683 systems total)								
	<2.0	>2.0 to 3.0	>3.0 to 5.0	>5.0 to 10.0	>10.0 to 15.0	>15.0 to 20.0	>20.0 to 30.0	>30.0 to 50.0	>50.0
25 to 500	2,794	122	94	69	11	4	4	2	2
501 to 3,300	3,308	144	111	82	13	5	4	3	2
3,301 to 10,000	1,656	72	56	41	6	3	2	1	1
10,001 to 50,000	1,384	60	47	34	5	2	2	1	1
> 50,000	477	21	16	12	2	1	1	0	0
Total	9,622	419	323	239	37	15	13	8	7
(% of systems)	(90.1%)	(3.9%)	(3.0%)	(2.2%)	(0.4%)	(0.1%)	(0.1%)	(0.1%)	(0.1%)

Note: Totals may not add up due to rounding of the number of systems to the nearest whole number. Systems serving fewer than 25 people are not included in this table. The estimates in this table do not take into account most treatment in place; in particular most of the systems in the ''>50.0'' column will have treated for arsenic in order to reduce their concentration below 50 μg/L. See text for more details.

E. How Do EPA's Estimates Compare With Other Recent National Occurrence Estimates?

In addition to EPA's national occurrence results presented in section V.D., two additional studies recently developed national occurrence estimates for arsenic in drinking water: the NAOS study (Frey and Edwards, 1997), and the USGS study of arsenic occurrence in ground water (USGS, 2000). The databases that supported the NAOS and USGS estimates are briefly described in section V.A., ''What data did EPA evaluate?'' Each of these occurrence estimates was developed in a slightly different manner. Whereas EPA's occurrence estimates are based on compliance monitoring data from more than 19,000 CWSs in 25 states, the NAOS occurrence estimates are based on a stratified random sampling from representative groups defined by source type, system size, and geographic location. The NAOS database contains 435 predicted finished water arsenic data points (derived from raw water arsenic concentrations and treatment information), from more than 400 CWSs. The USGS analysis is based on arsenic ambient (untreated, or raw water) ground water data, providing 17,496 samples for 1,528 counties (with 5 or more data points) in the United States (out of a total of 3,222 counties). USGS derived exceedance estimates for each county by calculating the percentage of data points in each county exceeding specific concentrations, from 1 μg/L to 50 μg/L. Then USGS associated the percentages for each county with the number of CWSs that use ground water in these counties, which was based on data derived from SDWIS. This information was aggregated for all of the appropriate counties to derive the national estimates for ground water CWSs. USGS did not have estimates for surface water CWSs.

TABLE V–5.—COMPARISON OF CWSS FROM EPA, NAOS, AND USGS ESTIMATES EXCEEDING ARSENIC CONCENTRATIONS

% CWS exceeding	EPA GW &SW (percent)	NAOS GW & SW (percent)	EPA GW (percent)	USGS GW (percent)
2 μg/L	24.1	21.7	27.2	25.0
5 μg/L	10.3	11.5	12.1	13.6
10 μ/L	4.5	4.5	5.4	7.6

Table V–5 compares the EPA, NAOS, and USGS estimates of the percent of samples exceeding various arsenic concentrations. At a concentration of 2 μg/L, the EPA national exceedance estimate for both surface water and ground water CWSs (24.1 percent) is higher than the NAOS estimate (21.7 percent). At 5 μg/L, the EPA and NAOS predicted exceedance probabilities are relatively similar (10.3 and 11.5 percent, respectively). These two estimates are the same at 10 μg/L (4.5 percent). For ground water CWSs, the USGS and EPA estimates are also relatively similar. At 2 μg/L, the EPA national ground water exceedance estimate (27.2 percent) is slightly higher than the USGS estimate (25.0 percent). At 5 and 10 μg/L, the USGS exceedance estimates (13.6 percent and 7.6 percent, respectively) are slightly higher than the EPA estimates (12.1 percent and 5.4 percent). This comparison of exceedance probabilities suggests that EPA's arsenic occurrence projections based on compliance monitoring data are relatively close to the NAOS and USGS projections through the range of this comparison. In addition, the USGS estimates are expected to be slightly higher than the EPA estimates for ground water, because they are based on raw water arsenic levels (untreated).

F. What Are the National Occurrence Estimates of Arsenic in Drinking Water for Non-Transient, Non-Community Water Systems?

The 25-States database contains data for non-transient, non-community water systems (NTNCWSs) in 15 States (two additional States only provided data from two systems). NTNCWSs are public water systems that regularly serve at least 25 of the same persons more than 6 months a year. Most NTNCWSs serve less than 3,300 people (99.5%) and use ground water (96%).

EPA calculated basic statistics for ground water CWSs and NTNCWSs in each of these States. EPA compared the data and found that arsenic distributions in NTNCWSs are quite

similar to arsenic distributions in CWSs. In general, the means, standard deviations, and level of censoring for CWSs in a particular State are very close to the levels observed in NTNCWSs in that State. In some States, mean levels are slightly higher in CWSs than in NTNCWSs, whereas in others, mean levels are slightly lower in CWSs. There is no clear pattern and the differences are relatively minor, suggesting that any differences are due to random variation, rather than systematic underlying differences between NTNCWSs and CWSs. As a result, the occurrence distributions for CWSs were used to derive the occurrence distributions for NTNCWS systems. If the NTNCWSs data from the 15 States were used to derive the estimates, there would have been less spatial coverage of United States, which would have resulted in more uncertainty in the estimate. The NTNCWSs estimates are presented in Tables V–6 and V–7.

As in the case of Tables V–3 and V–4, the estimated numbers of systems in Tables V–6 and V–7 with mean concentrations above 50 μg/L do not represent the number of systems which are believed to be out of compliance with the current MCL of 50 μg/L; nor do they represent actual systems at all. Rather they represent the estimated number of systems which would have mean arsenic concentrations above 50 μg/L if they had not treated for arsenic. By comparison with Tables V–6 and V–7, during the three-year period from September 1994 through August 1997, EPA recorded a total of 14 samples from 10 public water systems in which arsenic concentrations exceeded 50 μg/L.

TABLE V–6.—STATISTICAL ESTIMATES OF NUMBER OF GROUND WATER NTNCWSS WITH AVERAGE ARSENIC CONCENTRATIONS IN SPECIFIED RANGES

System size (population served)	Number of systems with average arsenic concentrations in specified ranges (μg/L; 19,293 systems total)								
	<2.0	>2.0 to 3.0	>3.0 to 5.0	>5.0 to 10.0	>10.0 to 15.0	>15.0 to 20.0	>20.0 to 30.0	>30.0 to 50.0	>50.0
25 to 500	12,088	1,223	1,285	1,111	382	178	163	106	73
501 to 3,300	1,902	192	202	175	60	28	26	17	11
3,301 to 10,000	43	4	5	4	1	1	1	0	0
10,001 to 50,000	8	1	1	1	0	0	0	0	0
> 50,000	0	0	0	0	0	0	0	0	0
Total	14,041	1,421	1,493	1,291	444	206	189	123	85
(% of systems)	(72.8%)	(7.4%)	(7.7%)	(6.7%(	(2.3%)	(1.1%)	(1.0%)	(0.6%)	(0.4%)

Note: Totals may not add up due to rounding of the number of systems to the nearest whole number. Systems serving fewer than 25 people are not included in this table. The estimates in this table do not take into account most treatment in place; in particular most of the systems in the ''>50.0'' column will have treated for arsenic in order to reduce their concentration below 50 μg/L. See text for more details.

TABLE V–7.—STATISTICAL ESTIMATES OF NUMBER OF SURFACE WATER NTNCWSS WITH AVERAGE ARSENIC CONCENTRATIONS IN SPECIFIED RANGES

System size (population served)	Number of systems with average arsenic concentrations in specified ranges (''μg/L; 764 systems total)								
	<2.0	>2.0 to 3.0	>3.0 to 5.0	>5.0 to 10.0	>10.0 to 15.0	>15.0 to 20.0	>20.0 to 30.0	>30.0 to 50.0	>50.0
25 to 500	502	22	17	12	2	1	1	0	0
501 to 3,300	163	7	5	4	1	0	0	0	0
3,301 to 10,000	18	1	1	0	0	0	0	0	0
10,001 to 50,000	4	0	0	0	0	0	0	0	0
50,000	2	0	0	0	0	0	0	0	0
Total									
(% of systems)	688	30	23	17	3	1	1	1	0
	(90.1%)	(3.9%)	(3.0%)	(2.2%)	(0.4%)	(0.1%)	(0.1%)	(0.1%)	(0.1%)

Note: Totals may not add up due to rounding of the number of systems to the nearest whole number. Systems serving fewer than 25 people are not included in this table. The estimates in this table do not take into account most treatment in place; in particular most of the systems in the ''>50.0'' column will have treated for arsenic in order to reduce their concentration below 50 μg/L. See text for more details.

G. How Do Arsenic Levels Vary From Source To Source and Over Time?

EPA analyzed the variability of arsenic concentrations within a system, from well to well or entry point to entry point (sampling point). This analysis allows EPA to estimate the number of sampling points in a system that may be above the proposed MCL and to improve estimation of the treatment costs for systems with multiple sampling points. The result of the intrasystem analysis is a constant coefficient of variation (CV), which is one of the inputs to the cost-benefit computer modeling. EPA analyzed six of the eight States that provided intrasystem data: California, Utah, New Mexico, Oklahoma, Illinois and Indiana. Arkansas and Alabama were not analyzed because these States had very little occurrence of arsenic and almost all of the arsenic values were below the detection limit. After statistical analysis of 127 systems with five or more sampling points, EPA derived an arithmetic average CV of 0.64 or 64%. The EPA document titled ''Arsenic Occurrence in Public Drinking Water Supplies,'' presents this statistical analysis (US EPA, 2000b).

USGS examined its raw water arsenic data to assess the variability of arsenic levels over time and to determine whether there are temporal trends (USGS, 2000). Data came from about 350 wells with 10 or more arsenic analyses collected over different time periods. These wells were used for various purposes, such as public supply, research, agriculture, industry, and domestic supply, and encompassed non-potable and potable water quality. USGS conducted a regression analysis

of arsenic concentration and time for each well and found that most of the wells had little or no change in concentration over time (low ''r-squared'' values when arsenic concentrations were regressed with time). Arsenic levels for most of the wells probably do not consistently increase or decrease over time. In addition, USGS found that well depth had no relationship to temporal variability. To determine the extent of the temporal variability, EPA analyzed the CVs for the mean arsenic level in the wells. More than 100 wells had a CV and standard deviation of zero. Most of these wells consistently had arsenic concentrations below the detection limit of 1 μg/L. EPA examined the CVs for the other wells in relation to the mean arsenic level and found a relatively constant CV on the lognormal scale. The geometric mean of the CVs, excluding CVs of zero, is 0.39 or 39%. The report (USGS, 2000) listed several factors that may contribute to this variability, including natural variability in geochemistry or source of contamination, sampling technique, and changes in pumping over time.

H. How Did EPA Evaluate Co-Occurrence?

Sections 1412(b)(3)(C)(i)(II), (III) and (VI) of the SDWA, as amended in 1996, require EPA to take into account activities under preceding rules which may have impacts on each new successive rule. To fulfill this need EPA began the analysis of the co-occurrence of drinking water contaminants. The information on co-occurrence will be used to determine the level of overlap in regulatory requirements. For example, this will include cases where treatment technologies applied for one regulation may resolve monitoring and/or additional treatment needs for another regulation or where water utilities may incur costs for installing multiple treatments to address other co-occurring substances. This information may also be used to show where specific levels of one contaminant may interfere with the treatment technology for another.

1. Data

For the co-occurrence analysis, EPA relied on data from the National Water Information System (NWIS), a U.S. Geological Survey (USGS) database. The NWIS database was used for several reasons:

- It contains both ground and surface water data;
- It is national in scope, representing raw water samples from approximately 40,000 observation stations across the U.S.; and
- It provides latitude/longitude coordinates for monitoring stations, which can be used in subsequent analyses to associate with Public Water Supply Systems.

NWIS contains a water quality data storage retrieval system developed by the USGS Water Resources Division. NWIS is a distributed water database; data can be processed over a network of computers at USGS offices throughout the U.S. The system comprises the Automated Data Processing System, the Ground Water Site Inventory System, the Water-Quality System, and the Water-Use Data System. NWIS does not represent Public Water Supply Systems directly but can be associated with them because it provides latitude/longitude coordinates for monitoring stations.

Using the NWIS data, arsenic was analyzed with 18 other constituents. The other constituents included: Sulfate, radon, radium, uranium, nitrate, antimony, barium, beryllium, cadmium, chromium, cyanide, iron, manganese, mercury, nickel, nitrite, selenium, thallium, hardness, and total dissolved solids. An additional set of ancillary parameters were selected for use as indicators of the hydrogeologic and geochemical conditions that could influence the co-occurrence of specific constituents. These ancillary parameters included: turbidity, conductance, dissolved oxygen, pH, alkalinity, well depth, and depth below land.

2. Results of the Co-occurrence Analysis (US EPA, 1999f)

Dissolved arsenic was observed to have 5442 detected counts and total arsenic was observed to have 1273 detected counts in the database at the minimal threshold level of 2 μg/L. The national co-occurrence estimates derived from the USGS NWIS data revealed several correlations between arsenic/sulfate and arsenic/iron at the threshold levels chosen by EPA as likely to affect treatment (see section VIII.). First, a significant correlation was observed between dissolved arsenic and sulfate in surface water and ground water samples at the national level. The analysis of the surface and ground water data from EPA Regions 1, 2, 4, 5, 6, 7, 8, 9 and 10 show 339 co-occurrence frequency counts of the data above the threshold values of dissolved arsenic >5 μg/L and sulfate >250 mg/L (Table V–8). For total arsenic and sulfate there are 143 co-occurrence frequency counts for the same threshold levels. There was no significant co-occurrence of arsenic and sulfate in EPA Region 3. Secondly, a correlation was observed between dissolved arsenic and iron and total arsenic and iron in surface and ground waters from EPA Regions 1, 2, 4, 5, 7, 8 and 9 (Table V–8). There are 562 co-occurrence frequency counts of the data above the threshold levels of dissolved arsenic >5 μg/L and iron >300 μg/L. There are 542 co-occurrence frequency counts of the data above the threshold values of total arsenic >5 μg/L and iron >300 μg/L. There was no significant co-occurrence of arsenic and iron in EPA Regions 3, 6 and 10.

TABLE V–8.—CORRELATION OF ARSENIC WITH SULFATE AND IRON (SURFACE AND GROUND WATERS)

EPA regions	Arsenic types (threshold levels >5 μg/L)	Correlation elements and their threshold level	Frequency counts
1, 2, 4, 5, 6, 7, 8, 9, 10.	Dissolved Arsenic	Sulfate (>250 mg/L)	339
	Total Arsenic	Sulfate (>250 mg/L)	143
1, 2, 4, 5, 7, 8, 9	Dissolved Arsenic	Iron (>300 μg/L)	562
	Total Arsenic	Iron (>300 μg/L)	542

The results also show some co-occurring pairs of arsenic with radon. This appears to occur in EPA Regions 5 and 6 for ground water. However, the co-occurrence of arsenic and radon at levels of concern is not significant (Table V–9). At present, the analysis does not show significant co-occurring pairs between arsenic and radon in surface water in any EPA region. The impact from the co-occurrence of arsenic and radon is not a concern on a national level because there was no significant co-occurring pairs in EPA Regions 1, 2, 3, 4, 7, 8, 9, and 10. EPA requests comments on whether the NWIS database and this analysis is appropriate to use to represent co-

occurrence of arsenic with other constituents.

TABLE V–9.—CORRELATION OF ARSENIC WITH RADON (GROUND WATER)

EPA regions	Arsenic types and threshold levels (μg/L)	Radon and threshold levels(pci/l)	Frequency counts
5 and 6	Dissolved 2≤5	100≤300	58
		300≤1000	140
	Dissolved 5≤10	100≤300	124
		300≤1000	101
	Total 2≤5	0≤100	2
		100≤300	2
	Total 5≤10	0≤100	1
		100≤300	1

VI. Analytical Methods

A. What Section of SDWA Requires the Agency To Specify Analytical Methods?

Section 1401 of SDWA directs EPA to promulgate national primary drinking water regulations (NPDWRs) which specify either MCLs or treatment techniques for drinking water contaminants (42 U.S.C. 300g–1). EPA is required to set an MCL ''if, in the judgement of the Administrator, it is economically and technologically feasible to ascertain the level of a contaminant in water in public water systems'' (SDWA section 1401(1)(C)(i)). Alternatively, ''if, in the judgement of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant,'' the Administrator may identify known treatment techniques, which sufficiently reduce the contaminant in drinking water, in lieu of an MCL (SDWA section 1401(1)(C)(ii)). In addition, the NPDWRs are required to include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures to insure compliance with such levels * * *'' (SDWA section 1401(1)(D))

B. What Factors Does the Agency Consider in Approving Analytical Methods?

In deciding whether an analytical method is economically and technologically feasible to determine the level of a contaminant in drinking water, the Agency considers the following factors:

- Is the method sensitive enough to address the level of concern (*i.e.,* the MCL)?
- Does the method give reliable analytical results at the MCL? What is the precision (or reproducibility) and the bias (accuracy or recovery)?
- Is the method specific? Does the method identify the contaminant of concern in the presence of potential interferences?
- Is the availability of certified laboratories, equipment and trained personnel sufficient to conduct compliance monitoring?
- Is the method rapid enough to permit routine use in compliance monitoring?
- What is the cost of the analysis to water supply systems?

C. What Analytical Methods and Method Updates Are Currently Approved for the Analysis of Arsenic in Drinking Water?

EPA approved analytical methods and method updates for the analysis of arsenic in drinking water in previous rulemakings. EPA took the factors listed in section VI.B into consideration when it approved these methods and updates. The methods and updates, listed in Table VI–1, are based on atomic absorption, atomic emission and mass spectroscopy methodologies and have been used for compliance monitoring of arsenic at the 0.05 mg/L MCL by State, Federal and private laboratories for many years. In this section on the discussion of analytical methods, and in the sections discussing the consumer confidence rule and public notification, EPA uses the mg/L units of measure, the units used in the regulatory language. Note that EPA's drinking water analytical methods refer to mg/L instead of μg/L, and milligrams are 1,000 times larger than micrograms.

TABLE VI–1.—APPROVED ANALYTICAL METHODS (AND METHOD UPDATES) FOR ARSENIC (CFR 141.23)

Methodology	Reference method [1]	MDL [2] or EDL [3] (mg/L)
Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP–AES)	200.7 (EPA)	0.008
	3120B (SM)	[3] 0.050
Inductively Coupled Plasma Mass Spectroscopy (ICP–MS) ICP–MS with Selective Ion Monitoring	200.8 (EPA)	0.0014
		[4] (0.0001)
Stabilized Temperature Platform Graphite Furnace Atomic Absorption (STP–GFAA) STP–GFAA with Multiple Depositions.	200.9 (EPA)	0.0005
		[5] (0.0001)
Graphite Furnace Atomic Absorption (GFAA)	3113B (SM)	[3] 0.001
	D–2972–93C (ASTM)	[3] 0.005
Gaseous Hydride Atomic Absorption (GHAA)	3114B (SM)	[3] 0.0005
	D–2972–93B (ASTM)	[3] 0.001

[1] The reference methods approved for measuring arsenic in drinking water are cited in 40 CFR 141.23. The reference methods include:
EPA = ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA/600/R–94–111, US EPA, May 1994. (US EPA, 1994b)

SM = Standard Methods for the Examination of Water and Wastewater, 18th and 19th eds., Washington, D.C., 1992 and 1995. (APHA, 1992 and 1995 respectively). The 19th edition of SM was approved in the December 1, 1999 final methods rule (64 FR 67450, US EPA 1999j).

ASTM = Annual Book of ASTM Standards: Waster and Environmental Technology,'' Vol. 11.01 and 11.02, American Society for Testing and Materials, 1994 and 1996. (ASTM, 1994 and 1996). The 1996 edition of ASTM was approved in the December 1, 1999 final methods rule (64 FR 67450, US EPA 1999j).

[2] MDL = Method Detection Limit = ''the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero.'' (40 CFR Part 136 Appendix B).

[3] EDL = Estimated Detection Limit (EDL) is defined as either the MDL or a concentration of a compound in a sample yielding a peak in the final extract with a signal to noise ratio of 5, whichever value is greater. Although the ASTM GFAA method (D–2972–93C) has a reported EDL of 0.005 mg/L, this method is similar to other GFAA methods. EPA believes D–2972–93C is capable of detection limits similar to other GFAA methods.

[4] In 1994 (59 FR 62456; US EPA, 1994c), the Agency approved the use of the updated ''Methods for the Determination of Metals in Environmental Samples—Supplement I,'' (US EPA, EPA/600/R–94/111, 1994). The revised manual allows the use of selective ion monitoring with ICP–MS. The determined MDL for the direct analysis of arsenic in aqueous samples was 0.1 µg/L.

[5] In 1994 (59 FR 62456; US EPA, 1994c), the Agency approved the use of the updated ''Methods for the Determination of Metals in Environmental Samples—Supplement I,'' (US EPA, EPA/600/R–94/111, 1994). The revised manual allows the use of multiple depositions with STP–GFAA. The determined MDL for arsenic using multiple deposition with STP–GFAA is 0.1 µg/L.

D. Will Any of the Approved Methods for Arsenic Analysis Be Withdrawn?

EPA believes all of the analytical methods listed in Table VI–1, with the exception of EPA Method 200.7 and SM 3120B, are technically and economically feasible for compliance monitoring of arsenic in drinking water at the proposed MCL of 0.005 mg/L. EPA is proposing to withdraw approval for EPA Method 200.7 and SM 3120B because the detection limit for the first ICP–AES method, 0.008 mg/L, and the estimated detection limit for the second ICP–AES method, 0.050 mg/L, are inadequate to reliably determine the presence of arsenic at the proposed MCL of 0.005 mg/L. Analysis of the Water Supply (WS) studies used to derive the PQL (Analytical Methods Support Document, US EPA, 1999l) indicates that ICP–AES technology was rarely used for low level arsenic analysis. Therefore, the Agency believes the removal of the methods that use ICP–AES technologies will not have an impact on laboratory capacity.

Even at the MCL options of 0.003, 0.010 mg/L, and 0.020 mg/L, the Agency would still withdraw both EPA Method 200.7 and SM 3120B. At these MCL options, these methods are still inadequate for compliance monitoring of arsenic in drinking water.

E. Will EPA Propose Any New Analytical Methods for Arsenic Analysis?

The Agency conducted a literature search to identify additional analytical methods which are capable of compliance monitoring of arsenic at the proposed MCL of 0.005 mg/L (Analytical Methods Support Document, US EPA, 1999l). A large majority of the analytical techniques identified from the literature search were from EPA's Office of Solid Waste SW–846 methods manual, which can be accessed online at www.epa.gov/epaoswer/hazwaste/test/index.html. Of the Solid Waste methods, the Agency evaluated:

- SW–846 Method 6020 (ICP–MS, MDL = 0.0004 mg/L; US EPA, 1994d);
- SW–846 Method 7060A (GFAA, MDL = 0.001 mg/L; US EPA, 1994e);
- SW–846 Method 7062 (GFAA, MDL = 0.001 mg/L; US EPA, 1994f);
- SW–846 Method 7063 (Anodic Stripping Voltammetry-ASV, MDL = 0.0001 mg/L; US EPA, 1996d);

In addition to the SW–846 method, the Agency also reviewed:

- EPA Method 1632 (a wastewater GHAA method with an MDL = 0.000002 mg/L or 0.002 µg/L; US EPA 1996a); and
- EPA Method 200.15 (an ICP–AES with ultrasonic nebulization as part of the written method, MDL = 0.003 mg/L or 0.002 mg/L; US EPA, 1994a).

Although the SW–846 methods and the EPA 1632 wastewater method are capable of reaching the detection limits needed at the proposed arsenic MCL, most of these techniques (with the exception of the method using ASV technology) are similar to methods that have already been approved for the analysis of arsenic in drinking water. The Agency does not believe approval of these methods for drinking water would provide additional analytical benefits. Moreover, the addition of the SW–846 methods could complicate the laboratory certification process because SW–846 methods are not mandatory procedures, but rather guidance. At this time, laboratories are certified at different times for different EPA programs. Therefore, laboratories certified for both drinking water methods and Office of Solid Waste methods may need to be certified separately under both programs to use SW–846 methods for drinking water.

While SW–846 Method 7063 (using ASV technology) is not similar to any technique approved thus far, this method will not be approved for the measurement of arsenic in drinking water because it only detects dissolved arsenic as opposed to total arsenic. Today's proposal would regulate total arsenic in drinking water not dissolved arsenic. The techniques currently approved for drinking water measure total arsenic (arsenic species in the dissolved and suspended fractions of a water sample). A preliminary total metals digestion would be necessary with the ASV technique in order to determine the total arsenic concentration in a drinking water sample.

The Agency also reviewed but does not propose to approve EPA Method 200.15, an ICP–AES method which requires the use of ultrasonic nebulization to introduce the sample into the plasma. To provide uniform signal response using EPA Method 200.15, it is necessary for arsenic to be in the pentavalent state. The addition of hydrogen peroxide to the mixed acid solutions of samples and standards prior to ultrasonic nebulization is necessary to convert all of the arsenic species to the pentavalent state. Although EPA Method 200.15 is capable achieving a MDL of 0.003 mg/L using direct analysis and a MDL of 0.002 mg/L using a total recoverable digestion and a 2-fold concentration, these levels of detection are still insufficient for compliance monitoring at the proposed MCL of 0.005 mg/L.

At the MCL options of 0.010 mg/L and 0.020 mg/L, the Agency would approve the use of EPA Method 200.15 but only with the use of a total recoverable digestion and a 2-fold concentration (MDL = 0.002 mg/L). At an MCL option of 0.003 mg/L, EPA method 200.15 would not be approved.

F. Other Method-Related Items

1. The Use of Ultrasonic Nebulization with ICP–MS

In the September 3, 1998 Analytical Methods for Drinking Water Contaminants Proposed Rule (63 FR 47907; US EPA 1998d), EPA proposed the use of ultrasonic nebulization with EPA Method 200.7 (ICP–AES) and EPA Method 200.8 (ICP–MS). Because EPA Method 200.7 and SM 3120B will be withdraw for the analysis of arsenic in drinking water under the proposed MCL of 0.005 mg/L, ultrasonic nebulization as a modification would not be allowed.

Even with the modification of ultrasonic nebulization, the ICP–AES method is not capable of compliance monitoring for arsenic at the proposed MCL of 0.005 mg/L. EPA Method 200.8 (ICP–MS) would still be allowed for compliance monitoring at the proposed MCL of 0.005 mg/L. The use of ultrasonic nebulization can enhance transport efficiency and lower the detection limits for ICP–MS by approximately 5 to 10 fold. The final methods update rule was published in the **Federal Register** on December 1, 1999 (64 FR 67450; US EPA 1999j).

2. Performance-Based Measurement System

On October 6, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all of its programs to the extent feasible (62 FR 52098; US EPA, 1997e). EPA is currently determining how to adopt PBMS into its drinking water program, but has not yet made final decisions. When PBMS is adopted into the drinking water program, its intended purpose will be to increase flexibility in laboratories in selecting suitable analytical methods for compliance monitoring, significantly reducing the need for prior EPA approval of drinking water analytical methods. Under PBMS, EPA will modify the regulations that require exclusive use of Agency-approved methods for compliance monitoring of regulated contaminants in drinking water regulatory programs. EPA will probably specify ''performance standards'' for methods, which the Agency would derive from the existing approved methods and supporting documentation. A laboratory would be free to use any method or method variant for compliance monitoring that performed acceptably according to these criteria. EPA is currently evaluating which relevant performance characteristics under PBMS should be specified to ensure adequate data quality for drinking water compliance purposes. After PBMS is implemented, EPA may continue to approve and publish compliance methods for laboratories that choose not to use PBMS. After EPA makes final determinations about the implementation of PBMS in programs under the Safe Drinking Water Act, the Agency would then provide specific instruction on the specified performance criteria and how these criteria would be used by laboratories for compliance monitoring of SDWA analytes.

G. What Are the Estimated Costs of Analysis?

To obtain cost information on the analysis of arsenic in drinking water, the Agency collected price information from a random telephone survey of seven commercial laboratories, which were certified in drinking water analysis, and from price lists posted on the Internet (Analytical Methods Support Document, US EPA, 1999l). Table VI–2 summarizes the results of this survey, including the specific methodology and the associated cost range. The actual costs of performing an analysis may vary with laboratory, the analytical technique selected, and the total number of samples analyzed by a laboratory. The estimated cost range is only for the analysis of arsenic and does not include shipping and handling costs. The Agency solicits comments from the public on the cost estimates listed in Table VI–2.

TABLE VI–2.—ESTIMATED COSTS FOR THE ANALYSIS OF ARSENIC IN DRINKING WATER [1]

Methodology	Estimated cost range ($)
Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP–AES)	15 to 25.
Inductively Coupled Plasma Mass Spectroscopy (ICP–MS)	10 to 15.
Stabilized Temperature Platform Graphite Furnace Atomic Absorption (STP–GFAA)	15 to 50.
Graphite Furnace Atomic Absorption (GFAA)	15 to 50.
Gaseous Hydride Atomic Absorption (GHAA)	15 to 50.

[1] Analytical Methods Support Document (US EPA, 1999l).

H. What Is the Practical Quantitation Limit?

Method detection limits (MDLs) and practical quantitation levels (PQLs) are two performance measures used by EPA's drinking water program to estimate the limits of performance of analytic chemistry methods for measuring contaminants in drinking water. As cited in Table VI–1, EPA defines the MDL as ''the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (40 CFR part 136, appendix B).'' MDLs can be operator, method, laboratory, and matrix specific. MDLs are not necessarily reproducible within a laboratory or between laboratories on a daily basis due to the day-to-day analytical variability that can occur and the difficulty of measuring an analyte at very low concentrations. In an effort to integrate this analytical chemistry data into regulation development, EPA's OGWDW uses the PQL to estimate or evaluate the minimum, reliable quantitation level that most laboratories can be expected to meet during day-to-day operations. EPA's Drinking Water program defined the PQL as ''the lowest concentration of an analyte that can be reliably measured within specified limits of precision and accuracy during routine laboratory operating conditions (50 FR 46906, November 13, 1985).''

1. PQL Determination

A PQL is determined either through the use of interlaboratory studies or, in absence of sufficient information, through the use of a multiplier of 5 to 10 times the MDL. The inter-laboratory data is obtained from water supply (WS) performance evaluation (PE) studies that are conducted twice a year by EPA to certify drinking water laboratories (now referred to as the Performance Testing or PT program). In addition to certification of drinking water laboratories, WS studies also provide:

- Large-scale evaluation of analytical methods;
- A database for method validation;
- Demonstration of method utilization by a large number of laboratories; and
- Data for PQL determinations.

Using graphical or linear regression analysis of the WS data, the Agency sets a PQL at a concentration where at least 75% of the laboratories (generally EPA and State laboratories) could perform within an acceptable level of precision and accuracy. This method of deriving a PQL was used in the past for inorganics such as antimony, beryllium,

cyanide, nickel and thallium (57 FR 31776 at 31800; US EPA, 1992b).

2. PQL for Arsenic

In 1994, EPA derived a preliminary PQL for arsenic based on data collected by the Agency from WS studies 20 through 33 (WS 31 was excluded because the spiked samples were mixed incorrectly). In response to concerns from the water utility industry, the results of this derivation and a separate evaluation conducted by the American Water Works Association (AWWA) were reviewed by the EPA Science Advisory Board (SAB) in 1995. The SAB noted that the acceptance limits of + 40% used by EPA to derive the PQL in 1994 were wider than those for other SDWA metal contaminants. The acceptance limits and PQLs for several SDWA metals are shown in Table VI–3. The SAB recommended that EPA set the PQL using acceptance limits similar to those used for other inorganics.

TABLE VI–3.—ACCEPTANCE LIMITS AND PQLS FOR OTHER METALS (IN ORDER OF DECREASING PQL)

Contaminant	Acceptance limit [1] (percent)	PQL (mg/L) [2]
Barium	±15	0.15
Chromium	±15	0.01
Selenium	±20	0.01
Antimony	±30	0.006
Thallium	±30	0.002
Cadmium	±20	0.002
Beryllium	±15	0.001
Mercury	±30	0.0005

[1] Acceptance limits for the listed inorganics are found at CFR 141.23 (k) (3)(ii).
[2] The PQL for antimony, beryllium and thallium was published in 57 FR 31776 at 31801 (July 17, 1992; US EPA, 1992b). The PQL for barium, cadmium, chromium, mercury and selenium was published in 66 FR 3526 at 3459 (January 30, 1991; US EPA, 1991a).

Subsequent to SAB's recommendation, EPA derived a new PQL for arsenic (Analytical Methods Support Document, US EPA, 1999l). The process employed by the Agency to determine the new PQL utilized:

- Data from six voluntary, low-level (<0.006 mg/L of arsenic) WS studies;
- Acceptance limits similar to other low-level inorganics; and
- Linear regression analysis to determine the point at which 75% of EPA Regional and State laboratories fell within the chosen acceptance range.

The derivation of the PQL for arsenic was consistent with the process used to determine PQLs for other metal contaminants regulated under SDWA and took into consideration the recommendations from the SAB. Using acceptance limits of + 30% and linear regression analysis of WS studies 30 through 36 (excluding 31) yielded a PQL of 0.00258 mg/L. The Agency rounded up to derive a PQL for arsenic of 0.003 mg/L at the ± 30% acceptance limit. While the PQL represents a stringent target for laboratory performance, the Agency believes most laboratories, using appropriate quality assurance and quality control procedures, will achieve this level on a routine basis.

I. What Are the Sample Collection, Handling and Preservation Requirements for Arsenic?

The manner in which samples are collected, handled and preserved is critical to obtaining valid data. Specific sample collection, handling and preservation procedures for SDWA analytes are outlined in the ''Manual for the Certification of Laboratories Analyzing Drinking Water'' (US EPA, 1997a). For metals such as arsenic, the certification manual specifies the following:

- Nitric acid (HNO_3 at pH< 2) as the preservative;
- A maximum sample holding time of 6 months;
- And a sample size of 1 liter, collected in an appropriately cleaned plastic or glass container, is suggested.

Currently, arsenic does not have an entry for preservation, collection, and holding time. EPA is proposing in this rule, to revise the table following § 141.23(k)(2) to add ''arsenic, Conc. HNO_3 to pH < 2, P or G, and 6 months.'' EPA requests comment on the appropriateness of this revision.

While 40 CFR 141.23(a)(4) allows compositing of up to 5 samples from the same PWS, the detection limit required for compositing must be ⅕ of the MCL. Also, compositing for inorganic samples must be done in the laboratory. Samples should only be held if the laboratory detection limit is adequate for the number of samples being composited. In any case, the composite is not to exceed five samples. EPA is adding the test methods and detection limits for the approved arsenic analytical methods to the table following § 141.23(a)(4)(i).

J. Laboratory Certification

1. Background

The ultimate effectiveness of today's regulation depends upon the ability of laboratories to reliably analyze arsenic at the proposed MCL. The existing drinking water laboratory certification program (LCP), which was established by States with guidance and recommendations from EPA, requires that only certified laboratories analyze compliance samples. External checks of a laboratory's ability to analyze samples of regulated contaminants within specific limits is the one means of judging laboratory performance and determining whether or not to grant certification. Under a performance testing (PT) program (formerly known as the performance evaluation or PE program), laboratories are required to successfully analyze PT samples (contaminant concentrations are unknown to the laboratory being reviewed) that are prepared by appropriate third parties. Successful participation in a PT program is a prerequisite for a laboratory to achieve certification and to remain certified for analyzing drinking water compliance samples. Achieving acceptable performance in these studies of unknown test samples provides some indication that the laboratory is following proper practices. Unacceptable performance may be indicative of problems that could affect the reliability of the compliance monitoring data.

2. What Are the Performance Testing Criteria for Arsenic?

The Agency has historically identified acceptable performance using one of two different approaches:

(a) Regressions from the performance of preselected laboratories (using 95 percent confidence limits), or

(b) Specified accuracy requirements.

Acceptance limits based on specified accuracy requirements are developed from past PE study data. EPA has traditionally preferred to use the second (''true value'') approach because it is the better indicator of performance and provides laboratories with a fixed target. Under this approach, each laboratory demonstrates its ability to perform within pre-defined limits. Laboratory performance is evaluated using a constant ''yardstick'' independent of performance achieved by other laboratories participating in the same study. A fixed criterion based on a percent error around the ''true'' value reflects the experience obtained from numerous laboratories and includes relationships of the accuracy and precision of the measurement to the concentration of the analyte. It also assumes little or no bias in the analytical methods that may result in average reporting values different from the reference ''true'' value.

In today's rulemaking, the Agency is proposing that the laboratory certification criteria for arsenic be set at an acceptance limit of + 30 % at > 0.003 mg/L in § 141.23(k)(3)(ii). Analysis of water supply data indicate that laboratory capacity at this level should be sufficient for compliance monitoring. At this level, 75 % of EPA Regional and State laboratories and 62 % of non-EPA laboratories were capable of achieving acceptable results. As discussed in the Analytical Methods Support Document, (US EPA, 1999l), setting an acceptance limit of ±20% would have decreased laboratory capacity. EPA requests comment on setting the acceptance limit at the upper range of SAB's recommendation.

3. How Often is a Laboratory Required To Demonstrate Acceptable PT Performance?

EPA requires that a PT (PE) sample for chemical contaminants be successfully analyzed at least once a year using each method which is used to report compliance monitoring results. For arsenic this would require that the laboratory successfully analyze a PT (PE) sample using the method which is used to report the results for compliance monitoring. Additional guidance on the minimum quality assurance requirements, conditions of laboratory inspections and other elements of laboratory certification requirements for laboratories conducting compliance monitoring measurements are detailed in the Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance (US EPA, 1997a), which can be downloaded via the Internet at ''http://www.epa.gov/ogwdw000/certlab/labindex.html.''

4. Externalization of the PT Program (Formerly Known as the PE Program)

Due to resource limitations, on July 18, 1996 EPA proposed options for the externalization of the PT studies program (61 FR 37464; US EPA, 1996c). After evaluating public comment, in the June 12, 1997 final notice EPA (62 FR 32112; US EPA, 1997c):

''decided on a program where EPA would issue standards for the operation of the program, the National Institute of Standards and Technology (NIST) would develop standards for private sector PE (PT) suppliers and would evaluate and accredit PE suppliers, and the private sector would develop and manufacture PE (PT) materials and conduct PE (PT) studies. In addition, as part of the program, the PE (PT) providers would report the results of the studies to the study participants and to those organizations that have responsibility for administering programs supported by the studies.''

EPA has addressed this topic in public stakeholders meetings and in some recent publications, including the **Federal Register** notices mentioned in this paragraph. More information about laboratory certification and PT (PE) externalization can be accessed at the OGWDW laboratory certification website under the drinking water standards heading (www.epa.gov/safewater).

VII. Monitoring and Reporting Requirements

The currently applicable monitoring requirements for arsenic are different than the other inorganic contaminants (IOCs). First of all, arsenic's MCL and compliance requirements are found in § 141.11, instead of in § 141.62(b). Monitoring, compliance, and reporting requirements for arsenic are also different than the standardized monitoring framework for the grouped IOCs (which does not include radon). EPA is proposing to move arsenic to the standardized monitoring framework for IOCs (antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium), including the State reporting and compliance requirements. Table VII–1 presents a comparison of the existing and proposed arsenic requirements, in abbreviated form. For a full picture of the regulations, you must look at the regulatory language.

In addition, EPA is proposing to clarify the regulatory language for sampling to determine compliance for inorganics, volatiles and synthetic organic contaminants.

TABLE VII–1.—COMPARISON OF SAMPLING, MONITORING, AND REPORTING REQUIREMENTS

[This table is not complete for compliance purposes, but provides an overview for readers.]

Requirement	Current rule	Proposed rule
Compliance with § 141.11(a)	MCL only applies to CWS and compliance is calculated using § 141.23.	Would link compliance with 50 µg/L with § 141.23(l) and would not add NTNCWS.
Compliance with § 141.11(b)	MCL is 0.05 mg/L	MCL will remain 50 µg/L for CWS serving 10,000 or less until 5 years after publication of final rule, and be effective for larger systems 3 years after publication of final rule. New lower MCL in § 141.62. NTNCWS will be subject to sampling, monitoring and reporting 3 years after publication of final rule, but not subject to increased monitoring after exceedances, nor to MCL violations.
Monitoring frequency	Groundwater § 141.23(a)(1) One sample at each entry point to the distribution system (sampling point).	No change to § 141.23(a)(1).
	Surface water § 141.23(a)(2) One sample at every entry point to the distribution system (sampling point).	No change to § 141.23(a)(2).

TABLE VII–1.—COMPARISON OF SAMPLING, MONITORING, AND REPORTING REQUIREMENTS—Continued

[This table is not complete for compliance purposes, but provides an overview for readers.]

Requirement	Current rule	Proposed rule
Compositing inorganics	§ 141.23(a)(4) may composite up to 5 samples in the lab; detection limit <⅕ of the MCL.	Adding approved arsenic analytical methods and detection limits to the table following § 141.23(a)(4)(i).
Composite >⅕ MCL	§ 141.23(a)(4)(i) take follow-up samples within 14 days of each sampling point in the composite.	Same but § 141.23(a)(4)(i) table will list MCL and detection limits for arsenic.
Compositing by system size	§ 141.23(a)(4)(ii) State may permit compositing at sampling points within a system serving >3,300 people.	No change to § 141.23(a)(4)(ii).
	§ 141.23(a)(4)(ii) State may permit compositing among different systems, 5-sample limit, systems serving <3,300 people.	No change to § 141.23(a)(4)(ii).
Resampling composites	§ 141.23(a)(4)(iii) Can use duplicates of the original sample instead, must be analyzed and reported to State within 14 days of collection.	No change to § 141.23(a)(4)(iii).
Compliance with § 141.11 CWSs have same requirements, but arsenic monitoring would move from § 141.23(l) to § 141.23(c).	§ 141.23(l)(1) CWS surface water yearly	§ 141.23(c)(1) surface water one sample per compliance point annually.
	§ 141.23(l)(2) CWS ground water every three years..	§ 141.23(c)(1) groundwater one sample at each sampling point during each compliance period.
Monitoring waivers § 141.23(c)	None currently available for arsenic.	§ 141.23(c)(2) System may apply to the State.
		§ 141.23(c)(3)Must take at least one sample during waiver, which cannot exceed one compliance period (9 years).
Minimum data for waivers: Surface water Ground water All results <MCL. New water source needs three rounds of monitoring.		§ 141.23(c)(4) at least 3 years. At least 3 rounds of monitoring. At least one sample must be taken after January 1, 1990.
Once MCL exceeded sampling	§ 141.23(m) Supplier must report to State within 7 days and initiate three additional samples at the same sampling point within a month.	§ 141.23(c)(7) exceed MCL as calculated in (i), go to quarterly monitoring next quarter. § 141.31(d) within 10 days of giving public notice, contact primacy agency. § 141.203(b) Tier 2 public notice no later than 30 days after learning of violation and repeat every 3 months or at least once a year if allowed by primacy agency.
Compliance based on less than required number of samples.	Not currently specified.	§ 141.23(i)(1) for IOCs, § 141.24(f)(15)(i) for VOCs, and §§ 141.24(h)(11)(i) and (ii) for SOCs will average based on # samples collected.
Average that determines violation. State notice Public notice	§ 141.23(n) When the 4 analyses, rounded to the same number of significant figures as the MCL exceeds the MCL, supplier must notify the State § 141.31 and give notice to the public § 141.32. Monitoring frequency determined by the State must continue until < MCL in two consecutive samples or until a variance, exemption, or enforcement action schedule becomes effective.	§ 141.23(i)(5) arsenic will be reported to the nearest 0.001 mg/L. § 141.23(i)(1) monitoring > annually, running annual average at sampling point. If less samples taken than required, compliance is based on average of samples. Any sample below method detection limit is assigned zero for calculation.
Sampling frequency after MCL compliance monitoring begun.		§ 141.23(i)(2) monitoring annually or less often if sampling point > MCL.
Confirmation sample	None currently specified for arsenic	If State requires a confirmation sample, then compliance based on average of the two samples. If State specifies additional monitoring, compliance based on running annual average. If less samples taken than required, compliance is based on average of samples.
Increased monitoring frequency		§ 141.23(f)(1) State may require one within two weeks.
		§ 141.23(c)(8) State can decrease monitoring after a minimum of 2 quarters for ground water and 4 quarters for surface water <MCL.

TABLE VII–1.—COMPARISON OF SAMPLING, MONITORING, AND REPORTING REQUIREMENTS—Continued

[This table is not complete for compliance purposes, but provides an overview for readers.]

Requirement	Current rule	Proposed rule
		§ 141.23(f)(1) If >MCL, State can require a confirmation sample within two weeks. § 141.23(f)(3) Average used to determine compliance with (i). States can delete results with obvious sampling errors. § 141.23(g) State may require more frequent monitoring.
New system and new sources	Only mentions waiver eligibility in § 141.23(c)(4).	§ 141.23(c)(9) IOCs, § 141.24(f)(22) VOCs, § 141.24(h)(20 SOCs, Compliance demonstrated within State-specified time and sampling frequencies.
Subpart O Consumer Confidence Reports for CWS.	>50 µg/L annual report § 141.153(d)(6) length of violation, potential health effects using Appendix C, actions taken. 25–50 µg/L informational statement per § 141.154(b).	Lowers MCL & adds MCLG to Appendices A & B to Subpart O–effective 30 days after final arsenic rule is published, before compliance with lower MCL is in place.
Subpart Q Public Notification for PWS	>50 µg/L CWSs Tier 2 annual report § 141.203 required October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA) or on the date a primacy State adopts the new requirements (not to exceed May 6, 2002)..	§ 141.203(b) Tier 2 public notice no later than 30 days after learning of violation and repeat every 3 months or at least once a year if allowed by primacy agency.
		§ 141.31(d) within 10 days of giving public notice, contact primacy agency.
		>5 µg/L CWSs & add NTNCWS to Table 1 of § 141.203 to require Tier 2 annual report § 141.203 after effective date of arsenic MCL (3–5 yrs).

A. What Are the Existing Monitoring and Compliance Requirements?

The arsenic monitoring requirements appear in 40 CFR 141.23(a). Surface water systems must collect routine samples annually and ground water systems must collect a routine sample every three years. However, § 141.11(a) currently only requires community water systems (CWS) to monitor for arsenic. EPA understands that some States also require their non-transient non-community water systems (NTNCWS) to collect samples for the analysis of arsenic as well. Under the proposal, CWSs would continue to be allowed to composite samples as specified in § 141.23(a)(3); however, the one-fifth arsenic MCL will no longer be 10 µg/L (It will be 1 µg/L).

Sections 141.23(l) through (q) are currently used to determine compliance for arsenic. That is, if arsenic is detected at a concentration greater than the maximum contaminant level (MCL), the community water system must collect 3 additional samples within one month at the entry point to the distribution system that exceeded the MCL (§ 141.23(n)). If the average of the four analyses performed, rounded to one significant figure, exceeds the MCL, the system must notify the State; and the system must provide public notice (§ 141.23(n)). After public notification, the monitoring continues at the frequency designated by the State until the MCL ''has not been exceeded in two successive samples or until [the State establishes] a monitoring schedule as a condition to a variance, exemption or enforcement action (§ 141.23(n)).'' Monitoring waivers are not permitted to exclude a system from the sampling requirements under § 141.23(l)–(q) which currently apply to arsenic.

B. How Does the Agency Plan To Revise the Monitoring Requirements?

The Agency is proposing to require CWS and NTNCWSs to monitor for arsenic using § 141.23(c). This will make the arsenic monitoring requirements consistent with the inorganic contaminants (IOC's) regulated under the standardized monitoring framework. EPA is proposing that NTNCWSs monitor and report arsenic results to the State and public, as a Tier 2 notice in subpart Q, Public Notification. However, the Agency is proposing that NTNCWSs not be required to meet the MCL, unlike the other inorganics listed in § 141.62(b). EPA's analysis for not requiring NTNCWSs to comply with the MCL is based on the cost-benefit analysis discussed later in section XI.C. of this preamble.

If arsenic exceeds the MCL, the CWS will be triggered into quarterly monitoring for that sampling point ''in the next quarter after the violation occurred (§ 141.23(c)(7).'' The State may allow the system to return to the routine monitoring frequency when the State determines that the system is reliably and consistently below the MCL. However, the State cannot make a determination that the system is reliably and consistently below the MCL until a minimum of 2 consecutive ground water or 4 consecutive surface water samples have been collected (§ 141.23(c)(8)). All systems must comply with the sampling requirements, unless a waiver has been granted in writing by the State (§ 141.23(c)(6)).

As shown in Table VI–1, the approved methods can measure to 0.001 mg/L or below. In order to use the analytical power of the methods, EPA is proposing that arsenic data be reported to the nearest 0.001 mg/L. Therefore, a result of 0.0055 mg/L would be rounded to 0.006 mg/L, and 0.0145 mg/L would be rounded to 0.014 mg/L (Figures ending in ''5'' rounded down to end on an even digit and up to an even digit.). During the writing of this regulation, some people had asked whether data above 0.01 mg/L could be rounded to one significant figure because the MCL is being proposed with one significant figure. EPA is issuing a clarification to arsenic reporting in § 141.23(i) to indicate that arsenic results will be reported to the nearest 0.001 mg/L. The significance for compliance purposes will be that values between 0.010 mg/

L and 0.014 mg/L will be averaged to the nearest 0.001 mg/L, and the yearly average will more closely reflect the values measured. EPA requests comment on these clarifications to reporting requirements.

C. Can States Grant Monitoring Waivers?

As proposed, States will be able to grant a 9-year monitoring waiver to a system (§ 141.23(c)(3)). Waivers of arsenic sampling requirements must be based on all analytical results from previous sampling and a vulnerability assessment or the assessment from an approved source water assessment program (provided that the assessments were designed to collect all of the necessary information needed to complete a vulnerability assessment for a waiver). States issuing waivers must consider the requirements in 40 CFR 141.23(c)(2)–(6). In order to qualify for a waiver, there must be three previous samples from a sampling point (annual for surface water and three rounds for groundwater) with analytical results reported below the proposed MCL (*i.e.,* the reporting limit must be < 0.005 mg/L). The use of grandfathered data collected after January 1, 1990 that is consistent with the analytical methodology and detection limits of the proposed regulation may be used for issuing sampling point waivers. The existing § 141.23(l)–(q) regulations do not permit the use of monitoring waivers. However, a State could now use the analytical results from the three previous compliance periods (1993–1995, 1996–1998, and 1999–2001) to issue ground water sampling point waivers. Surface water systems must collect annual samples so a State could use the previous 3 years sampling data (1999, 2000, and 2001) to issue sampling point waivers. One sample must be collected during the nine-year compliance cycle that the waiver is effective, and the waiver must be renewed every nine years. Vulnerability assessments must be based on a determination that the water system is not susceptible to contamination and arsenic is not a result of human activity (*i.e.,* it is naturally occurring).

Although the approved analytical methods can measure to 0.005 mg/L, not all States have required systems to report arsenic results below 50 μg/L. In this case, the States would not have adequate data to grant waivers until enough data are available to make the determinations. EPA has compliance monitoring data from 25 States at 10 μg/L and below. On the other hand, one State submitted data to EPA rounded to tens of μg/L, so some States may not be able to grant waivers until the data are reported below the proposed MCL.

EPA believes that some States may have been regulating arsenic under the standardized inorganic framework being proposed today. If so, those States will have to ensure that existing monitoring waivers have been granted using data reported below the new proposed MCL. Otherwise States will have to notify the systems of the new lower reporting requirements that need to be met to qualify for a waiver for the proposed MCL.

D. How Can I Determine if I Have an MCL Violation?

For this proposal, violations of the arsenic MCL would be determined under § 141.23(f)–(i). If a system samples more frequently than annually (*e.g.,* quarterly), the system would be in violation if the running annual average at any sampling point exceeds the MCL or if any one sample would cause the annual average to be exceeded (§ 141.23(i)(1)). If a system conducts sampling at an annual or less frequent basis, the system would be in violation if one sample (or the average of the initial and State-required confirmation sample(s)), at any sampling point exceeds the MCL (§ 141.23(i)(2). However, States can require more frequent monitoring per § 141.23(g) for systems sampling annually or less often. Therefore, the Agency is proposing to clarify this section for situations for IOCs in § 141.23(i)(2)) and the corresponding sections for volatile and synthetic organic contaminants (§§ 141.24(f)(15)(ii) and 141.24(h)(11)(ii), respectively. This proposal clarifies compliance for contaminants subject to §§ 141.23(i)(2)), 141.24(f)(15)(ii), and 141.24(h)(11)(ii) by pointing out that compliance will be based on the running annual average of the initial MCL exceedance and subsequent State-required confirmation samples. These confirmation samples may be required at State-specified frequencies (*e.g.,* quarterly or some other frequency depending on site-specific conditions).

In addition, the clarifications to §§ 141.23(i)(2)), (141.24(f)(15)(ii) and 141.24(h)(11)(ii) address calculation of compliance when a system fails to collect the required number of samples. Compliance (determined by the average concentration) would be based on the total number of samples collected. The Agency expects systems will conduct all required monitoring. However, some systems have purposely not collected the required number of quarterly samples, and in doing so some avoided reporting an MCL violation. While these systems all incurred monitoring and reporting violations for the uncollected samples, some systems divided the sum of the samples taken by four, which lowered the annual average reported to below the MCL, avoiding an MCL violation. The Agency requests comment on this clarification of exceedances determined under a State-determined monitoring frequency.

For purposes of calculating MCL annual averages, § 141.23(i)(1) continues to set all non-detects equal to a value of zero. However, the Agency realizes that some States use the detection limit or a fraction of the detection limit to calculate an average.

E. When Will Systems Have To Complete Initial Monitoring?

The rule becomes effective 3 years after promulgation (about January 1, 2004) for large PWS (serving over 10,000). This will require all GW and SW systems serving over 10,000 to complete the initial round of monitoring by December 31, 2004. However, States may allow systems, on a case-by-case basis, 2 additional years to comply with the MCL if capital improvements are necessary.

The Agency is proposing a national finding that capital improvements are necessary for public water systems serving less than 10,000, on the basis that existing treatments are not expected to be effective in arsenic removal. Table VII–2 shows the percentage of small systems with no treatment in place as well as the percentage of systems which currently have in place technologies that can remove arsenic. The data shows that capital improvements would be necessary for many systems. The rule would be effective 5 years after promulgation (about January 1, 2006) for systems serving under 10,000. This would require these small GW systems to complete the initial round of monitoring by the December 31, 2007 ('05–'07 compliance period), and small SW systems to complete the initial round of monitoring by December 31, 2006. EPA is requesting comment on whether it is appropriate to make a national finding that systems serving less than 10,000 people will need the two additional years to add capital improvements in order to comply with the proposed MCL. The alternative would require States to issue individual two-year extensions for these small systems.

TABLE VII–2.—TREATMENT IN-PLACE AT SMALL WATER SYSTEMS (US EPA, 1999E AND US EPA, 1999M)

System size	Percent of systems with no treatment in place		Percent of systems with ion exchange in place		Percent of systems with coagulation/filtration in place		Percent of systems with lime softening in place		Percent of systems with reverse osmosis in place	
	GW	SW	GW	SW	GW	SW	GW	SW	GW	SW
25–100	50	7	1.7	0	1.7	21.7	2.6	4.3	0	0
101–500	25	6	1.4	0	4.1	53.3	2.7	8.9	0.5	0
501–1K	25	0	2.9	0	2.4	73.0	2.4	18.9	0	0
1K–3.3K	27	0	1.6	0	2.7	76.4	2.7	16.4	0.4	0
3.3K–10K	26	0	2.1	0	8.1	85.3	3.3	7.4	0.6	0

References: Geometries and Characteristics of Public Water Systems, August 1999, (US EPA, 1999e) Drinking Water Baseline Handbook, February 24,1999, (US EPA, 1999m)

The regulatory changes affected by the revised arsenic MCL are summarized in Table VII–3.

TABLE VII–3.—TABLE IDENTIFYING REGULATORY CHANGES

CFR citation	Topic or subpart
§ 141.23(a)(4)	Sample compositing allowed by the State.
141.23(a)(4)(i)	Detection limit for arsenic.
141.23(a)(5)	Frequency of monitoring for arsenic determined in § 141.23(c).
141.23(c)	Standard inorganic monitoring framework, with State waivers possible.
141.23(f)(1)	Confirmation sampling may be required by the State.
141.23(g)	More frequent monitoring may be required by the State.
141.23(i)(5)	Compliance determination reporting.
141.23(k)(1)	Approved methodology.
141.23(k)(2)	Container, preservation, and holding time.
141.23(k)(3)(ii)	Acceptance limit for certified laboratories.
141.62(b)(16)	MCL for arsenic.
141.62(c)	BATs for arsenic.
141.26(d)	Small system compliance technologies (SSCTs).
141.154(b)	Requires CWS to report exceedances of new MCL in CCR before lower MCL is effective, removing 25–50 μg/L informational statement requirement.
Appendix A to Subpart O of 141.	Converting lower MCL compliance values for CCRs and listing MCLG.
Appendix B to Subpart O of 141.	Changes MCLG and MCL values effective 30 days after MCL is final.
PN, Subpart Q, Table 1 to § 141.203.	Add NTNCWS exceeding MCL (not a violation) to Tier 2 reporting.
Appendix A to Subpart Q of 141.	Public notification regulatory citations revised.
Appendix B to Subpart Q of 141.	Standard Health Effects Language unchanged; revise MCLG, MCL.

In order to prevent the arsenic MCL of 5 μg/L from becoming effective immediately, EPA is proposing to delete the reference to § 141.11(a) in § 141.6(c), which provides effective dates. While examining § 141.6(c) for sections that affect arsenic, we found several sections that do not exist. Therefore, EPA is proposing to remove the reference to the following sections in § 141.6(c) listed in Table VII–4:

TABLE VII–4.—TABLE LISTING DELETED SECTIONS

CFR section	Topic or reason
141.11(a)	New arsenic MCL would be effective immediately.
141.11(e)	Section 141.11(e) does not exist

TABLE VII–4.—TABLE LISTING DELETED SECTIONS—Continued

CFR section	Topic or reason
141.14(a)(1)	Section 141.14 does not exist.
141.14(b)(1)(i)	Section 141.14 does not exist.
141.14(b)(2)(i)	Section 141.14 does not exist.
141.14(d)	Section 141.14 does not exist.
141.24(a)(3)	Section 141.24(a) is reserved.

The Agency requests comment on whether these deletions to § 141.6(c) are necessary and appropriate.

F. Can I use Grandfathered Data To Satisfy the Initial Monitoring Requirement?

Ground water systems may use grandfathered data collected after Jan 1, 2002 to satisfy the sampling requirements for the 2002—2004 compliance period. However, the detection limit must be less than the revised MCL. If the grandfathered data is used to comply with the 2002–2004 compliance period and the analytical result is between the current MCL and the revised MCL, then that system will be in violation of the revised MCL on the effective date of the rule. If the system chooses not to use the grandfathered data, then it must collect another sample by December 31, 2004 to demonstrate compliance with the revised MCL.

G. What Are the Monitoring Requirements for New Systems and Sources?

The current regulations only address new systems and sources in the waiver provisions of § 141.23(c)(4), so the proposal specifically adds monitoring requirements for these systems for inorganic, volatile organic, and synthetic organics contaminants. All new systems or systems that use a new source of water that begin operation after the effective date of this rule would have to demonstrate compliance with the MCL within a period of time specified by the State. The State would also specify sampling frequencies to ensure a system can demonstrate compliance with the MCL. This requirement would be effective for all inorganic, volatile organic, and synthetic organic contaminants regulated in § 141.23 and § 141.24. The Agency recognizes that many States have established requirements for new systems and new sources, and these are part of the approved State primacy programs. Therefore EPA believes that recognizing State-determined compliance will be the most effective way to regulate new systems and sources. EPA requests comment on this proposed clarification.

H. How Does the Consumer Confidence Report Change?

On August 19, 1998, EPA issued subpart O, the final rule requiring community water systems to provide annual reports on the quality of water delivered to their customers (63 FR 44512; US EPA, 1998e). The first Consumer Confidence Reports (CCRs) were required by October 19, 1999. The next reports are due by July 1, 2000, for calendar year 1999 data and every July 1 after that (§ 141.152(a)). In general, reports must include information on the health effects of contaminants only if there has been a violation of an MCL or a treatment technique. For such violations specific ''health effects language'' in subpart O must be included verbatim in the report. The arsenic health effects language is currently required when arsenic levels exceed 50 μg/L.

In addition, the Agency decided to require more information for certain contaminants because of concerns raised by commenters. One of these contaminants was arsenic. As explained in the preamble to the final rule (63 FR 44512 at 44514; US EPA, 1998e) because of concerns about the adequacy of the current MCL, EPA decided that systems that detect arsenic between 0.025mg/L and the current MCL must include some information regarding arsenic (§ 141.154(b)). This informational statement is different from the health effects language required for an exceedance of the MCL. EPA noted that the requirement would be deleted upon promulgation of a revised MCL.

Another issue which affects handling of arsenic in the CCR is the provision in the statute which authorized the Administrator to require inclusion of language describing health concerns for ''not more than three regulated contaminants'' other than those detected at levels which constitute a violation of an MCL (section 1414(c)(4)(B)(vi)). Based on stakeholder and commenter input, the Agency decided in the final CCR rule that it would use this authority in future rulemaking to require health effects language when certain MCLs are promulgated or revised. The health effects language of Subpart O would have to be included in reports of systems detecting a contaminant above the level of the new or revised MCL, prior to the effective date of the MCL, although technically the systems are not in violation of the regulations. The Agency used this authority in the promulgation of the Disinfectants and Disinfection Byproducts for one contaminant, Total Trihalomethanes on December 16, 1998 (63 FR 69390). The Agency is now proposing to use this same authority to require inclusion of the health effects language in reports of systems which detect arsenic above the level of the revised MCL upon promulgation of these regulations. The Agency believes that it is important to provide this information to customers immediately. The systems have the flexibility to place this information in context and explain to customers that there is no on-going violation. Furthermore, the health advisory EPA is planning to issue in the near future will provide consumers with information about obtaining sources with lower arsenic prior to the effective date of the 5 μg/L arsenic MCL. EPA asks for comment on whether the consumer confidence report should notify customers of arsenic health effects starting with the report issued by July 1, 2002 for calendar year 2001.

After the promulgation date of the revised arsenic MCL and before the effective date, community water systems that detect arsenic above 5 μg/L but below 50 μg/L would include the arsenic health effects language. Those systems that detect arsenic above 50 μg/L would include the health effects language and also report violations as required by § 141.153(d)(6).

I. How Will Public Notification Change?

On May 4, 2000, EPA issued the final Public Notification Rule (PNR) for Subpart Q (US EPA 2000c) to revise the minimum requirements public water systems must meet for public notification of violations of EPA's drinking water standards and other situations that pose a risk to public health from the drinking water. Water systems must begin to comply with the new PNR regulations on October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA) or on the date a primacy State adopts the new requirements (not to exceed May 6, 2002). EPA's arsenic drinking water regulation affects public notification requirements and amends the PNR as part of its rulemaking.

The PNR divides the public notice requirements into three tiers, based on the seriousness of the violation or situation. Tier 1 is for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. Notice is required within 24 hours of the violation. Tier 2 is for other violations and situations with potential to have serious adverse effects on human health. Notice is required within 30 days, with extensions up to three months at the discretion of the State or primacy agency. Tier 3 is for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2. Notice is required within 12 months of the violation, and may be included in the consumer confidence report at the option of the water system.

Today's proposal will require community water systems (CWS) to provide a Tier 2 public notice for arsenic MCL violations and to provide a tier 3 public notice for violations of the monitoring and testing procedure requirements. Today's proposal would also require NTNCWS to provide a Tier 2 notice for exceedances of the MCL. As later explained in section XI.C., the Agency believes that overall risks from water ingested from NTNCWS cannot justify the costs of treatment. EPA believes that most States will, using their authority as described in § 141.203(b), require NTNCWS to issue repeat notices on a yearly basis rather than every three months. EPA requests comment on the implementation of arsenic public notification requirements by the effective date of the arsenic MCL and on the Tier 2 public notice requirement for quarterly repeat notices for continuing exceedances of the arsenic MCL for NTNCWS.

VIII. Treatment Technologies

Section 1412(b)(4)(E) of the Safe Drinking Water Act states that each NPDWR which establishes an MCL shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting the MCL. Technologies are judged to be a best available technology (BAT) when the following criteria are satisfactorily met:

- The capability of a high removal efficiency;
- A history of full scale operation;
- General geographic applicability;
- Reasonable cost;
- Reasonable service life;
- Compatibility with other water treatment processes; and
- The ability to bring all of the water in a system into compliance.

In order to fulfill this requirement set forth by SDWA, EPA has identified BATs in Section VIII.A. Their removal efficiencies and a brief discussion of the major issues surrounding the usage of each technology are also given in section VIII.A. Likely treatment trains, of which the BAT will be the integral part, are identified in section VIII. B. The costs associated with these treatment trains are also provided. More details about the treatment technologies and costs can be found in ''Technologies and Costs for the Removal of Arsenic From Drinking Water'' (US EPA,1999i).

Section 1412(b)(4)(E)(ii) of the Act also states that EPA shall list any affordable small systems compliance technologies that are feasible for the purposes of meeting the MCL. The general process by which EPA identifies compliance, and if necessary, variance technologies is described in section VIII.C. The Agency, for the revised arsenic regulation, is not proposing any variance technologies. Compliance technologies for arsenic are identified in section VIII.E. More details about the technologies and affordability determinations can be found in ''Compliance Technologies for Arsenic'' (US EPA,1999g).

Section VIII.F briefly discusses how other rules, presently being developed by the Agency, may impact the arsenic rule, or how the arsenic rule may impact these other regulations.

A. What Are the Best Available Technologies (BATs) for Arsenic? What Are the Issues Associated With These Technologies?

EPA reviewed several technologies as BAT candidates for arsenic removal: ion exchange, activated alumina, reverse osmosis, nanofiltration, electrodialysis reversal, coagulation assisted microfiltration, modified coagulation/filtration, modified lime softening, greensand filtration, conventional iron and manganese removal, and several emerging technologies. The Agency proposes that, of the technologies capable of removing arsenic from source water, only the technologies in Table VIII–1 fulfill the requirements of the SDWA for BAT determinations for arsenic. The maximum percent removal that can be reasonably obtained from these technologies is also shown in the table. These removal efficiencies are for arsenic (V) removal.

TABLE VIII–1.—BEST AVAILABLE TECHNOLOGIES AND REMOVAL RATES

Treatment technology	Maximum percent removal [1]
Ion Exchange	95
Activated Alumina	90
Reverse Osmosis	>95
Modified Coagulation/Filtration	95
Modified Lime Softening	80
Electrodialysis Reversal	85

[1] The percent removal figures are for arsenic (V) removal.

In water, the most common valence states of arsenic are As (V), or arsenate, and As (III), or arsenite. As (V) is more prevalent in aerobic surface waters and As (III) is more likely to occur in anaerobic ground waters. In the pH range of 4 to 10, As (V) species ($H_2AsO_4^-$ and $H_2AsO_4^{2-}$) are negatively charged, and the predominant As (III) compound (H_3AsO_3) is neutral in charge. Removal efficiencies for As (V) are much better than removal of As (III) by any of the technologies evaluated, because the arsenate species carry a negative charge and arsenite is neutral under these pH conditions. To increase the removal efficiency when As (III) is present, pre-oxidation to the As (V) species is necessary.

Pre-oxidation. As (III) may be converted through pre-oxidation to As (V) using one of several oxidants. Data on oxidants indicate that chlorine, potassium permanganate, and ozone are effective in oxidizing As (III) to As (V). Pre-oxidation with chlorine may create undesirable concentrations of disinfection by-products and membrane fouling of subsequent treatments such as reverse osmosis. EPA has completed research on the chemical oxidants for As (III) conversion, and is presently investigating ultraviolet light disinfection technology (UV) and solid oxidizing media. For point-of-use and point-of-entry (POU/POE) devices, central chlorination may be required for oxidation of As (III).

Coagulation/Filtration (C/F) is an effective treatment process for removal of As (V) according to laboratory and pilot-plant tests. The type of coagulant and dosage used affects the efficiency of the process. Within either high or low pH ranges, the efficiency of C/F is significantly reduced. Below a pH of approximately 7, removals with alum or ferric sulfate/chloride are similar. Above a pH of 7, removals with alum decrease dramatically (at a pH of 7.8, alum removal efficiency is about 40%). Other coagulants are also less effective than ferric sulfate/chloride. Disposal of the arsenic-contaminated coagulation sludge may be a concern especially if nearby landfills are unwilling to accept such a sludge.

Lime Softening (LS), operated within the optimum pH range of greater than 10.5 is likely to provide a high percentage of As removal. However, if removals greater than 80% are required, it may be difficult to remove consistently at that level by LS alone. Systems using LS may require secondary treatment to meet that goal (*e.g.,* addition of an ion exchange unit as a polishing step). As with C/F, disposal of arsenic-contaminated sludge from LS may be an issue.

Coagulation/Filtration and Lime Softening are technologies primarily used for large systems. Package plants may make it more affordable for small systems to employ these technologies. Package plants are pre-engineered (*i.e.,* the process engineering for the package plants has been done by the manufacturer). What remains for the water system's engineer to design is the specifics of the on-site application of the equipment. However, these technologies still require well trained operators. If it is not possible to keep a trained operator at the plant, an off-site contract operator may be able to monitor the process with a telemetry device. Because of these complexities, these technologies are not likely to be installed solely for arsenic removal. However, if they are already in place, modification of these two technologies to achieve higher arsenic removal efficiencies is a viable option.

Activated Alumina (AA) is effective in treating water with high total dissolved solids (TDS). However, the capacity of activated alumina to remove arsenic is very pH sensitive. High removals can be achieved at high pHs, but at shorter run lengths. The use of chemicals for pH adjustment and bed regeneration, storage of sulfuric acid and sodium hydroxide, and process oversight increase operator responsibilities and the need for advanced training. (Decisions on the certification of water operators will be

made at the State and local levels). Operators may have to add an acid to lower pH to an optimal range and then afterwards increase the pH to avoid corrosion. Sodium hydroxide and sulfuric acid are required in the regeneration process. Selenium, fluoride, chloride, sulfate, and silica, if present at high levels, may compete for adsorption sites. Suspended solids and precipitated iron can cause clogging of the AA bed. Systems containing high levels of these constituents may require pretreatment or periodic backwashing. AA is highly selective towards As (V), and this strong attraction results in regeneration problems, possibly resulting in 5 to 10 percent loss of adsorptive capacity after each run. As a result, AA may not be efficient in the long term. In addition, activated alumina produces highly concentrated waste streams, which can contain approximately 30,000 mg/L of total dissolved solids (TDS) content. Because of the high content of TDS in the waste stream, disposal of the brine must be taken into consideration.

The safety issue of handling corrosive and caustic chemicals associated with this technology may make it inappropriate for small systems. Therefore, in estimating national costs, it was assumed that small systems would not adjust pH and would not regenerate on site. Costs were estimated assuming systems operated a non-optimal pH and operation on a ''throw-away'' basis. Regenerating the media off-site instead of disposing of spent media is another possibility.

Ion Exchange (IX) can effectively remove arsenic as well. It is recommended as a BAT primarily for small, ground water systems with low sulfate and TDS, and as a polishing step after filtration. Sulfate, TDS, selenium, fluoride, and nitrate compete with arsenic for binding sites and can affect run length. Column bed regeneration frequency is a key factor in calculating costs. Recent research indicates that ion exchange may be practical up to approximately 120 mg/L of sulfate (Clifford 1994). Passage through a series of columns could improve removal and decrease regeneration frequency. As with AA, suspended solids and precipitated iron can cause clogging of the IX bed. Systems containing high levels of these constituents may require pretreatment. Suspended solids and precipitated iron may also be removed by backwashing.

Ion exchange also produces a highly concentrated waste by-product stream, and the disposal of this brine must be considered. Brine recycling can reduce the amount of waste for disposal and lower the cost of operation. Recent research showed that the brine regeneration solution could be reused as many as 20 times with no impact on arsenic removal provided that some salt was added to the solution to provide adequate chloride levels for regeneration (Clifford 1998).

Reverse Osmosis (RO) can provide removal efficiencies of greater than 95 percent when operating pressure is ideal (*e.g.,* pounds per square inch, psi). Water rejection (on the order of 20–25%) may be an issue in water-scarce regions. If RO is used by small systems in the western U. S., water recovery will likely need to be optimized due to the scarcity of water resources. Water recovery is the volume of water produced by the process divided by the influent stream (product water/influent stream). Increased water recovery can lead to increased costs for arsenic removal. Since the ability to blend with an MCL of 5 μg/L would be limited, the entire stream may have to be treated. Therefore, most of the alkalinity and hardness would also be removed. In that case, to avoid corrosion problems and to restore minerals to the water, post-treatment corrosion control may be necessary. Discharge of reject water or brine may also be a concern.

Electrodialysis Reversal (EDR) can produce effluent water quality comparable to reverse osmosis. EDR systems are fully automated, require little operator attention, and do not require chemical addition. EDR systems, however, are typically more expensive than nanofiltration and reverse osmosis systems. These systems are often used in treating brackish water to make it suitable for drinking. This technology has also been applied in the industry for wastewater recovery. The technology typically operates at a recovery of 70 to 80 percent. Few studies have been conducted to exclusively evaluate this process for the removal of arsenic, but a removal of approximately 85% can be expected (US EPA, 1999i).

Other Technologies

Coagulation Assisted Microfiltration. The coagulation process described previously can be linked with microfiltration to remove arsenic. The microfiltration step essentially takes the place of a conventional gravity filter. The University of Houston recently completed pilot studies at Albuquerque, New Mexico on iron coagulation followed by a direct microfiltration system. The results of this study indicated that iron coagulation followed by microfiltration is capable of removing arsenic (V) from water to yield concentrations which are consistently below 2 μg/L. Critical operating parameters are iron dose, mixing energy, detention time, and pH (Clifford, 1997). However, since a full-scale operation history is one of the requirements to list a technology as a BAT, it is not presently being listed as one. It could be designated as such in the future if the technology meets that requirement.

Oxidation/Filtration (including greensand filtration) has an advantage in that there is not as much competition with other ions. However, the process has not been used very much for arsenic removal. In addition, similar to activated alumina, greensand filtration may require pH adjustment to optimize removal, which may be difficult for small systems. This technology is not recommended for high removals. The maximum removal percentage was assumed to be 50% when estimating national costs. The presence of iron in the source water is critical for arsenic removal. If the source water does not contain iron, oxidizing and filtering the water will not remove arsenic. In developing national cost estimates, it was assumed that systems would opt for this type of technology only if more than 300 μg/L of iron was present. Oxidation/Filtration is not being listed as a BAT because it does not meet the requirement of a high removal efficiency. However, since it is a relatively inexpensive technology, it may be appropriate for those systems that do not require much arsenic removal and have high iron in their source water.

Emerging Technologies

There are several emerging technologies for arsenic removal; however, these require more testing before they can be designated as a BAT. Iron-based media products include the following. Iron oxide coated sand removes arsenic using adsorption; the sand also doubles as a filtration media. The technology has only been tested at the bench-scale level and may have a high cost associated with it. Granular ferric hydroxide also employs an adsorption process and is being used in a number of full scale plants in Germany. Costs may be an issue with this technology as well. Iron filings are essentially a filter technology, initially developed for arsenic remediation. Though quite effective at remediation, this technology may have limited use as a drinking water treatment technology; the technology performs well when treating high influent arsenic levels typical of remediation, but needs to be proven in treating lower influent levels expected in raw drinking water to a finished level at the proposed MCL.

Sulfur-modified iron appears to remove total organic carbon (TOC) and disinfection byproducts (DBPs) as well as arsenic. However, it has only been tested at the bench scale. ADI Group, Inc.''s proprietary process also has an iron-based media that has been installed in a number of locations.

Nanofiltration is of interest because it can be operated at lower pressures than reverse osmosis, which translate into lower operation and maintenance costs. However, when nanofiltration is operated at realistic recoveries, the removal efficiency appears to be low.

Electrodialysis Reversal (EDR), although easier to operate than reverse osmosis and nanofiltration, does not appear to be competitive with respect to costs and process efficiency.

Waste Disposal

Waste disposal will be an important issue for both large and small plants. Costs for waste disposal have been added to the costs of the treatment technologies (in addition to any pre-oxidation and corrosion control costs), and form part of the treatment trains that are listed in Section VIII.B. A sufficient volume of receiving water would be needed in order to directly discharge the contaminated brine stream from membrane technologies. Otherwise, operators may have to pre-treat to meet Clean Water Act permit requirements prior to discharge. If the plant is discharging to a sanitary sewer because of the membranes, there may be a very high salinity in the discharge as well as high levels of arsenic that might, without pretreatment, exceed local sewer use regulations. Ion exchange and activated alumina treatment brines will be even more concentrated (on the order of 30,000 TDS), and more than likely will require pre-treatment prior to discharge to either a receiving body of water or the sanitary sewer.

Disposal of solid treatment residuals would be problematic if they fail the toxicity characteristic (TC) of the Resource Conservation and Recovery Act (RCRA). If they fail the TC, the residuals are regulated as hazardous waste because of the concentration of arsenic. For the purposes of the national cost estimate, it was assumed that solid residuals would be disposed of at nonhazardous landfills.

B. What Are the Likely Treatment Trains? How Much Will They Cost?

Likely treatment trains are shown in Table VIII–2. These trains represent a wide variety of solutions a facility may consider when complying with the proposed arsenic MCL. Not all solutions may be viable for a given system. For example, only those systems with coagulation/filtration in-place will be able to modify their existing treatment system. The treatment trains include BATs, waste disposal, and when necessary, pre-oxidation and corrosion control.

Table VIII–2 also contains two ''non-treatment'' options which may be appropriate if the source water is of very poor quality. ''Regionalization'' refers to connecting with another system and purchasing water, and ''alternate source'' refers to finding a new source of water (*e.g.* drilling a new well). However, since arsenic is a naturally occurring contaminant, it may be ubiquitous at a particular site, so drilling another well may not improve the situation.

TABLE VIII–2.—TREATMENT TECHNOLOGY TRAINS

Train No.	Treatment technology trains
1	Regionalization.
2	Alternate Source.
3	Add pre-oxidation [if not in-place] and modify in-place Lime Softening.
4	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration.
5	Add pre-oxidation [if not in-pace] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
6	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
7	Add pre-oxidation [if not in-place] and add Anion Exchange and add evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
8	Add pre-oxidation [if not in-place] and add Anion Exchange and evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH at 7.
10	Add pre-oxidation [if not in-pace] and add Reverse Osmosis and add direct discharge waste disposal and add corrosion control [if >90% removal required].
11	Add pre-oxidation [if not in-place] and add Reverse Osmosis and add POTW waste disposal and add corrosion control [if >90% removal required].
12	Add pre-oxidation [if not in-place] and add Reverse Osmosis and add chemical precipitation/non-hazardous landfill and add corrosion control [if >90% removal required].
13	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration and add mechanical dewatering/non-hazardous landfill waste disposal.
14	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration and add non-mechanical dewatering/non-hazardous landfill waste disposal.
15	Add pre-oxidation [if not in-place] and add Oxidation/Filtration (Greensand) and add POTW for backwash stream.
16	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
17	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
18	Add pre-oxidation [if not in-place] and add Activated Alumina and add POTW/non-hazardous landfill waste disposal. pH at 7.
19	Add pre-oxidation [if not in-place] and add POE Activated Alumina.
20	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
21	Add pre-oxidation [if not in-place] and add POU Activated Alumina.

Costs for each of these treatment trains are given in Table VIII–3. These costs are a function of system size. Some individual systems may experience household costs higher than those estimated in this table. The pre-oxidation costs and corrosion control costs are given separately for each system size category because they will only be incurred by some of the systems. In estimating national costs, it was assumed that only systems without pre-oxidation in-place would add the necessary equipment. It is expected that no surface water systems will need to install pre-oxidation for arsenic removal. Based on Table IX–4, it is expected that fewer than 50% of the ground water systems may need to install pre-oxidation for arsenic removal. Ground water systems without pre-oxidation should determine if pre-oxidation is necessary by determining if the arsenic is present as As (III) or As (V). Groundwater systems with predominantly As (V) will probably not need pre-oxidation to meet the MCL. Similarly, costs for corrosion control were only added to systems that used ion exchange or reverse osmosis to remove more than 90% of the arsenic in the raw water. It is expected that fewer than 1% of the affected systems will need to install corrosion control due to installation of arsenic treatment. For ion exchange, different treatment trains were used for two levels of sulfate. As sulfate affects regeneration frequency, the high sulfate treatment train is more expensive than the low sulfate treatment train.

TABLE VIII–3.—ANNUAL COSTS OF TREATMENT TRAINS (PER HOUSEHOLD)*

Treatment train	Size							
	25–100 (dollars)	101–500 (dollars)	501–1000 (dollars)	1001–3300 (dollars)	3301–10K (dollars)	10K–50K (dollars)	50K–100K (dollars)	100K–1M (dollars)
1	$ 1347	$ 202	$ 77	$ 25	$ 8	$ 2	$ 1	$ 0
2	96	14	5	2	1	0	0	0
3	750	138	70	40	30	26	22	18
4	462	82	40	22	49	60	38	18
5	519	146	90	106	73	55	44	39
6	883	248	160	160	78	60	49	44
7	629	226	153	154	108	84	71	58
8	1227	469	333	290	197	165	135	88
9	384	227	201	182	168	152	144	143
10	2136	800	555	429	300	256	225	206
11	2136	800	555	429	300	256	225	206
12	2819	892	572	409	293	237	204	186
13	1282	293	195	125	72	50	32	18
14	1218	281	187	117	80	54	35	21
15	558	156	102	72	55	42	37	31
16	1008	222	121	128	86	58	46	40
17	1050	246	115	114	96	66	52	45
18	427	243	212	192	177	161	153	152
19	467	427	408	388	367	342	327	298
20	325	289	272	254	236	214	202	178
21	377	334	314	292	271	245	230	202
pre-ox**	416	66	26	9	4	2	1	1
corros**	63	17	11	6	5	3	3	3

*These costs are based on a discount rate of 7%.
**The costs for treatment trains 1–21 do not include pre-oxidation or corrosion control costs. For systems that need to add pre-oxidation or corrosion control, the costs for these additional treatments should be added to those of the trains shown in the table.

C. How Are Variance and Compliance Technologies Identified for Small Systems?

Section 1415(e)(1) of SDWA allows States to grant variances to small water systems (*i.e.,* systems having fewer than 10,000 customers) in lieu of complying with an MCL if EPA determines that there are no nationally affordable compliance technologies for that system size/water quality combination. The system must then install an EPA-listed variance treatment technology (section 1412(b)(15)) that makes progress toward the MCL, if not necessarily reaching it. To list variance technologies, three showings must be made:

(1) EPA must determine, on a national level, that there are no compliance technologies that are affordable for the given small system size category/source water quality combination.

(2) If there is no nationally affordable compliance technology, then EPA must identify a variance technology that may not reach the MCL but that will allow small systems to make progress toward the MCL (it must achieve the maximum reduction affordable). This technology must be listed as a small systems variance technology by EPA in order for small systems to be able to rely on it for regulatory purposes.

(3) EPA must make a finding on a national level, that use of the variance technology would be protective of public health and establish.

Primacy States must then make a site-specific determination for each system as to whether or not the system can afford to meet the MCL based on State-developed affordability criteria. If the State determines that compliance is not affordable for the system, it may grant a variance, but it must establish terms and conditions, as necessary, to ensure that the variance is adequately protective of human health.

In the Agency's draft national-level affordability criteria published in the August 6, 1998 **Federal Register** (US EPA, 1998h), EPA discussed the affordable treatment technology determinations for the contaminants regulated before 1996. The national-level affordability criteria were derived as follows. First an ''affordability threshold'' (*i.e.,* the total annual household water bill that would be considered affordable) was calculated. In developing this threshold value, EPA considered the percentage of median

household income spent by an average household on comparable goods and services such items as housing (28%), transportation (16%), food (12%), energy and fuels (3.3%), telephone (1.9%), water and other public services (0.7%), entertainment (4.4%) and alcohol and tobacco (1.5%).

Another of the key factors that EPA used to select an affordability threshold was cost comparisons with other risk reduction activities for drinking water. Section 1412(b)(4)(E)(ii) of the SDWA identifies both Point-of-Entry and Point-of-Use devices as options for compliance technologies. EPA examined the projected costs of these options. EPA also investigated the costs associated with supplying bottled water for drinking and cooking purposes. The median income percentages that were associated with these risk reduction activities were: Point-of-Entry (>2.5%), Point-of-Use (2%) and bottled water (>2.5%). The complete rationale for EPA's selection of 2.5% as the affordability threshold is described in Variance Technology Findings for Contaminants Regulated Before 1996 (US EPA, 1998f).

Based on the foregoing analysis, EPA developed an affordability criteria of 2.5% of median household income, or about $750, for the affordability threshold (US EPA 1998f). The median water bill for households in each small system category was then subtracted from this threshold to determine the affordable level of household expenditures for new treatment. This difference is referred to as the ''available expenditure margin.'' Based on EPA's 1995 Community Water System Survey, median water bills were about $250 per year for small system customers. Thus, an average available expenditure margin of up to $500 per year was considered affordable for the contaminants regulated before 1996. However, EPA expects the available expenditure margin may be lower than $500 per household per year for the arsenic rule because EPA believes that water rates are currently increasing faster than median household income. Thus, the ''baseline'' for annual water bills will rise as treatment is installed for compliance with regulations promulgated after 1996, but before the arsenic rule is promulgated.

To account for this, EPA intends to adjust its calculation of the baseline for the affordability criteria as follows. The national median annual household water bills for each size category will be adjusted by averaging the total national costs for the size category over all of the systems within the size category. In other words, the costs incurred by these rules at the affected water systems will be averaged over all of the systems in that size category. A revised available expenditure margin will be calculated by subtracting the new baseline from the affordability threshold. The affordable technology determinations will be made by comparing the projected costs of treatment against the lower available expenditure margin. If the projected costs of all treatment technologies for a given system size/source water quality exceed the revised available expenditure margin, then variance technologies could be considered for those systems. EPA requests comment on this method of accounting for new regulations in its affordability criteria.

Applying the affordability criterion to the case of arsenic in drinking water, EPA has determined that affordable technologies exist for all system size categories and has therefore not identified a variance technology for any system size or source water combination at the proposed MCL. (See Table IX–12, Total Annual Costs per Household.) In other words, annual household costs are projected to be below the available affordability threshold for all system size categories for the proposed MCL. EPA solicits comment on its determination in this case as well as its affordability criteria more generally.

EPA recognizes that individual water systems may have higher than average treatment costs, fewer than average households to absorb these costs, or lower than average incomes, but believes that the affordability criteria should be based on characteristics of typical systems and should not address situations where costs might be extremely high or low or excessively burdensome. EPA believes that there are other mechanisms that may address these situations to a certain extent, such as rates for disadvantaged communities and grants. For instance, many utilities extend special ''lifeline'' rates to disadvantaged communities.

EPA also notes that high water costs are often associated with systems that have already installed treatment to comply with a NPDWR. Such treatment facilities may also facilitate compliance with future standards. EPA's approach to establishing the national-level affordability criteria did not incorporate a baseline for in-place treatment technology. Assuming that systems with high baseline water costs would need to install a new treatment technology to comply with a NPDWR may thus overestimate the actual costs for some systems.

To investigate this issue, EPA examined a group of five small surface water systems with annual water bills above $500 per household per year during the derivation of the national-level affordability criteria. All of these systems had installed disinfection and filtration technologies to comply with the surface water treatment rule. If these systems exceeded the revised arsenic standard, modification of the existing processes would be much more cost-effective than adding a new technology to comply with the arsenic rule. These systems have already made the investment in treatment technology and that is reflected in the current annual household water bills.

In addition, systems that meet criteria established by the State could be classified as disadvantaged communities under section 1452(d) of the SDWA. They can receive additional subsidization under the Drinking Water State Revolving Fund (DWSRF) program, including forgiveness of principal. Under DWSRF, States must provide a minimum of 15% of the available funds for loans to small communities and have the option of providing up to 30% of the grant to provide additional loan subsidies to the disadvantaged systems, as defined by the State.

As previously noted in today's proposal, some technologies can interfere with treatment in-place or require additional treatment to address side effects which will increase costs over the arsenic treatment technology base costs. (An example is corrosion control for lead and copper, which may need to be adjusted to accommodate other treatment). While EPA tries to account for such interferences in its cost estimates for each new compliance technology, it is not possible to anticipate all the site specific issues which may arise. However, EPA has included a discussion of the co-occurrence of radon, sulfate, and iron in this proposal. EPA will also provide guidance identifying cost-effective treatment trains for ground water systems that need to treat for both arsenic and radon after the arsenic rule is finalized.

EPA encourages small systems to discuss their infrastructure needs for complying with the arsenic rule with their primacy agency to determine their eligibility for DWSRF loans, and if eligible, to ask for assistance in applying for the loans.

D. When Are Exemptions Available?

Under section 1416(a), the State may exempt a public water system from any MCL and/or treatment technique requirement if it finds that (1) due to compelling factors (which may include economic factors), the system is unable

to comply or develop an alternative supply, (2) the system was in operation on the effective date of the MCL or treatment technique requirement, or, for a newer system, that no reasonable alternative source of drinking water is available to that system, (3) the exemption will not result in an unreasonable risk to health, and (4) management or restructuring changes cannot be made that would result in compliance with this rule. Under section 1416(b), at the same time it grants an exemption the State is to prescribe a compliance schedule and a schedule for implementation of any required control measures. The final date for compliance may not exceed three years after the NPDWR effective date except that the exemption can be renewed for small systems for limited time periods.

E. What Are the Small Systems Compliance Technologies?

Section 1412(b)(4)(E)(ii) of SDWA, as amended in 1996, requires EPA to issue a list of technologies that achieve compliance with MCLs established under the Act that are affordable and applicable to typical small drinking water systems. These small public water systems categories are: (1) Population of more than 25 but less than 500; (2) Population of more than 500, but less than 3,300; and (3) Population of more than 3,300, but less than 10,000. Owners and operators may choose any technology or technique that best suits their conditions, as long as the MCL is met.

Of the treatment trains identified in section VIII.B., the ones identified in Table VIII–4 are deemed to be affordable for systems serving 25–500 people and the ones identified in Table VIII–5 are deemed to be affordable for systems serving 501–3,300 and 3,301–10,000 people, as their annual costs are below the affordability threshold (US EPA, 1999g). Because affordable compliance technologies are available, the Agency does not propose to identify any variance technologies. EPA requests comments on the affordable compliance technology determinations for the three size categories and the determination that there will be no variance technologies. Centralized compliance treatment technologies include ion exchange, activated alumina, modified coagulation/filtration, modified lime softening, and oxidation/filtration (*e.g.* greensand filtration) for source waters high in iron. In addition, point-of-use (POU) and point-of-entry (POE) devices are also compliance technology options for the smaller systems. EPA is aware that very few water systems have had experience with centrally managed POU or POE options in the past. EPA requests comments on implementation issues associated with a centrally managed POU or POE option for arsenic. The non-treatment alternatives are especially relevant for small systems. EPA is proposing to add the abbreviations ''POU'' and ''POE'' to the definitions in § 141.2 and asks for comment on the utility of adding them.

TABLE VIII–4.—AFFORDABLE COMPLIANCE TECHNOLOGY TRAINS FOR SMALL SYSTEMS WITH POPULATION 25–500

Train No.	Treatment technology trains
3	Add pre-oxidation [if not in-place] and modify in-place Lime Softening
4	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration
5	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
6	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
7	Add pre-oxidation [if not in-place] and add Anion Exchange and add evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
8	Add pre-oxidation [if not in-place] and add Anion Exchange and evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH at 7.
15	Add pre-oxidation [if not in-place] and add Oxidation/Filtration (Greensand) and add POTW for backwash stream.
16	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
17	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
18	Add pre-oxidation [if not in-place] and add Activated Alumina and add POTW/non-hazardous landfill waste disposal. pH at 7.
19	Add pre-oxidation [if not in-place] and add POE Activated Alumina.
20	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
21	Add pre-oxidation [if not in-place] and add POU Activated Alumina.

TABLE VIII–5.—AFFORDABLE COMPLIANCE TECHNOLOGY TRAINS FOR SMALL SYSTEMS WITH POPULATIONS 501–3,300 AND 3,301 TO 10,000

Train No.	Treatment technology trains
3	Add pre-oxidation [if not in-place] and modify in-place Lime Softening
4	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration
5	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
6	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
7	Add pre-oxidation [if not in-place] and add Anion Exchange and add evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
8	Add pre-oxidation [if not in-place] and add Anion Exchange and evaporation pond/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.

TABLE VIII–5.—AFFORDABLE COMPLIANCE TECHNOLOGY TRAINS FOR SMALL SYSTEMS WITH POPULATIONS 501–3,300 AND 3,301 TO 10,000—Continued

Train No.	Treatment technology trains
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH at 7.
10	Add pre-oxidation [if not in-place] and add Reverse Osmosis and add direct discharge waste disposal and add corrosion control [if >90% removal required].
11	Add pre-oxidation [if not in-place] and add Reverse Osmosis and add POTW waste disposal and add corrosion control [if >90% removal required].
12	Add pre-oxidation [if not in-place] and add Reverse Osmosis and add chemical precipitation/non-hazardous landfill and add corrosion control [if >90% removal required].
13	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration and add mechanical dewatering/non-hazardous landfill waste disposal.
14	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration and add non-mechanical dewatering/non-hazardous landfill waste disposal.
15	Add pre-oxidation [if not in-place] and add Oxidation/Filtration (Greensand) and add POTW for backwash stream.
16	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 25 mg/l.
17	Add pre-oxidation [if not in-place] and add Anion Exchange and add chemical precipitation/non-hazardous landfill waste disposal and add corrosion control [if >90% removal required]. Sulfate level at 150 mg/l.
18	Add pre-oxidation [if not in-place] and add Activated Alumina and add POTW/non-hazardous landfill waste disposal. pH at 7.
19	Add pre-oxidation [if not in-place] and add POE Activated Alumina.
20	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
21	Add pre-oxidation [if not in-place] and add POU Activated Alumina.

Centralized treatment is not always a feasible option. When this is the situation, home water treatment devices can be effective and affordable compliance options for small systems in meeting the proposed arsenic MCL. Home water treatment can consist of either whole-house (point-of-entry) or single faucet (point-of-use) treatment.

Whole-house, or POE treatment, is necessary when exposure to the contaminant by modes other than consumption is a concern; this is not the case with arsenic. Single faucet, or POU treatment, is preferred when treated water is needed only for drinking and cooking purposes. POU devices are especially applicable for systems that have a large flow and only a minor part of that flow directed for potable use. POE/POU options include reverse osmosis, activated alumina, and ion exchange processes. POU systems are easily installed and can be easily operated and maintained. In addition, these systems generally offer lower capital costs and may reduce engineering, legal, and other fees associated with centralized treatment options.

Allowing the usage of POU devices is one of the new elements of the Safe Drinking Water Act; on June 11, 1998, EPA issued a **Federal Register** notice (US EPA, 1998i) to withdraw the prohibition on the use of POU devices as compliance technologies. The SDWA stipulates that POU/POE treatment systems ''shall be owned, controlled and maintained by the public water system, or by a person under contract with the public water system to ensure proper operation and compliance with the MCL or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems.''

Using POU/POE devices introduces some new issues. Adopting a POU/POE treatment system in a small community requires more record-keeping to monitor individual devices than does central treatment. POU/POE systems require special regulations regarding customer responsibilities and water utility responsibilities. Use of POU/POE systems does not reduce the need for a well-maintained water distribution system. On the contrary, increased monitoring may be necessary to ensure that the treatment units are operating properly.

Water systems with high influent arsenic concentrations (*i.e.,* greater than 1 mg/L) may have difficulty meeting the proposed MCL when POU/POE devices are used. As a result, influent arsenic concentration and other source water characteristics must be considered when evaluating POU/POE devices for arsenic removal.

EPA assumed that systems would more likely opt to use POU AA or RO (and not IX), and POE AA (and not IX nor RO), when developing national cost estimates (refer to Table VIII–4). Activated alumina and ion exchange units face a breakthrough issue. If the media or resin is not replaced and/or regenerated on time, there is a potential for significantly reduced arsenic removal. Activated alumina units have the advantage of longer run lengths and the option to use the media once and throw it away. However, if POE ion exchange units are regenerated on time, they would also be an effective treatment technology. Units with automatic regeneration are thus viable options. POE IX and RO units also have a potential for creating corrosion control problems. With ion exchange POE units, a reduction in pH can be expected initially with new resin, but the pH reduction should subside over time.

F. How Does the Arsenic Regulation Overlap With Other Regulations?

Several Federal rules are under development regarding treatment requirements that may relate to the treatment of arsenic for this drinking water rule. The following briefly describes each rule, the impact the Arsenic Rule may have on that rule, and/or how each rule may impact the arsenic standard. The Arsenic Rule is expected to be promulgated in a similar time frame as the Ground Water Rule, the Radon Rule, and the Microbial and Disinfection By-Product Rule (Final December, 1998). In addition, the disposal of residuals may be affected by the hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA).

Ground Water Rule (GWR). The goals of the GWR are to: (1) Provide a consistent level of public health protection; (2) prevent waterborne

microbial disease outbreaks; (3) reduce endemic waterborne disease; and (4) prevent fecal contamination from reaching consumers. EPA has the responsibility to develop a ground water rule which not only specifies the appropriate use of disinfection, but also addresses other components of ground water systems to assure public health protection. This general provision is supplemented with an additional requirement that EPA develop regulations specifying the use of disinfectants for ground water systems as necessary. To meet these requirements, EPA worked with stakeholders to develop a Ground Water Rule proposal (US EPA, 2000d) and plans to issue a final rule by late Fall 2000.

The GWR will result in more systems using disinfection. Under the GWR, a system has options other than disinfection (*e.g.,* protecting source water). However, if a system does add a disinfection technology, it may contribute to arsenic pre-oxidation. This largely depends on the type of disinfection technology employed. If a system chooses a technology such as ultraviolet radiation, it may not affect arsenic pre-oxidation. However, if it chooses chlorination, it will contribute to arsenic pre-oxidation. As discussed previously, arsenic pre-oxidation from As (III) to As (V) will enhance the removal efficiencies of the technologies. In addition, systems may use membrane filtration for the GWR. In that case, depending on the size of the membrane, some arsenic removal can be achieved. Thus, the GWR is expected to alleviate some of the burden of the Arsenic Rule.

Radon. In the 1996 Amendments to the SDWA, Congress (section 1412(b)(13)) directed EPA to propose an MCLG and NPDWR for radon by August, 1999 (proposed on December 21, 1999, US EPA 1999n) and finalize the regulation by August, 2000 (section 1412(b)(13)). Like the Ground Water Rule, the Radon Rule will also be finalized before the Arsenic Rule. Systems may employ aeration to comply with the radon rule. Aeration alone, however, will not likely be sufficient to oxidize arsenic (III) to arsenic (V). However, if systems do aerate, they may be required by State regulations to also disinfect. The disinfection process may oxidize the arsenic, depending on the type of disinfection employed. Ultraviolet disinfection may not assist in arsenic oxidation (still under investigation by US EPA), whereas chemical disinfection or oxidation is likely to. Thus, the Radon Rule is expected to alleviate some of the burden of the Arsenic Rule.

Microbial and Disinfection By-product Regulations. To control disinfection and disinfection byproducts and to strengthen control of microbial pathogens in drinking water, EPA is developing a group of interrelated regulations, as required by the SDWA. These regulations, referred to collectively as the Microbial Disinfection By-product (M/DBP) Rules, are intended to address risk trade-offs between the two different types of contaminants.

EPA proposed a Stage 1 Disinfectants/Disinfection By-products Rule (DBPR) and Interim Enhanced Surface Water Treatment Rule (IESWTR) in July 1994. EPA issued the final Stage 1 DBPR and IESWTR in November, 1998.

The Agency has finalized and is currently implementing a third rule, the Information Collection Rule, that will provide data to support development of subsequent M/DBP regulations. These subsequent rules include a Stage 2 DBPR and a companion Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR).

The IESWTR will primarily affect large surface water systems, so EPA does not expect much overlap with small systems treating for arsenic. However, the Stage 1 DBPR will affect both large and small sized systems and may overlap with small systems treating for arsenic. In addition, the Stage 2 DBPR and possibly the LT2ESWTR would have significance as far as arsenic removal is concerned. For systems removing DBP precursors, systems may use nanofiltration. The use of nanofiltration would also be relevant for removing arsenic, and as a result, would ease some burden when systems implement these later rules.

Hazardous Waste. The current toxicity characteristic (TC) regulatory level for designating arsenic as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) is 5 mg/L and is listed in 40 CFR 261.24(a). It is important to differentiate between the toxicity characteristic and the toxicity characteristic leaching procedure (TCLP). The TCLP is the method by which a waste is evaluated to determine if it exceeds the toxicity characteristic. It is also important to note that while the toxicity characteristic was based on multiplying the current drinking water MCL by a factor of 100, the TC is not directly linked to the drinking water MCL. Thus, lowering the drinking water MCL does not mean that the toxicity characteristic would be lowered. A separate RCRA rulemaking would be required to lower the toxicity characteristic regulatory level. The drinking water standards for several inorganic contaminants have been lowered without any lowering of the toxicity characteristic. For example, the cadmium MCL was lowered from 10 μg/L to 5 μg/L in 1991, but the TC for cadmium still remains at 1.0 mg/L. The drinking water standard for lead was revised from an MCL of 50 μg/L to an action level of 15 μg/L. Both drinking water standards were lowered in 1991. The TC for lead remains at 5 mg/L. The studies summarized below show that arsenic residuals should be below the current TC of 5 mg/L and could be disposed in a non-hazardous landfill.

In one study, sludges from four different water treatment plants were evaluated. (Bartley *et al.* 1992). There are data from two lime softening plants, one plant with both lime softening and coagulation/filtration processes, and one arsenic removal plant utilizing coagulation/filtration. The raw water arsenic in the tow lime softening plants and the one plant using both lime softening and coagulation/filtration were below 0.001 mg/L. The arsenic removal plant was removing arsenic from 1.1 mg/L to 0.42 mg/L using ferric sulfate coagulation. The product water was blended with water from another source to comply with the MCL. The TCLP extracts ranged from 0.007 to 0.039 mg/L, which is considerably below the current criterion for being designated a hazardous waste under RCRA.

In another study, TCLP tests were performed using the activated alumina from two activated alumina plants (Wang *et al.,* 2000). Both plants had similar setups (one is referred to as CS, the other is referred to as BES). Both systems consist of four tanks of activated alumina with two parallel sets of two tanks in series. The first set of tanks are used as roughing filters and the second set of tanks are used as polishing filters. The units were not regenerated, but replaced. For the CS system, the influent arsenic concentration ranged from 0.053 to 0.087 mg/L with an average of 0.062 mg/L. The effluent arsenic concentration was consistently below 0.005 mg/L. When the activated alumina media was removed from the roughing filters, three samples were taken. All three samples had arsenic TCLP test results of less than 0.05 mg/L. Again, these results were well below the regulatory limit.

The influent arsenic concentration of the activated alumina plant referred to as BES ranged from 0.021 to 0.076 mg/L, with an average of 0.049 mg/L. Effluent levels were also less than 0.005 mg/L. When the media was removed from the two roughing filters, TCLP tests were taken. The results were <0.05 mg/

L and 0.066 mg/L. Again, the results were below the regulatory limit.

Another study examined residuals produced by anion exchange and coagulation-microfiltration (Clifford, 1997). Experiments were performed at the University of Houston-US EPA Drinking Water Research Facility, a 10 ft x 40 ft customized trailer containing various unit processes, including ion exchange and coagulation-microfiltration, and a small analytical lab. The mobile research facility was set up at the West Mesa Pump Station in Albuquerque, NM. The mean arsenic concentration in the source water was 0.021 mg/L.

Ion exchange was field tested, and the media was regenerated. This initial waste stream was a brine from the regeneration process. The brine in the ion exchange process was reused 15 times. The average arsenic concentration in the product was below 0.002 mg/L during the 15 cycles. The process produced a highly concentrated spent brine, with arsenic concentrations reaching 26.6 mg/L. It should be noted that the arsenic concentration in the brine would be lower if the brine was not used as many times. After 6 months of storage, the arsenic concentration reduced to 11.3 mg/L. The arsenic was then precipitated out of the brine using iron, resulting in a brine with approximately 0.037 mg/L of arsenic. The precipitated sludge was then subjected to the TCLP extraction procedure. The TCLP extract had an average arsenic concentration of 0.270 mg/L. This is below the current threshold for being designated a hazardous waste.

Coagulation-microfiltration was also field tested. Arsenic removal to below 0.002 mg/L could be achieved; 12,000 gallons of water were filtered over 3 days. The backwash water, which is the process waste, had less than 0.5% solids. According to the TCLP Method 1311, for a liquid waste containing less than 0.5% solids, the liquid portion of the waste after filtration, is defined as the TCLP extract. About 20 backwash samples were collected, filtered, and analyzed for arsenic. The average concentration in the backwash water after filtration was 0.0026 mg/L and thus could be disposed as a nonhazardous waste. Additionally, the simulated sludge was subjected to the TCLP leaching procedure. The arsenic concentration in the TCLP extract was 0.0218 mg/L, which is also considerably lower than the regulatory limit.

The University of Colorado performed a series of tests of various arsenic treatment solid residuals using the TCLP test (Amy et al, 1999). The arsenic treatment processes included conventional plants utilizing lime softening, alum and ferric chloride coagulation, activated alumina, and membranes. The results of this analysis for the conventional plant residuals are presented in Table VIII–6. The data indicates that all the plants would pass the current TCLP test although the data from the iron coagulation plant do approach the limit.

TABLE VIII–6.—TCLP RESULTS FOR CONVENTIONAL PLANT ARSENIC RESIDUALS

Utility ID	Type of utility	TCLP extract Arsenic (mg/L)
F, coagulation sludge	Lime softening	0.0009
F, softening sludge	Lime softening	0.0039
F, filter sludge	Lime softening	0.0014
G	Lime softening	0.002
J	Lime softening	0.0284
L	Alum coagulation	0.0093
C	Fe/Mn removal	0.0444
O	Iron coagulation	1.5596

Table VIII–7 is a summary of TCLP data on liquid residuals prepared by the University of Colorado for activated alumina regenerant and a reverse osmosis reject water precipitated with ferric chloride. The activated alumina regenerant solution was neutralized to a pH of 6, which caused the aluminum to precipitate and adsorb the arsenic. The membrane reject water was treated with ferric chloride to remove the arsenic and the resulting ferric hydroxide residual was tested. The data indicates that solid residuals generated from the alumina regenerant and membrane residuals would pass the TCLP test.

TABLE VIII–7.—TCLP TEST RESULTS FOR ACTIVATED ALUMINA AND MEMBRANE RESIDUALS

Sample	TCLP extract as (mg/L)
Activated Alumina Column Regenerant	0.0242

TABLE VIII–7.—TCLP TEST RESULTS FOR ACTIVATED ALUMINA AND MEMBRANE RESIDUALS—Continued

Sample	TCLP extract as (mg/L)
Membrane Filter Reject Residuals	0.0179

All of the previous data is from residuals produced by central treatment. There is no TCLP data on spent activated alumina from POU or POE devices. The TCLP results of spent activated alumina media from POU and POE devices were simulated by assuming a worst-case scenario for 6-month and one year replacement frequencies (Kempic, 2000). To determine the amount of arsenic that could potentially leach into the extraction fluid during the toxicity characteristic leaching procedure, it was assumed that the influent arsenic concentration was 0.050 mg/L and that the activated alumina column adsorbed all of the arsenic. The first assumption represents the upper bound for influent concentrations since it is the current maximum contaminant level (MCL) for arsenic. The second assumption means that there would be no leakage or any breakthrough of arsenic through the column, which is not realistic. To calculate the total adsorbed arsenic mass, it was assumed that the POU unit treated 24 liters per day. This is the upper bound consumption used in the replacement frequency calculations.

Two other assumptions were made to simulate the worst-case scenarios. In the TCLP, the solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The dry media mass was used for the solid phase for this calculation rather the wet media mass. It was also assumed that all of the adsorbed arsenic would leach into the extraction fluid, which is not realistic. The estimates for the worst-case scenarios are provided in Table VIII–8.

TABLE VIII–8.—TCLP PROJECTIONS FOR ACTIVATED ALUMINA WORST-CASE SIMULATIONS

Replacement frequency	Max TCLP Conc. (mg/L)
POU & 6-months	2.6
POE & 6-months	0.8
POU & Annual	10.4
POE & Annual	3.2

The projections for three of the worst-case scenarios were below the TC of 5 mg/L. The worst-case maximum TCLP concentration for annual replacement for a POU activated alumina device was above the TC. However, despite this projection, activated alumina waste should be non-hazardous. The most unrealistic assumption was that all of the arsenic adsorbed onto the alumina would leach into the extraction fluid. The TCLP uses weak acetic acid (0.57%) at pH 5 for the extraction fluid. The optimal pH for arsenic adsorption onto activated alumina is between pH 5.5 and 6.0. Therefore, arsenic should be retained on the activated alumina at this pH. In fact, adsorbed arsenic is extremely difficult to remove under any conditions. A strong base (4% NaOH) is typically used to regenerate activated alumina. Arsenic is so strongly adsorbed to the activated alumina that only 50 to 70% of the arsenic is eluted during regeneration. Therefore, it is extremely unlikely that the spent activated alumina from POU and POE units would be considered hazardous.

All of the TCLP data from solid residuals were below the current TC of 5 mg/L. The arsenic concentrations in TCLP extracts from alum coagulation, activated alumina, lime softening, iron/manganese removal, and coagulation-microfiltration residuals were below 0.05 mg/L, which is two orders of magnitude lower than the current TC regulatory level. The TCLP data for iron coagulation was mixed—the residuals from the arsenic removal plant were below 0.05 mg/L, but the residuals from another iron coagulation plant were above 1 mg/L. For anion exchange, the TCLP data on the precipitated brine stream was 0.27 mg/L. As was noted, this was a highly concentrated brine stream which had been used for fifteen regenerations. Arsenic concentrations in the precipitate would be lower if the brine was used for fewer regeneration cycles. Based on this data, EPA does not believe that drinking water treatment plant residuals would be classified as hazardous waste. The TCLP data also indicate that most residuals could meet a much lower TC regulatory level. EPA requests comment on whether it is appropriate to assume that all residuals can be disposed at a non-hazardous landfill.

IX. Costs

A. Why Does EPA Analyze the Regulatory Burden?

EPA is responsible for issuing regulations that improve the quality of the nation's drinking water and reduce the risk of illness from exposure to harmful contaminants via drinking water supplied by public water systems (PWSs). As part of the regulatory development process, the Agency is required to analyze the regulatory cost and burden imposed on all regulated and affected entities and the benefits associated with the regulation. The Regulatory Impact Analysis (RIA) document is the principal summary of these analyses. Assessing the impacts of proposed SDWA regulations is a complex process, involving many analyses specified by various federal mandates. In particular, EPA must conduct analyses for the following mandates:

- 1996 Safe Water Drinking Act (SDWA) Amendments
- Paperwork Reduction Act (PRA)
- Regulatory Flexibility Act (RFA)
- Small Business Regulatory Enforcement Fairness Act (SBREFA)
- Unfunded Mandates Reform Act (UMRA)
- Executive Order (EO) 12866, ''Regulatory Planning and Review''
- EO 12989, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''
- EO 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.''

Executive Order 12866 describes the requirements for and content of the national cost-benefit analyses. Section 1412(b)(3)(C) of SDWA, as amended in 1996, directs EPA to seek comment on a health risk reduction and cost analysis (HRRCA) that will be issued with proposed MCLs. The HRRCA must identify quantifiable and nonquantifiable costs and health benefits of each MCL considered, including the incremental costs and benefits of each MCL considered. In addition, the HRRCA must identify benefits resulting from reducing co-occurring contaminants and exclude costs that will result from other proposed or final regulations. The Paperwork Reduction Act (PRA) requires federal agencies to document the cost and labor burden associated with data collection, recordkeeping, and reporting requirements of proposed regulations. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), mandates that federal agencies consider the impact imposed on small businesses, governments, and non-profit organizations. The objective of these mandates is to provide regulatory relief to small entities affected by SDWA regulations by identifying alternative or lower-cost compliance options. Finally, the Unfunded Mandates Reform Act (UMRA) seeks to assess the burden and costs of federal regulations to local and State governments, while Executive Order 12989 on environmental justice instructs federal agencies to evaluate the impact of proposed regulations on minority and low-income populations. Executive Order 13045 requires EPA to state how the regulation addresses risks for children.

An RIA attempts to estimate the possible outcomes in terms of costs and benefits of various levels of regulation. At the most basic level, an RIA is built on estimates of the distribution of arsenic occurrence among the various water systems, the costs of treatment technologies, and predictions of responses by systems above the regulatory level under consideration. Because actual compliance monitoring at the proposed MCL has not been required of all systems at the time of proposal development, projections are based on statistical estimates. EPA believes that the current estimates include appropriate conservative assumptions and on average actual costs are not likely to exceed the estimates. One conservative assumption is that equipment useful life is identical to financing life. The Agency has a long term effort in progress to better characterize how much this issue will affect cost estimations.

To be complete, accurate, and consistent, these analyses should be based on a single, integrated set of data and information that defines the baseline characteristics or conditions of the regulated community prior to implementation of the regulation. The regulated community is primarily the water supply industry and State, local, and tribal governments. However, it is the customers of public water systems, especially community water systems, that ultimately incur the cost burden and realize the intended health benefits of these regulations. Therefore, the baseline study identifies and, where possible, quantifies the universe (*e.g.*, characteristics of water suppliers, their customers, and governmental entities) to

be used in the regulatory impact analysis (RIA).

The current RIA applied national occurrence information in the modeling effort as described earlier in section V.G. EPA requests comment on its analyses for developing cost projections, including household costs, as well as additional cost information. Most previous RIAs conducted for the drinking water program assumed that all the water going into a system was the same concentration. Actually, many water systems (especially those serving more than 500 people) have multiple points where water enters the distribution system. Each of these entry points generally will have a different level of arsenic. Consequently, water systems tend to be impacted by regulations in stages that increase with decreasing regulatory level. Because costs are spread across the entire system, individual household expenditures will vary according to regulatory level. Past RIAs were unable to incorporate this information, and for costing purposes, all entry points to the distribution system required treatment. The arsenic RIA is the first drinking water chemical RIA to incorporate monte carlo simulation of intra-system occurrence variability into the cost and benefits estimation. This simulation permits more accurate characterization of the relative household impacts of various alternatives. Several other changes have also been incorporated into the cost and benefit estimates for the arsenic RIA:

Very Large Systems—Very large water systems, those serving more than a million people, can contribute a significant portion to estimates of overall costs and benefits at select regulatory levels. On the other hand, because there are so few of these systems and given that they are of complex configuration, statistically based estimates of arsenic occurrence (especially at low levels of arsenic incidence) introduce very large uncertainty into the RIA. EPA addressed this issue by developing individually tailored estimates through the use of generally available occurrence information and Information Collection Rule data. Estimates were provided to the utilities and they were offered the opportunity to correct errors in the Agency assessment. While these estimates are a considerable improvement over past ones, it is important to keep in mind that they are merely projections and that individual compliance costs could actually still vary by a wide margin depending upon rule timing, interactions with other treatment or capital budget priorities, regulatory commission decisions, or actual compliance sampling results.

Inventory Based Modeling—Past RIAs have generally developed benefit and cost estimates by estimating impacts for single representative community water systems within a limited number of size-based classes. Such an approach introduces a slight positive bias to total national cost estimates. This RIA has gone beyond the past approach in the modeling of community water system and non-transient non-community water system impacts. This RIA uses a monte carlo approach to simulate application of occurrence information to the actual SDWIS inventory. Through repeated simulations and assignments, the model is able to develop the most robust [statistically defensible] estimates of actual exposure levels and to better characterize the spread in household costs.

B. How Did EPA Prepare the Baseline Study?

EPA identified baseline characteristics as the first step in standardizing baseline profiles and information for use across all Agency drinking water RIAs and related analyses. The Agency has several efforts underway to develop improved technical approaches for cost and benefit analyses, including developing characteristic engineering unit costs of treatment plants, assessing financial and operational capacity, and considering the low-cost best available treatment (BAT) options for small systems. Then, EPA reviewed the analytical procedures, and data requirements needed to conduct the analyses.

Table IX–1 provides an overview of the overall approach for identifying and classifying specific baseline characteristics. This matrix organizes the baseline characteristics according to the various entities likely to be affected by SDWA regulations and the different categories of data analysis inputs. The affected entities include:

- State and Tribal Governments: Agencies at the State or local level (including certain Tribes and Alaskan Native Villages) responsible for implementing, administering, and enforcing drinking water programs, and other programs potentially affected by Federal drinking water mandates.
- Public Water Suppliers: Utilities and other entities that provide potable water to 25 or more persons, 15 or more service connections (includes community and transient/non-transient non-community water systems).
- Customers: All entities that purchase drinking water from public water systems (including residential, commercial, industrial, wholesale, governmental, agricultural, and other users).

The corresponding categories of data analysis inputs shown in Table IX–1 include:

1. Technical/Operational: Characteristics relating to capital assets and operational processes, labor skills and training, and other variable inputs.
2. Managerial/Organizational: Characteristics relating to ownership, control and authority, organizational structure and management approach.
3. Financial/Economic: Characteristics relating to monetary factors, opportunity costs, and benefits.
4. Socio-Economic/Demographic: Composition and characteristics of affected entities (who, where, how much) and demographic trends.

Data to describe all the baseline conditions shown in Table IX–1 are contained in a comprehensive EPA document designed to be applicable to all drinking water regulatory impact analyses, ''The Baseline Handbook.'' It is data from this document which is used in Chapter 4 of the RIA for Arsenic.

1. Use of Baseline Data

Uses of baseline data include the following analyses:

National and Sub-National Benefits, Costs, and Economic Impact Analyses:
- Occurrence Analysis
- Exposure/Risk Assessment
- Model Plants/System Configuration
- Unit Engineering Cost Analysis
- Compliance Decision Tree Analysis
- Financial Analysis
- Government Implementation
- Reporting, Recordkeeping, and Monitoring Costs
- Valuation of Health Benefits
- Non-Health Benefits Assessment
- Economic Impact Assessment

Small Entity Impact Analyses:
- Small Entity Definition
- Reporting and Recordkeeping Requirements for Small Entities
- Financial Analysis for Small Entities
- Socio-Economic Analysis for Small Entities
- Regulatory Alternatives Analysis

Other Special Analyses:
- Health Risks to Sensitive Subpopulations
- Affordability Analyses
- Government Budgetary Effects

These broad analytical requirements reflect the overlapping nature of the required analyses pursuant to the relevant statutory and administrative mandates. For example, various mandates, including EO 12866, SDWA,

UMRA, and PRA, require national cost and benefit analyses.

2. Key Data Sources Used in the Baseline Analysis for the RIA?

A number of different data sources were employed in the development of the tables included Chapter 4 of the arsenic RIA. The key data sources used included:

1995 Community Water System Survey (CWSS). This database was compiled by EPA from a survey conducted in 1995 to profile the operational and financial characteristics of community water systems of all source, size, and ownership types.

WATER STATS, The Water Utility Database. This database was compiled by the American Water Works Association from a 1996 survey of its member utilities. Data on water system operations and finances were collected in two stages. The first stage involved a comprehensive census of the largest water utilities (i.e., those serving 50,000 or more persons). A second stage data collection involved a statistical sample of smaller water utilities.

Safe Drinking Water Information System (SDWIS). This database serves as the U.S. EPA's comprehensive database of public water system regulatory compliance and violation information. SDWIS contains the Agency's inventory of all public water supplies, both community and noncommunity systems and the populations they serve.

Survey on State Program Staffing/Funding for FY–97. The Association of State Drinking Water Administrators (ASDWA) conducted a survey of State drinking water programs to solicit estimates on the number of staff (*i.e.*, full-time equivalents, FTEs) involved in drinking water regulatory implementation and enforcement activities by program area, as well as estimates of drinking water program revenues/funding and expenditures by major account categories.

1990 Census of Population. Data from the 1990 Census of Population was used in conjunction with water system data to develop estimates for various demographic characteristics of households and communities served by public water systems.

TABLE IX–1.—SUMMARY OF GENERAL BASELINE CATEGORIES OF AFFECTED ENTITIES

Affected entity	Baseline characteristics			
	1: Technical & operational	2: Managerial & organizational	3: Economic & financial	4: Socioeconomic & demographic
A: State Government	A1.1 PWS Inspections & Sanitary Surveys.	A2.1 Program Staffing A2.2 Laboratory Capacity/Facilities. A2.3 Division of Authority/Jurisdiction.	A3.1 Program Expenditures. A3.2 Program Funding/Revenues.	A4.1 State PWS Profile.
B: Public Water Suppliers	B1.1 Water Sources/Intakes. B1.2 Source Contamination/Protection. B1.3 Physical Configuration. B1.4 Plant Condition B1.5 Plant Flow/Capacity B1.6 Treatment/Waste Processes In-Place. B1.7 Storage Capacity B1.8 Distribution System B1.9 Residence Time B1.1 Monitoring/Laboratory.	B2.1 Ownership/Organizational Structure. B2.2 Plant Operation/Operators.	B3.1 Operating Expenses B3.2 Operating Revenues. B3.3 Non-Operating Expenses. B3.4 Assets & Liabilities B3.5 Rate Structures/User Burden. B3.6 Capital Investment Expenditure.	B4.1 PWS Type. B4.2 PWS Size/Customer Base. B4.3 PWS Source Water. B4.4 Geographic Location.
C: Customers	C1.1 POU/POE Systems In Use.	C2.1 Alternative Water Use. C2.2 Public Attitudes/Perceptions.	C3.1 Residential Income C3.2 Nonresidential Income. C3.3 Residential Water Costs. C3.4 Nonresidential Water Costs. C3.5 Cost of Drinking Water Alternatives. C3.6 Medical Costs C3.7 Non-Medical Costs C3.8 Community Financial Information.	C4.1 Population Profile. C4.2 Customer Water Use.

C. How Were Very Large System Costs Derived?

EPA must conduct a thorough cost-benefit analysis, and provide comprehensive, informative, and understandable information to the public about its regulatory efforts. As part of these analyses, EPA evaluated the regulatory costs of compliance for very large systems, who would be subject to the new arsenic drinking water regulation. The nation's 25 largest drinking water systems (*i.e.,* those serving a million people or more) supply approximately 38 million people and generally account for about 15 to 20 percent of all compliance-related costs. Accurately determining these costs for future regulations is critical. As a result, EPA has developed compliance cost estimates for the arsenic and radon regulations for each individual system that serves greater than 1 million persons. These cost estimates help EPA to more accurately assess the cost impacts and benefits of the arsenic regulation. The estimates also help the Agency identify lower cost regulatory options and better understand current water systems' capabilities and constraints.

The system costs were calculated for the 24 public water systems that serve a retail population greater than 1 million persons and one public water

system that serves a wholesale population of 16 million persons. Table IX–2 lists these 25 public water systems. The distinguishing characteristics of these very large systems include:

(1) A large number of entry points from diverse sources;

(2) mixed (*i.e.,* ground and surface) sources;

(3) Occurrence not conducive to mathematical modeling;

(4) Significant levels of wholesaling;

(5) Sophisticated in-place treatment;

(6) Retrofit costs dramatically influenced by site-specific factors; and

(7) Large amounts of waste management and disposal which can contribute substantial costs.

TABLE IX–2.—LIST OF LARGE WATER SYSTEMS THAT SERVE MORE THAN 1 MILLION PEOPLE

	PWS ID #	Utility name
1	AZ0407025	Phoenix Municipal Water System.
2	CA0110005	East Bay Municipal Utility District.
3	CA1910067	Los Angeles—City Dept. of Water and Power.
4	CA1910087	Metropolitan Water District of Southern California.
5	CA3710020	San Diego—City of.
6	CA3810001	San Francisco Water Department.
7	CA4310011	San Jose Water Company.
8	CO0116001	Denver Water Board.
9	FL4130871	Miami-Dade Water And Sewer Authority—Main System.
10	GA1210001	City of Atlanta.
11	IL0316000	City of Chicago.
12	MA6000000	Massachusetts Water Resource Authority.
13	MD0150005	Washington Suburban Sanitation Commission.
14	MD0300002	Baltimore City.
15	MI0001800	City of Detroit.
16	MO6010716	St. Louis County Water County.
17	NY5110526	Suffolk County Water Authority.
18	NY7003493	New York City Aqueduct System.
19	OH1800311	City of Cleveland.
20	PA1510001	Philadelphia Water Department.
21	PR0002591	San Juan Metropolitano.
22	TX0570004	Dallas Water Utility.
23	TX1010013	City of Houston—Public Works Department.
24	TX150018	San Antonio Water System.
25	WA5377050	Seattle Public Utilities.

Generic models cannot incorporate all of these considerations; therefore, in-depth characterizations and cost analyses were developed utilizing several existing databases and surveys.

The profile for each system contains information such as design and average daily flows, treatment facility diagrams, chemical feed processes, water quality parameters, system layouts, and intake and aquifer locations. System and treatment data were obtained from the following sources:

(1) The Information Collection Rule (1997);

(2) The Community Water Supply Survey (1995);

(3) The Association of Metropolitan Water Agencies Survey (1998);

(4) The Safe Drinking Water Information System (SDWIS); and

(5) The American Water Works Association WATERSTATS Survey (1997).

While these sources contained much of the information necessary to perform cost analyses, the Agency was still missing some of the detailed arsenic occurrence data in these large water systems. Where major gaps existed, especially in groundwater systems, occurrence data obtained from the States of Texas, California, and Arizona, the Metropolitan Water District of Southern California Arsenic Study (1993), the National Inorganic and Radionuclides Study (EPA, 1984), and utilities were used. Based on data from the studies, detailed costs estimates were derived for each of the very large water systems.

Cost estimates were generated for each system at several MCL options. The total capital costs and operational and maintenance (O & M) costs were calculated using the profile information gathered on each system, conceptual designs (*i.e.,* vendor estimates and RS Means), and modified EPA cost models (*i.e.,* Water and WaterCost models). The models were modified based on the general cost assumptions developed in the Phase I Water Treatment Cost Upgrades (EPA, 1998).

Preliminary cost estimates were sent to all of the systems for their review. Approximately 30% of the systems responded by submitting revised estimates and/or detailed arsenic occurrence data. Based on the information received, EPA revised the cost estimates for those systems. Based on the results, the majority of the very large systems will not have capital or O&M expenditures for complying with a MCL of 5 μg/L (Table IX–3). More detailed costs estimates for each very large water system can be found in the water docket.

TABLE IX–3.—TOTAL ANNUAL COSTS FOR LARGE SYSTEMS FOR (SERVING MORE THAN 1 MILLION PEOPLE)

MCL option (μg/L)	Number systems treating	Cost [$millions] [1]
3	3	$16–18
5	3	11–12
10	3	6.6–7.47
20	3	2.6–2.7

[1] The lower number shows costs annualized at 3%; the higher number shows costs annualized at 7% capital costs. The 7% rate represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

D. How Did EPA Develop Cost Estimates?

EPA developed national cost estimates by using the occurrence data, unit cost curves, and a decision tree. The occurrence data provides a measure of the number of systems that would need to install treatment in each size

category (the occurrence data was described in Section V). The unit cost curves provide a measure of how much a technology will cost to install. Unit cost curves are continuous functions; they are a function of system size and provide an estimated cost for all design and average flows. The costs for a treatment train for the average flow in each size category were given previously in Table VIII–3. The unit cost curves can be found in ''Technologies and Costs for the Removal of Arsenic From Drinking Water'' (US EPA, 1999i).

EPA then developed a decision tree, which is a prediction of what treatment technology trains facilities would likely install to comply with options considered for the revised arsenic standard. A brief discussion of this decision tree follows. A copy of the full 300+ page flowchart and supporting documentation can be found in ''Decision Tree for the Arsenic Rulemaking Process'' (US EPA, 1999d). The following figure is a brief representation of this flowchart. As shown in the flowchart, EPA considered the impact of (1) MCL option and influent arsenic concentration; (2) system size; (3) regional effects (water scarcity); (4) source water type (that is, ground water or surface water); (5) existing treatment in-place; (6) waste disposal issues and costs; and (7) co-occurrence of iron and sulfate, to estimate what systems are likely to install.

Ultimately, the decision tree was expressed in decision matrices, in which EPA assigned probabilities as to how often each of the treatment trains in Table VIII–2 will likely be used. EPA developed a different decision matrix for the eight system size categories, for three different removal efficiencies (<50%, 50–90% and >90%), and for two source waters (ground and surface). In general, to the extent possible (*e.g.,* based on source water quality), EPA assumed that systems would employ the least-cost technology that can meet the MCL option.

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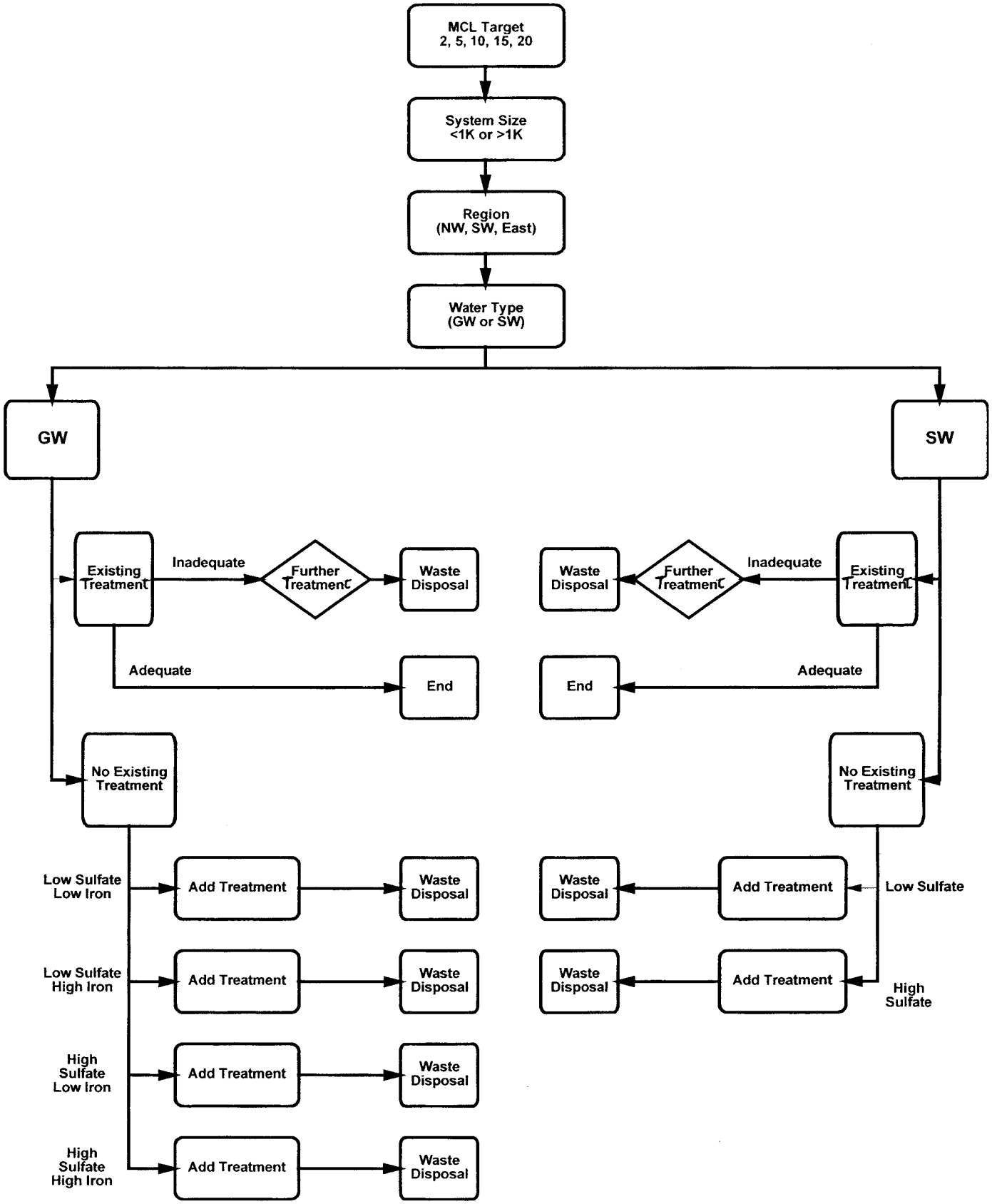

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MCL option. EPA developed a decision tree that accounted for treatment technology limitations, and only assigned non-zero probabilities in the matrices to those technologies capable of reaching each MCL option. The maximum removal percentages are given in Table VIII–1. For instance, since greensand filtration is only assumed capable of removing 50% of the influent arsenic, for an influent level of 20 µg/L, the technology is assumed to be capable of only producing product water with 10 µg/L of arsenic. Therefore, for an MCL option of 5 µg/L, no usage was assumed for greensand filtration at a 20 µg/L level of influent arsenic.

System size. The decision tree also depends on system size. For instance, small systems are assumed to operate activated alumina on a throw-away basis, and thus the probability of using a treatment train that employs on-site regeneration is assumed to be zero. The converse is true for large systems; non-zero probabilities are assumed only for those trains that employ regeneration on-site.

Water scarcity. Water scarcity was also taken under consideration when developing the decision tree. It was assumed that this issue would adversely affect the selection of reverse osmosis, since the technology rejects a significant portion of the influent water. However, the costs for reverse osmosis treatment trains are much higher than others (refer to Table VIII–3), and systems would likely opt for other, less expensive, treatment options. For the range of MCL options considered, it was assumed that ion exchange would be capable of delivering the required removal efficiencies. Thus, water scarcity, though considered in the decision tree, did not affect percentages assigned to reverse osmosis.

Source water type. Source water type is also a factor in the decision tree. It affects the unit cost curves; one set of curves were developed for surface water, and another was developed for ground water. The treatment-in-place data and co-occurrence data (as shown below) are sorted by source water type. Also, certain technologies are considered appropriate for one source water type, but not the other. For instance, greensand filtration is considered relevant only for ground waters.

Existing treatment in-place. Treatments that may already exist at facilities were taken into account in the decision tree. It was assumed that systems would need to pre-oxidize, if they weren't doing so already. Table IX–4 shows the number of systems that were assumed to require addition of pre-oxidation (Source: US EPA,1999e).

TABLE IX–4.—SYSTEMS NEEDING TO ADD PRE-OXIDATION

System size	Percent of ground water systems	Percent of surface water systems
25–100	54	9
101–500	30	4
501–1K	24	0
1,001–3.3K	24	0
3,301–10K	27	3
10,001–50K	13	1
50,001–100K	41	2
100,001–1 M	16	0

It was also assumed that those systems that had coagulation/filtration in place, or lime softening in place, would modify those treatments to optimize for arsenic removal, since it is a relatively inexpensive option. The percent of systems with these treatments in place is given in Table IX–5 (Source: US EPA,1999e). However, for higher removals (>90%), it was assumed that only half of the systems would be able to achieve the desired removal with a modification. For those systems, an additional cost of a polishing step, such as ion exchange, was added.

TABLE IX–5.—PERCENT OF SYSTEMS WITH COAGULATION-FILTRATION AND LIME-SOFTENING IN PLACE

System size	Percent of ground water systems with CF in place	Percent of surface water systems with CF in place	Percent of ground water systems with LS in place	Percent of surface water systems with LS in place
25–100	2	22	3	4
101–500	4	53	3	9
501–1K	2	73	2	19
1,001–3.3K	3	76	3	16
3,301–10K	8	85	3	7
10,001–50K	4	92	5	8
50,001–100K	4	85	3	5
100,001–1 M	5	94	10	5

Waste disposal issues and costs. Waste disposal of arsenic contaminated sludges and brines was also factored into the decision tree, and waste costs were added to the treatment trains. The waste disposal options for each of the technologies considered are given in Table IX–6. For ion exchange and activated alumina, it was assumed that the waste streams would be too concentrated to discharge directly. For these technologies, it was assumed that some of the smallest systems would be able to take advantage of evaporation ponds, but that this option would be cost prohibitive in medium and large systems. It was assumed that most systems would opt for either chemical precipitation or discharge to a sanitary sewer. EPA also assumed that systems would dispose of spent activated alumina media in non-hazardous landfills. Costs for reverse osmosis are prohibitive (In Table VIII–3, Annual Costs of Treatment Trains, compare lines 11, 12, and 13 against other technologies), but if used, EPA assumed the relatively large amount of reject water would be discharged directly (because it would not be as concentrated as ion exchange and activated alumina waste streams), to a sanitary sewer or by chemical precipitation. For coagulation assisted microfiltration, modified coagulation filtration, and modified lime softening, EPA assumed the waste would be discharged to non-hazardous landfills after the sludge is mechanically or non-mechanically dewatered. For greensand filtration, it was assumed that the spent media would be disposed of in a non-hazardous landfill.

TABLE IX–6.—WASTE DISPOSAL OPTIONS

Treatment tech	POTW waste disposal	Evap pond	Non-haz landfill	Direct discharge	Chemical precip	Mech dewater	Non-mech dewater
Ion Exchange	✔	✔			✔		
Activated Alumina	✔	✔	✔		✔		
Reverse Osmosis	✔			✔	✔		
Coag Assisted Micro-filtration			✔			✔	✔
Greensand			✔				
Modify CF			✔			✔	✔
Modify LS			✔			✔	✔

Co-occurrence of iron and sulfate. EPA also factored into the decision tree co-occurrence data on iron and sulfate (shown in Tables IX–7 to IX–10, Source: US EPA,1999f). Co-occurrence of sulfate in water adversely affects the performance of ion exchange, and increases operation and maintenance costs. Three sulfate-level treatment trains were costed for ion exchange: one low-level, one mid-level and one high-level. The percentages in Tables IX–7 to IX–8 were used as ceilings in national cost estimates and limited the number of systems that could be placed in the decision matrices in the low-level and mid-level sulfate ranges. For example, the co-occurrence data shows that the maximum number of systems that can be costed at the low-level sulfate treatment train for an influent level of arsenic between 10 and 20 μg/L is 35%. If more systems were to be placed in the decision matrices under ion exchange, no more than 39% were assumed to face a sulfate level between 25 and 120 mg/L. Any more systems assigned to ion exchange in the decision matrices were assumed to face high sulfate levels.

TABLE IX–7.—GROUND WATER: ARSENIC AND SULFATE

Influent arsenic	Likelihood of sulfate (percent)		
	<25 mg/L	25–120 mg/L	>120 mg/L
<10 μg/L	48	33	19
10–20 μg/L	35	39	26
>20 μg/L	33	38	30

TABLE IX–8.—ARSENIC WATER: ARSENIC AND SULFATE

Influent arsenic	Likelihood of sulfate (percent)		
	<25 mg/L	25–120 mg/L	>120 mg/L
<10 μg/L	28	32	40
10–20 μg/L	20	30	51
>20 μg/L	12	28	60

TABLE IX–9.—GROUND WATER: ARSENIC AND IRON

Influent arsenic	Likelihood of sulfate (percent)	
	<300 μg/L	>300 μg/L
<10 μg/L	82	18
10–20 μg/L	81	19
>20 μg/L	71	29

TABLE IX–10.—SURFACE WATER: ARSENIC AND IRON

Influent arsenic	Likelihood of sulfate (percent)	
	<300 μg/L	>300 μg/L
<10 μg/L	91	9
10–20 μg/L	92	8
>20 μg/L	90	10

Co-occurrence of iron in water improves the performance of greensand filtration. Greensand is relatively inexpensive for small systems to use, but not as effective as other treatment technologies. It was assumed that systems would opt for greensand filtration only if the level of iron was greater than 300 μg/L. EPA used the co-occurrence data in Tables IX–9 to IX–10 to determine the ceiling on the number of systems that could use greensand filtration in the decision matrices.

E. What Are the National Treatment Costs of Different MCL Options?

Under the proposed option of 5 μg/L, the Agency estimates that annual treatment costs to community water systems will be $374 million per year. If required to treat at the proposed level,

treatment costs to non-community non-transient systems would be $15 million per year. National annual costs for the MCL options considered (3, 5, 10, and 20 μg/L) are provided in Table IX–11.

TABLE IX–11.—NATIONAL ANNUAL TREATMENT COSTS

[Dollars in millions]

MCL option (μg/L)	Community water systems	Non-community Non-transient systems	Total treatment costs
3	$639	$25	$664
5	374	15	389
10	160	6	166
20	59	2	61

Total annual costs per household are given in Table IX–12. Due to economies of scale, costs per household are higher in the smaller size categories, and lower in the larger size categories. For the proposed option of 0.005 μg/L, costs are expected to be $364 per household for systems serving 25–100 people, and $254 per household for systems serving 101–500 people. Costs per households in systems larger than those are substantially lower: from $104 to $21 per household. Costs per household do not vary dramatically across MCL options. This is because of the fact that once a system installs a treatment technology to meet an MCL target, costs do not vary significantly based upon the removal efficiency it will be operated under. Costs are, however, somewhat lower at less stringent MCL options. This is because it was assumed that some systems would blend water at these options, and treat only a portion of the flow.

TABLE IX–12.—TOTAL ANNUAL COSTS PER HOUSEHOLD

[Dollars]

System size	3 μg/L	5 μg/L	10 μg/L	20 μg/L
25–100	$368	$364	$357	$349
101–500	259	254	246	238
501–1K	106	104	98	93
1K–3.3K	64	60	57	52
3.3K–10K	44	41	37	33
10K–50K	36	33	29	25
50K–100K	30	27	23	19
100K–1M	23	21	18	15

Incremental costs are given in Tables IX–13 and IX–14. Incremental costs refer to the dollars that must be spent to obtain the next, more stringent, level of control. The national and household costs under 20 μg/L refer to the amount that must be spent to reach 20 μg/L starting from the baseline of 50 μg/L. The dollar value under 10 μg/L represents the cost differential between 20 μg/L and 10 μg/L. The values under 5 μg/L and 3 μg/L were derived similarly.

TABLE IX–13.—INCREMENTAL NATIONAL ANNUAL COSTS

[Dollars in millions]

MCL option (μg/L)	Community water systems	Non-community non-transient water systems	Total
20	$59	$2	$61
10	101	4	105
5	214	9	223
3	265	19	275

TABLE IX–14.—INCREMENTAL ANNUAL COSTS PER HOUSEHOLD

[Dollars]

System size	20 μg/L	10 μg/L	5 μg/L	3 μg/L
25–100	$349	$8	$7	$4
101–500	238	8	8	5
501–1K	93	5	6	2
1K–3.3K	52	5	3	4
3.3K–10K	33	4	4	3

TABLE IX–14.—INCREMENTAL ANNUAL COSTS PER HOUSEHOLD—Continued

[Dollars]

System size	20 µg/L	10 µg/L	5 µg/L	3 µg/L
10K–50K	25	4	4	3
50K–100K	19	4	4	3
100K–1M	15	3	3	2

In the process of analyzing treatment technologies and developing cost estimates, EPA held several meetings with stakeholders to obtain input on assumptions made. Several of the key assumptions agreed to by stakeholders are given below.

1. Assumptions Affecting the Development of the Decision Tree

- EPA assumed that ion exchange usage would be prohibited above 120 mg/L of sulfate and 500 mg/L of TDS.
- EPA assumed that greensand filtration would be used only if iron in the raw water was above 300 µg/L.
- EPA assumed that systems would pre-oxidize, when existing chlorination or other oxidants are not already present.
- EPA assumed that systems would not likely use POE–RO nor POE–IX because of corrosion control problems. Also, with IX, if the resin is not replaced and/or regenerated on time, there is a potential for arsenic peaking. EPA assumed that systems will most likely use POE–AA.
- The breakthrough issue also exists with POU–IX. POU–AA has the advantage of a longer run length. EPA assumed that systems would use either POU–AA or POU–RO.

2. Assumptions Affecting Unit Cost Curves

- There are significant safety and operating efficiency risks to small systems when adjusting downward. This pH adjustment would require much more oversight than most small systems will have. EPA, in calculating unit costs for activate alumina assumed that systems would not adjust pH downward; thus, AA will be operated at a sub-optimal pH.
- There is a danger of operating technologies such as ion exchange near breakthrough. EPA incorporated a safety factor, and used 80% of the MCL as the target when calculating costs for all technologies.
- EPA assumed that small systems would not regenerate Activated Alumina on site—AA will likely be operated on a ''throw-away'' basis.
- For modifying coagulation/filtration, EPA considered the cost of a new chemical feed system when switching to iron. EPA costed out switching coagulants for high removals. For lower removals, EPA costed out optimizing alum usage.
- EPA assumed 75% for RO recovery.
- For Activated Alumina, EPA assumed that there will not be any systems with raw water in the optimal range for arsenic removal (pH between 5.5–6.0).
- For iron-coagulation-micro-filtration EPA assumed systems would apply a stronger iron dose rather than adjusting to optimum pH.
- For ion exchange, one or more regenerations per day is not problematic. Regeneration in Ion Exchange can be done automatically. EPA examined cost models on regeneration frequency, volume of waste generated and considered computer-automation for regeneration.

X. Benefits of Arsenic Reduction

The benefits associated with reductions of arsenic in drinking water arise from a reduction in the risk of adverse human health effects, and a corresponding decrease in the number of expected cases and premature deaths of people experiencing these effects. The various adverse health effects associated with arsenic are known with different levels of certainty. Presently some can be quantified and some cannot. The best characterized benefits can be both quantified and monetized (*i.e.,* a dollar value is attached to the expected decrease in number of cases), while other benefits may be only known well enough to describe. The latter are known as qualitative benefits. The Safe Drinking Water Act (SDWA) amendments of 1996 require that EPA fully consider both quantifiable and non-quantifiable benefits that result from drinking water regulations.

The first step in the benefits evaluation process is to consider the adverse health effects that may be expected to decrease with a reduction in the concentrations of arsenic in drinking water. Arsenic has many health effects, both cancer and non-cancer. Section III. discusses these health effects.

As discussed in section VIII.A., treatment for arsenic removal may add or remove other contaminants. Using chlorine or other oxidants may increase risk from disinfection by-products. On the other hand, treatments put in place for arsenic may incidentally reduce the risk from other co-occurring contaminants.

A. Monetized Benefits of Avoiding Bladder Cancer

Reducing arsenic levels in tap water will reduce the risks of suffering the adverse health effects described in the previous sections. In 1999 the National Research Council examined several risk distributions for male bladder cancer in 42 villages in Taiwan with arsenic ranging from 10 to 934 µg/L, grouping arsenic exposure by village. Previous scientific studies analyzed risk using less specific exposure categories, which can obscure ''the true shape of the dose response curve (NRC 1999, page 273).'' Risk assessments for other adverse health effects have not been as thoroughly addressed.

To monetize bladder cancer benefits, EPA calculated the number of cases potentially avoided based on the NRC bladder cancer risk analyses. The cases are evaluated in terms of the economic benefits associated with avoiding the cancer cases.

In addition to the monetized benefits of avoiding bladder cancer, EPA has chosen to monetize the potential benefits of avoided lung cancer, using a ''What If'' analysis based on statements in the NRC report (see section X.B for applying the ''what-if'' scenario to lung cancer).

1. Risk Reductions: The Analytic Approach

EPA applied the 1999 NRC bladder cancer risk assessment to U.S. males and females. The following sections explain how we calculated risk reductions for populations exposed to MCL options of 3 µg/L and above. The approach for this analysis included five components. First, EPA used data from the recent EPA water consumption study. This study is described in section X.A.2. Second, Monte Carlo simulations (section X.A.3) were used to develop relative exposure factors (section X.A.4). Third, arsenic occurrence estimates were used to identify the population exposed to levels above 3 µg/L. Fourth, NRC risk distributions were chosen for

the analysis. Fifth, EPA developed estimates of the risks faced by exposed populations using Monte Carlo simulations, using the relative exposure factors, occurrence, and NRC risk distributions mentioned above. These components of the analysis are described in the following sections.

2. Water Consumption

EPA recently updated its estimates of personal (per capita) daily average estimates of water consumption (''Estimated per Capita Water Consumption in the United States,'' EPA 2000a). The estimates used data from the combined 1994, 1995, and 1996 Continuing Survey of Food Intakes by Individuals (CSFII), conducted by the U.S. Department of Agriculture (USDA). The CSFII is a complex, multistage area probability sample of the entire U.S. and is conducted to survey the food and beverage intake of the U.S. Estimates of water consumed include direct water, indirect water and total water (Table X–1). ''Direct'' water is tap water consumed directly as a beverage. ''Indirect'' water is defined as water added to foods and beverages during final preparation at home or by food service establishments such as school cafeterias and restaurants. For the purpose of the report, indirect water did not include ''intrinsic'' water which consists of water found naturally in foods (biological water) and water added by commercial food and beverage manufactures (commercial water). ''Total'' water refers to combined direct and indirect water consumption.

TABLE X–1.—SOURCE OF WATER CONSUMED

Source	Direct (drinking)	Indirect (from food and beverages)	Bottled water
Community Tap	X	X	
Well Tap	X	X	
Total	X	X	X

Per capita water consumption estimates are reported by source. Sources include community/tap water, bottled water, and water from other sources, including water from household wells and rain cisterns, and household and public springs. For each source, the mean and percentiles of the distribution of average daily per capita consumption are reported. The estimates are based on an average of 2 days of reported consumption by survey respondents.

The estimated mean daily average per capita consumption of community/tap water by individuals in the U.S. population is 1 liter/person/day. For total water, which includes bottled water, the estimated mean daily average per capita consumption is 1.2 liters per/person/day. These estimates of water consumption are based on a sample of 15,303 individuals in the 50 States and the District of Columbia. The sample was selected to represent the entire population of the U.S. based on 1990 census data.

The estimated 90th percentile of the empirical distribution of daily average per capita consumption of community/tap water for the U.S. population is 2.1 liters/person/day; the corresponding number for daily average per capita consumption of total water is 2.3 liters/person/day. In other words, current consumption data indicate that 90 percent of the U.S. population consumes up to approximately 2 liters/person/day, which is the amount many federal agencies use as a standard consumption value.

Water consumption estimates for selected subpopulations in the U.S. are described in the analysis, including per capita water consumption by source for gender, region, age categories, economic status, race, and residential status and separately for pregnant women, lactating women, and women in childbearing years. The water consumption estimates by age were used in the computation of the relative exposure factors discussed in the section X.A.4.

These water consumption numbers differ somewhat from previous estimates reported in earlier studies. The mean per capita daily intake of total tap water, as estimated from the 1977–78 USDA's Nationwide Food Consumption Survey, was 1.193 liters/person/day (reported by Ershow and Cantor in 1989). Based on the 1977–78 study, the estimated percentile corresponding to 2 liters per day consumed is the 88th.

3. Monte Carlo Analysis

Monte Carlo analysis is a technique for analyzing problems where there are a large number of combinations of input values that are too large to calculate for every possible result. A random number generator is used to generate numbers that correspond to assumptions about the distribution or likelihood of various input values. For each set of random input values a single outcome is calculated. As the simulation runs, the outcome is recalculated for each new set of input values and continues until a stopping criterion is reached. The accuracy of this technique, like other statistical techniques, depends on the accuracy of the underlying assumptions about the distribution of input values; it does not resolve the uncertainty behind the assumptions. For the risk distributions calculated in this report, the simulations were carried out 2,000 times. For each simulation, a relative exposure factor, occurrence estimate, and individual risk estimate were calculated. These calculations resulted in estimates of the risks faced by populations exposed to arsenic concentrations in their drinking water. The underlying risk distribution are described in the following sections.

4. Relative Exposure Factors

EPA used models to integrate the new drinking water consumption study information into the benefits analysis. We used distributions for both community/tap water and total water consumption because the community water/tap water estimates may underestimate actual tap water consumption. In this analysis, we combined the water consumption data with data on population weight from the U.S. Census. The weight data included a mean and a distribution of weight for male and females on a year-to-year basis throughout a lifetime. Monte Carlo analysis generated male and female relative exposure factors (REFs) for each of the broad age categories used in the water consumption study. Lifetime male and female relative exposure factors were then estimated, where the factors show the sensitivity of exposure to an individual weighing 70 kilograms and consuming 2 liters of water per day. These life-long REFs can be directly multiplied by the average drinking water consumption to provide estimates of individual lifetime consumption

practices. The REFs provide a means to incorporate information on various age groups, for example children, into the analysis, as weight and water consumption vary among age groups. The means and variances of the REFs derived from this analysis were: for community water consumption (0.60, 0.37 males; 0.64, 0.36 females), for total water consumption (0.73, 0.39 males; 0.79, 0.37 females).

5. NRC Risk Distributions

While the NRC's work did not constitute a formal risk analysis, they did examine many statistical issues (*e.g.,* measurement errors, age-specific probabilities, body weight, water consumption rate, comparison populations, mortality rates, choice of model) and provided a starting point for additional EPA analyses. The report noted that ''poor nutrition, low selenium concentrations in Taiwan, genetic and cultural characteristics, and arsenic intake from food'' were not accounted for in their analysis (NRC, 1999, pg. 295).

In its 1999 report, ''Arsenic in Drinking Water,'' the NRC analyzed bladder cancer risks using data from Taiwan. In addition, NRC examined evidence from human epidemiological studies in Chile and Argentina, and concluded that risks of bladder and lung cancer were comparable to those ''in Taiwan at comparable levels of exposure (NRC 1999, page 7).'' The NRC also examined the implications of applying different mathematical procedures to the newly available Taiwanese data for the purpose of characterizing bladder cancer risk. These risk distributions are based on bladder cancer mortality data in Taiwan, in a section of Taiwan where arsenic concentrations in the water are very high by comparison to those in the U.S. It is also an area of very low incomes and poor diets, and the availability and quality of medical care is not of high quality, by U.S. standards. In its estimate of bladder cancer risk, the Agency assumed that within the Taiwanese study area, the risk of contracting bladder cancer was relatively close to the risk of dying from bladder cancer (that is, that the bladder cancer incidence rate was equal to the bladder cancer mortality rate). At the time the study data were collected the chances of surviving were probably poor for individuals diagnosed with bladder cancer. We do not have data, however, on the rates of survival for bladder cancer in the Taiwanese villages in the study and at the time of data collection. We do know that the relative survival rates for bladder cancer in developing countries overall ranged from 23.5% to 66.1% in 1982–1992 (''Cancer Survival in Developing Countries,'' International Agency for Research on Cancer, World Health Organization, Publication No. 145, 1998). We also have some information on annual bladder cancer mortality and incidence for the general population of Taiwan in 1996. The age-adjusted annual incidence rates of bladder cancer for males and females, respectively, were 7.36 and 3.09 per 100,000, with corresponding annual mortality rates of 3.21 and 1.44 per 100,000 (correspondence from Chen to Herman Gibb, January 3, 2000).

Assuming that the proportion of males and females in the population is equal, these numbers imply that the mortality rate for bladder cancer in the general population of Taiwan, at present, is 45%. Since survival rates have most likely improved over the years since the original Taiwanese study, this number represents a lower bound on the survival rate for the original area under study (that is, one would not expect a higher rate of survival in that area at that time). This has implications for the bladder cancer risk estimates from the Taiwan data. For this estimate we have made the assumption that all bladder tumors in the study area in Taiwan were fatal. If there were any persons with bladder cancer who recovered and died from some other cause, then our estimate underestimated risk; that is, there were more cancer cases than cancer deaths. Based on the above discussion, we think bladder cancer incidence could be no more than 2 fold bladder cancer mortality; and that an 80% mortality rate would be plausible. In the benefits analysis we include estimates using an assumed mortality rate ranging from 80% to 100%.

In the U.S. approximately one out of four individuals who is diagnosed with bladder cancer actually dies from bladder cancer. The mortality rate for the U.S. is taken from a cost of illness study recently completed by EPA (US EPA, 1999a). For those diagnosed with bladder cancer at the average age of diagnosis (70 years), the probability for dying of that disease during each year post-diagnosis were summed over a 20-year period to obtain the value of 26 percent. Mortality rates for U.S. bladder cancer patients have decreased overall by 24 percent from 1973 to 1996.

In the NRC report, Table 10–11 shows excess risk estimates based on the Taiwanese male bladder cancer, using a Poisson regression model; a risk at the current MCL of 50 μg/L is in the range of 1 to 1.347 per 1,000. Table 10–12 presents excess lifetime risk estimates for bladder cancer in males calculated using EPA's 1996 proposed revisions to the cancer guidelines (US EPA 1996b). EPA selected four of these distributions as representative of the risks and uncertainty involved (selecting relatively high and relatively low estimates). These distributions (mean 1.049, 95% upper confidence limit 1.347; mean 0.731, 95% upper confidence limit 0.807; mean 1.237, 95% upper confidence limit 1.548; and mean 1.129, 95% upper confidence limit 1.229), were used in the EPA Monte Carlo simulations. All of these risk distributions are linear in the mean, and thus may be conservative assumptions, as the NRC report suggested the true relationship may be sublinear. If the true relationship is sublinear, *i.e.,* lower than the straight line from 50 μg/L to zero, the true risks at levels below 50 μg/L are being overestimated. Other factors which might lower the true risk include the use of grouped data, the high Taiwanese dietary intake of arsenic, and the amount of selenium in the Taiwanese diet.

NRC concluded that the present MCL in drinking water of 50 μg/L does not achieve EPA's goal for public health and requires downward revision. EPA did not request nor did NRC recommend a specific new MCL level.

6. Estimated Risk Reductions

Estimated risk reductions for bladder cancer at various MCL levels were developed using Monte Carlo simulations. The inputs to the simulations were the distributions of relative risk factors (described in section X.A.4.), distributions of occurrence for arsenic levels at 3 μg/L and above, and bladder cancer risk distributions from the National Research Council report. The relative risk factor and occurrence distributions represent primarily population and occurrence variability, while the cancer risk distributions represent primarily uncertainty about the true risk. Thus the combined distributions reflect both variability and uncertainty. These combined distributions provide our best estimate of the actual risks faced by the exposed population, including the percentiles of the population facing various levels of risk.

Estimated risk reductions for bladder cancer at various MCL levels are shown in Tables X–2a and X–2b. Table X–2a uses data on community water consumption from the new EPA study; Table X–2b uses data on total water consumption from the study. Populations at or above 10^{-4} risk levels are shown in Tables X–3a and X–3b.

The after treatment occurrence distributions were assumed to reflect treatment to 80% of the MCL level. The latter assumption is made since water systems tend to treat below the MCL level in order to provide a margin of safety.

As shown in Table X–2a, bladder cancer risks at the 90th percentile of water intake, for the various MCL options under consideration, range from a multiple of 10^{-5} at 3 μg/L ($4–6 \times 10^{-5}$) to a multiple of 10^{-4} at 20 μg/L ($1.2–2.4 \times 10^{-4}$). At 5 μg/L , the 90th percentile level is $6–11 \times 10^{-5}$; at 10 μg/L the 90th percentile is $1.0–1.7 \times 10^{-4}$. Table X–2b presents similar information. The risk estimates in Table X–2b are somewhat higher than those in Table X–2a because total water consumption is higher than community water consumption. Since there is uncertainty about these numbers, it is assumed that the range $1–1.5 \times 10^{-4}$ represents a risk level of essentially 10^{-4}. It is then assumed that risks above 1.5×10^{-4} represent risks greater than 10^{-4}. Table X–3a gives information about percentages of the exposed populations and the number of people exposed at 10^{-4} risk levels and above, and, using the stated definition for an over 10^{-4} risk level, above 10^{-4}. The numbers in this table show that at an MCL of 3 μg/L, only a small number (not quantifiable) face a risk level of greater than 10^{-4}. At an MCL of 5 μg/L, about 0.3 to 0.8 million face such risk levels, at an MCL of 10 μg/L, 0.8 to 4 million, and at an MCL of 20 μg/L, about 2.4 to 6.4 million would be at such levels. Table X–3b gives similar information using total water consumption data. The mean bladder cancer risks for the exposed population at the various MCL options, after treatment, are shown in Tables X–4a and X–4b. These mean risks are used in the computation of the number of cases avoided, used later in the benefits evaluation section.

TABLE X–2A.—BLADDER CANCER INCIDENCE RISKS [1] FOR HIGH PERCENTILE U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [2] (COMMUNITY WATER CONSUMPTION DATA [3])

MCL (μg/L)	85th	90th	95th
3	$3.2–5.4 \times 10^{-5}$	$4–6 \times 10^{-5}$	$4.3–7.5 \times 10^{-5}$
5	$5.3–9.3 \times 10^{-5}$	$6–11 \times 10^{-5}$	$7.5–13.0 \times 10^{-5}$
10	$.88–1.49 \times 10^{-4}$	$1.0–1.7 \times 10^{-4}$	$1.26–2.12 \times 10^{-4}$
20	$1.2–1.96 \times 10^{-4}$	$1.4—2.4 \times 10^{-4}$	$1.9–3.2 \times 10^{-4}$

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.

[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.

[3] Discussed in Section X.A.2.

TABLE X–2B.—BLADDER CANCER INCIDENCE RISKS [1] FOR HIGH PERCENTILE U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [2] (TOTAL WATER CONSUMPTION DATA [3])

MCL (μg/L)	85th	90th	95th
3	$3.8–6.4 \times 10^{-5}$	$4–7 \times 10^{-5}$	$5–8.7 \times 10^{-5}$
5	$6.3–10.5 \times 10^{-5}$	$7–12 \times 10^{-5}$	$8.5–14.5 \times 10^{-5}$
10	$1.02–1.8 \times 10^{-4}$	$1.2–2.0 \times 10^{-4}$	$1.39–2.56 \times 10-4$
20	$1.4–2.34 \times 10^{-4}$	$1.7–2.8 \times 10^{-4}$	$2.17–3.56 \times 10^{-4}$

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.

[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.

[3] Discussed in Section X.A.2.

TABLE X–3A.—PERCENT OF EXPOSED POPULATION AT 10^{-4} RISK OR HIGHER FOR BLADDER CANCER INCIDENCE [1] AFTER TREATMENT [2] (COMMUNITY WATER CONSUMPTION DATA [3])

MCL (μg/L)	Percent at 10^{-4} risk or higher	Population at 10^{-4} risk or higher (millions)	Percent over 10^{-4}*	Population over 10^{-4} (millions)
3	<1–2.6	<0.3–0.7	<1	‡
5	1.5–12	0.4–3.2	<1–3	<0.3–0.8
10	11–34	2.9–9.1	3–15	0.8–4
20	19.5–41	5.2–11	9–24	2.4–6.4

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.

[2] The percents presented in this table provide our ''best'' estimates at this time. Actual percents could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.

[3] Discussed in Section X.A.2.

* Where over 10^{-4} means 1.5×10^{-4} or above.

‡ Too low to calculate.

TABLE X–3B.—PERCENT OF EXPOSED POPULATION AT 10^{-4} RISK OR HIGHER FOR BLADDER CANCER INCIDENCE [1] AFTER TREATMENT [2] (TOTAL WATER CONSUMPTION DATA [3])

MCL (μg/L)	Percent at 10^{-4} risk or higher	Population at 10^{-4} risk or higher (millions)	Percent over 10^{-4}*	Population over 10^{-4} (millions)
3	<1–3	<0.3–0.8	<1	‡
5	3–18	0.8–4.8	<1–4	0.3–1.1
10	16–50	4.3–13.4	4–23	1.1–6.2
20	26–53	7–14.2	13–33	3.5–8.9

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.
[2] The percents presented in this table provide our ''best'' estimates at this time. Actual percents could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.
[3] Discussed in Section X.A.2.
* Where over 10^{-4} means 1.5×10^{-4} or above.
‡ Too low to calculate.

TABLE X–4A.—MEAN BLADDER CANCER INCIDENCE RISKS [1] FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [2] (COMMUNITY WATER CONSUMPTION DATA [3])

MCL (μ/L)	Mean exposed population risk
3	$2.1–3.6 \times 10^{-5}$
5	$3.6–6.1 \times 10^{-5}$
10	$5.5–9.2 \times 10^{-5}$
20	$6.9–11.6 \times 10^{-5}$

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.
[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.
[3] Discussed in Section X.A.2.

TABLE X–4B.—MEAN BLADDER CANCER INCIDENCE RISKS [1] FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [2] (TOTAL WATER CONSUMPTION DATA [3])

MCL (μ/L)	Mean exposed population risk
3	$2.6–4.5 \times 10^{-5}$
5	$4.4–7.5 \times 10^{-5}$
10	$6.7–11.4 \times 10^{-5}$
20	$8.4–13.9 \times 10^{-5}$

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for lung cancer risks.
[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.
[3] Discussed in Section X.A.2.

B. ''What if?'' Scenario for Lung Cancer Risks

The NRC report ''Arsenic in Drinking Water'' states that ''some studies have shown that excess lung cancer deaths attributed to arsenic are 2–5 fold greater than the excess bladder cancer deaths (NRC, 1999, pg. 8).'' Two-to-five fold greater would be 3.5 fold greater on average. Also in the U.S. the mortality rate from bladder cancer is 26% and the mortality rate of lung cancer is 88%. This suggests that if the risk of contracting lung cancer were identical to the risk of contracting bladder cancer, one would expect 3.4 times the number of deaths from lung cancer as from bladder cancer. Since these numbers are essentially the same, it seems reasonable to assume that the risk of contracting lung cancer is essentially the same as the rate of contracting bladder cancer,[1] in the context of this ''what-if'' scenario. If the risk of contracting lung cancer from arsenic in drinking water is approximately equal to the risk of contracting bladder cancer, then the combined risk estimates of contracting either bladder or lung cancer would be approximately double the risk estimates presented in the previous tables.

EPA anticipates that a peer-reviewed quantification of lung cancer risk from arsenic exposure may be available between the time of proposal and promulgation. If so, EPA will make this information available for public comment through a Notice of Data Availability (NODA) and consider the analysis and public comment for the final rulemaking.

[1] If ''X'' is the probability of contracting bladder cancer, then 0.26X is the probability of mortality from bladder cancer. If lung cancer deaths are 2 to 5 times as high as bladder cancer, then they are, on average, 3.5 times as high and the average probability of mortality from lung cancer would be 3.5 times 0.26X, or 0.91X. Since we also know that there is a 88% mortality rate from lung cancer, then if the probability of contracting lung cancer is ''Y,'' the probability of mortality from lung cancer can also be represented as 0.88Y. Setting the two ways of deriving the probability of mortality from lung cancer equal, or 0.91X = 0.88Y, one can solve for Y (Y= (0.91/0.88) X). Thus Y is approximately equal to X, and the rate of contracting lung cancer is approximately the same as the rate of contracting bladder cancer.

C. Evaluation of Benefits

The evaluation stage in the analysis of risk reductions involves estimating the value of reducing the risks. Background information on the economic concepts that provide the foundation for benefits valuation, and the methods that are typically used by economists to monetize the value of risk reductions, such as wage-risk, cost of illness, and contingent valuation studies are provided in the RIA. The following sections describe the use of these techniques to estimate the value of the risk reductions attributable to the regulatory options for arsenic in drinking water. Described first is the approach for valuing the reductions in fatal risks; described next is the approach for valuing the reductions in nonfatal risks.

The benefits calculated for this proposal are assumed to begin to accrue on the effective date of the rule and are based on a calculation referred to as the ''value of a statistical life'' (VSL), currently estimated at $5.8 million. The VSL is an average estimate derived from a set of 26 studies estimating what people are willing to pay to avoid the risk of premature mortality. Most of these studies examine willingness to pay in the context of voluntary acceptance of higher risks of immediate accidental death in the workplace in exchange for higher wages. This value is sensitive to differences in population characteristics and perception of risks being valued.

For the present rulemaking analysis, which evaluates reduction in premature mortality due to carcinogen exposure, some have argued that the Agency

should consider an assumed time lag or latency period in these calculations. Latency refers to the difference between the time of initial exposure to environmental carcinogens and the onset of any resulting cancer. Use of such an approach might reduce significantly the present value estimate. EPA is interested in receiving comments on the extent to which the presentation of more detailed information on the timing of cancer risk reductions would be useful in evaluating the benefits of the proposed rule.

Latency is one of a number of adjustments or factors that are related to an evaluation of potential benefits associated with this rule, how those benefits are calculated, and when those economic benefits occur. Other factors which may influence the estimate of economic benefits associated with avoided cancer fatalities include (1) a possible ''cancer premium'' (*i.e.,* the additional value or sum that people may be willing to pay to avoid the experiences of dread, pain and suffering, and diminished quality of life associated with cancer-related illness and ultimate fatality); (2) the willingness of people to pay more over time to avoid mortality risk as their income rises; (3) a possible premium for accepting involuntary risks as opposed to voluntary assumed risks; (4) the greater risk aversion of the general population compared to the workers in the wage-risk valuation studies; (5) ''altruism'' or the willingness of people to pay more to reduce risk in other sectors of the population; and (6) a consideration of health status and life years remaining at the time of premature mortality. Use of certain of these factors may significantly increase the present value estimate. EPA therefore believes that adjustments should be considered simultaneously. The Agency also believes that there is currently neither a clear consensus among economists about how to simultaneously analyze each of these adjustments nor is there adequate empirical data to support definitive quantitative estimates for all potentially significant adjustment factors. As a result, the primary estimates of economic benefits presented in the analysis of this proposed rule rely on the unadjusted estimate. However, EPA solicits comment on whether and how to conduct these potential adjustments to economic benefits estimates together with any rationale or supporting data commenters wish to offer. Because of the complexity of these issues, EPA will ask the Science Advisory Board (SAB) to conduct a review of these benefits transfer issues associated with economic valuation of adjustments in mortality risks. Consistent with the recommendations of the SAB, and subject to resolution of any technical problems, EPA will attempt to develop and present an estimate of the latency structure as a part of the analysis of the final rule, with prior solicitation of comment, if appropriate.

1. Fatal Risks and Value of a Statistical Life (VSL)

To estimate the monetary value of reduced fatal risks (*i.e.,* risks of premature death from cancer) predicted under different regulatory options, value of a statistical life (VSL) estimates are multiplied by the number of premature fatalities avoided. VSL does not refer to the value of an identifiable life, but instead to the value of small reductions in mortality risks in a population. A ''statistical'' life is thus the sum of small individual risk reductions across an entire exposed population.

For example, if 100,000 people would each experience a reduction of 1/100,000 in their risk of premature death as the result of a regulation, the regulation can be said to ''save'' one statistical life (*i.e.,* $100{,}000 \times 1/100{,}000$). If each member of the population of 100,000 were willing to pay $20 for the stated risk reduction, the corresponding value of a statistical life would be $2 million (*i.e.,* $\$20 \times 100{,}000$). VSL estimates are appropriate only for valuing small changes in risk; they are not values for saving a particular individual's life.

Of the many VSL studies, the Agency recommends using estimates from 26 specific studies that have been peer reviewed and extensively reviewed within the Agency (US EPA, 1997f). These estimates, which are derived from wage-risk and contingent valuation studies, range from $0.7 million to $16.3 million and approximate a Wiebull distribution with a mean of $5.8 million (in 1997 dollars). To value the changes in fatal risks associated with the arsenic regulation, the mean estimate of $5.8 million is used.

Use of these estimates to value the averted risks of premature death associated with the regulatory options for arsenic is an example of the benefit transfer technique, since the subject of most of the studies (*i.e.,* job-related risks) differs from the fatal cancer risks averted by the regulatory options. Applying these studies results in several sources of potential bias (see latency discussion in section X.C.); however, quantitative adjustments to address these biases generally have not been developed or adequately tested and may be counterbalancing.[2] EPA notes the uncertainties in the cost-benefit analyses, as required by section 1412(b)(3)(C)(i)(VII) of SDWA, and requests comment on alternate approaches.

2. Nonfatal Risks and Willingness To Pay (WTP)

Estimates of the willingness to pay to avoid treatable, nonfatal cancers are the ideal economic measures used for evaluation of the reduction in nonfatal risks. However this information is not available for bladder cancer. Willingness to pay (WTP) data to avoid chronic bronchitis is available, however, and has been used before by EPA (the microbial/disinfection by-product (MDBP) rulemaking) as a surrogate to estimate the WTP to avoid non-fatal bladder cancer. The use of such WTP estimates is supported in the SDWA, as amended, at section 1412(b)(3)(C)(iii): ''The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.'' The WTP central tendency estimate of $536,000, to avoid chronic bronchitis, is used to monetize the benefits of avoiding non-fatal bladder cancers (Viscusi *et al.,* 1991).

EPA has also developed cost of illness estimates for bladder cancer, as reported in Table X–5. These estimates of direct medical costs are derived from a study conducted by Baker *et al.,* (as cited in US EPA, 1997f) which uses data from a sample of Medicare records for 1974–1981. These data include the total charges for inpatient hospital stays, skilled nursing facility stays, home health agency charges, physician services, and other outpatient and medical services. EPA combined these data with estimates of survival rates and treatment time periods to determine the average costs of initial treatment and maintenance care for patients who do not die of the disease.

[2] Some of the key sources of bias include the characteristics of the averted risks (whether they are voluntary or involuntary, ordinary or catastrophic, delayed or immediate, natural or man-made, *etc.*); the demographic characteristics of the group affected (*e.g.,* age, income); the lag between exposure and diagnosis or incidence of the disease (latency) as well as between incidence and death; the baseline health status (*i.e.,* whether a person is currently in good health) of affected individuals; and the presence of altruism (*i.e.,* individual's willingness to pay to reduce risks incurred by others) (US EPA, 1997f).

TABLE X–5.—LIFETIME AVOIDED MEDICAL COSTS FOR SURVIVORS (PRELIMINARY ESTIMATES, 1996 DOLLARS [1])

Type of cancer	Date data collected	Number of cases studied	Estimated survival rate	Mean value per nonfatal case [2]
Bladder	1974–1981	5% of 1974 Medicare patients (sample from national statistics).	26 percent (after 20 years)	$179,000 (for typical individual diagnosed at age 70)

[1] These costs increase by 2.8 percent when inflated to 1997 dollars, based on the consumer price index for the costs of medical commodities and services.
[2] Undiscounted costs.
Source: US EPA, 1999a.

D. Estimates of Quantifiable Benefits of Arsenic Reduction

Benefits estimates for avoided cases of bladder cancer were calculated using mean population risk estimates at various MCL levels. Table X–6 gives the mean populations risk estimates used, which are a composite of the mean population risk estimates discussed earlier. Lifetime risk estimates were converted to annual risk factors, and applied to the exposed population to determine the number of cases avoided. These cases were divided into fatalities and non-fatal cases avoided, based on survival information. The avoided premature fatalities were valued based on the VSL estimates discussed earlier, as recommended by EPA current guidance for cost/benefit analysis. The avoided non-fatal cases were valued based on the willingness to pay estimates for the avoidance of chronic bronchitis. The upper bound estimates have been adjusted upwards to reflect an 80% mortality rate, which is a plausible mortality rate for the area of Taiwan during the Chen study.

The ''What if?'' scenario for lung cancer benefits (described in section X.B.) was used to estimate potential benefits for avoided cases of lung cancer. This scenario is based on the statement in the NRC report ''Arsenic in Drinking Water'' that ''some studies have shown that excess lung cancer deaths attributed to arsenic are 2–5 fold greater than the excess bladder cancer deaths (NRC, 1999, pg. 8).'' It was shown in section X.D that the statement implies (if it were accurate for the U.S.), that, because of the relative U.S. mortality rates for bladder and lung cancer, the rate of contracting lung cancer could be essentially the same as the rate of contracting bladder cancer. This would double the number of cancer cases avoided, for both low and high estimates. The potential monetized benefits for lung cancer would be several times higher than those for bladder cancer, due to the higher number of fatalities involved with lung cancer.

Another way of considering the addition of lung cancer effects would be to estimate the potential benefits from avoided cases of lung cancer using the 2–5 times range for fatalities (that is, taking the expected number of bladder cancer fatalities and multiplying them by 2 and then 5 to obtain a range of lung cancer fatalities, and then factoring in non-fatal cases).

Benefits (and costs) are assumed to accrue on the effective date of the rule. Table X–7 displays the results.

TABLE X–6.–MEAN BLADDER CANCER INCIDENCE RISKS [1] FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [2] (COMPOSITE OF TABLES X–5A AND X–5B)

MCL (μg/L)	Mean exposed population risk
3	$2.1-4.5\times10^{-5}$
5	$3.6-7.5\times10^{-5}$
10	$5.5-11.4\times10^{-5}$
20	$6.9-13.9\times10^{-5}$

[1] See Sections III.C. and D. for a description of other health effects, and Section X.B. for ''What-if?'' estimates of magnitude for cancer risks.
[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.

TABLE X–7.—ESTIMATED COSTS AND BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER

[Millions, 1999]

Arsenic level (μg/l)	Total national costs to CWSs [1]	Total national costs to CWSs and NTNCWSs [2]	Total bladder cancer health benefits [3]	''What if'' scenario [4] and potential non-quantified benefits	
				''What If'' lung cancer health benefits estimates	Potential non-quantifiable health benefits
3	$643.1–753	$644.6–756.3	$43.6–104.2 [5](79)	$47.2–448 [6](213.4)	• Skin Cancer. • Kidney Cancer. • Cancer of the Nasal Passages.
5	377.3–441.8	378.9–444.9	31.7–89.9 [5](64.3)	35–384 [6](173.4)	• Liver Cancer. • Prostate Cancer.
10	163.3–191.8	164.9–194.8	17.9–52.1 [5](37)	19.6–224 [6](100)	• Cardiovascular Effects. • Pulmonary Effects. • Immunological Effects. • Neurological Effects.

TABLE X–7.—ESTIMATED COSTS AND BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER—Continued

[Millions, 1999]

Arsenic level (µg/l)	Total national costs to CWSs [1]	Total national costs to CWSs and NTNCWSs [2]	Total bladder cancer health benefits [3]	"What if" scenario [4] and potential non-quantified benefits	
				"What If" lung cancer health benefits estimates	Potential non-quantifiable health benefits
20	61.6–72.9	63.2–77.1	7.9–29.8 [5](19.8)	8.8–128 [6](53.4)	• Endocrine Effects. • Reproductive and Developmental Effects.

[1] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and State costs for administration of water programs. The lower number shows costs annualized at a consumption rate of interest of 3%, EPA's preferred approach. The higher number shows costs annualized at 7%, which represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

[2] Costs include treatment, monitoring, O&M, administrative costs to CWSs; monitoring and administrative costs to NTNCWSs; and State costs for administration of water programs.

[3] The upper bound estimate includes an adjustment to account for a possible mortality risk of 80%. It is possible that this risk could have been below 80%, which would lead to increased benefits. The actual risk depends on the survival rate for bladder cancer in the area of Taiwan studied by Chen, which is unknown.

[4] These estimates are based on the "what if" scenario for lung cancer, where the risks of a fatal lung cancer case associated with arsenic are assumed to be 2–5 times that of a fatal bladder cancer case.

[5] The number in parentheses indicates the bladder cancer health benefits assuming an 80% mortality rate for bladder cancer in the area of the Chen study, and starting from the midpoint of the benefits range when mortality and incidence are assumed equivalent.

[6] The number in parentheses is the midpoint of the range and corresponds to an assumption that the risk of fatal lung cancer is 3.5 times the risk of fatal bladder cancer.

F. NDWAC Working Group (NDWAC, 1998) on Benefits

The National Drinking Water Advisory Council (NDWAC) recommends that:

(1) EPA should focus its benefits analysis efforts primarily on assessing effects on human health, defining these effects as clearly as possible and using the best available data to value them. It is also recommended that EPA should also consider, where appropriate, taste and odor improvements, reduction of damage to water system materials, commercial water treatment cost reductions, benefits due to source water protection (*e.g.,* ecological benefits and non-use benefits), and benefits derived from the provision of information on drinking water quality (*e.g.,* a household's improved ability to make informed decisions concerning the need to test or filter tap water);

(2) EPA should devote substantial efforts to better understanding the health effects of drinking water contaminants, including the types of effects, their severity, and affected sensitive subpopulations. Better information is also needed on exposures and the effects of different exposure levels, particularly for contaminants with threshold effects. These efforts should pay particular attention to obtaining improved information concerning impacts on children and other sensitive populations;

(3) EPA should clearly identify and describe the uncertainties in the benefits analysis, including descriptions of factors that may lead the analysis to significantly understate or overstate total benefits. Factors that may have significant but indeterminate effects on the benefits estimates should also be described;

(4) EPA should consider both quantified and non-quantified benefits in regulatory decision-making. The information about quantified and non-quantified (qualitative) benefits should be presented together in a format, such as a table, to ensure that decision-makers consider both kinds of information;

(5) EPA should consider incremental benefits and costs, total benefits and costs, the distribution of benefits and costs, and cost-effectiveness in regulatory decision-making. This information should be presented together in a format, such as a table, to ensure its consideration by decision-makers;

(6) Whenever EPA considers regulation of a drinking water contaminant, it should evaluate and consider, along with water treatment requirements to remove a contaminant, source water protection options to prevent such a contaminant from occurring. The full range of benefits of those options should be considered.

XI. Risk Management Decisions: MCL and NTNCWSs

A. What Is the Proposed MCL?

EPA is proposing an arsenic MCL of 5 µg/L and soliciting comments on options of 3µg/L, 10 µg/L, and 20 µg/L. EPA is also asking that commenters provide their rationale and any supporting data or information for the option they prefer.

The SDWA generally requires that EPA set the MCL for each contaminant as close as feasible to the MCLG, based on available technology and taking costs to large systems into account. The 1996 amendments to the SDWA added the requirement that the Administrator determine whether or not the quantifiable and nonquantifiable benefits of an MCL justify the quantifiable and nonquantifiable costs based on the Health Risk Reduction and Cost Analysis (HRRCA) required under section 1412(b)(3)(C). The 1996 SDWA amendments also provided new discretionary authority for the Administrator to set an MCL less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)). This proposal to establish an MCL for arsenic of 5 µg/L is the first time EPA has invoked this new authority.

In conducting this analysis, EPA considered all available scientific information concerning the health effects of arsenic, including various uncertainties in the interpretation of the results. As discussed in more detail below, an array of health endpoints of concern were considered in this analysis. For some of these, the risk can currently be quantified (i.e., expressed in numerical terms); and for some, it cannot. Similarly, there are a variety of health and other benefits attributable to reductions in levels of arsenic in drinking water, some of which can be monetized (i.e., expressed in monetary terms) and others that cannot yet be monetized. All were considered in this analysis. The array of factors taken into account in making risk management decisions for arsenic underscore the difficulty of recommending the most appropriate regulatory level. A detailed

discussion of each of the principal factors considered follows.

1. Feasible MCL

Because arsenic is a carcinogen with no established mode of action, EPA is proposing that the MCLG be set at zero. To establish the MCL, EPA must first determine the level which is as close to this level as feasible. EPA has determined that 3 μg/L is technologically feasible for large systems based on peer-reviewed treatment information and the practical quantitation level achievable with available analytical methods.

2. Principal Considerations in Analysis of MCL Options

In addition to the feasible MCL of 3 μg/L, the Agency evaluated MCL options of 5 μg/L, 10 μg/L, and 20 μg/L. EPA considered the health effects associated with arsenic, the risk levels to the population for these health effects that would remain after implementation, and the costs and benefits of the different options (both those that could be monetized and/or quantified now and those that could not). The Agency's assessment centered on the health risk posed by arsenic in drinking water as well as on the benefits and costs imposed by the options evaluated. These options were then analyzed, taking into consideration the uncertainties involved in each of these factors. EPA solicits public comment on all the factors it considered in making this decision.

Estimates of risk levels to the population remaining after the regulation is in place provide a perspective on the level of public health protection and benefits. The SDWA clearly places a particular focus on public health protection afforded by MCLs. For instance, where EPA decides to use its discretionary authority after a determination that the benefits of an MCL would not justify the costs, section 1412(b)(6)(A) requires EPA to set the MCL at a level that ''maximizes health risk reduction benefits at a cost that is justified by the benefits.''

The SDWA requires the Agency to consider both quantifiable and nonquantifiable health risk reduction benefits (quantifiable benefits can include both those that are monetizable and those that are not). Non-monetizable benefits range from those about which some quantitative information is known (such as skin cancer), and those which are more qualitative in nature (such as some of the non-cancer health effects associated with arsenic). If additional potential benefits that are presently not monetized (see Table XI–1) could be estimated at some future point, the benefits might increase further. (Important assumptions inherent in EPA's benefits estimates, including the value of a statistical life and willingness to pay are discussed in section X.C.)

EPA considered the relationship of the monetized benefits to the monetized costs for each option. While equality of monetized benefits and costs is not a requirement under section 1412(b)(6)(A), this relationship is still a useful tool in comparing costs and benefits. However, EPA believes that reliance on a simple arithmetic analysis of whether monetized benefits outweigh monetized costs is inconsistent with the HRRCA's instruction to consider both quantifiable and non-quantifiable costs and benefits. The Agency therefore believes it is necessary to also examine the qualitative and non-monetized benefits and consider these benefits in establishing the MCL.

3. Findings of NRC and Consideration of Risk Levels

The Agency based its evaluation of the risk posed by arsenic at the MCL options of 3 μg/L, 5 μg/L, 10 μg/L and 20 μg/L on national and international research, the bladder cancer risk analysis provided by the National Research Council (NRC) report issued by the National Academy of Sciences (NRC 1999), and the NRC's qualitative statements of overall risk of combined cancers. The Agency is relying heavily on the findings of the NRC for a number of reasons. In carrying out its charge, the NRC assembled an independent body of preeminent scientists from several disciplines. This committee examined and carefully analyzed more information than has been available before, and NRC had the draft report peer reviewed by thirteen other individuals with ''diverse perspectives and technical expertise (NRC 1999b).'' EPA decided, in 1996, to charge the NRC with evaluating EPA's two risk assessments for arsenic and considering the most current national and international research on arsenic. The NRC determined that the current MCL of 50 μg/L is not adequately protective and should be revised downward as soon as possible. The NRC conducted a number of statistical analyses in making this determination. The report also recommended that EPA conduct separate analyses for ''bladder, lung, and other internal cancers,'' as well as consider the combined impact of these various health effects.

Given the release date of the NRC report (March 1999) relative to the timing of the proposed rule and the additional analyses needed to definitively quantify all endpoints of concern, EPA chose to use NRC's bladder cancer analysis to quantify and monetize the bladder cancer risk for the proposed rule. NRC provided quantitative risk factors for bladder cancer, that, when combined with key risk characterization scenarios by EPA and qualitative benefits, yield risks and benefits associated with various possible MCL options. The NRC report also noted that lung cancer deaths due to arsenic could be 2 to 5 times higher than bladder cancer deaths, considering the frequency and incidence of cancers projected from international studies. However, the report did not provide a numeric risk-based quantification analysis for this judgment similar to that provided for bladder cancer. As noted in section X.E., EPA approximated the potential benefits of avoiding arsenic-related lung cancer by assuming that the probability of incidence of lung cancer is approximately equal to that of bladder cancer. One can then use the death rate associated with lung cancer (88% for lung cancer as compared to 26% for bladder cancer) to derive benefits and to consider the implications of this health endpoint on risk. The risk factors associated with various MCL options increase under this ''What If'' analysis, with 10 μg/L being on the upper end or just outside of the Agency's 1×10^{-4} risk range and more stringent MCL options being more solidly under this risk ceiling.

EPA anticipates that a peer reviewed quantification of lung cancer risk from arsenic exposure may be available between the time of proposal and promulgation. If so, EPA will make this information available for public comment through a Notice of Data Availability (NODA) and consider the analysis and public comment for the final rulemaking.

Individual risk varies widely depending on susceptibility, amount of drinking water consumption, dietary levels of arsenic, years of exposure, and other factors. Consequently, any single MCL does not provide the same level of protection to all individuals. While not required by statute, the Agency has historically set protectiveness levels within a risk range of 10^{-4} to 10^{-6}. EPA has sought to ensure that drinking water standards were established at levels such that less than 10% of the exposed population faced a risk that exceeded the chosen risk level. This conclusion is based on a recognition of its responsibility to protect public health, together with its obligation to consider a range of risk management factors when establishing regulatory levels.

4. Non-Monetized Health Effects

There are a number of important non-monetized benefits that EPA considered in its analysis. Chief among these are certain health impacts known to be caused by arsenic (such as skin cancer).

A number of epidemiologic studies conducted in several countries (*e.g.*, Taiwan, Japan, England, Hungary, Mexico, Chile, and Argentina) report an association between arsenic in drinking water and skin cancer in exposed populations. Studies conducted in the U.S. have not demonstrated an association between inorganic arsenic in drinking water and skin cancer. However, these studies may not have included enough people in their design to detect these types of effects.

There were also a large number of other health effects associated with arsenic, discussed in section III, and listed in Table XI.1, which are not monetized, due to lack of appropriate quantitative data. These health effects include other cancers such as prostate cancer and cardiovascular, pulmonary, neurological and other non-cancer endpoints.

Other benefits not monetized for this proposal include customer peace of mind from knowing drinking water has been treated for arsenic and reduced treatment costs for currently unregulated contaminants that may be co-treated with arsenic. To the extent that reverse osmosis is used for arsenic removal, these benefits could be substantial. Reverse osmosis is the primary point of use treatment, and it is expected that very small systems will use this treatment to a significant extent.

5. Sources of Uncertainty

Among the non-quantifiable factors EPA considered in choosing the proposed MCL was Congress' intent that EPA ''reduce * * * [scientific] uncertainty'' in promulgating the arsenic regulation, reflected in the 1412(b)(12) arsenic research plan provisions and the legislative history for the arsenic provision (S. Rep. 104–169, 104th Cong., 1st Sess. at 39–40).

All assessments of risk are characterized by an amount of uncertainty. Some of this can be reduced by collecting more data or data of a different sort; for other types of uncertainty, improved data or assessment methods can allow one to define the degree to which an estimate is likely to be above or below the ''true'' risk. For the arsenic risk assessment, there are some definable sources of uncertainty. These include (but aren't limited to) the following: choice of endpoint and population; uncertainty about the exact exposure of individuals in the study population; issues on applying data from rural Taiwanese to the heterogenous population of the U.S.; the inability to know precisely how a chemical causes cancer in humans (the mode of action, which affects judgments as to the shape of the chemical's dose response curve at low doses); choice of mathematical modeling procedures. Congress established a dual path for arsenic in SDWA: on the one hand, EPA is to issue a proposed MCL in 4½ years; on a parallel track EPA is to develop a long-term research plan, complete the required consultations and peer reviews, complete the research, and fully consider the research results. While the plan has been developed and research is underway, not all research results will be available for the final rule. However, EPA did obtain through the NRC study the most authoritative review of existing scientific information available. This review examined the areas of uncertainty listed above.

EPA considered uncertainty about arsenic's mode of action and the shape of the dose response curve below the observable range of data. EPA is proposing an MCLG of zero. This decision is supported by the NRC's findings that the dose-response relationship at low doses is uncertain and that a conservative, default assumption of linearity is advisable. (An assumption of linearity in the dose-response relationship implies that there is no ''safe'' level that can be identified at which no health effects are expected to occur.) However, the Agency also notes the NRC's conclusion that ''* * * a sublinear dose-response curve in the low dose range is predicted, although linearity cannot be ruled out.'' (NRC, 1999, pg. 6). EPA believes the NRC study's articulation of uncertainty about the shape of the dose-response curve below the observed health effect range is an important qualitative consideration and, given Congress' concern about scientific ''uncertainty'' in setting the arsenic level, guides EPA to a default assumption of linearity.

The choice of one endpoint for risk assessment is a judgment call. While this choice is guided by the best available science, it introduces uncertainty. Basing the risk assessment on incidence of bladder tumors will underestimate the combined risk of all arsenic-induced health effects. Section XI.A.4. discusses how assessments of other tumor types and health endpoints would result in a higher estimate of arsenic risk.

Another source of uncertainty is in the application of data from one human population to another. EPA believes that the differences in dietary contributions of arsenic that NRC identified in the Taiwan study population and the U.S. are important to consider and a source of uncertainty in interpreting the results. NRC estimated that daily inorganic arsenic intake from food in the U.S. ranges from 1.3 μg/day for infants, to 4.5 μg/day for males 14–16 years old and 5.2 μg/day for females 14–16 years old, to a maximum of 12.5 μg/day for 60–65 year-old males and 9.7 μg/day for 60–65 year old females. On the other hand, NRC cited a study (Schoof *et al.*, 1998) that estimated the Taiwanese obtain 31 μg/day of inorganic arsenic from yams and 19 μg/day from rice, ''for a total of 50 μg/day within a range of estimates of 15–211 μg/day (NRC, 1999, pg. 51).'' NRC noted (p. 24) that ''Limited data on dietary arsenic intake in the blackfoot-disease region now available suggest that arsenic intake from food is higher in Taiwan than in the United States.'' NRC noted that EPA previously observed that arsenic intake from sources other than drinking water would overestimate the unit risk calculated from the Taiwan study (US EPA 1988, pg. 86). The report noted that improved quantification of arsenic in Taiwanese food might affect the risk assessment for arsenic in drinking water in the U.S. (NRC 1999, pg. 6).

In addition, the NRC report discussed laboratory animal studies that indicated that selenium reduced the toxicity of arsenic. While there is no direct evidence for humans, NRC noted that ''Selenium status there [in Taiwan] should be considered a moderator of arsenic toxicity and taken into account when the Taiwanese data are applied to populations with adequate selenium intakes (NRC, 1999, pg. 240).'' The NRC report cited studies comparing urinary selenium concentrations and blood serum selenium concentrations; these were lower for the Taiwanese by comparison to other study populations including people in the U.S.

NRC noted that the ''model choice can have a major impact on estimated low-dose risks when the analysis is based on epidemiological data (NRC 1999, pg. 294).'' NRC noted that EPA's 1988 risk assessment used the multistage Weibull model to estimate a lifetime skin cancer risk of 1×10^{-3} for U.S. males exposed to arsenic at 50 μg/L. In their report NRC discussed the implications (both in a general sense and specifically for the Tseng data) of using data from an ecological study, and of using grouped data. They also reported the results of applying both a multistage Weibull and a Poisson model. When they re-assorted data into varying exposure groups, there

was a strong effect on the fitted Weibull model. NRC concluded: ''Thus the fact that grouping does have a strong effect provides evidence of additional measurement error in the arsenic concentrations being assigned at the village level (NRC, 1999, pg. 284).'' NRC used median village arsenic concentrations to represent exposure levels. The Expert Panel (US EPA, 1997d) noted that biases from using average doses for groups leads to overestimation of risk.

''* * * [D]espite a distribution of doses in the population, those individuals exhibiting effects would tend also to be those who received the highest doses; because of this, deriving an average dose based on affected individuals would to some extent bias risk estimates upward. Similarly attribution of the total excess risk in the population to arsenic exposure alone could also be expected to inflate the estimate of risk if the population is also characterized by other risk factors such as smoking, excess exposure to sunlight, nutritional status, and so on (US EPA, 1997d, pg. 31).''

The Poisson model with a quadratic term for age and a linear term for exposure fit as well as the multistage Weibull model, and had less variability in risks from regrouping the exposure intervals. Results from the NRC Poisson model estimations were used in the EPA analysis of bladder cancer risks.

NRC noted that ''Ecological studies in Chile and Argentina have observed risks of lung and bladder cancer of the same magnitude as those reported in the studies in Taiwan at comparable levels of exposure.'' This observation increases confidence in the risk estimates based on the Tseng data. That these populations are different in terms of ethnic background, dietary patterns, and potential for other exposures also decreases the level of concern about generalized applicability of the Taiwanese data for risk assessment.

EPA considered these various uncertainties associated with interpretation of the health effects of arsenic in making risk management decisions and in selecting an appropriate regulatory level. The Agency requests comment on whether we have properly weighed the uncertainties which overestimate and underestimate risk of the proposed MCL.

There is also a measure of uncertainty about the costs associated with various possible regulatory levels. EPA has provided its best estimates of the costs, but recognizes that a number of stakeholders have performed independent analyses suggesting that the costs may be higher than those estimated by EPA. EPA requests comment on its cost estimates and any additional information commenters may have on possible costs of the rule.

6. Comparison of Benefits and Costs

The monetized costs and monetized benefits of the proposed rule, and the methodologies used to calculate them, are discussed in detail in sections IX, X, and XIII of this preamble and in the HRRCA. Overall estimates of monetized costs and monetized benefits associated with various MCL options are provided in Table XI–1. There are also many health effects which have not been monetized, as is also shown in Table XI–1.

TABLE XI–1.—ESTIMATED COSTS AND BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER

[In 1999 $ millions]

Arsenic level (μg/L)	Total national costs to CWSs [1]	Total national costs to CWSs and NTNCWSs [2]	Total bladder cancer health benefits [3]	''What if'' scenario [4] and potential non-quantified benefits	
				''What if'' lung cancer health benefits estimates	Potential non-quantifiable health benefits
3	643.1–753	644.6–756.3	43.6–104.2 [5] (79)	47.2–448 [6] (213.4)	• Skin Cancer. • Kidney Cancer. • Cancer of the Nasal Passages. • Liver Cancer. • Prostate Cancer. • Cardiovascular Effects. • Pulmonary Effects. • Immunological Effects. • Neurological Effects. • Endocrine Effects. • Reproductive and Developmental Effects.
5	377.3–441.8	378.9–444.9	31.7–89.9 [5] (64.3)	35–384 [6] (173.4)	
10	163.3–191.8	164.9–194.8	17.9–52.1 [5] (37)	19.6–224 [6] (100)	
20	61.6–72.9	63.2–77.1	7.9–29.8 [5] (19.8)	8.8–128 [6] (53.4)	

[1] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and State costs for administration of water programs. The lower number shows costs annualized at a consumption rate of interest of 3%, EPA's preferred approach. The higher number shows costs annualized at 7%, which represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

[2] Costs include treatment, monitoring, O&M, administrative costs to CWSs; monitoring and administrative costs to NTNCWSs; and State costs for administration of water programs.

[3] The upper bound estimate includes an adjustment to account for a possible mortality risk of 80%. It is possible that this risk could have been below 80%, which would lead to increased benefits. The actual risk depends on the survival rate for bladder cancer in the area of Taiwan studied by Chen, which is unknown.

[4] These estimates are based on the ''what if'' scenario for lung cancer, where the risks of a fatal lung cancer case associated with arsenic are assumed to be 2–5 times that of a fatal bladder cancer case.

[5] The number in parentheses indicates the bladder cancer health benefits assuming an 80% mortality rate for bladder cancer in the area of the Chen study, and starting from the midpoint of the benefits range when mortality and incidence are assumed equivalent.

[6] The number in parentheses is the midpoint of the range and corresponds to an assumption that the risk of fatal lung cancer is 3.5 times the risk of fatal bladder cancer.

7. Conclusion and Request for Comment

In summary, based on the NRC report, EPA agrees that the current MCL of 50 μg/L is too high and must be made more protective of human health. Because EPA is proposing an MCLG for arsenic of 0, the MCL must be set as close as feasible to the MCLG, unless EPA invokes its discretionary authority to set a different MCL at a level where the costs are justified by the benefits. EPA believes that the feasible level for arsenic is 3 μg/L. Today, EPA is proposing that the arsenic MCL be set at 5 μg/L.

EPA believes that setting the MCL at 3 μg/L, the feasible level in this case, may not be justified at this time, given the uncertainty regarding the relationship between the monetized benefits and the monetized costs at that level, the current uncertainty of the non-monetized benefits, and the degree of scientific uncertainty regarding the dose-response curve for an MCL at that level (affected by differences in nutrition and arsenic from food). Because there is a substantial possible imbalance between currently estimated monetized costs and benefits at the

feasible level of 3 μg/L, and a lack of certainty concerning the non-monetized costs and potential non-monetized benefits, EPA is proposing a standard other than the feasible level, using its discretionary authority in section 1412(b)(6). (See Senate Rep. 104–169, 104th Cong., 1st Sess. at 33). The statute requires that a level proposed or promulgated using this discretionary authority be one which maximizes health risk reduction at a level where the costs are justified by the benefits. EPA believes that the 5 μg/L MCL best meets this statutory test. EPA solicits comment on this finding, as described in more detail below.

As discussed earlier in section XI.A.4., EPA believes that there are a number of not yet quantified adverse health effects that pose a significant risk to public health. While the relationship of actual monetized benefits to monetized costs at 5 μg/L, $31.7–$89.9 million for bladder cancer benefits (plus possible lung cancer benefits of $35–$384 million based on the ''What If'' scenario) vs. $378.9–444.9 million in costs, is uncertain. EPA believes the range of benefits supports that level, especially when there may potentially be substantial non-monetized benefits factored into the analysis. EPA believes that, given the guidance of the NRC report, these potential non-monetized benefits, including a number of non-cancer health effects (see Table XI–1), are substantial enough to strike a reasonable balance between benefits and costs. Strict parity of monetized costs and monetized benefits is not required to find that the benefits of a particular MCL option are justified under the statutory provisions of § 1412(b)(6). In addition, at 5 μg/L, the remaining risks (of bladder cancer) to the exposed population after the rule's implementation are well within the 10^{-4} range, which is protective of public health. As a result, EPA finds that the actual risk levels (including risks of potential non-monetized health effects) at 5 μg/L are high enough to justify this MCL, and it is therefore the level which maximizes health protection at a level where the costs are justified.

As discussed earlier, EPA has, as a matter of policy typically established MCLs for cancer-causing contaminants to ensure that the risks of excess cancer deaths represented by exposure to drinking water at the MCL over the course of a lifetime are within a range of one in 10,000 to one in 1,000,000. EPA believes that this range is reasonably protective of public health consistent with the goals of the Safe Drinking Water Act. In using its statutory discretion under section 1412(b)(6)(A) to set a standard less stringent than the feasible level that maximizes health risk reduction at a cost that is justified by the benefits, EPA is proposing that it should choose a level that falls within the afore-mentioned target risk range. EPA is proposing to stay within this risk range even if the monetized benefits of a standard set at the upper end of the range are below the costs, as may be the case with this rule. EPA believes that important factors in this evaluation are the considerable non-quantifiable benefits that may be attributable to the proposed MCL. EPA also notes, as discussed earlier, that Congress did not direct EPA to ensure strict equality of monetizable costs and benefits in applying its discretionary authorities under section 1412(b)(6)(A). EPA requests comments on its proposed use of the new authority under section 1412(b)(6)(A) of the SDWA.

The risk assessment for bladder cancer indicates that a standard set at 10 μg/L would fall at the upper end of the target risk range, with 5 μg/L more solidly within that risk range. However, there are two important sets of considerations when using available health effects information and studies to help determine the appropriate level for a proposed new standard. On the one hand, multiple health endpoints are of concern in ensuring that the standard is adequately protective. As noted earlier, the NRC expresses concern about lung cancer and other health endpoints and indicated that excess lung cancer deaths from arsenic in drinking water could be 2–5 times the level of bladder cancer deaths. If these other risks were fully quantified, the total risk at 10 μg/L might be well above 1×10^{-4} (the upper end of the risk range), given that the quantified risk of bladder cancer alone appears to be at approximately this level.

On the other hand, there is uncertainty in the quantification of bladder cancer risk (as well as other health endpoints) and this risk estimate includes a number of conservative assumptions, as discussed previously. These include the assumptions of using a linear dose-response function; the fact that the dose-response data from the Taiwan epidemiologic study are based upon grouped occurrence information from wells used by the study population; and the possibility that the study population was more susceptible to arsenic in drinking water (as compared to the U.S. population) due to the relatively high dietary intake and dietary deficiencies in other elements (*e.g.,* selenium) that might mitigate the results of arsenic. Thus, the risk of bladder cancer alone might be well below current estimates which represent EPA's best estimate at this time using currently available data and standard methodologies. The proposed MCL attempts to balance these countervailing considerations in establishing a level that is protective of public health.

Given these competing sources of uncertainty, EPA believes it is appropriate to propose a standard at 5 μg/L, because at this level it is more likely that the total risk would be within the target range than at a higher standard. However, between now and promulgation of the final rule, EPA will work to resolve as much of this uncertainty as possible, both in terms of quantifying risk of additional health endpoints (*e.g.,* lung cancer) and in terms of reexamining conservative assumptions in the risk estimate. EPA requests comment on its proposed level of 5 μg/L and on its rationale for selecting this level. In selecting the final level of the standard, EPA will evaluate, in light of comments received and any new scientific information, its proposed way of using its discretionary authority under section 1412(b)(6)(A) and the total risk, costs, and benefits associated with each of the levels of the standard under consideration.

EPA requests comment on other potential MCLs and which of the MCLs and rationales presented here best fits the statutory framework. First, EPA is requesting comment on setting the MCL at 10 μg/L. The monetized costs of $164.9–$194.8 million, and monetized benefits of $17.9–$52.1 million for bladder cancer (plus possible lung cancer benefits of $19.6–$224 based on the ''What If'' scenario) are closer at 10 μg/L. The risk levels (of bladder cancer) to the exposed population are within the 10^{-4} risk range, and the uncertainties already discussed in Section XI.A.6. may be a basis for inferring lower expected possible non-monetized benefits than assumed for the MCL option of 5 μg/L.

EPA is also requesting comment on an MCL option of 20 μg/L. Some stakeholders favor an MCL in this range and cite, as justification for such a level, their belief that if all uncertainties are taken into consideration, risk estimates would be within the Agency's risk range of range of 1×10^{-6} to 1×10^{-4}. As can be seen from Table XI–1, costs are considerably reduced at this level, since far fewer CWSs would be impacted (*i.e.,* occurrence of arsenic, without treatment, is already below this level for many systems). Approximately 1,200 CWSs would be projected to incur costs of approximately $63–$77 million to

comply with an MCL of 20 μg/L. Benefits would also be considerably lower than for other options, at $7.9–$29.8 million for bladder cancer (plus possibly $8.8–$128 million for lung cancer, based on the ''What If'' scenario). EPA's principal concern with an MCL option in this range is that it may not be sufficiently protective after consideration of all health endpoints of concern. In other words, when the effects of bladder cancer, lung cancer, and skin cancer are considered, together with the various non-quantifiable endpoints such as circulatory system impacts, an MCL option of 20 μg/L could result in an unacceptably high risk, well outside of the risk range of 1×10^{-6} to 1×10^{-4}. As noted above, in using its statutory discretion to set a standard above the feasible level, EPA is proposing not to set a standard that exceeds this target risk range. However, EPA solicits comment on an MCL option of 20 μg/L along with any supporting rationale that commenters wish to offer.

EPA is also requesting comment on setting the MCL at 3 μg/L. As explained in section XI.A.1., this is the level as close to the MCLG as is feasible. It is also the level at which the risks are most solidly within the 10^{-4} risk range of the three MCLs considered. If EPA were to set the MCL at this level, EPA would not use its discretionary authority to set the MCL at a less stringent level based on costs and benefits. The Agency estimates that the likelihood that actual monetized benefits of $43.6–$104.2 million for bladder cancer (plus possible lung cancer benefits of $47.2–$448 million based on the ''What If'' scenario), are close to monetized costs of $644.6–$756.3 million is less certain than at 5 μg/L. (See Table XI–1.) While EPA believes that benefits may be substantially less than monetized costs for the feasible level, the feasible level would be the most protective of the options presented here and would conservatively account for the uncertainties about the severity of various health effects endpoints and their potential additive impacts.

Finally, Congress indicated interest in assuring that EPA considered impacts of an MCL decision on people served by large systems who could afford protective MCLs and an MCL of 3 would respond to this interest. Section 1412(b)(6)(B), however, provides that the interests of people served by large systems are to be considered along with benefits and costs to systems not expected to get small system variances. Because this proposal does not include small system variance technologies (*i.e.,* affordable technologies for small systems at the proposed MCL have been identified), the interests of persons served by large and small systems are being considered together and the provisions of section 1412(b)(6)(B) do not apply in this case.

B. Why Is EPA Proposing a Total Arsenic MCL?

The previous drinking water standard for arsenic of 0.05 mg/L was based on total arsenic. Total arsenic includes the dissolved and undissolved arsenic species present in drinking water and makes no distinction between inorganic or organic species. Consistent with the previous standard for arsenic, today's proposed regulation of 0.005 mg/L will be based on total arsenic. From an occurrence and analytical methods standpoint, the Agency believes it is inappropriate to make a regulatory distinction between inorganic and organic arsenic forms in drinking water.

According to Irgolic (1994) and as mentioned in section II.B, the inorganic arsenic species (As III and As V) are present in drinking water, and organic arsenic compounds are rarely found in water supplies. Furthermore, inorganic As V (arsenate) is more prevalent in drinking water supplies than inorganic As III (arsenite), which tends to occur in anaerobic waters. If organic species are present in drinking water, methylarsonic acid (MMA) and dimethylarsonic acid (DMA) are the predominant organic forms. These organic species, when present, can result from the leaching of arsenic-containing herbicides or from the conversion of the inorganic forms to the organic forms in the presence of microbial activity. In arsenic-rich ground water wells from Taiwan, methylated compounds were not present above concentrations of 1 μg/L. No DMA or MMA was detected in the ground water samples from six districts in West Bengal, India (Chatterjee et al.,1995). Regarding surface water, Anderson and Bruland (1991) reported that organic species (DMA and MMA) accounted for 1 to 59% of the total arsenic concentration from fourteen lake and river samples taken in California. As Irgolic pointed out in his review of the Anderson and Bruland study, the level of the organic arsenic found in these surface water samples were in the low nanomolar (nM or nm/L) range. After converting the reported units from nm/L to μg/L, analysis of the Anderson and Bruland data indicate that only two of the fourteen water samples exceeded a concentration of 1 μg/L of organic arsenic (DMA and MMA combined).

There is currently no EPA approved method for arsenic analysis in drinking water that distinguishes inorganic arsenic species from organic arsenic forms. The method would need to meet the criteria listed in section VI.B. and would require interlaboratory studies for validation. The estimated costs of such an analytical method could range from $150 to $250 per analysis. In addition, laboratory capacity for this type of method would most likely be limited at this time.

Few toxicity studies exist for organic arsenicals. The NRC report noted that methylated arsenic has less developmental toxicity than inorganic arsenic. Concentrations of DMA administered that decreased fetal weight produced over 50% maternal mortality in studies with rats and mice (Rogers *et al.,* 1981 as reported in NRC, 1999); hamsters had no developmental toxicity from exposure to MMA nor DMA (Willhite, 1981, as reported in NRC, 1999). NRC noted that EPA has two unpublished studies of rats fed MMA which had some increase in thyroid tumors, but no effect on mice. In addition, MMA and DMA produced mutations in cells at concentrations over one thousand times higher than the concentrations of inorganic arsenite and arsenate (Moore *et al.,* 1997 as reported in NRC, 1999). It takes roughly ten times more DMA than arsenite to cause chromosome changes in a human cell line (Oya-Ohata *et al.,* 1996, as reported in NRC, 1999).

Because of the limited occurrence of organic arsenic species in water and the lack of a suitable and widely available analytical method for inorganic arsenic, the Agency believes compliance with the proposed arsenic standard of 0.005 mg/L should be based on total arsenic. EPA requests comments on setting the MCL based on total arsenic and any data or established analytical methods that would support setting an MCL based on inorganic arsenic.

C. Why Is EPA Proposing To Require Only Monitoring and Notification for NTNCWSs?

In this rulemaking, the Agency is soliciting comment on an approach which would not extend coverage of the rule to Non-Transient Non-Community (NTNC) water systems, but would instead create an intermediate level of control for these systems (monitoring and notification requirements). The suggested approach would recognize the lower level of risk generally posed to individuals by these systems. Simultaneously, it would provide a mechanism for the public to be adequately informed in those situations where unusual concentrations of NTNC systems, customer overlap, and high

local arsenic water concentrations caused risk levels to more closely approach community water system levels.

There are approximately 20,000 NTNCs water systems regulated under the Safe Drinking Water Act. By definition, these systems do not serve over 25 people as year round residents, as would be the case for a community water system. However, they must serve at least 25 of the same people for over six months out of the year, or they would be classified as Transient Non-Community (TNC) water systems. It is generally an important distinction since the Agency has not applied regulations for contaminants with chronic health effects to TNC water systems, while it often has regulated NTNC systems similar to community water systems when addressing the risks posed by chronic contaminants.

In the case of arsenic, the existing regulation does not apply to NTNC systems. While it is feasible to control arsenic in NTNC water systems, extending regulation to these systems needs to be considered in light of the new SDWA requirement to determine whether the benefits extending coverage to this category would justify the costs and whether such regulation would provide a reasonable opportunity for health risk reduction. As discussed elsewhere in the preamble, this analysis requires a balancing of both quantitative and non-quantitative factors. Based on the modeling to be discussed, the ninetieth percentile lifetime risk of contracting bladder cancer posed to an individual consuming water from a NTNC water system, even in their present untreated state, does not exceed one in 100,000. [3] As a consequence, costs per each bladder cancer case avoided at the proposed MCL would approach the fifty million dollar mark if coverage of the rule were extended to NTNCs. This level is well above the range of historical environmental risk management decisions.

These much lower risk levels result because most individuals served by NTNC systems are expected to receive only a small portion of their lifetime drinking water exposure from such systems. For example, even with twelve years of perfect attendance at schools served by NTNC water systems, the water consumed by an individual student is estimated to represent less than five percent of lifetime consumption.

On the other hand, there are some segments of the NTNC water system population where exposure is a more significant portion of the total lifetime exposure. Manufacturing and other workers, although they represent only five percent of the population served by NTNC systems, could receive twenty to forty percent of their lifetime exposure at work. Nevertheless, as manufacturing workers represent a small portion of the NTNC population, overall risks among the NTNC population are small.

Another factor of potential concern is the extent to which users of the different NTNC water systems overlap. It is conceivable that some areas in the country exist where individuals are subjected to arsenic exposure at a number of different non-community systems (*e.g.,* day care center plus school plus factory, *etc.*). In such circumstances, individuals would be exposed to proportionately higher risks if the water systems all had elevated arsenic levels. For some individuals, the exposure could approach levels observed in corresponding community water systems. This concern is alleviated by the fact that NTNC systems generally serve only a very small portion of the total population. For example, over ninety-five percent of all school children are served by community water systems. Only a small percentage are served by NTNC water systems and, of that group, only about twelve percent (or less than one half of one percent of the overall student population) would be expected to have arsenic in their water above the proposed regulatory level). Likewise, less than 0.1 percent of the work force population receive water from an NTNC water system. With such low portions of the total population exposed to any particular type of NTNC system, the overall likelihood of multiple exposure cases in the NTNC population should also be small. The groups have been treated independently for this analysis. Comment and data are solicited to support any alternative treatments of the exposure data.

Finally, although the Agency does not believe there is sufficient evidence to support unusual sensitivity on the part of children, they generally do consume more water on a weight adjusted basis. For this reason, NTNC systems which were likely to pose the greatest exposure risk to children were separately examined and their higher relative doses considered in the modeling effort. All of these factors contributed to the Agency's evaluation of whether or not to extend regulation to NTNC water systems for arsenic and are discussed further in the results section.

1. Methodology for Analyzing NTNCWS Risks

Determination of system and individual exposure factors—In the past, the Agency has directly used SDWIS population estimates for assessing the risks posed to users of NTNC water systems. In other words, it was assumed that the same person received the exposure on a year round basis. Under this approach it was generally assumed that all NTNC users were exposed for 270 days out of the year and obtained fifty percent of their daily consumption from these systems. TNC users were assumed to use the system for only ten days per year.

With the recent completion of ''Geometries and Characteristics of Public Water Systems (US EPA, 1999e),'' however, the Agency has developed a more comprehensive understanding of NTNC water systems. These systems provide water in due course as part of operating another line of business. Many systems are classified as NTNC, rather than TNC, water systems solely because they employ sufficient workers to trigger the ''25 persons served for over six months out of the year'' requirement. Client utilization of these systems is actually much less and more similar to exposure in TNC water systems. For instance, it is fairly implausible that highway rest areas along interstate highways serve the same population on a consistent basis (with the exception of long distance truckers). Nevertheless, there are highway rest areas in both NTNC and TNC system inventories. The ''Geometries'' report suggests that population figures reported in SDWIS which have been used for past risk assessments generally appear to reflect the number of workers in the establishment coupled with peak day customer utilization.

Under these conditions use of the SDWIS figures for population greatly overestimates the actual individual exposure risk for most of the exposed population and also significantly underestimates the number of people exposed to NTNC water.[4] Adequately characterizing individual and

[3] Throughout this discussion, exposures and risks were only considered for populations potentially addressable by regulation, *i.e.,* systems with present arsenic levels in excess of 3 µg/L.

[4] For example, airports constitute only about a hundred of the NTNC water systems. Washington's Reagan National and Dulles, Dallas/Fort Worth, Seattle/Tacoma, and Pittsburgh airports are the five largest of the airports. SDWIS reports that these five airports serve about 300,000 people. In actuality, Bureau of Transportation Statistics suggest that they serve about eleven million passengers per year. Examination of this information and other BTS statistics suggests that these airports serve closer to seven million unique individuals over the course of a year and that exposure occurs on an average of ten times per year per individual customer, not 270 times.

population risks necessitates some adjustments to the SDWIS population figures. For chronic contaminants, such as arsenic, health data reflect the consequences of a lifetime of exposure. Consequently, risk assessment requires the estimation of the portion of total lifetime drinking water consumption that any one individual would receive from a particular type of water system. In turn, one needs to estimate the appropriate portions for daily, days per year, and years per lifetime consumption. These estimates need to be prepared for both the workers at the facility and the ''customers'' of the facility.

This adjustment was accomplished through a comprehensive review of government and trade association statistics on entity utilization by the U.S. Department of Commerce's Standard Industrial Classification (SIC) code. These figures, coupled with SDWIS information relating to the portion of a particular industry served by non-community water systems, made possible the development of two estimates needed for the risk assessment: customer cycles per year and worker per population served per day. These numbers are required to distinguish the more frequent and longer duration exposure of workers from that of system customers.[5] A more detailed characterization of the derivation of these numbers is contained in the docket. Table XI–2 provides the factors used in the NTNC risk assessment to account for the intermittent nature of exposure. Comment is solicited on the appropriateness of the various factors.

Once the population adjustment factors were derived, it was possible to determine the actual population served by NTNC water systems. Table XI–3 provides a breakout of these figures by type of establishment. Although not included in Table XI–3, there are other equally important characteristics to note about these systems. With notable exceptions (such as the airports in Washington, DC and Seattle), the systems generally serve a fairly small population on any given day. In fact, 99 percent of the systems serve less than 3300 users on a daily basis. This means that water production costs will be relatively high on a per gallon basis.

Risk calculation—Calculations of individual risk were prepared for each industrial sector. Even within a given sector, however, risk varies as a function of an individual's relative water consumption, body weight, vulnerability to arsenic exposure, and the water's arsenic concentration. Computationally, risks were estimated by performing Monte Carlo modeling, as was done in the community water system risk estimation, with two exceptions. First, each realization in a given sector was multiplied by the portion of lifetime exposure factor presented in Table XI–2 to reflect the decreased consumption associated with the NTNC system. Secondly, relative exposure factors were limited to age specific ratings where appropriate.[6] For example, in the case of school children, water consumption rates and weights for six to eighteen year olds were used.

TABLE XI–2.—EXPOSURE FACTORS USED IN THE NTNC RISK ASSESSMENT

NTNCWS	Number of cycles per yr	Worker/pop/day	Worker fraction daily	Worker days/yr	Worker exposure years	Customer fraction daily	Days of use/yr	Customer exposure years
Water wholesalers	1.00	0.000				0.25	270	70
Nursing homes	1.00	0.230	0.50	250	40	1.00	365	10
Churches	1.00	0.010	0.50	250	40	0.50	52	70
Golf/country clubs	4.50	0.110	0.50	250	40	0.50	52	70
Food retailers	2.00	0.070	0.50	250	40	0.25	185	70
Non-food retailers	4.50	0.090	0.50	250	40	0.25	52	70
Restaurants	2.00	0.070	0.50	250	40	0.25	185	70
Hotels/motels	86.00	0.270	0.50	250	40	1.00	3.4	40
Prisons/jails	1.33	0.100	0.50	250	40	1.00	270	3
Service stations	7.00	0.060	0.50	250	40	0.25	52	54
Agricultural products/services	7.00	0.125	0.50	250	40	0.25	52	50
Daycare centers	1.00	0.145	0.50	250	10	0.50	250	5
Schools	1.00	0.073	0.50	200	40	0.50	200	12
State parks	26.00	0.016	0.50	250	40	0.50	14	70
Medical facilities	16.40	0.022	0.50	250	40	1.00	6.7	10.3
Campgrounds/RV	22.50	0.041	0.50	180	40	1.00	5	50
Federal parks	26.00	0.016	0.50	250	40	0.50	14	70
Highway rest areas	50.70	0.010	0.50	250	40	0.50	7.2	70
Misc. recreation service	26.00	0.016	0.50	250	40	1.00	14	70
Forest Service	26.00	0.016	1.00	250	40	1.00	14	50
Interstate carriers	93.00	0.304	0.50	250	40	0.50	2	70
Amusement parks	90.00	0.180	0.50	250	10	0.50	1	70
Summer camps	8.50	0.100	1.00	180	10	1.00	7	10
Airports	36.50	0.308	0.50	250	40	0.25	10	70
Military bases		1.000	0.50	250	40			
Non-water utilities		1.000	0.50	250	40			
Office parks		1.000	0.50	250	40			
Manufacturing: Food		1.000	0.50	250	40			
Manufacturing: Non-food		1.000	0.50	250	40			
Landfills		1.000	1.00	250	40			
Fire departments		1.000	1.00	250	40			

[5] For example, travel industry statistics provide information on total numbers of hotel stays, vacancy rates, traveller age ranges, and average duration of stay. These figures can be combined with the SDWIS peak day population estimates to allocate daily population among workers, customers and vacancies. The combination of these factors provides an estimate of the number of independent customer cycles experienced in a year.

[6] For example, school kid water consumption was weighted to reflect consumption between ages 6 and 18, while factory worker consumption was weighted over ages 20 to 64.

TABLE XI–2.—EXPOSURE FACTORS USED IN THE NTNC RISK ASSESSMENT—Continued

NTNCWS	Number of cycles per yr	Worker/pop/day	Worker fraction daily	Worker days/yr	Worker exposure years	Customer fraction daily	Days of use/yr	Customer exposure years
Construction		1.000	1.00	250	40			
Mining		1.000	1.00	250	40			
Migrant labor camps		1.000	1.00	250	40			

TABLE XI–3.—COMPOSITION OF NON-TRANSIENT, NON-COMMUNITY WATER SYSTEMS

[Percentage of total NTNC population served by sector]

Schools	9.7	Medical Facilities	8	Interstate Carriers	7.1	Campgrounds	1.3
Manufacturing	2.7	Restaurants	0.9	State Parks	8.6	Misc Recreation	1.8
Airports	26.1	Non-food Retail	1.6	Amusement Parks	17.7	Other	3.5
Office Parks	0.6	Hotels/Motels	9.2	H'way Rest Area	1.0		

To illustrate the process, it was conservatively assumed that a child would attend only NTNC served schools for all twelve years. Further, it was assumed that a child would get half of their daily water consumption at school (for an average first grader this would correspond to roughly nine ounces of water per school day). Finally, it was assumed that the child would have perfect attendance and attend school for 200 days per year. Table XI–4 provides a sample output for the upper bound individual risk distribution to school children resulting from exposure to the range of untreated arsenic observed in community ground water systems[7] as well as an estimate based on more moderate assumptions of four ounces per day and 150 days attendance for four years. Upper and lower bound risk distributions were prepared for both workers and ''customers'' at all types of NTNC water systems and are contained in the docket.

TABLE XI–4.—UPPER BOUND SCHOOL CHILDREN RISK ASSOCIATED WITH CURRENT ARSENIC EXPOSURE IN NTNC WATER SYSTEMS

[Risks are per 10,000 students. i.e., $\times 10^{-4}$]

	Moderate exposure scenario	Upper bound scenario
Mean Lifetime Risk	0.0087	0.079
90th Percentile Lifetime Risk	0.019	0.17
Lifetime Bladder Cancers in Student Population	0.5	4.5

Note: This table does not include potential non-quantified lung or skin cancers.

The distribution of population risks overall was determined as part of the same simulation by developing sector weightings to reflect the total portion of the NTNC population served by each sector. Population weighted proportional sampling of the individual sectors provided an overall distribution of risk among those exposed at NTNC systems.

2. Results

It is important to note that the results presented in the discussion of NTNC benefits are based on the currently quantified health endpoint for arsenic related bladder cancer. As noted elsewhere in Section X of today's proposal, there are a number of health end points that have not yet been quantified and which could provide a rationale for extending coverage to NTNCs—in the event that a substantial portion of the consumers of water from such systems fall outside the 1 in 10,000 risk range frequently used by the Agency as a benchmark for such decisions. (Any additional data quantifying such endpoints would made available for public comment in a Notice of Data Availability.)

Table XI–5 presents a summary of the Benefit Cost Analysis for all NTNC systems. As can be seen from a review of the Table, regulation of arsenic in NTNC water systems provides only very limited opportunity for national risk reduction. Table XI–6 presents risk figures for three particular sets of individuals: children in daycare centers and schools, and construction workers. Construction and other strenuous activity workers comprise an extremely small portion of the population served by NTNC systems (less than 0.1%), but face the highest relative risks of all NTNC users (90th percentile risks of 0.7 to 1.6×10^{-4} lifetime risk). Nevertheless, there is considerable uncertainty about these exposure numbers. It is quite likely that they overestimate consumption and may be revised downward by subsequent analysis (Any additional data quantifying such endpoints would made available for public comment in a Notice of Data Availability.). The risks for children are much lower with an upper bound, 90th percentile estimate of 1.7×10^{-5} lifetime risk.

What is not possible to determine from the analysis of NTNC systems is the extent to which there is overlap of individual exposure between the various sectors. As mentioned earlier, NTNC establishments generally constitute a small portion of their SIC sectors. This fact and the observation that NTNC populations would only serve about one percent of the total population if all of the sectors with significant exposure (greater than five percent of lifetime) if they were

[7] Community ground water occurrence information was used since NTNC systems are almost exclusively supplied by ground water sources. Further, as there was no depth dependence of arsenic levels observed in the community information, it is believed that the data are an adequate approximation.

mutually exclusive, [8] provide some support for treating the SIC groups independently. However, it is equally plausible that there are communities where one individual might go from an NTNC day care center to a series of NTNC schools and then work in an NTNC factory.

The Agency is concerned about the potential for local issues to arise with respect to combined arsenic exposures. In the rare community where all ground water is contaminated with the highest levels of arsenic, risks could be outside of the Agency's traditionally allowable realm. Further, different levels of protection being provided by schools served by community water systems versus those served by NTNC systems could be seen as posing equity considerations for rural communities. For all of these reasons, the Agency does not believe it is appropriate to completely exempt NTNC systems from arsenic regulation. On the other hand, it does not believe an adequate basis exists to prescribe a standard.

The Agency is proposing to take a somewhat different approach with respect to NTNC water systems than previously practiced. We are proposing that NTNC water systems be subject to arsenic monitoring requirements applicable to community water systems. When an individual NTNC system has arsenic present in excess of the MCL for community systems, it would be required to post a notice to customers as described in Section VII.I. of this rule. The Agency believes that this approach will provide localities with high arsenic concentrations the opportunity to limit their consumption of water from these systems. Because the NTNC is not the sole source of water available to these consumers as would be the case with a community water system, they would have the ability to use bottled water, or in the case of schools for instance, to install voluntary treatment to reduce their exposure.

The Agency requests comment on this approach for addressing NTNC water systems as well as on two other possible approaches: exempting NTNC systems entirely from coverage under this rule or extending coverage to NTNC systems in the same manner as CWSs. EPA requests an accompanying rationale and any data commenters wish to submit as part of their comments on this topic. The Agency may decide, as part of the final rule, to incorporate any of these three approaches without further opportunity for comment (except where a NODA may be issued to provide the public with additional new information not taken into consideration for today's rulemaking).

TABLE XI–5.—NON-TRANSIENT NON-COMMUNITY BENEFIT COST ANALYSIS

[All risk values are per 10,000-i.e., 10^{-4}]

MCL option	Untreated		10		5		3	
	Lower bound	Upper bound	Lower bound	Upper bound	Lower bound	Upper bound	Lower bound	Upper bound
Mean Individual Risk	0.019	0.042	0.012	0.026	0.0077	0.017	0.0046	0.01
90th Percentile Individual	0.037	0.08	0.027	0.058	0.017	0.037	0.01	0.022
Annual Bladder Cancers	0.427	0.95	0.265	0.583	0.16	0.36	0.101	0.215
Cancer Cases Avoided	0	0	0.162	0.367	0.267	0.59	0.326	0.735
Benefit Million Dollars	0	0	0.31	0.70	0.51	1.1	0.62	1.4
Cost Million Dollars	.....	0	.....	6.121	.....	14.69	.....	25.21

Note: This table does not include potential non-quantified lung cancer benefits.

TABLE XI–6.—SENSITIVE GROUP EVALUATION LIFETIME RISKS

Group	Mean risk	90th percentile risk
Forest Service, Construction and Mining Workers	$3.2–7\times10^{-5}$	$7.2–16\times10^{-5}$
School Children	$3.8–7.9\times10^{-6}$	$0.84–1.7\times10^{-5}$
Day Care Children	$3.4–6.8\times10^{-6}$	$0.74–1.5\times10^{-5}$

XII. State Programs

A. How Does Arsenic Affect a State's Primacy Program?

States must revise their programs to adopt any part of today's rule which is more stringent than the approved State program. Primacy revisions must be completed in accordance with 40 CFR 142.12, and 142.16. States must submit their revised primacy application to the Administrator for approval. State requests for final approval must be submitted to the Administrator no later than 2 years after promulgation of a new standard unless the State requests and is granted an additional 2-year extension.

For revisions of State programs, § 142.12 requires States to submit, among other things, ''[a]ny additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate (§ 142.12(c)(1)(ii)).'' Based on comments from stakeholders at the arsenic in drinking water regulatory development meetings held prior to proposal, EPA believes that the information required in § 142.16(e) is not required for States revising the MCL for arsenic. Although that section refers to applications that adopt requirements of §§ 141.11, 141.23, 141.32, and 141.62, EPA believes that existing State programs which contain the standardized monitoring framework for inorganic contaminants (40 CFR 141.23) can ensure all CWSs monitor for arsenic. Therefore, EPA is proposing to clarify that § 141.16(e) applies only to new contaminants, not revisions of existing contaminants regulations. The Agency requests comment on whether this is an appropriate change.

EPA believes that the requirements in § 142.12(c) will provide sufficient information for EPA review of the State revision. The side-by-side comparison of requirements required in § 142.12(c)(1)(i) will only consist of sections revised to adopt the changes required for the arsenic regulation and

[8] This is considerably less than the estimated rural population in the U.S. which is the smallest group among which users of these systems would conceivably be distributed.

any other revisions requested by the State. In addition, the Attorney General's statement required in § 142.12(c)(1)(iii) will certify that the revised regulations will be effective and enforceable. The Agency requests comment on whether any other documentation is necessary to approve revisions to State programs enforcing the new arsenic regulation.

The Agency is proposing to add § 142.16(j) to clarify primacy requirements relating to monitoring plans and waiver procedures for revisions of existing monitoring requirements such as arsenic. Section 142.16(j) clarifies that the State simply needs to inform the Agency in their application of any changes to the monitoring plans and waiver procedures. Alternatively, a State may indicate in the primacy application that they will use the existing monitoring plans and waiver criteria approved for primacy under the National Primary Drinking Water Standards for other contaminants (for example, *i.e.* the Phase II/V rules). This information may be provided in the primacy application crosswalk which identifies revisions to the State primacy program.

B. When Does a State Have To Apply?

To maintain primacy for the Public Water Supply (PWS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's rule, when final. A State must submit a request for approval of program revisions that adopt the revised MCL and implementing regulations within two years of promulgation unless EPA approved an extension per § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

C. How Are Tribes Affected?

Currently, no federally recognized Indian tribes have primacy to enforce any of the drinking water regulations. EPA Regions implement the rules for all Tribes under section 1451(a)(1) of SDWA. Tribes must submit a primacy application to have oversight for the inorganic contaminants (*i.e.,* the Phase II/V rule) to obtain the authority for the revised arsenic MCL. Tribes with primacy for drinking water programs are eligible for grants and contract assistance (section 1451(a)(3)). Tribes are also eligible for grants under the Drinking Water State Revolving Fund Tribal set aside grant program authorized by section 1452(i) for public water system expenditures.

XIII. HRRCA

A. What Are the Requirements for the HRRCA?

Section 1412(b)(3)(C) of the 1996 Amendments requires EPA to prepare a Health Risk Reduction and Cost Analysis (HRRCA) in support of any NPDWR that includes an MCL. According to these requirements, EPA must analyze each of the following when proposing a NPDWR that includes an MCL: (1) Quantifiable and non-quantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur as the result of treatment to comply with each level; (2) quantifiable and non-quantifiable health risk reduction benefits for which there is a factual basis in the rulemaking record to conclude that such benefits are likely to occur from reductions in co-occurring contaminants that may be attributed solely to compliance with the MCL, excluding benefits resulting from compliance with other proposed or promulgated regulations; (3) quantifiable and non-quantifiable costs for which there is a factual basis in the rulemaking record to conclude that such costs are likely to occur solely as a result of compliance with the MCL, including monitoring, treatment, and other costs, and excluding costs resulting from compliance with other proposed or promulgated regulations; (4) the incremental costs and benefits associated with each alternative MCL considered; (5) the effects of the contaminant on the general population and on groups within the general population, such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population; (6) any increased health risk that may occur as the result of compliance, including risks associated with co-occurring contaminants; and (7) other relevant factors, including the quality and extent of the information, the uncertainties in the analysis, and factors with respect to the degree and nature of the risk.

This analysis summarizes EPA's estimates of the costs and benefits associated with various arsenic levels. Summary tables are presented that characterize aggregate costs and benefits, impacts on affected entities, and tradeoffs between risk reduction and compliance costs. This analysis also summarizes the effects of arsenic on the general population as well as any sensitive subpopulations and provides a discussion on the uncertainties in the analysis and any other relevant factors.

B. What Are the Quantifiable and Non-Quantifiable Health Risk Reduction Benefits?

Arsenic ingestion has been linked to a multitude of health effects, both cancerous and non-cancerous. These health effects include cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Arsenic ingestion has also been attributed to cardiovascular, pulmonary, immunological, neurological, endocrine, and reproductive and developmental effects. A complete list of the arsenic-related health effects reported in humans is shown in Table X–1. Current research on arsenic exposure has only been able to define scientifically defensible risks for bladder cancer. Because there is currently a lack of strong evidence on the risks of other arsenic-related health effects noted above, the Agency has based its assessment of the quantifiable health risk reduction benefits solely on the risks of arsenic induced bladder cancers. It is important to note that if the Agency were able to quantify additional arsenic-related health effects, the quantified benefits estimates may be significantly higher than the estimates presented in this analysis.

The quantifiable health benefits of reducing arsenic exposures in drinking water are attributable to the reduced number of fatal and non-fatal cancers, primarily of the bladder. Table XIII–1 shows the health risk reductions (number of total bladder cancers avoided and the proportions of fatal and non-fatal bladder cancers avoided) at various arsenic levels.

TABLE XIII–1.—RISK REDUCTION FROM REDUCING ARSENIC IN DRINKING WATER [1]

Arsenic level [2] (μg/L)	Risk reduction (total bladder cancers avoided per year)	Risk reduction (fatal bladder cancers avoided per year)	Risk reduction (non-fatal bladder cancers avoided per year)
3	22–42	5.7–10.9	16.3–31.1
5	16–36	4.2–9.4	11.8–26.6
10	9–21	2.3–5.5	296 6.7–15.5
20	4–12	1–3	3–9

[1] The number of bladder cancer cases avoided provide our ''best'' estimates at this time. The actual number of cases could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.

The above ranges of total, fatal, and non-fatal bladder cancer cases are based on a range of mean bladder cancer risks for exposed populations at or above arsenic levels of 3, 5, 10, and 20 μg/L as shown in Table XIII–2. For example, if we multiply the risk range at 3 μg/L (2.1×10^{-5} to 4.5×10^{-5}) by the population exposed at 3 μg/L (26.6 million), we find that the total cancers avoided at this arsenic level range from 22 to 42 bladder cancers per year, when subtracted from the number of bladder cancers per year at the baseline (50 μg/L). Fatal bladder cancer cases are determined through the relationship (EPA, 1999a) that approximately 26 percent of the total bladder cancer cases avoided at each level result in fatalities. Non-fatal bladder cancer cases are calculated by subtracting the total number of cancers from the number of fatal cancer cases.

TABLE XIII–2.—MEAN BLADDER CANCER RISKS AND EXPOSED POPULATION [1]

Arsenic level (μg/L)	Mean exposed population risk [2]	Total bladder cancer cases avoided per year [3]
Baseline (50 μg/L):		
3	$2.1-4.5\times10^{-5}$	22–42
5	$3.6-7.5\times10^{-5}$	16–36
10	$5.5-11.4\times10^{-5}$	9–21
20	$6.9-13.9\times10^{-5}$	4–12

[1] The population exposed at 3 μg/L or greater is approximately 26.6 million.
[2] The bladder cancer risks presented in this table provide our ''best'' estimates at this time. Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume a 100% mortality rate. An 80% mortality rate is used in the computation of upper bound benefits.
[3] Total bladder cancer cases avoided could be higher, depending on the survival rate for bladder cancer in the study area of Taiwan for the duration of the study.

The Agency has developed monetized estimates of the health benefits associated with the risk reductions from arsenic exposures. The SDWA, as amended, requires that a cost-benefit analysis be conducted for each NPDWR, and places a high priority on better analysis to support rulemaking. The Agency is interested in refining its approach to both the cost and benefit analysis, and in particular recognizes that there are different approaches to monetizing health benefits.

The approach used in this analysis for the measurement of health risk reduction benefits is the monetary value of a statistical life (VSL) applied to each fatal cancer avoided. Estimating the VSL involves inferring individuals' implicit tradeoffs between small changes in mortality risk and monetary compensation. In this analysis, a central tendency estimate of $5.8 million (1997$) is used in the monetary benefits calculations. This figure is determined for the VSL estimates in 26 studies reviewed in EPA's recent draft guidance on benefits assessment (US EPA, 1997f). It is important to recognize the limitations of existing VSL estimates and to consider whether factors such as differences in the demographic characteristics of the populations and differences in the nature of the risks being valued have a significant impact on the value of mortality risk reduction benefits. Also, medical care or lost-time costs are not separately included in the benefits estimates for fatal cancers, since it is assumed that these costs are captured in the VSL for fatal cancers.

For non-fatal cancers, willingness to pay (WTP) data to avoid chronic bronchitis is used as a surrogate to estimate the WTP to avoid non-fatal bladder cancers. The use of such WTP estimates is supported in the SDWA, as amended, at section 1412(b)(3)(C)(iii): ''The Administrator may identify valid approaches for the measurement and valuation of benefits under this subparagraph, including approaches to identify consumer willingness to pay for reductions in health risks from drinking water contaminants.''

A WTP central tendency estimate of $536,000 (in 1997 $) is used to monetize the benefits of avoiding non-fatal cancers (Viscusi *et al.*, 1991). The fatal, non-fatal, and non-quantifiable health benefits are summarized in Table XIII–3. As expected, the quantified bladder cancer benefits increase as arsenic levels decrease.

TABLE XIII–3.—ESTIMATED COSTS AND BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER

[In 1999 $ millions]

Arsenic level (μg/L)	Total national costs to CWSs [1]	Total national costs to CWSs and NTNCWSs [2]	Total bladder cancer health benefits [3]	"What if" scenario [4] and potential non-quantified benefits	
				"What if" lung cancer health benefits estimates	Potential non-quantifiable health benefits
3	643.1–753	644.6–756.3	43.6–104.2 [5] (79)	47.2–448 [6] (213.4)	• Skin Cancer. • Kidney Cancer. • Cancer of the Nasal Passages.
5	377.3–441.8	378.9–444.9	31.7–89.9 [5] (64.3)	35–384 [6] (173.4)	• Liver Cancer. • Prostate Cancer. • Cardiovascular Effects.
10	163.3–191.8	164.9–194.8	17.9–52.1 [5] (37)	19.6–224 [6] (100)	• Pulmonary Effects. • Immunological Effects.
20	61.6–72.9	63.2–77.1	7.9–29.8 [5] (19.8)	8.8–128 [6] (53.4)	• Neurological Effects. • Endocrine Effects. • Reproductive and Developmental Effects.

[1] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and State costs for administration of water programs. The lower number shows costs annualized at a consumption rate of interest of 3%, EPA's preferred approach. The higher number shows costs annualized at 7%, which represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

[2] Costs include treatment, monitoring, O&M, administrative costs to CWSs; monitoring and administrative costs to NTNCWSs; and State costs for administration of water programs.

[3] The upper bound estimate includes an adjustment to account for a possible mortality risk of 80%. It is possible that this risk could have been below 80%, which would lead to increased benefits. The actual risk depends on the survival rate for bladder cancer in the area of Taiwan studied by Chen, which is unknown.

[4] These estimates are based on the "what if" scenario for lung cancer, where the risks of a fatal lung cancer case associated with arsenic are assumed to be 2–5 times that of a fatal bladder cancer case.

[5] The number in parentheses indicates the bladder cancer health benefits assuming an 80% mortality rate for bladder cancer in the area of the Chen study, and starting from the midpoint of the benefits range when mortality and incidence are assumed equivalent.

[6] The number in parentheses is the midpoint of the range and corresponds to an assumption that the risk of fatal lung cancer is 3.5 times the risk of fatal bladder cancer.

Reductions in arsenic exposures may also be associated with non-quantifiable benefits. EPA has identified several potential non-quantifiable benefits associated with regulating arsenic in drinking water. In addition to the non-quantifiable benefits noted in Table XIII–3, these benefits may include any customer peace of mind from knowing that their drinking water has been treated for arsenic. Also, using reverse osmosis to remove arsenic from drinking water may also reduce other contaminants such as sulfate, nitrate, and iron due to the high removal efficiency of this treatment technology.

C. What Are the Quantifiable and Non-Quantifiable Costs?

The costs of reducing arsenic to various levels are summarized in Table XIII–4, which shows that, as expected, aggregate arsenic mitigation costs increase with decreasing arsenic levels. Total national costs range from $646 million per year at 3 μg/L to $65 million per year at 20 μg/L.

TABLE XIII–4.—ESTIMATED ANNUALIZED NATIONAL COSTS OF REDUCING ARSENIC EXPOSURES

[In 1999 $ millions]

Arsenic level (μg/L)	Costs to CWSs [1]	Total national costs to CWSs [2]	Total national costs to CWSs and NTNCWSs [3]	Total cost per fatal bladder cancer case avoided [4]
3	639–746.4	643.1–753	644.6–756.3	59–113 (69.4–132.7)
5	374–436	377.3–441.8	378.9–444.9	40–91 (47–106)
10	160–187	163.3–191.8	164.9–194.8	30.2–70.5 (35.4–84.7)
20	59–68	61.6–72.9	63.2–77.1	20.3–60.7 (26–77.1)1.

[1] Costs include treatment and O&M costs only. The lower number shows costs annualized at 3 percent; the higher number shows costs annualized at 7%. The 7% rate represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

[2] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and State costs for administration of water programs. Costs annualized at 3 and 7 percent.

[3] Costs include treatment, monitoring, O&M, administrative costs to CWSs; monitoring and administrative costs to NTNCWSs; and State costs for administration of water programs. Costs annualized at 3 and 7 percent.

[4] Range based on range of fatal bladder cancer cases avoided per year shown in Table XIII.1. The range of costs per fatal bladder cancer avoided could be one-half of the value presented, depending on the mortality rate for bladder cancer in the study area of Taiwan for the duration of the study. A plausible estimate for that mortality rate is 80%.

The cost impact of reducing arsenic in drinking water at the household level was also assessed. Table XIII–5 examines the cost per household for each system size category. As shown in the table, costs per household decrease as system size increases. Costs per household also do not vary significantly across arsenic levels. This is because

costs do not vary significantly with removal efficiency; once a system installs a treatment technology to meet an MCL, costs based upon the removal efficiency that the treatment technology will be operated under remain relatively flat. Per household costs are, however, somewhat lower at less stringent arsenic levels. This is due to the assumption that some systems would blend water at these levels and treat only a portion of the flow.

TABLE XIII–5.—ESTIMATED ANNUAL COSTS PER HOUSEHOLD [1] (IN 1999 $) AND (NUMBER OF HOUSEHOLDS AFFECTED)

System size	3 μg/L	5 μg/L	10 μg/L	20 μg/L
25–100	$368	$364	$357	$349
	(93,900)	(58,600)	(27,000)	(10,000)
101–500	$259	$254	$246	$238
	(366,900)	(229,000)	(103,000)	(41,000)
501–1,000	$106	$104	$98	$93
	(356,000)	(223,000)	(102,000)	(41,000)
1,001–3,300	$64	$60	$57	$52
	[2] (1)	(626,000)	(290,000)	(118,000)
3,301–10,000	$44	$41	$37	$33
	[2] (1.6)	[2] (1)	(478,000)	(196,000)
10,001–50,000	$36	$33	$29	$25
	[2] (3.25)	[2] (2.1)	(998,000	(406,000)
50,001–100,000	$30	$27	$23	$19
	[2] (1.4)	[2] (0.9)	(465,000)	(189,000)
100,001–1 million	$23	$21	$18	$15
	[2] (3.1)	[2] (1.8)	(937,000)	(365,000)

[1] Costs include treatment and O&M costs to CWSs only.
[2] Million.

Costs per household are higher for households served by smaller systems than larger systems for two reasons. First, smaller systems serve far fewer households than larger systems and, consequently, each household must bear a greater percentage share of the capital and O&M costs. Second, smaller systems tend to have higher influent arsenic concentrations that, on a per-capita or per-household basis, require more expensive treatment methods (*e.g.*, a higher percentage removal efficiency) to comply with an MCL.

Table XIII–6 summarizes the estimates of total national costs of compliance with the proposed MCL options of 3, 5, and 10, and 20 μg/L. This table is divided into two major groupings; the first grouping displays the estimated costs to Community Water Systems (CWSs) and the second grouping displays the estimated costs to Non-Transient Non-Community Water Systems (NTNCWSs). The State costs presented in Table XIII–6 were developed as part of the analyses to comply with the Unfunded Mandates Reform Act (UMRA) and also the Paperwork Reduction Act (PRA). Additional information on State costs is provided in Section XIV of this preamble.

TABLE XIII–6.—SUMMARY OF THE TOTAL ANNUAL NATIONAL COSTS OF COMPLIANCE WITH THE PROPOSED ARSENIC RULE ACROSS MCL OPTIONS

[In 1997 $ millions] [1]

Costs	CWS		NTNCWS	
Cost of capital	3 percent	7 percent	3 percent	7 percent
3 μg/L				
Treatment	639.2	746.4	*(25.2)	*(30.5)
Monitoring, Reporting & Recordkeeping	2.2	2.9	0.95	1.1
State & EPA Administrative Costs	2.2	3.7	1.1	2.2
Total Costs	643.6	753.0	*1.2 (27.3)	*3.3 (33.8)
5 μg/L				
Treatment	373.9	436.0	*(14.7)	*(17.8)
Monitoring, Reporting & Recordkeeping	1.9	2.7	0.92	1.1
State & EPA Administrative Costs	1.8	3.1	1.0	2.0
Total Costs	377.8	441.8	*1.2 (16.6)	*3.1 (20.9)
10 μg/L				
Treatment	160.4	186.7	*(6.1)	*(7.4)
Monitoring, Reporting & Recordkeeping	1.8	2.5	0.90	1.1
State & EPA Administrative Costs	1.5	2.6	0.93	1.9
Total Costs	163.7	191.8	*1.8 (7.9)	*3.0 (10.3)

TABLE XIII–6.—SUMMARY OF THE TOTAL ANNUAL NATIONAL COSTS OF COMPLIANCE WITH THE PROPOSED ARSENIC RULE ACROSS MCL OPTIONS—Continued

[In 1997 $ millions] [1]

Costs	CWS		NTNCWS	
Cost of capital	3 percent	7 percent	3 percent	7 percent
20 μg/L				
Treatment	58.9	68.3	*(2.1)	*(2.6)
Monitoring, Reporting & Recordkeeping	1.7	2.4	2.0	2.3
State & EPA Administrative Costs	1.3	2.3	0.91	1.9
Total Costs	61.9	72.9	*2.9 (5.1)	*4.2 (6.7)

[1] Totals may not add due to rounding.
*Costs in parentheses include treatment costs if NTNCWS had to comply with the MCL.

D. What Are the Incremental Benefits and Costs?

Table XIII–7 summarizes the incremental benefits and costs associated with arsenic exposure reduction.

TABLE XIII–7.—ESTIMATES OF THE ANNUAL INCREMENTAL RISK REDUCTION, BENEFITS, AND COSTS OF REDUCING ARSENIC IN DRINKING WATER

[$millions, 1999]

Arsenic level	20 μg/L	10 μg/L	5 μg/L	3 μg/L
Incremental Risk Reduction, Fatal Bladder Cancers Avoided Per Year	1–3	1.3–2.5	1.9–3.9	1.5–1.5
Incremental Risk Reduction, Non-Fatal Bladder Cancers Avoided Per Year	3–9	3.7–6.5	5.1–11.1	4.5–4.5
Annual Incremental Monetized Benefits [1]	7.9–29.8	10–22.3	13.8–37.8	11.9–14.3
Annual Incremental Costs [2]	63.2	101.7	214	265.7

[1] The incremental upper bound benefits estimates presented in this table have been adjusted upwards to reflect an 80% mortality rate, which is a plausible mortality rate for the area of Taiwan during the Chen study.
[2] Costs include treatment, monitoring, O&M, and administrative costs to CWSs; monitoring and administrative costs to NTNCWSs and State costs.

E. What Are the Risks of Arsenic Exposure to the General Population and Sensitive Subpopulations?

The SDWA, as amended, includes specific provisions in section 1412(b)(3)(C)(i)(V) to assess the effects of the contaminant on the general population and on groups within the general population such as children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population. The NRC Report concluded that there is insufficient scientific information to permit separate cancer risk estimates for potential subpopulations such as pregnant women, lactating women, and children and that factors that influence sensitivity to or expression of arsenic-associated cancer and noncancer effects need to be better characterized. Despite the inconclusive nature of the effects on subpopulations, EPA is planning to issue a health advisory for arsenic in early 2000. See section IV.C of this preamble for further information on the health advisory.

F. What Are the Risks Associated With Co-Occurring Contaminants?

The SDWA, as amended, requires EPA to take into account the activities under preceding rules that may have impacts on future rules. To address this requirement, EPA analyzed the co-occurrence of arsenic with other drinking water contaminants (EPA, 1999f). The results of this analysis help determine the level of overlap in regulatory requirements (cost of technology that can remove more than one contaminant) and also indicate where specific levels of one contaminant may interfere with the treatment technology for another. This analysis indicates that there is some co-occurrence of arsenic with sulfate, iron, and radon. Co-occurrence can also indicate the likelihood for increased, or in this case, decreased risks due to arsenic and selenium.

As discussed in section XI.A.5. of the preamble, animal studies suggest that selenium reduces the toxicity of arsenic, and people in Taiwan have much lower levels of selenium in their blood and urine than people in China, the U.S., and Canada. Deficient selenium intake is linked to heart problems, and excessive intake can lead to thick brittle nails and changes in the nervous system. The U.S. recommends a daily dietary intake of 55 μg/day for females and 70 μg/day for males. The WHO lower limit of safe ranges are 30 (for females) and 40 (for males) μg/day (NRC, 1990). EPA's study of co-occurrence of arsenic (at 2, 5, 10, 20, and > 20 μg/L) and selenium above 50 μg/L levels found no significant correlations between arsenic and selenium. EPA believes that, in general, the U.S. population does not experience selenium toxicity which would be reduced by the presence of arsenic and that there is sufficient selenium in the American diet to reduce the toxicity of arsenic. The Agency requests data and comments on whether selenium decreases arsenic toxicity on a regional basis. Section V of this preamble summarizes the results of EPA's arsenic co-occurrence analysis.

G. What Are the Uncertainties in the Analysis?

The models used to estimate arsenic-related cancer risks, risk reduction, and monetary benefits take many inputs which are both uncertain and highly variable. The benefits estimates that have been discussed in this preamble were derived using point estimates of

the monetary surrogates for fatal and non-fatal bladder cancers. The value of statistical life (VSL) has been approximated by a single-value estimate of $5.8 million, and willingness-to-pay (WTP) to avoid non-fatal bladder cancer has been modeled as a constant with a value of $536,000. These are the central tendency values derived by EPA, based on studies from the economic literature and previous regulatory analyses (US EPA 1997f, Viscusi *et al.,* 1991). Because the VSL is much larger than the WTP value, the VSL value dominates the total monetary benefits calculation.

The studies that have been reviewed by EPA (US EPA 1997f) have developed a wide range of VSL values, from $700,000 to $16.3 million. This implies that the monetized benefits of reduced bladder cancer risks could take a wide range of values, depending upon the VSL that is chosen.

Additional sources of uncertainty in this analysis are also found in the NRC Report. Such uncertainties include the shape of the dose-response curve, the contribution of arsenic exposure from food, and the choice of model when conducting arsenic risk assessment. These sources of uncertainties are discussed in further detail in section XI. of today's document.

XIV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review'' (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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

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.

1. Overview

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.

2. Use of Alternative Small Entity Definition

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the Federal Register and taking comment (5 U.S.C. 601(3)–(5)). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

EPA is proposing the Arsenic Rule which contains provisions which apply to small PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of ''small'' for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of ''small entity'' in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7605 at 7620, February 13, 1998, US EPA 1998j). Comments showed that stakeholders supported the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 44511, August 19, 1998, US EPA, 1998e), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

3. Initial Regulatory Flexibility Analysis

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

The RFA requires EPA to address the following when completing an IRFA:

(1) Describe the reasons why action by the Agency is being considered;

(2) State succinctly the objectives of, and legal basis for, the proposed rule;

(3) Describe, and where feasible, estimate the types and number of small entities to which the proposed rule will apply;

(4) Describe the projected reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of reports or records;

(5) Identify, to the extent practicable, all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) Describe any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes while minimizing any significant economic impact of the proposed rule on small entities.

EPA has considered and addressed all of the previously described requirements. The following is a summary of the IRFA. The first and second requirements are discussed in section I.A. of this Preamble. The third and fourth requirements are summarized as follows. The fifth requirement is discussed under section VIII.F. of this Preamble in a subsection addressing potential interactions between the arsenic rule and upcoming and existing rules affecting community water systems. The sixth requirement, regulatory alternatives, is detailed in section XIII.

a. Number of Small Entities Affected. The number of small entities subject to today's rule is shown in Table XIV–1 below.

TABLE XIV–1.—PROFILE OF THE UNIVERSE OF SMALL WATER SYSTEMS REGULATED UNDER THE ARSENIC RULE

Water system type	System size category				
	<100	101–500	501–1,000	1,001–3,300	3,301–10,000
Publicly-Owned:					
CWS	1,729	5,795	3,785	6,179	3,649
NCWS	1,783	3,171	1,182	361	29
Privately-Owned:					
CWS	13,640	11,266	2,124	1,955	654
NCWS	8,178	4,162	902	411	56
Total Systems:					
CWS	15,369	17,061	5,909	8,134	4,303
NCWS	9,961	7,333	2,084	772	85
Total	25,330	24,394	7,993	8,906	4,388

Source: Safe Drinking Water Information System (SDWIS), December 1998 freeze.

b. *Reporting, Recordkeeping and Other Requirements for Small Systems.* The proposed arsenic rule continues to require small systems to maintain records and to report arsenic concentration levels at the point-of-entry to the water system's distribution system. Small systems are also required to provide arsenic information in the Consumer Confidence Report or other public notification if the system exceeds the MCL. Arsenic monitoring and reporting will be required annually for surface water (and mixed surface and ground water systems) or once every three years for ground water systems, unless the small system obtains a monitoring waiver from the State, demonstrating compliance with the proposed MCL. Other existing information and reporting requirements, such as Consumer Confidence Reports and public notification requirements, will be revised to include the lower arsenic MCL (see sections VII. H. and I.). As is the case for other contaminants, required information on system arsenic levels must be provided by affected systems and is not considered to be confidential. The professional skills necessary for preparing the reports are the same skill level required by small systems for current reporting and monitoring requirements for other drinking water standards.

The classes of small entities that are subject to the proposed arsenic rule include public water systems serving less than 10,000 people.

4. Small Business Advocacy Review (SBAR) Panel Recommendations

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements.

EPA identified 22 representatives of small entities that were most likely to be subject to the proposal. In December, 1998, EPA prepared and distributed to the small entity representatives (SERs) an outreach document on the arsenic rule titled ''Information for Small Entity Representatives Regarding the Arsenic in Drinking Water Rule'' (US EPA, 1998g).

On December 18, 1998, EPA held a small entity conference call from Washington D.C. to provide a forum for small entity input on key issues related to the planned proposal of the arsenic in drinking water rule. These issues included, but were not limited to issues related to the rule development, such as arsenic health risks, treatment technologies, analytical methods, and monitoring. Fifteen SERs from small water systems participated on the call from the following States: Alabama, Arizona, California, Georgia, Massachusetts, Montana, Nebraska, New Hampshire, New Jersey, Utah, Virginia, Washington, and Wisconsin.

Efforts to identify and incorporate small entity concerns into this rulemaking culminated with the convening of a SBAR Panel on March 30, 1999, pursuant to section 609 of RFA/SBREFA. The four-person Panel was headed by EPA's Small Business Advocacy Chairperson and included the Director of the Standards and Risk Management Division within EPA's Office of Ground Water and Drinking Water, the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget, and the Chief Counsel for Advocacy of the SBA. For a 60-day period starting on the convening date, the Panel reviewed technical background information related to this rulemaking, reviewed comments provided by the SERs, and met on several occasions. The Panel also conducted its own outreach to the SERs and held a conference call on April 21, 1999 with the SERs to identify issues and explore alternative approaches for accomplishing environmental protection goals while minimizing impacts to small entities. Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the June 4, 1999 Panel report is included in the docket for this proposed rule (US EPA, 1999c).

Today's notice incorporates all of the recommendations on which the Panel reached consensus, except for a number of recommendations on information to include in small system guidance. The small system guidance materials will be provided before or soon after the final rule is published in the **Federal Register**. EPA is committed to addressing the following Panel recommendations regarding guidance for small systems: highlight the various waste disposal options and the necessary technical and procedural steps for small CWSs to follow in exploring these alternatives; provide specific recommendations and technical information relative to the use of POU devices; provide guidance to State and local authorities on waste disposal issues relative to the use of these devices; and provide information to assist in making treatment decisions to address multiple contaminants in the most cost-effective manner. The Panel also recommended that EPA provide guidance identifying cost-effective treatment trains for ground water systems that need to treat for both arsenic and radon in the proposed rule. However, treatment trains cannot be accurately identified until after the radon and arsenic standards are finalized because these standards would affect which treatment technologies are appropriate. Since the co-occurrence of

arsenic and radon seems to be statistically significant in only two EPA regions, the impact from this co-occurring pair is not significant on a national level. However, for the regions which are impacted, there is the potential that aeration treatment technology that may be used to mitigate radon may also help to mitigate arsenic. Aeration technology can oxidize the soluble form of arsenic to the insoluble form. This would reduce the cost of arsenic mitigation by making it easier to remove arsenic. EPA will address this recommendation further in the small system guidance materials.

The following is a summary of the rest of the Panel recommendations and EPA's response to these recommendations, by subject area:

Treatment Technologies, Waste Disposal, and Cost Estimates: The Panel recommended the following: further develop the preliminary treatment and waste disposal cost estimates; fully consider these costs when identifying affordable compliance technologies for all system size categories; and provide information to small water systems on possible options for complying with the MCL, in addition to installing any listed compliance technologies.

In response to these recommendations, the treatment section of the preamble (see section VIII.A.) and the Treatment and Cost document (US EPA, 1999i) describe the development of final cost estimates for treatment and waste disposal, including the request for comment on its projected household costs; how EPA identified the affordable compliance technologies, including the consideration of cost (section VIII.B.); and information has been added to the treatment section about options for complying with the MCL other than installing compliance technologies, such as selecting to regionalize (see section VIII.B.).

Regarding POU devices, the Panel recommended the following: continue to promote the use of POU devices as alternative treatment options for very small systems where appropriate; account for all costs, including costs that may not routinely be explicitly calculated; and consider liability issues from POU/POE devices when evaluating their appropriateness as compliance technologies; and investigate waste disposal issues with POE devices.

In response to these recommendations, the treatment section of the preamble: includes an expanded description regarding available POU compliance treatment technologies and conditions under which POU treatment may be appropriate for very small systems (see section VIII.D.); describes the components which contribute to the POU cost estimates (see section VIII.D.); and clarifies that water systems will be responsible for POU operation and maintenance to prevent liability issues from customers maintaining equipment themselves (see section VIII.D.). In addition, EPA does not recommend reverse osmosis as a POE treatment technology due to the evaluation of corrosion control issues (see section VIII.D.).

Relevance of Other Drinking Water Regulations: The Panel recommended the following: include discussion of the co-occurrence of arsenic and radon in the proposed rule for arsenic; take possible interactions among treatments for different contaminants into account in costing compliance technologies and determining whether they are nationally affordable for small systems; and encourage systems to be forward-looking and test for the multiple contaminants to determine if and how they would be affected by the upcoming rules.

In response, the co-occurrence section of the preamble includes a discussion on the co-occurrence analysis of radon and arsenic (see section V.H.), and the treatment section of the preamble has been expanded to describe the relationship of treatment for arsenic with other drinking water rules and how this issue was taken into account in cost estimates (see section VIII.F.). The preamble encourages systems to consider other upcoming rules when making future plans on monitoring or treatment (see section VIII.E.).

Small Systems Variance Technologies and National Affordability Criteria: The Panel recommended the following: include a discussion of the issues surrounding appropriate adjustment of its national affordability criteria to account for new regulatory requirements; consider revising its approach to national affordability criteria to address the concern that the current cumulative approach for adjusting the baseline household water bills is based on chronological order rather than risk, to the extent allowed by statutory and regulatory requirements; and examine the data in the 1995 Community Water Supply Survey to determine if in-place treatment baselines can be linked with the current annual water bill baseline in each of the size categories for the proposed rule.

In response to these recommendation, the treatment section of the preamble (VIII.C.) includes an expanded discussion about the national affordability criteria and adjusting it to account for new regulations; information and rationale have been added to explain the national affordability approach (see section VIII.C.). The 1995 Community Water System Survey (US EPA, 1997g) does not provide sufficient data to link in-place treatment baselines with annual water bill baselines.

Monitoring and Arsenic Species: The Panel recommended that EPA consider allowing States to use recent compliance monitoring data to satisfy initial sampling requirements or to obtain a waiver and that EPA continue to explore whether or not to make a regulatory distinction between organic and inorganic arsenic based on compliance costs and other considerations. In response, the monitoring section of the preamble and the proposed regulatory language describe the allowance of monitoring data that meet analytical requirements and have reporting limits sufficiently below the revised MCL and collected after 1990. The MCL section of the preamble contains information and rationale to support EPA's decision to base the MCL on total arsenic (see section XI).

Considerations in setting the MCL: The Panel recommended the following: in performing its obligations under SDWA, take cognizance of the scientific findings, the large scientific uncertainties, the large potential costs (including treatment and waste disposal costs), and the fact that this standard is scheduled for review in the future; give full consideration to the provisions of the Executive Order 12866 and to the option of exercising the new statutory authority under SDWA sections 1412(b)(4)(C) and 1412(b)(6)(A) in the development of the arsenic rule; and fully consider all of the ''risk management'' components of its rulemaking effort to ensure that the financial and other impacts on small entities are factored into its decision-making processes. The Panel also recommended that EPA take into account both quantifiable and non-quantifiable costs and benefits of the standard and the needs of sensitive sub-populations, and give due consideration to the impact of the rule upon small systems.

In response to all these recommendations, EPA describes in detail the factors that were considered in setting in the MCL and provides the rationale for this selection (see section XI).

Applicability of proposal: The Panel recommended that EPA carefully consider the appropriateness of extending the scope of the rule to Non-Transient, Non-Community Water Systems (NTNCWSs). In response, the

proposed MCL for arsenic does not apply to NTNCWSs and the MCL section of the preamble describes the basis for this decision, including the incremental costs and benefits attributable to coverage of these water systems (see section XI.C.).

Other Issues: The Panel recommended that EPA encourage small systems to discuss their infrastructure needs for complying with the arsenic rule with their primacy agency to determine their eligibility for DWSRF loans, and if eligible, to ask for assistance in applying for the loans. In response, the UMRA section XIV.C. has been expanded to discuss funding options for small systems, and guidance will be written to encourage systems to be proactive in communicating with their primacy agency.

Regarding health effects, the Panel recommended the following: Further evaluate the Utah study and its relationship to the studies on which the NRC report was based and give it appropriate weight in the risk assessment for the proposed arsenic standard; and examine the NRC recommendations in the light of the uncertainties associated with the report's recommendations, and any new data that may not have been considered in the NRC report. In response to these recommendations, the benefits and MCL sections (sections X and XI) describe the quantitative and non-quantitative benefits evaluation and use of research data.

We invite comments on all aspects of the proposal and its impacts on small entities.

C. Unfunded Mandates Reform Act (UMRA)

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for 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.

1. Summary of UMRA Requirements

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, and the private sector in any one year. Accordingly, EPA has prepared, under section 202 of the UMRA, a written statement addressing the following areas:

(1) Authorizing legislation;

(2) cost-benefit analysis including an analysis of the extent to which the costs to State, local, and tribal governments will be paid for by the Federal government;

(3) estimates of future compliance costs and disproportionate budgetary effects;

(4) macro-economic effects; and

(5) a summary of EPA's consultation with State, local, and tribal governments, a summary of their concerns, and a summary of EPA's evaluation of their concerns.

A summary of this analysis follows and a more detailed description is presented in EPA's Regulatory Impact Analysis (RIA) of the Arsenic Rule (US EPA, 2000e) which is included in the docket for this proposed rulemaking.

a. Authorizing legislation. Today's proposed rule is proposed pursuant to section 1412(b)(13) of the 1996 amendments to the SDWA which requires EPA to propose and promulgate a national primary drinking water regulation for arsenic, establishes a statutory deadline of January 1, 2000, to propose this rule, and establishes a statutory deadline of January 1, 2001, to promulgate this rule.

b. Cost-benefit analysis. Section XIII. of this Preamble, describing the Regulatory Impact Analysis (RIA) and Health Risk Reduction and Cost Analysis (HRRCA) for arsenic, contains a detailed cost-benefit analysis in support of the arsenic rule. Today's proposed rule is expected to have a total annualized cost of approximately $379 to 445 million.[9] This total annualized cost includes the total annual administrative costs of State, local, and tribal governments, in aggregate, less than 1% of the cost, and total annual treatment (CWS only, as proposed), monitoring, reporting, and record keeping impacts on public water systems, in aggregate, of approximately $376.7 to 439.8 million.[10] Treatment costs estimates are presented in Sections IX.D. and E. of this Preamble, and administrative costs are discussed in section 9 of the RIA (US EPA, 2000e).

The RIA includes both qualitative and monetized benefits for improvements in health and safety. EPA estimates the proposed arsenic rule will have annual monetized benefits for bladder cancer of approximately $43.6 to 104.2 million if the MCL were to be set at 3 μg/L, $31.7 to 89.9 million if set at 5 μg/L, $17.9 to 52 million if set at 10 μg/L, and $7.9 to 29.8 million if set at 20μg/L (EPA also estimates possible lung cancer benefits based on the ''What If'' scenario of $47–448 million at 3 μg/L, $35–384 million at 5 μg/L, $19.6–224 million at 10 μg/L, and $8.8–128 million at 20 μg/L.).[11] The monetized health benefits of reducing arsenic exposures in drinking water are attributable to the reduced incidence of fatal and non-fatal bladder cancers. Under baseline assumptions (no control of arsenic exposure <50 μg/L), 10–17 fatal bladder cancers and 29–48 non-fatal bladder cancers per year are associated with arsenic exposures through CWSs. At a arsenic level of 3 μg/L, an estimated 5.7 to 10.9 fatal bladder cancers and 22 to 42 non-fatal bladder cancers per year are prevented. At a level of 5 μg/L, an estimated 4 to 9 fatal bladder cancers and 16 to 36 non-fatal bladder cancers per year are prevented. At a level 10 μg/L, 2 to 6 fatal and 9 to 21 non-fatal bladder cancers per year are prevented. At a level 20 μg/L, 1 to 3 fatal and 3 to 9 non-fatal bladder cancers per year are prevented.

[9] Costed as proposed, using the 3 percent and 7 percent discount rate cost-of-capital values in Table X–8, in 1999 $ with NTNCWS monitoring and reporting, but not required to comply with the MCL. If NTNCWS were to comply with the MCL, their treatment costs would bring the annualized cost to $394.4 million.

[10] Source: table XII–6, in 1997 $.

[11] Source: Table X–7.

In addition to quantifiable benefits, EPA has identified several potential non-quantifiable benefits associated with reducing arsenic exposures in drinking water. These potential benefits are difficult to quantify because of the uncertainty surrounding their estimation. Non-quantifiable benefits may include any peace-of-mind benefits specific to reduction of arsenic risks that may not be adequately captured in the Value of Statistical Life (VSL) estimate.

State, local and Tribal governments will incur a range of administrative costs with the MCL options in complying with the arsenic rule. Administrative costs associated with water mitigation can include costs associated with program management, inspections, and enforcement activities. EPA estimates the total annual costs of administrative activities for compliance with the MCL to be approximately $2.8 million.

c. Financial Assistance. Various Federal programs exist to provide financial assistance to State, local, and tribal governments to administer and comply with this and other drinking water rules. The Federal government provides funding to States that have a primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision (PWSS) Grants program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program. For example, the SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State will have considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program.

Under PWSS Program Assistance Grants, the Administrator may make grants to States to carry out public water system supervision programs. States may use these funds to develop primacy programs. States may ''contract'' with other State agencies to assist in the development or implementation of their primacy program. However, States may not use program assistance grant funds to contract with regulated entities (*i.e.,* water systems). PWSS Grants may be used by States to set-up and administer a State program which includes such activities as: public education, testing, training, technical assistance, developing and administering a remediation grant and loan or incentive program (excludes the actual grant or loan funds), or other regulatory or non-regulatory measures.

d. Estimates of future compliance costs and disproportionate budgetary effects. To meet the requirement in section 202 of the UMRA, EPA analyzed future compliance costs and possible disproportionate budgetary effects of the MCL options. The Agency believes that the cost estimates, indicated previously and discussed in more detail in Section XIII.B of today's Preamble accurately characterize future compliance costs of the proposed rule.

With regard to the disproportionate impacts, EPA considered available data sources in analyzing the disproportionate impacts upon geographic or social segments of the nation or industry. No rationale for disproportionate impacts by geography were identified. EPA will prepare a small entity compliance guide, a monitoring/analytical manual, and a small systems technology manual that will assist the public and private sector. To fully consider the potential disproportionate impacts of this proposed rule, this analysis also developed three other measures:

(1) Reviewing the impacts on small versus large systems;

(2) reviewing the costs to public versus private water systems; and

(3) reviewing the household costs for the proposed rule.

The first measure, the national impacts on small versus large systems, is shown in Section IX, Table IX–12, Total Annual Costs per Household. Small systems are defined as those systems serving 10,000 people or less and large systems are those systems that serve more than 10,000 people. The higher compliance costs to small systems is primarily due to the greater number of small systems as opposed to large systems (*i.e.,* there are 39,420 small systems versus 1,443 large systems).

The second measure of disproportionate impacts evaluated is the relative total costs to public versus private water systems, by size. Table XIV–2 presents the total annualized costs for public and private systems by system size category for the 3 μg/L, 5 μg/L, 10 μg/L, and 20 μg/L arsenic levels. The costs are comparable for public and private systems across system sizes for all options. This pattern may be due in large part to the limited number of treatment options assumed to be available to either public or private systems to remove arsenic.

TABLE XIV–2.—AVERAGE ANNUAL COST PER CWS BY OWNERSHIP

System size	Treatment and monitoring costs		Total cost
	Public	Private	All systems
MCL = 3 μg/L			
<100	$9,475	$7,354	$7,559
101–500	25,228	18,570	20,588
501–1,000	34,688	31,645	33,474
1,001–3,300	60,929	51,097	58,189
3,301–10,000	135,573	111,396	131,197
10,001–1,000,000	578,591	547,969	573,423
>1,000,000	3,885,713	.....	3,885,713
MCL = 5 μg/L			
<100	9,720	7,212	7,450
101–500	24,560	18,223	20,198

TABLE XIV–2.—AVERAGE ANNUAL COST PER CWS BY OWNERSHIP—Continued

System size	Treatment and monitoring costs		Total cost
	Public	Private	All systems
501–1,000	34,124	30,697	32,778
1,001–3,300	57,277	48,198	54,666
3,301–10,000	124,552	102,005	120,399
10,001–1,000,000	518,647	459,930	508,640
>1,000,000	2,669,474	.....	2,669,474
MCL = 10 μg/L			
<100	9,453	7,135	7,350
101–500	23,584	17,675	19,551
501–1,000	32,271	29,160	31,048
1,001–3,300	53,357	44,785	50,921
3,301–10,000	113,338	91,244	109,278
10,001–1,000,000	458,340	415,520	450,835
>1,000,000	1,395,498	.....	1,395,498
MCL = 20 μg/L			
<100	9,121	6,950	7,157
101–500	22,778	16,954	18,738
501–1,000	30,493	27,668	29,376
1,001–3,300	48,399	41,625	46,501
3,301–10,000	99,872	79,128	95,983
10,001–1,000,000	394,742	334,737	384,868
>1,000,000	921,121	.....	921,121

*Costs were calculated at a commercial interest rate and include system treatment, monitoring, and administrative costs; note that systems serving over 1 million people are public surface water systems.

The third measure, household costs, can also be used to gauge the impact of a regulation and to determine whether there are disproportionately high impacts in particular segments of the population. A detailed analysis of household cost impacts by system size is presented in the RIA (US EPA 2000e). The costs for households served by public and private water systems are presented in Table XIV–3. As expected, cost per household increases as system size decreases. Cost per household is higher for households served by smaller systems than larger systems for two reasons. First, smaller systems serve far fewer households than larger systems and, consequently, each household must bear a greater percentage share of the system's costs. Second, smaller systems tend to have higher influent arsenic concentrations that, on a per-capita or per-household basis, require more expensive treatment methods to achieve the target arsenic level.

There is a moderate difference in annual cost per household for the 3 μg/L, 5 μg/L, 10 μg/L, and 20 μg/L levels for each size category. However, the costs per household are higher for private systems than for public systems. For public systems, the cost per household ranges from $24.73 to $341.78 per year at 5 μg/L and from $22.03 to $329.17 per year at 10 μg/L. For private systems, the ranges are $21.91 to $369.21 per year, and $19.06 to $363.08 per year, respectively.

TABLE XIV–3.—AVERAGE COMPLIANCE COSTS PER HOUSEHOLD FOR CWSS EXCEEDING MCLS

System size	Groundwater		Surface water	
	Public	Private	Public	Private
MCL = 3 μg/L				
<100	$338.44	$374.86	328.94	$385.61
101–500	218.59	285.61	135.98	183.96
501–1,000	108.63	112.60	45.44	46.72
1,001–3,300	62.17	83.24	21.13	27.91
3,301–10,000	44.67	62.96	18.34	22.94
10,001–1,000,000	31.29	31.29	26.49	22.81
>1,000,000	.....	.....	2.70	.....
MCL = 5 μg/L				
<100	341.78	369.21	323.48	330.05
101–500	213.11	280.76	135.22	182.65
501–1,000	106.00	108.40	44.86	46.35
1,001–3,300	58.31	77.54	20.07	26.57
3,301–10,000	40.60	57.25	16.89	21.54
10,001–1,000,000	28.12	28.63	24.73	21.91

TABLE XIV–3.—AVERAGE COMPLIANCE COSTS PER HOUSEHOLD FOR CWSS EXCEEDING MCLS—Continued

System size	Groundwater		Surface water	
	Public	Private	Public	Private
>1,000,000	.....	.....	1.73	.....
MCL = 10 μg/L				
<100	329.17	363.09	317.80	325.64
101–500	203.40	273.04	132.74	180.88
501–1,000	99.45	102.19	42.98	44.48
1,001–3,300	53.70	71.97	18.62	25.49
3,301–10,000	36.30	50.41	14.68	18.55
10,001–1,000,000	24.09	24.47	22.03	19.06
>1,000,000	.....	.....	0.89	.....
MCL = 20 μg/L				
<100	320.13	352.42	310.11	324.84
101–500	195.99	262.01	132.68	179.93
501–1,000	93.27	96.63	42.26	44.04
1,001–3,300	48.03	66.12	18.20	24.87
3,301–10,000	31.38	44.14	13.35	17.53
10,001–1,000,000	20.27	20.39	19.96	.....
>1,000,000	.....	.....	0.55	.....

*Costs to households were calculated at a commercial interest rate and include system treatment, monitoring, and administrative costs; note that systems serving over 1 million people are public surface water systems.

TABLE XIV–4.—AVERAGE COMPLIANCE COSTS PER HOUSEHOLD FOR CWSS EXCEEDING MCLS AS A PERCENT OF MEDIAN HOUSEHOLD INCOME

System size	Groundwater		Surface water	
	Public	Private	Public	Private
MCL = 3 μg/L				
<100	0.85	0.95	0.83	0.85
101–500	0.55	0.72	0.34	0.46
501–1,000	0.27	0.28	0.11	0.12
1,001–3,300	0.16	0.21	0.05	0.07
3,301–10,000	0.11	0.16	0.05	0.06
10,001–1,000,000	0.08	0.08	0.07	0.06
>1,000,0000	.....	.....	0.01	.....
MCL = 5 μg/L				
<100	0.86	0.93	0.82	0.83
101–500	0.54	0.71	0.34	0.46
501–1,000	0.27	0.27	0.11	0.12
1,001–3,300	0.15	0.20	0.05	0.07
3,301–10,000	0.10	0.14	0.04	0.05
10,001–1,000,000	0.07	0.07	0.06	0.06
>1,000,0000	.....	.....	0.00	.....
MCL = 10 μg/L				
<100	0.83	0.92	0.80	0.82
101–500	0.51	0.69	0.33	0.46
501–1,000	0.25	0.26	0.11	0.11
1,001–3,300	0.14	0.18	0.05	0.06
3,301–10,000	0.09	0.13	0.04	0.05
10,001–1,000,000	0.06	0.06	0.06	0.05
>1,000,0000	.....	.....	0.00	.....
MCL = 20 μg/L				
<100	0.81	0.89	0.78	0.82
101–500	0.49	0.66	0.33	0.45
501–1,000	0.24	0.24	0.11	0.11
1,001–3,300	0.12	0.17	0.05	0.06
3,301–10,000	0.08	0.11	0.03	0.04
10,001–1,000,000	0.05	0.05	0.05	0.00

TABLE XIV–4.—AVERAGE COMPLIANCE COSTS PER HOUSEHOLD FOR CWSS EXCEEDING MCLS AS A PERCENT OF MEDIAN HOUSEHOLD INCOME—Continued

System size	Groundwater		Surface water	
	Public	Private	Public	Private
>1,000,0000	.....	.....	0.00	.....

*Costs to household were calculated at a commercial interest rate and include system treatment, monitoring, and administrative costs; median household income in May 1999 was $39,648 from the 1998 annual median household income from the Census.

To further evaluate the impacts of these household costs, the costs per household were compared to median household income data for each system-size category. The result of this calculation, presented in Table XIV–4 for public and private systems, indicate a household's likely share of incremental costs in terms of its household income. For all system sizes, household costs as a percentage of median household income are less than one percent for households served by either public or private systems. Similar to the cost per household results on which they are based, household impacts exhibit little variability across arsenic levels.

e. Macroeconomic effects. As required under UMRA § 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion so a rule would have to cost at least $18 billion annually to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the arsenic rule should be negligible based on the fact that, assuming 100 percent compliance with an MCL, the total annual costs are approximately $756 million at the 3 μg/L level, $445 million at the 5 μg/L level, about $195 million at the 10 μg/L level, and at the 20 μg/L level, about $77 million (at a 7 percent discount rate), and the costs are not expected to be highly focused on a particular geographic region or industry sector.

f. Summary of EPA's consultation with State, local, and tribal governments and their concerns. Under UMRA section 204, EPA is to provide a summary of its consultation with elected representatives (or their designated authorized employees) of affected State, local, and Tribal governments in this rulemaking. EPA initiated consultations with governmental entities and the private sector affected by this rulemaking through various means. This included five stakeholder meetings announced in the **Federal Register** and open to any one interested in attending in person or by phone, and presentations at meetings of the American Water Works Association (AWWA), the Association of State Drinking Water Administrators (ASDWA), the Association of California Water Agencies (ACWA), and the Association of Metropolitan Water Agencies (AMWA). Participants in EPA's stakeholder meetings also included representatives from the National Rural Water Association, AMWA, ASDWA, AWWA, ACWA, Rural Community Assistance Program, State departments of environmental protection, State health departments, State drinking water programs, and a Tribe. EPA also made presentations at Tribal meetings in Nevada, Alaska, and California. To address the proposed rule's impact on small entities, the Agency consulted with representatives of small water systems and convened a Small Business Advocacy Review Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Two of the small entity representatives were elected officials from local governments. EPA also invited State drinking water program representatives to participate in a number of workgroup meetings. In addition to these consultations, EPA participated in and gave presentations at AWWA's Technical Workgroup for Arsenic. State public health department and drinking water program representatives, drinking water districts, and ASDWA participated in the Technical Workgroup meetings. Finally EPA presented the benefits analysis to State and Tribal health and environmental agencies.

The public docket for this proposed rulemaking contains meeting summaries for EPA's five stakeholder meetings on arsenic in drinking water, written comments received by the Agency, and provides details about the nature of State, local, and Tribal government's concerns. A summary of State, local, and Tribal government concerns on this proposed rulemaking is in the next section.

In order to inform and involve Tribal governments in the rulemaking process, EPA staff attended the 16th Annual Consumer Conference of the National Indian Health Board on October 6–8, 1998 in Anchorage, Alaska. Over nine hundred attendees representing Tribes from across the country were in attendance. During the conference, EPA conducted two workshops for meeting participants. The objectives of the workshops were to present an overview of EPA's drinking water program, solicit comments on key issues of potential interest in upcoming drinking water regulations, and to solicit advice in identifying an effective consultative process with Tribes for the future.

EPA, in conjunction with the Inter Tribal Council of Arizona (ITCA), also convened a Tribal consultation meeting on February 24–25, 1999, in Las Vegas, Nevada to discuss ways to involve Tribal representatives, both Tribal council members and tribal water utility operators, in the stakeholder process. Approximately twenty-five representatives from a diverse group of Tribes attended the two-day meeting. Meeting participants included representatives from the following Tribes: Cherokee Nation, Nezperce Tribe, Jicarilla Apache Tribe, Blackfeet Tribe, Seminole Tribe of Florida, Hopi Tribe, Cheyenne River Sioux Tribe, Menominee Indian Tribe, Tulalip Tribes, Mississippi Band of Choctaw Indians, Narragansett Indian Tribe, and Yakama Nation.

The major meeting objectives were to:

(1) identify key issues of concern to Tribal representatives;

(2) solicit input on issues concerning current OGWDW regulatory efforts;

(3) solicit input and information that should be included in support of future drinking water regulations; and

(4) provide an effective format for Tribal involvement in EPA's regulatory development process.

EPA staff also provided an overview on the forthcoming arsenic rule at the meeting. The presentation included the health concerns associated with arsenic, EPA's current position on arsenic in drinking water, the definition of an MCL, an explanation of the difference between point-of-use and point-of-entry treatment devices, and specific issues for Tribes. The following questions were posed to the Tribal representatives to begin discussion on arsenic in drinking water:

(1) What are the current arsenic levels in your water systems?

(2) What are Tribal water systems affordability issues in regard to arsenic?

(3) Does your Tribe use well water, river water or lake water?

(4) Purchase water from another drinking water utility?

The summary for the February 24–25, 1999 meeting was sent to all 565 Federally recognized Tribes in the United States.

EPA also conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council which was held on May 18–20, 1999 in Eureka, California. Representatives from over 50 Tribes attended all, or part, of these sessions. The objectives of the workshops were to provide an overview of forthcoming EPA regulations affecting water systems; discuss changes to operator certification requirements; discuss funding for Tribal water systems; and to discuss innovative approaches to regulatory cost reduction. Meeting summaries for EPA's Tribal consultations are available in the public docket for this proposed rulemaking.

g. Nature of State, local, and Tribal government concerns and how EPA addressed these concerns. State and local governments raised several concerns, including the high costs of the rule to small systems; the burden of revising the State primacy program; the high degree of uncertainty associated with the benefits; the high costs of including Non-Transient Non-Community Water Systems (NTNCWSs). EPA modified regulations governing the revision of State primacy in order to decrease the burden of the new arsenic regulation in response to State concerns that EPA minimize paperwork and documentation of existing programs that would manage the arsenic regulation. Section XI. asks for comment on alternate MCL options, based partly on the high costs of the rule for small systems and uncertainty associated with the risks.

Tribal representatives were generally supportive of regulations which would ensure a high level of water quality, but raised concerns over funding for regulations. With regard to the forthcoming proposed arsenic rule, many Tribal representatives saw the health benefits as highly desirable, but felt that unless additional funds were made available, implementing the regulation would be difficult for many Tribes.

EPA understands the State, local, and tribal government concerns with the above issues. The Agency believes the options for small systems, proposed for public comment in this rulemaking, will address stakeholder concerns pertaining to small systems and will help to reduce the financial burden to these systems. Small systems compliance technologies and associated costs were listed in section VIII.E. Regionalization, the process by which a small system can connect with another system and purchase water, is a non-treatment option that could be considered for small systems. The costs for regionalization by system size are presented as Treatment Train #1 in Table VIII–3 of section VIII.B. Sections XII.C address tribal SRF and grant funding.

Non-Transient Non-Community Water Systems (NTNCWSs) are only required to monitor and report exceedances of the MCL. A detailed discussion of the exposure to arsenic in NTNCWSs is shown in section V.F. of this Preamble. EPA has conducted a preliminary analysis on exposure and risks to NTNCWSs and is soliciting public comment on this preliminary analysis. An analysis of the potential benefits and costs of arsenic in drinking water for NTNCWSs is summarized in the preamble and included in the docket for this proposed rulemaking (US EPA 2000e).

The Agency is basing this regulation on the risks to the general population and is not excluding any particular segments of the population. For a more complete discussion on the risks of arsenic in drinking water and air, see section II.C. of this Preamble.

h. Regulatory Alternatives Considered. As required under section 205 of the UMRA, EPA considered several regulatory alternatives in developing an MCL for arsenic in drinking water. In preparation for this consideration, the Regulatory Impact Analysis and Health Risk Reduction and Cost Analysis (HRRCA) for Arsenic evaluated arsenic levels of 3 μg/L, 5 μg/L, 10 μg/L, and 20 μg/L.

The Regulatory Impact Analysis and HRRCA also evaluated national costs and benefits of States choosing to reduce arsenic exposure in drinking water. For further discussion on the regulatory alternatives considered in this proposed rulemaking, see section XIII. of this Preamble. EPA examined a range of regulatory alternatives that could be employed to achieve the objectives of this rule and chose what it believes is the least burdensome such alternative. The regulatory approach embodied in this rule includes a proposed MCL that relies on the use of the Administrator's discretionary authority under section 1412(b)(6) of the SDWA to set a less stringent level than the feasible level. The exercise of these authorities in this manner is expected to reduce overall burden on regulated entitities (as compared to the burden of a more stringent level) but still maximize health risk reduction. (See section XI.A for a more complete discussion of the rationale for the exercise of these authorities.) In terms of coverage of the rule, we are proposing that only CWSs be fully covered by the rule, driven, in part by consideration of the burden associated with not covering NTNCWSs in view of the minimal health risk reduction that would be achieved. The proposed approach is also based upon an analysis and listing of least cost treatment alternatives (including use of point of use treatment devices) that are collectively expected to reduce regulatory burden. Finally, today's proposal includes an approach to monitoring and reporting that involves a framework that provides for reduced regulatory burden where arsenic levels are low. Also, see EPA's Regulatory Impact Analysis for Arsenic (US EPA 2000e).

2. Impacts on Small Governments

In developing this rule, EPA consulted with small governments pursuant to section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. In preparation for the proposed arsenic rule, EPA conducted analysis on small government impacts and included small government officials or their designated representatives in the rule making process. EPA conducted stakeholder meetings on the development of the arsenic rule which gave a variety of stakeholders, including small governments, the opportunity for timely and meaningful participation in the regulatory development process. Groups such as the National Association of Towns and Townships, the National League of Cities, and the National Association of Counties participated in the proposed rulemaking process.

Through such participation and exchange, EPA notified potentially affected small governments of requirements under consideration and provided officials of affected small governments with an opportunity to have meaningful and timely input into the development of the regulatory proposal. See section XIV.B.6.a. for a summary of the Small Business Review Panel consultations.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about the arsenic rule requirements. One of the most important components of this process is the Small Entity Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996 shortly after the rule is promulgated. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the arsenic rule.

D. Paperwork Reduction Act (PRA)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR, No. 1948.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Two types of information will be collected under the proposed arsenic rule. First, information on CWSs and NTNCWSs and their arsenic levels reported under 50 μg/L will enable the States and EPA to evaluate compliance with the lower MCL. This information, most of which consists of monitoring results, corresponds to arsenic information already collected from water systems. Arsenic monitoring and reporting will continue annually for surface water systems or once every three years for ground water systems, unless the MCL is exceeded or a State grants a waiver (see section VII). Other existing information and reporting requirements, such as Consumer Confidence Reports (US EPA, 1998j) and the public notification requirements (US EPA, 2000c), will be amended to reflect the lower MCL for arsenic. As proposed, NTNCWSs will not be required to comply with the MCL because of the low exposure levels as explained in section XI.C. However, EPA is requiring NTNCWSs to report to the State and public when it exceeds the MCL through public notification requirements. As is the case for other contaminants, required information on system arsenic levels must be provided by affected systems and is not considered to be confidential. EPA believes the information needs discussed previously, on compliance with the MCL programs, are essential to achieving the arsenic-related health risk reductions anticipated by EPA under the proposed rule.

EPA has estimated the burden associated with the specific record keeping and reporting requirements of the proposed rule in an accompanying Information Collection Request (ICR), which is available in the public docket for this proposed rulemaking. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing procedures to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR for the proposed rule covers the information collection, reporting and record-keeping requirements for the three-year period following promulgation of the Arsenic Rule. There are several activities that PWSs must perform in preparation for compliance with the revised Arsenic Rule in the first three years. Start-up activities include reading the final rule to become familiar with the requirements and training staff to perform the required activities. The number of hours required to perform each activity varies by system size. The total start-up burden per system for systems serving less than 10,000 people is estimated to be 24 hours; the total start-up burden per system for systems serving more than 10,000 people is estimated to be 40 hours. The total hour burden for the 74,607 PWSs (including NTNCWS) covered by this rule is estimated to be 1,847,784 hours, or an annual average of 615,928 hours. There are no monitoring, record-keeping, reporting or equipment costs for PWSs during the first three-year period. EPA expects States to incur only nominal information collection, reporting or record-keeping costs during the first three years. (For estimates of the cost of information collection, reporting and record-keeping over a 20-year period, see ICR No. 1948.01)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 22, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by July 24, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. National Technology Transfer and Advancement Act (NTTAA)

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.*, material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA's process for selecting analytical methods is consistent with section 12(d) of the NTTAA. EPA performed a

literature search to identify analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to reliably measure total arsenic in drinking water at the proposed MCL of 0.005 mg/L. Today's proposed rulemaking allows the use of analytical methods which are described in the ''Annual Book of ASTM Standards'' (American Society for Testing and Materials, 1994 and 1996) and in ''Standards for the Examination of Water and Wastewater'' (APHA, 1992 and 1995). The four methods published by these consensus organizations include SM 3113B, SM 3114B, ASTM 2972–93B and ASTM 2972–93C. These methods were all approved for arsenic analysis in previous methods-related rulemakings for the MCL of 0.050 mg/L. Along with the review of other analytical methods, EPA also re-evaluated these consensus methods for the new arsenic standard. The Agency believes these methods will still be reliable for compliance monitoring at the proposed MCL of 0.005 mg/L. Additional information on these methods are shown in section VI. C. and F. of today's preamble. One consensus method, SM 3120B, will be withdrawn in today's rulemaking. As discussed in section VI.D., SM 3120B will be withdrawn because the detection limit for this method is inadequate to reliably determine the presence of arsenic at the proposed MCL of 0.005 mg/L.

Although no other methods were identified from the literature search, EPA welcomes comments on this aspect of today's proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards, explain why such standard should be considered for inclusion with this regulation, and to provide the necessary information from inter-laboratory studies on detection limits, accuracy, recovery and precision.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' (59 FR 7629, February 16, 1994) establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice-related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders by convening a stakeholder meeting via video conference specifically to address environmental justice issues.

As part of EPA's responsibilities to comply with Executive Order 12898, the Agency held a stakeholder meeting via video conference on March 12, 1998, to highlight components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meeting by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water programs. The major objectives for the 1998 meeting were:

(1) Solicit ideas from Environmental Justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts;

(2) Identify key issues of concern to EJ stakeholders; and

(3) Receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulations. A meeting summary for the March 12, 1998 Environmental Justice stakeholders meeting (US EPA, 1998b) is available in the public docket for this proposed rulemaking.

During the presentation of separate cities' discussions, several arsenic issues came up. In Region 6 one stakeholder thought that test results for arsenic (discussed in ppb and μg/L) were hard to understand, and the health effects appear to be complicated. Region 6 participants had concerns about the toxic effects on mothers, individuals with different metabolisms, and individuals with poor nutrition. One of the stakeholders expressed a concern that the government was not protecting poorer communities against pollution. In Region 7, one stakeholder lives in an area that purchases water which has to be monitored. The area has a shrinking population that is increasing in age and immune conditions. Although there are pesticides in the water and air, it would not be economically practical to consolidate to a regional drinking water system. One member of an Indian tribe said Tribes tend to have more diabetes than the rest of the country, and diabetes seemed to be linked to arsenic exposure. In Region 8 a stakeholder wanted affordable or equally protective treatment options. A Region 8 participant asked for disclosure of environmental contamination. Region 9 reported some individual monitoring difficulties. Stakeholders wanted better access to funding sources. Stakeholders in Region 9 had concerns about the immuno-compromised, young children, and pregnant women. Some stakeholders wanted standard setting to address regional needs, include local governments in the standard setting, more technical assistance and training, and more stakeholder involvement. Tribes and large cities with low income families may be burdened with more of the risk.

The Agency considered equity-related issues concerning the potential impacts of this action. There is no factual basis to indicate that minority and low income communities are more (or less) exposed to arsenic in drinking water. The occurrence information suggests there is no difference between the percent of systems likely to be impacted in small communities versus larger ones. Further, arsenic in drinking water is primarily natural in origin (rather than related to contamination events) and a systematic bias based on socioeconomic factors would not be expected to occur. A key issue of concern is the potential for an uneven distribution of risk reduction benefits across water systems and society.

The public is invited to comment on EPA's analysis of environmental justice and, specifically, to recommend additional methods to address environmental justice concerns with the approach for treating arsenic in drinking water.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885 April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under 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 proposed rule is not subject to the Executive Order because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of arsenic in drinking water on children. The results of this evaluation are contained in section III.F.5. of this Preamble. Copies of the documents used to evaluate the environmental health or safety effects of arsenic in drinking water on children have been placed in the public docket for this proposed rulemaking.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to arsenic via ingestion.

H. 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.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule will have federalism implications. This rule will impose substantial direct compliance costs on State and local governments, and the Federal government will not provide the funds necessary to pay those costs. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. Summaries of the meetings have been included int public record for this proposed rulemaking. EPA consulted extensively with State, local, and tribal governments. For example, we held four public stakeholder meetings in Washington, D.C. (two meetings); San Antonio, Texas; and Monterey, California. Invitations to stakeholder meetings were extended to the National Association of Counties, The National Governors' Association, the National Association of Towns and Townships, the National League of Cities, and the National Conference of State Legislators. In addition, several elected officials were part of the Small Business Advocacy Review Panel convened by EPA (as required by section 609(b) of the Regulatory Flexibility Act). Consultation has not ended, however, but will be an on-going transactional process. EPA officials presented a summary of the rule to the National Governor's Association in a meeting on May 24, 2000. In addition, we scheduled a one-day stakeholders' meeting for the trade associations that represent elected officials on May 30, 2000 to discuss and solicit comment on this and other upcoming contaminant rules. EPA will continue to seek input from its State and local government partners.

Several key issues were raised by stakeholders regarding the arsenic rule provision, many of which were related to reducing burden and maintaining flexibility. The Office of Water was able to reduce burden and increase flexibility in a number of areas in response to these comments. More specifically, elected officials expressed overall concerns about: (1) Factors considered in setting of the MCL and (2) the treatment technologies, their associated costs and waste disposal costs. Specific issues regarding the setting of the MCL included:

- The treatment costs associated with a lower drinking water standard;
- Concerns about affordability for lower income areas;
- Asking the Agency to delay setting a standard below 25 μg/L until the development of affordable technologies; and
- A lack of evidence for health effects data below 50 μg/L.

Specific concerns regarding the treatment technologies, their associated costs and waste disposal costs included:

- The difficulty of using oxidation/filtration for arsenic removal when concentrations are <25 μg/L (even after the addition of iron salts and pH adjustment);
- The waste disposal costs created from the use of ion exchange;
- The more intensive need for operator oversight and the amount of sludge generated using coagulation filtration and lime softening at a high pH;
- The difficulty in finding and the expense associated with activated alumina;
- The expense associated with reverse osmosis, nano-filtration and pre-oxidation.

The Agency responded to these concerns in several ways. We are very sensitive to the potential costs of treatment for a lower drinking water standard and have examined an array of treatment options (especially those that are most appropriate for small systems) in order to identify the least cost, affordable options that systems may use to comply with a new standard. We therefore do not believe that it is necessary to delay promulgating a rule with an MCL below 25 μg/L pending identification of such technologies, as one of the comments suggests. We have also included higher MCL options than the proposed MCL in the preamble for comment, due in large part to concerns expressed by elected officials and other stakeholders about the treatment costs associated with a low MCL. These issues are discussed in more detail in the sections VIII. (treatment) and XI. (regarding choice of the MCL). We also share the concerns of elected officials in connection with the affordability of a new rule for lower income areas and

have identified special programs and avenues that may be pursued to provide relief for such areas (see section VIII.C.).

In response to the comment that there is a lack of evidence for health effects below 50 µg/L, we note that the National Academy of Sciences'' National Research Council has categorically determined, based on their review of the most recent data and information concerning the health effects of arsenic, that the current standard of 50 µg/L is not protective and should be revised downward as soon as possible (NRC, 1999). This topic is discussed in more detail in section III.

In response to concerns about specific treatment technologies, their associated costs and waste disposal costs, EPA identifies several treatment technologies in section VIII. Section VIII. A. identifies the BATs for arsenic removal and section VIII.B. identifies technologies which are considered affordable. The Agency agrees with the statement that oxidation/filtration is not an appropriate technology to treat arsenic to low levels. For this reason, it is not considered a BAT. The Agency also agrees that wastes are created using ion exchange. Section VIII. addresses the use of brine recycling in reducing wastes and waste disposal costs. In addition, regionalization or finding a new water source (section VIII.) are alternative non-treatment options to consider to avoid treatment and the costs and disposal issues associated with treatment. The Agency agrees with the concern that coagulation/filtration is more operator intensive but this technology and pH modifications are only considered if this treatment process is already in place. In regards to the amount of sludge produced, the additional amount of sludge generated due to the removal of arsenic is minor. The Agency disagrees that activated alumina is expensive and difficult to find. As shown in Table VIII–3, activated alumina is one of the cheaper treatment technologies. The Agency agrees that reverse osmosis, nano-filtration and the need for pre-oxidation are expensive treatment options. In these cases, a PWS should consider one of the more affordable treatment options shown in section VIII.B.

I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' 63 FR 27655 (May 19, 1998) EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

EPA has concluded that this rule may significantly affect communities of Indian Tribal governments. It will also impose substantial direct compliance costs on such communities, and the Federal government will not provide the funds necessary to pay the direct costs incurred by the Tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of Tribal governments pursuant to Executive Order 13084. Summaries of the meetings have been included in the public docket for this proposed rulemaking. EPA's consultation, the nature of the governments' concerns, and EPA's position supporting the need for this rule are discussed in sections XIV.C.1.f. and g. of this Preamble.

J. Request for Comments on Use of Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

XV. References

The following references are referred to in this notice and are included in the public docket together with other correspondence and information. The public docket is available as described at the beginning of this notice. All public comments received on the proposal are included in the public docket.

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Reporting and recordkeeping requirements, Water supply.

Dated: May 24, 2000.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141 and 142 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart A—General

§ 141.2 [Amended]

2. Section 141.2 is amended by revising the definition heading for ''Point-of-entry treatment device'' to read ''Point-of-entry treatment device (POE)'' and revising the definition heading for ''Point-of-use treatment device'' to read ''Point-of-use treatment device (POU)''.

3. Section 141.6 is amended by:

a. In paragraph (a) by revising the reference ''(a) through (i)'' to read ''(a) through (k)''.

b. Revising paragraph (c).

c. Adding paragraphs (j) and (k).

The revisions and additions read as follows:

§ 141.6 Effective dates.

* * * * *

(c) The regulations set forth in §§ 141.11(d); 141.21(a), (c) and (i); 141.22(a) and (e); 141.23(a)(3) and (a)(4); 141.23(f); 141.24(e) and (f); 141.25(e); 141.27(a); 141.28(a) and (b); 141.31(a), (d) and (e); 141.32(b)(3); and 141.32(d) shall take effect immediately upon promulgation.

* * * * *

(j) The arsenic MCL listed in § 141.62 is effective [THREE YEARS AFTER PUBLICATION DATE OF THE FINAL RULE]. Compliance with the arsenic MCL listed in § 141.62 is required for community water systems serving 10,000 people or less on [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE], and for all other community water systems on [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for §§ 141.23(a)(4), (a)(4)(i), (a)(5), (c), (f)(1), (g), (i), (k)(1), (k)(2), and (k)(3)(ii); 141.62(b)(16) and (c); 141.203, and revisions to arsenic in Appendices A and B of Subpart Q of this part for the public notification rule. However, the reporting date for the arsenic MCL listed in Appendix A of Subpart O of this part of the consumer confidence rule requirements and the arsenic reporting requirements in § 141.154(b) are [THIRTY DAYS AFTER PUBLICATION DATE OF THE FINAL RULE]. Non-transient non-community water systems will be subject to the sampling, monitoring, and reporting requirements of §§ 141.23(a), 141.23(c)(1)–(6), 141.23(f), 141.23(g), 141.23(k), 141.203, and 141.209 for arsenic exceeding the MCL listed in § 141.62 [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE].

(k) Compliance with §§ 141.23(c)(9), 141.24(f)(15)(ii), 141.24(f)(22) and 141.24(h)(20) regulations for inorganics and organics other than total trihalomethanes and sampling frequencies for new systems and new sources of water is required on [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE].

Subpart B—[Amended]

4. Section 141.11 is amended by revising the second sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) * * * The analyses and determination of compliance with the 0.05 milligrams per liter maximum contaminant level for arsenic use the requirements of § 141.23(l).

(b) The maximum contaminant level for arsenic is 0.05 milligrams per liter for community water systems serving 10,000 people or less until [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE], and for all other community water systems until [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE]. Non-transient non-community water systems will be subject to sampling, monitoring and reporting requirements for arsenic as of [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE]; however, they will not be subject to §§ 141.23(c)(7) and (8) and 141.62(b)(16).

* * * * *

Subpart C—[Amended]

5. Section 141.23 is amended by:

a. Adding a new entry for ''Arsenic'' in alphabetical order to the table in paragraph (a)(4)(i) and footnotes 6 and 7.

b. Adding ''arsenic,'' before ''barium,'' in paragraph (a)(5).

c. Adding ''arsenic,'' before ''barium,'' in paragraph (c) introductory text.

d. Adding paragraph (c)(9).

e. Revising the words ''asbestos, antimony,'' to read ''antimony, arsenic, asbestos,'' in paragraph (f)(1).

f. Adding ''arsenic,'' before ''asbestos,'' in paragraph (i)(1).

g. Adding one sentence at the end of paragraph (i)(1).

h. Revising paragraph (i)(2).

i. Add paragraph (i)(5).

j. Revise ''arsenic'' entry in the table in paragraph (k)(1).

k. Adding ''arsenic,'' before ''asbestos,'' in paragraph (k)(2) introductory text.

l. In the table to paragraph (k)(2) by adding in alphabetical order a new entry for ''Arsenic''.

m. Adding ''arsenic,'' before ''asbestos,'' in paragraph (k)(3) introductory text.

n. Adding in alphabetical order a new entry for ''Arsenic'' to the table in paragraph (k)(3)(ii).

The revisions and additions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
*	*	*	*
Arsenic	0.005	Atomic Absorption; Furnace	0.001
		Atomic Absorption; Platform–Stabilized Temperature	[6] 0.0005
		Atomic Absorption; Gaseous Hydride	0.001
		ICP-Mass Spectrometry	[7] 0.0014
*	*	*	*

* * * * * * *

[6] The MDL reported for EPA Method 200.9 (Atomic Absorption; Platform—Stabilized Temperature) was determined using a 2x concentration step during sample digestion. The MDL determined for samples analyzed using direct analysis (i.e., no sample digestion) will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining a MDL of 0.0001 mg/L.

[7] Using selective ion monitoring, EPA Method 200.8 (ICP–MS) is capable of obtaining a MDL of 0.0001 mg/L.

* * * * *

(c) * * *

(9) All new systems or systems that use a new source of water that begin operation after [EFFECTIVE DATE OF THE FINAL RULE] must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

* * * * *

(i) * * *

(1) * * * If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant is greater than the MCL. If confirmation samples are required by the State, the determination of compliance will be based on the annual average of the initial MCL exceedance and any State-required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

* * * * *

(5) Arsenic sampling results will be reported to the nearest 0.001 mg/L.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other
*	*	*	*	*
Arsenic [14]:				
ICP—Mass Spectrometry	[2] 200.8			
Atomic Absorption; Platform	[2] 200.9			
Atomic Absorption; Furnace	.....	D–2972–93C	3113B.	
Hydride Atomic Absorption	.....	D–2972–93B	3114B.	
*	*	*	*	*

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA/600/R–94/111, May 1994. Available at NTIS, PB95–125472.

[3] *Annual Book of ASTM Standards,*1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the *Annual Book of ASTM Standards,*1994, Vols. 11.01. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,*1992 and 1995, respectively, American Public Health Association; either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

* * * * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.,*no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 µL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

* * * * * * *

(2) * * *

Contaminant	Preservative [1]	Container [2]	Time [3]
*	*	*	*
Arsenic	Conc HNO_3 to pH <2	P or G	6 months.
*	*	*	*

[1] When indicated, samples must be acidified at the time of collection to pH <2 with concentrated acid or adjusted with sodium hydroxide to pH > 12. When chilling is indicated the sample must be shipped and stored at 4°C or less.
[2] P = plastic, hard or soft; G=glass, hard or soft.
[3] In all cases samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers or holding times that is specified in method.

* * * * * * *

(3) * * *
(ii) * * *

Contaminant	Acceptance limit
*	*
Arsenic	±30 at ≥0.005 mg/l
*	*

* * * * *

6. Section 141.24 is amended by:
a. Adding one sentence to the end of paragraph (f)(15)(i).
b. Removing the last sentence of paragraph (f)(15)(ii) and adding in its place two new sentences.
c. Adding paragraph (f)(22).
d. Adding a sentence to the end of paragraph (h)(11)(i).
e. Removing the last sentence of paragraph (h)(11)(ii) and adding in its place two new sentences.
f. Adding paragraph (h)(20).
The revisions and additions read as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical methods.

* * * * *

(f) * * *
(15) * * *
(i) * * * If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.
(ii) * * * If confirmation samples are required by the State, the determination of compliance will be based on the annual average of the initial MCL exceedance and any State-required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

* * * * *

(22) All new systems or systems that use a new source of water that begin operation after [DATE THREE YEARS AFTER PUBLICATION DATE OF FINAL RULE] must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

* * * * *

(h) * * *
(11) * * *
(i) * * * If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.
(ii) * * * If confirmation samples are required by the State, the determination of compliance will be based on the annual average of the initial MCL exceedance and any State-required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

* * * * *

(20) All new systems or systems that use a new source of water that begin operation after [DATE THREE YEARS AFTER PUBLICATION OF THE FINAL RULE] must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

Subpart F—[Amended]

7. In § 141.51(b) , the table is amended by adding in alphabetical order an entry for Arsenic to read as follows:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

* * * * *

(b) * * *

Contaminant	MCLG (mg/l)
*	*
Arsenic	zero
*	*

Subpart G—[Amended]

8. Section 141.60 is amended by adding paragraph (b)(4) to read as follows:

§ 141.60 Effective dates.

* * * * *

(b) * * *
(4) The compliance date for § 141.62(b)(16) is [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for community water systems serving 10,000 people or less, and [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for all other community water systems.

9. Section 141.62 is amended by:
a. Revising the second sentence of paragraph (b).
b. Adding entry ''(16)'' to the table in paragraph (b).
c. Adding an entry and footnote for ''Arsenic'' in alphabetical order to the

table in paragraph (c) and revising the table heading.

d. Adding paragraph (d).

The revisions and additions read as follows:

§ 141.62 Maximum contaminant levels for inorganic contaminants.

* * * * *

(b) * * * The maximum contaminant level specified in paragraphs (b)(1) and (b)(16) of this section only apply to community water systems. * * *

Contaminant	MCL (mg/l)
* * * * *	
(16) Arsenic	0.005

(c) * * *

BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(B)

Chemical name	BAT(s)
* * * * * * *	
Arsenic [4]	1, 2, 5, 6, 7, 9

* * * * * * *

[4] BATs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

(d) The Administrator, pursuant to section 1412 of the Act, hereby identifies in the following table the affordable technology, treatment technique, or other means available to systems serving 10,000 persons or fewer for achieving compliance with the maximum contaminant level for arsenic:

SMALL SYSTEM COMPLIANCE TECHNOLOGIES (SSCTS) [1] FOR ARSENIC [2]

Small System Compliance Technology	Affordable for listed small system categories [3]
Activated Alumina (centralized)	All size categories
Activated Alumina (Point-of-Entry) [4]	All size categories
Activated Alumina (Point-of-Use) [4]	All size categories
Coagulation/Filtration	501–3,300, 3,301–10,000
Coagulation-assisted Microfiltration	501–3,300, 3,301–10,000
Ion Exchange	All size categories
Lime Softening	501–3,300, 3,301–10,000
Oxidation/Filtration [5]	All size categories
Reverse Osmosis (centralized)	501–3,300, 3,301–10,000
Reverse Osmosis (Point-of-Use) [4]	All size categories

[1] Section 1412(b)(4)(E)(ii) of the SDWA specifies that SSCTs must be affordable and technically feasible for small systems.
[2] SSCTs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.
[3] The Act (*ibid.*) specifies three categories of small systems: (i) those serving 25 or more, but fewer than 501, (ii) those serving more than 500, but fewer than 3,301, and (iii) those serving more than 3,300, but fewer than 10,001.
[4] When POU or POE devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.
[5] For use only when the removal efficiency needed to reach an MCL is less than 50%.

Subpart O—[Amended]

10. Section 141.154 is amended by revising paragraph (b) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(b) Beginning [30 DAYS AFTER PUBLICATION DATE OF THE FINAL RULE], community water systems that detect arsenic above 0.005 mg/L must make a good faith effort, as described in § 141.155(b) to provide to its customers an annual report that contains the information specified in § 141.153 for arsenic.

* * * * *

11. The table in Appendix A, published at 65 FR 26024 on May 4, 2000 and effective June 5, 2000, is amended by revising the entry for arsenic to read as follows:

Appendix A to Subpart O.—Regulated Contaminants

* * * * *

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major sources in drinking water	Health effects language
*	*	*	*	*	*	*
Inorganic contaminants:						
*	*	*	*	*	*	*
Arsenic (ppb)	0.005	1000	5	0	Erosion of natural deposits; Runoff from orchards; Run-off from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*	*	*	*	*	*	*

Key:
* * * * * * *
ppb = parts per billion, or micrograms per liter (μg/l)
* * * * * * *

Subpart Q—[Amended]

12. Section 141.203(a), published at 65 FR 26036 on May 4, 2000, and effective June 5, 2000, is amended by adding entry (4) in numerical order to Table 1 to read as follows:

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

(a) * * *

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE

*	*	*	*	*	*	*
(4) Non-transient non-community water systems exceeding the arsenic MCL.						

* * * * *

13. Appendix A to Subpart Q, published at 65 FR 26040 on May 4, 2000, effective June 5, 2000, is amended in the table by revising the entry for ''2. Arsenic'' under B. Inorganic Chemicals (IOCs), revising endnote 1 and adding endnotes 18 and 19 to read as follows:

Appendix A to Subpart Q of Part 141.—NPDWR Violations and Other Situations Requiring Public Notice[1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
*	*	*	*	*
B. Inorganic Chemicals (IOCs)				
*	*	*	*	*
2. Arsenic	2	[18] 141.62(b)	3	[19] 141.23(a), (c)
*	*	*	*	*

Appendix A—Endnotes

1. Violations and other situations not listed in this table (*e.g.,* reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (*e.g.,* Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

* * * * *

18. The arsenic MCL citations apply [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for community water systems serving 10,000 people or less and [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for all other community water systems and non-transient non-community water systems. Until then, the citations are § 141.11(b) and § 141.23(n).

19. The arsenic Tier 3 violation MCL citations apply [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for community water systems serving 10,000 people or less and [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for all other community water systems. Until then, the citations are § 141.23(a,l).

14. Appendix B to Subpart Q published at 65 FR 26043 on May 4, 2000, effective June 5, 2000, is amended in the table by revising entry ''9. Arsenic'' and adding footnote 23 to read as follows:

Appendix B to Subpart Q of Part 141.—Standard Health Effects Language for Public Notification

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard health effects language for public notification
* * *	*	*	* * * *
9. Arsenic[23]	0	0.005	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with thier circulatory system, and may have an increased risk of getting cancer.
* * *	*	*	* * * *

Appendix B—Endnotes

1. MCLG—Maximum contaminant level goal.

2. MCL—Maximum contaminant level.

* * * * *

23. These arsenic values apply [DATE 5 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for community water systems serving 10,000 people or less and [DATE 3 YEARS AFTER PUBLICATION DATE OF THE FINAL RULE] for all other community water systems and non-transient non-community water systems. Until then, the MCL is 0.050 mg/L and there is no MCLG.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—Primary Enforcement Responsibility

2. In § 142.16, revise paragraph (e) introductory text and add paragraphs (j) and (k) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.40, 141.61 and 141.62 for a newly regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

* * * * *

(j) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 for an existing regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23, 141.24, and 141.40, the State shall describe the procedures and criteria which it will use to review waiver applications and issue wavier determinations. The State shall provide the same information required in paragraphs (e)(1)(i) and (ii) of this section. States may update their existing waiver criteria or use the requirements submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.*, Phase II/V rule) in paragraph (e) of this section. States may simply note in their application any revisions to existing waiver criteria or note that the same procedures to issue waivers will be used.

(2) A monitoring plan by which the State will assure all systems complete the required monitoring with the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (*i.e.* Phase II/V rule) in paragraph (e) of this section. States may simply note in their application any revisions to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

(k) States establish the initial monitoring requirements for new systems and new sources. States must explain their initial monitoring schedules and how these monitoring schedules ensure that public water systems and sources that begin operation after [DATE THIRTY DAYS AFTER PUBLICATION OF THE FINAL RULE] comply with MCL's and monitoring requirements. States must also specify the time frame in which new systems will demonstrate compliance with the MCLs.

4. In § 142.62(b), the table is amended by revising the table heading and adding arsenic in alphabetical order to the list of contaminants to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals

* * * * *

(b) * * *

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)[1]

Chemical name	BAT(s)
* * *	* * * *
Arsenic	1, 2, 5, 6, 7, 9
* * *	* * * *

* * * * *

Key to BATs in Table

1 = Activated Alumina

2 = Coagulation/Filtration (not BAT for systems < 500 service connections)

* * * * *

5 = Ion Exchange

6 = Lime Softening (not BAT for systems < 500 service connections)

7 = Reverse Osmosis

* * * * *

9 = Electrodialysis

* * * * *

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June 22, 2000

Part III

Commodity Futures Trading Commission

17 CFR Part 1, et al.

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Imtermediaries and Clearing Organizations; Exemption for Bilateral Transactions; Proposed Rules

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5, 15, 20, 36, 37, 38, 100, 170 and 180

RIN 3038–AB55

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing a new regulatory framework to apply to multilateral transaction execution facilities, to market intermediaries and to clearing organizations. This new framework constitutes a broad exemption under the authority of section 4(c) of the Commodity Exchange Act from many of the current rules applicable to designated contract markets. In addition, the proposed framework to a large degree relies more heavily on disclosure rather than merit regulation. It establishes three new market categories, including the category of exempt multilateral transaction execution facility and two categories of Commission-recognized and regulated multilateral transaction execution facilities. In companion releases published in this edition of the **Federal Register**, the Commission also is proposing new rules for intermediaries and regulations applicable to entities that clear derivative transactions. These notices propose far-reaching and fundamental changes to modernize Federal regulation of commodity futures and option markets. The Commission also is proposing in a companion release published in this edition of the **Federal Register** to expand and to clarify the operation of the current swaps exemption. Nothing in these releases, however, would affect the continued vitality of the Commission's exemption for swaps transactions under Part 35 of its rules, or any of its other existing exemptions, policy statements or interpretations. Moreover, nothing in the proposed rules would affect the application of any statutory exclusion, including in particular, the applicability of the exclusion under section 2(a)(1)(A)(ii), popularly known as ''the Treasury Amendment.''

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''Regulatory Reinvention.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, or Alan L. Seifert, Deputy Director or Riva Spear Adriance, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: (PArchitzel@cftc.gov), (ASeifert@cftc.gov) or (RAdriance@cftc.gov).

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview

The Commission is proposing a new regulatory framework to apply to multilateral transaction execution facilities that trade contracts for the purchase or sale of a contract for future delivery or commodity options. The Commission believes that this new structure will promote innovation, maintain U.S. competitiveness, and at the same time reduce systemic risk and protect customers. The proposed framework does not require that U.S. futures exchanges change their method of operation in any way. However, the markets are poised to undergo rapid change as they continue to meet the competitive challenges posed by technological advances. The new framework provides U.S. futures exchanges the flexibility to respond to these challenges by offering a level of regulation tailored to three alternative types of markets.

Specifically, the Commission is proposing to replace the current ''one-size-fits-all'' regulation for futures markets with broad, flexible ''Core Principles,'' and to establish three regulatory tiers for markets: Recognized futures exchanges (RFEs), derivatives transaction facilities (DTFs) and exempt multilateral transaction execution facilities (exempt MTEFs).[1] The Core Principles are tailored to match the degree and manner of regulation to the varying nature of the products traded thereon, and to the sophistication of customers.

Under the proposed framework, current U.S. futures exchanges would be included automatically in the RFE category. These exchanges would receive the immediate benefits associated with complying with core principles rather than the prescriptive regulations now in place. In addition to achieving greater flexibility in their current operations, the exchanges also could choose to operate as a DTF or as an exempt MTEF, where appropriate, and be subject to a lesser degree of regulation for many of the commodities that they trade. Or they could operate a combination of the three. The business choice would be theirs.

The Commission is proposing that a category of multilateral transaction execution facilities known as ''Derivatives Transaction Facilities,'' which is geared toward institutional or commercial traders, be subject to an intermediate level of regulation. DTFs, like RFEs, would be Commission-recognized markets. Futures exchanges, if they choose, also may operate as a DTF for those commodities with deliverable supplies sufficiently large to render them eligible for such an intermediate level of regulation.

Although DTFs are intended primarily for institutional traders, the proposed rules provide the individual DTF the flexibility to decide whether or not to include non-institutional traders. The Commission is proposing, therefore, to permit access to a DTF by non-institutional traders only through a registered futures commission merchant (FCM) that is a member of a recognized clearing organization and that has $20 million of adjusted net capital. Those FCMs would be required to provide their non-institutional customers trading on a DTF with additional disclosures and other protections.

In addition, certain commercial markets may operate as DTFs for any commodity, other than the agricultural commodities enumerated in section 1a(3) of the Act. Such commercial traders generally would have both the financial ability and the physical means to deliver tangible commodities or otherwise be involved in trading that commodity in connection with their line of commerce. A market that is eligible to be an exempt MTEF, which is discussed below, may voluntarily become a DTF in order to become a ''recognized'' market.

The Commission also is proposing an exemption for facilities on which transactions are entered into among institutional traders in contracts based upon a debt obligation, a foreign

[1] Products subject to the special procedural provisions of section 2(a)(1)(B) of the Act would continue to be designated and regulated by the Commission as contract markets.

currency, an interest rate, an exempt security, a measure of credit risk or quality, or cash-settled based upon an economic or commercial index or based upon an occurrence or contingency. These commodities are highly unlikely to be susceptible to manipulation. These facilities (exempt MTEFs) would be exempt from all of the requirements of the Commodity Exchange Act (Act or CEA) and Commission rules, except for anti-fraud and anti-manipulation provisions and a requirement that if performing a price discovery function they provide pricing information to the public. The proposed rules also include a provision that a violation of the terms of the exemption would not render the transactions void. These exempt markets could not hold themselves out as being regulated by the Commission. As noted above, existing futures markets, where appropriate, would have the opportunity to operate under the terms of this exemption, if they so choose. The following chart summarizes the proposed framework:

SUMMARY OF FRAMEWORK FOR MULTILATERAL TRADE EXECUTION FACILITIES

Market	Characteristics	Requirements
Recognized Futures Exchange (RFE)	1. Any commodity; 2. Any trader	Fifteen Core Principles.
Recognized Derivatives Transaction Facility (DTF) [2].	1. Only commodities: (a) included in box below; or (b) individual contracts on a case-by-case basis; or 2. Only commercial traders	Seven Core Principles.
Exempt Multilateral Transaction Facility (Exempt MTEF).	1. Only for the following commodities: (a) a debt obligation; (b) a foreign currency; (c) an interest rate; (d) an exempt security (e) a measure of credit quality; (f) an occurrence or contingency beyond the control of the counterparties; or (g) cash-settled based upon an economic or commercial index or measure; and 2. Only institutional traders	1. Anti-fraud section of the CEA; 2. Anti-manipulation section of the CEA; and 3. May not hold self out as regulated.

These proposed rules, along with those proposed in the companion releases on intermediaries and clearing organizations, comprise a new regulatory framework which is intended to provide greater flexibility in meeting technological and competitive challenges. At the same time, the Commission will retain its oversight authority to ensure the integrity of markets and prices, to deter manipulation, to protect the markets' financial integrity, and to protect customers.

To ensure that the Commission's regulations address regulatory goals in the least costly and burdensome manner consistent with achieving the Commission's mission, the Commission has reviewed its proposed regulatory framework in relation to the four primary objectives of the Act: Ensuring market and price integrity; protecting against market manipulation; protecting the financial integrity of the markets; and protecting customers from abusive trading and sales practices. The proposed amendments would move the Commission from a direct to an oversight regulator, replacing prescriptive rules with broad performance standards in the form of core principles. The core principles are proposed to be supplemented with statements of guidance on practices that comply with the standards and, only as necessary, implementing rules. The proposed framework reflects differences in regulation of individual markets due to the nature of the commodity traded and the sophistication of market participants. Moreover, the proposed framework adheres to internationally-accepted guidance regarding appropriate regulatory measures for exchange-traded derivatives markets.

The Commission was encouraged in this undertaking by the other Federal financial regulators that comprise the President's Working Group on Financial Markets [3] and by the chairmen of the Commission's Congressional oversight committees. Specifically, by letter dated November 30, 1999, the Chairmen of the Senate and House Agriculture Committees, joined by additional senior Senators and Members of the House of Representatives, ''encourag[ed] the Commission to use the exemptive authority granted it by the Commodity Exchange Act to lessen regulatory burdens on United States' futures markets so that they may compete more effectively.''

B. Changing Nature of Exchange-Traded Markets

The proposed new regulatory framework responds to changes that have occurred in markets operating under the CEA. Exchange-traded derivatives markets have changed dramatically over the last twenty-five years. Since the last major revision of the regulatory scheme in 1974, the majority of futures trading volume has shifted from agricultural commodities to financial commodities. Moreover, in

[2] As noted above, although DTFs are geared toward sophisticated or institutional traders, the framework would permit a facility eligible to be a DTF based upon the nature of the commodities traded to choose to include non-institutional traders.

[3] Recognizing the importance of the OTC derivatives markets, the Chairmen of the Senate and House Agriculture Committees requested that the President's Working Group on Financial Markets (PWG) conduct a study of OTC derivatives markets. After studying the existing regulatory framework for OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. *See* Over-the-Counter Derivatives Markets and the Commodity Exchange Act, Report of the President's Working Group. The PWG report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk. Although specific recommendations about the regulatory structure applicable to exchange-traded futures were beyond the scope of its report, the PWG suggested that the Commission review existing regulatory structures (particularly those applicable to markets for financial futures) to determine whether they were appropriately tailored to serve valid regulatory goals.

1974, no contracts were cash-settled. Today, many are. Over the past twenty-five years the markets also have become increasingly institutional. In addition, the exchanges themselves have matured. During the last twenty-five years they have developed better audit trails, have markedly improved their self-regulatory and surveillance programs and have placed in effect greater safeguards against conflicts of interest in decision-making. They have entered into arrangements with both domestic and foreign exchanges to share surveillance information in order better to carry out their functions. They also have introduced for trading a remarkable range of new commodities.

The competitive environment for United States futures exchanges also has changed dramatically during the last twenty-five years. Although futures trading was always global in nature, aggregate trading volume on non-U.S. futures and option exchanges has surpassed aggregate trading volume on U.S. exchanges. In addition, exchange-traded derivative markets face increased competition from the over-the-counter markets.

II. Framework for Multilateral Transaction Execution Facilities

The Commission is proposing a multifaceted framework which includes three broad categories of trading facilities: Recognized Futures Exchanges, Derivatives Transaction Facilities and Exempt MTEFs. The level of oversight applied to exchanges or trading facilities would be based on the nature of participants allowed to trade on the facility and certain characteristics of the commodities being traded. In general, where access to an exchange or facility is restricted to more sophisticated traders or commercial participants, or where the nature of the commodity being traded poses a relatively low susceptibility to manipulation, regulatory oversight would be set at a lower level, reflecting the reduced need to monitor closely such markets. One constant requirement at all levels of oversight, however, is the need for markets serving a price discovery function to provide a degree of price transparency. This multifaceted approach to oversight is intended to balance the public interests of market and price integrity, protection against manipulation and customer protection with the need to permit exchanges and other trading facilities to operate more flexibly in today's competitive environment.

A. Exempt Multilateral Transaction Execution Facilities (Exempt MTEFs)

The Commission is proposing a new, self-effectuating exemption for those multilateral transaction facilities (MTEFs) meeting the conditions specified in the rule. As proposed, these facilities would be exempt from regulation by the Commission. The exemption would apply to transactions traded on MTEFs that are open for trading only to eligible participants, either trading for their own account or through another eligible participant, and only for contracts based upon: (1) A debt obligation; (2) a foreign currency; (3) an interest rate; (4) an exempt security or index thereof, as provided in § 2a(1)(B)(v) of the Act; (5) a measure of credit risk or quality, including instruments known as ''total return swaps,'' ''credit swaps'' or ''spread swaps;'' (6) an occurrence or contingency beyond the control of the counterparties to the transaction; or (7) cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly corresponding underlying cash market.

The Commission is of the view that these commodities, when traded between or among eligible participants need not be subject to the regulatory scheme of the Act. Accord PWG Report at 17. In this regard, transactions by eligible participants in these commodities would be exempt from Commission regulation under either the Part 35 exemption for bilateral transactions or under the Part 36 exemption for MTEFs.

It should be noted that the instruments eligible for exemption are limited by operation of section 2(a)(1)(B) of the Act, which is reserved in proposed § 36.3(a). The reservation, and application, of this provision is consistent with the language of section 4(c) of the Act which limits the Commission's authority to exempt transactions from the application of section 2(a)(1)(B) of the Act.

Examples of existing non-dormant, designated contract markets that are based on an eligible debt obligation include CBT U.S. Treasury bonds, CBT Long term U.S. Treasury notes and CME Treasury Bills. The Commission particularly requests comment with respect to inclusion of government securities in the list of commodities that are eligible for the exemption under part 36. In light of the significant regulation of government securities markets under the Government Securities Act of 1986 (as amended)[4] and other securities laws, would granting a broad exemption to contract markets for futures on government securities give rise to significant and undesirable opportunities for regulatory arbitrage?

Examples of eligible foreign currencies include currency contract and currency cross rates. Contracts on an interest rate typically represent interest on time deposits. Because these time deposits generally are non-negotiable, the contracts overlying them are usually cash-settled. Such rates are derived from activity in the interbank market, which is very liquid and deep. A major component of the interbank market is the market for deposits of U.S. dollars held in foreign markets. This market sets the interest rates for dollars held as deposits in these banks. Much of the activity is centered in London and is reflected by the London Interbank Offer Rate (LIBOR). LIBOR is the rate at which the most credit-worthy banks offer to lend to one another. Variable rate loans, deposits, and interest rate swaps are often quoted as a spread over LIBOR. Other active trading centers exist throughout Europe and in other countries in Asia and elsewhere, and the interest rates reported for those markets share similar monikers such as PIBOR (Paris Interbank Offer Rate), FIBOR (Frankfurt Interbank Offer Rate), and TIBOR (Tokyo Offer Rate). Commodities on existing non-dormant designated contract markets eligible for this exemption include CME three month Eurodollars, CME one month LIBOR, CME three month Euroyen, CME three month TIBOR, CME three month Euro Canada and CBT yield curve spreads.

The commodities eligible for exemption include measures of credit risk or quality. This category specifically includes various types of instruments denominated as ''total return swaps,'' ''credit swaps,'' or ''credit spread swaps.'' As noted in a companion release in this issue of the **Federal Register** proposing amendments to the Commission's part 35 exemption, nothing in the rules that the Commission is proposing would affect the continued applicability of any existing Commission exemptions, policy statements or interpretations to such total return swaps or to any other instrument. An example of an existing designated contract market included in this category is the CBT bankruptcy index.

[4] Government Securities Act of 1986, Pub. L. 99–571, 100 Stat. 3208; Government Securities Act Amendments of 1993, Pub. L. 103–202, 107 Stat. 2344.

The final two categories of eligible commodity are for contracts based upon an occurrence or a contingency beyond the control of any trader, or any economic or commercial index or measure not based upon prices derived from trading in a directly corresponding underlying cash market. These instruments must be cash settled, because there is no underlying tangible commodity, financial asset or instrument which could be delivered to settle the contracts at maturity, *i.e.,* there is no direct cash market counterpart. For these types of derivatives, concerns about the potential for manipulation of cash market prices are obviated, since individual traders typically have no ability to influence the value of the cash settlement, and, since the settlement value is not based on the prices of any asset or product traded in a directly corresponding cash market.

Exempt derivative instruments included in this category are contracts that are cash settled based upon an objective measurement of an economic or commercial index, a natural occurrence or a contingency. In this regard, the cash settlement measure could be based on an objective process, such as a count or measurement of a physical property or natural occurrence, or could be calculated by an independent third party that is widely accepted as a reputable provider of data regarding the commodity. Also included in this category are contracts that are settled in cash based upon the outcome of a contingency, such as a recurring or nonrecurring event, a specific incident, a natural phenomenon or the unambiguous results of some other condition that gives rise to a hedgeable risk. It is not intended to include contracts based upon a cash-settlement price determined through cash-market trading of any physical commodity or financial instrument, but rather contracts based on the objectively determined results of an outcome, occurrence, or event that is beyond the control of the parties involved in the contract or the entity where trading occurs. Derivatives traders have no ability to influence the final settlement value to profit on a derivatives position, and in many cases, the data used to compile the indexes are publicly available and are generated by reputable sources. Finally, included in this category are contracts based on an objectively determined index value or measure of an economic or commercial index reflecting broad characteristics of the economy as a whole, or portions thereof, or material segments of commercial activity.

Examples include contracts based on: Weather (such as contracts based on temperatures or precipitation data); the Consumer Price index or the Gross Domestic Product; insurance data, bankruptcy rates, real estate rental indexes or occupancy (vacancy) rates for individual localities; or measures of physical production or sales amounts such as housing starts or auto sales; or crop yields.

The Commission is proposing to define MTEF as ''an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons conducting business through such market or similar facility.'' The definition as proposed does not, and is not intended to, ''preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as 'broker screens,' to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.'' See, 58 FR 5587, 5591 (Jan. 22, 1993). Accordingly, the definition makes clear that it does not include facilities merely used as a means of communicating bids or offers nor does it include markets in which a single market maker offers to enter into bilateral transactions with multiple counterparties who may not transact with each other.

It should be noted that the definition of MTEF in proposed § 36.1(b) applies only to those rules in which it is cited. It is not intended to modify, alter, amend or interpret any other provision of the Act or the Commission's rules. For example, the proposed § 36.1(b) definition of MTEF does not affect the meaning or application of the statutory term, ''board of trade.'' 7 U.S.C. 1a(a). Thus, the scope and application of the statutory exclusion in section 2(a)(1)(A)(ii) of the Act, popularly known as the ''Treasury Amendment,'' which depends in part on the meaning of ''board of trade,'' is in no way affected by the Commission's proposed adoption of a definition of MTEF under § 36.1(b) for purposes of the exemptions in part 35 and part 36 of its rules. Accordingly, a facility that fits within the definition of ''multilateral transaction execution facility'' in part 36 may not be a ''board of trade'' for purposes of the Treasury Amendment.

As proposed, in exercising its authority under these exemptive rules, the Commission would not make any determination that the exempted transactions are or are not subject to its jurisdiction. When it adopted section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission (under Section 4(c)) would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[5]

In exercising this exemptive authority to date, the Commission has not made a determination that the transactions being exempted were, or were not, subject to the Commission's jurisdiction under the CEA.[6] Accordingly, the Commission is not making a determination that any market that is eligible to be an exempt MTEF under the proposed exemption is or is not subject to the Commission's jurisdiction under the CEA. Moreover, the fact that one market may operate as an exempt MTEF in reliance upon the proposed exemption, or that a similar market voluntarily submits to CFTC oversight as a recognized DTF or RFE, does not imply that the Commission has made a determination that any firm or entity that operates in a similar manner is subject to the Commission's jurisdiction under the CEA. However, the proposed exemptive rules for DTFs and RFEs provide that a market that is eligible to operate as an exempt MTEF but which chooses to become recognized by the Commission as a DTF or RFE, is bound to comply with applicable provisions of the Act and Commission rules as a condition of those exemptions.

B. Derivatives Transaction Facilities

The Commission also is proposing a new exemptive category for Derivatives Transaction Facilities. A market or similar facility, including a board of

[5] 5 H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[6] For instance, when the Commission exempted certain swap agreements in 1993, pursuant to section 4(c) of the Act, it stated:

> The issuance of this rule (Rule 35.2) should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.

58 FR 5587, 5588 (Jan. 22, 1993). *See also* Order Granting the London Clearing House's Petition for an Exemption Pursuant to Section 4(c) of the Commodity Exchange Act, 64 FR. 53346 (October 1, 1999); Exemption for Certain Contracts Involving Energy Products, 58 FR. 21286, 21288 (Apr. 20, 1993); Regulation of Hybrid Instruments, 58 FR 5580, 55821 n. 2 (Jan. 22, 1993).

trade, would be eligible to become a DTF under proposed part 37, regardless of its method of transmitting bids and offers or its matching system, if the contracts traded on the DTF meet specified commodity eligibility requirements. These are identical to the commodity eligibility requirements for the exempt MTEF.[7] Such DTFs would have the choice of whether or not to permit access to the market by non-eligible traders, but if they did permit such access, it would be allowed only through registered FCMs meeting a number of additional requirements. The intermediary firm and its associated person would be required to meet a number of requirements, including providing their non-institutional customers with enhanced disclosure and additional protections.[8] The DTF, however, may limit access solely to eligible participants if it so chooses.[9]

In addition, under proposed part 37, a facility that restricted participation to ''eligible commercial participants'' would be eligible to become a DTF to trade contracts based on all commodities other than those domestic agricultural commodities enumerated in section 1(a)(3) of the Act[10] and those commodities subject to the provisions of section 2(a)(1)(B) of the Act. This type of eligible commercials-only market structure lessens many of the regulatory concerns regarding manipulation ordinarily present with contracts for tangible commodities.[11]

The Commission is proposing that the agricultural commodities listed in section 1a(3) of the Act not be eligible for trading on a DTF. Because the current futures markets in these commodities tend to be the primary, if not the only, centralized source of price discovery and price basing for these commodities, they have not been included by the Commission in certain regulatory programs, particularly at the time of their initiation.[12] However, members of the agricultural community have at times argued that they should not be prohibited from benefiting from innovative trading practices that are available for non-agricultural commodities. In light of the unique considerations that these commodities present, the Commission is seeking comment from the agricultural community on the advisability of allowing the enumerated agricultural commodities to be traded on a DTF at this time.

Although contracts, agreements or transactions traded on a DTF would be exempt from many of the Act's provisions and Commission regulations,[13] the exemption is contingent upon compliance with the conditions set forth in part 37.[14] Transactions carried out in reliance upon the proposed part 37 exemption would not be voidable as a matter of law due to a violation of the part 37 exemption.

To be recognized as a DTF under proposed part 37 an entity either must have been designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of the Commission's regulations, or must apply to the Commission for recognition as a DTF under part 37. Under proposed § 37.3, a DTF must meet certain conditions for recognition. An application should address how the facility has provided for rules relating to trading on its facility, including: (1) Depending on the nature of the trading mechanism, (i) rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trading rules, or (ii) use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules have occurred; (2) rules or terms and conditions defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform; and (3) rules or terms and conditions detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities. The application also should address how the facility would initially, and on a continuing basis, meet and adhere to seven core principles: enforcement, market oversight, operational information, transparency, fitness, recordkeeping and competition.[15]

Guidance on meeting the conditions for recognition is provided in the appendix to part 37. Including information not self-evident from the DTF's rules or trading terms addressing the issues set forth in the appendix to part 37 in an application for recognition would assist the Commission in understanding how the applicant meets and adheres to the conditions for recognition. The guidance in the appendix to part 37, however, is intended to be a safe harbor and not the exclusive method of meeting the part 37 conditions for recognition. A DTF could meet a condition for recognition or support its application through procedures, materials, descriptions or documents other than those described in the part 37 appendix.

A board of trade, facility, or entity seeking recognition as a derivatives transaction facility would be deemed to be recognized thirty days after the Commission received the application if the application met the conditions for recognition pursuant to § 37.3 and the applicant and/or its rules or procedures do not violate the Act or the

[7] The Commission also expects, however, on a case-by-case basis, that the surveillance history and the self-regulatory undertakings of a particular exchange or facility could make it possible to include a specific contract traded on that facility within the DTF category even if the underlying commodity does not meet the general eligibility criteria. An exchange or facility seeking a case-by-case determination would be recognized as a DTF for that contract or contracts only upon CFTC approval.

[8] Proposed amendments to the Commission's rules governing intermediaries are published today in a separate release in this edition of the **Federal Register**. Although those amendments apply to all categories of intermediaries irrespective of where they choose to transact business, certain proposals differentiate between intermediation on various types of markets and for different types of customers.

[9] Facilities that meet the commodity eligibility requirement and permit access only to institutional traders are thereby eligible to be exempt MTEFs. However, such facilities may choose to seek recognition as a DTF. By choosing to comply with the additional DTF requirements outlined in this framework and thereby becoming recognized, the facility would be acknowledged to have met a higher regulatory standard.

[10] They are wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, potatoes, wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[11] Many of these trading facilities are expected to replicate electronically various aspects of today's commercial markets, including trading exclusively between principals, and direct negotiation and documentation of trades. In addition, these facilities often do not provide clearing arrangements for contracts.

[12] For example, options on agricultural futures contracts were introduced subsequent to options trading on non-agricultural commodities and the enumerated agricultural commodities are not included in the existing Part 36 exemption.

[13] Certain sections of the Act, including the fraud and manipulation provisions of the Act and the Commission's regulations are reserved in proposed rule 37.5 and would continue to apply.

[14] Although exempt from many statutory and regulatory requirements, DTFs as a condition of the Part 37 rules, generally would be considered under proposed rule 37.1(a) to be subject to the Act's provisions as though the DTF were a ''board of trade,'' or a ''designated contract market'' under the Act. Therefore, the Act would apply to a DTF (and an RFE) as would any other statutory or regulatory provision which refers to ''boards of trade'' or ''designated contract markets.'' Accordingly, transactions on a DTF would be accorded the same treatment for bankruptcy or tax purposes as transactions on formally designated contract markets.

[15] A board of trade, facility, or entity recognized as a DTF that also maintained a designated contract market or a recognized futures exchange would be required either to clearly identify trading products by market on any electronic system or to provide for separate physical trading locations, depending upon the trading mechanism.

Commission's regulations. An entity seeking recognition as a DTF may request that the Commission approve its initial set of rules under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. Subsequently, the DTF would notify the Commission of additional rules and rule amendments in the same manner that it notifies market participants. A DTF could request that the Commission approve new rules or rule amendments under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. A DTF also could request the Commission to issue an order determining whether the DTF, in adopting and implementing a rule, endeavored to take the least anticompetitive means of achieving the objective, purposes, and policies of the Act.[16]

C. Recognized Futures Exchanges

The Commission also is proposing significant regulatory relief to futures exchanges from current requirements that are applicable to designated contract markets. All currently designated contract markets, except for those designated as contract markets in section 2(a)(1)(B) commodities, will be afforded this relief. Under proposed part 38, currently designated contract markets will become recognized futures exchanges. Proposed part 38 replaces many prescriptive rules with performance-based rules. These performance-based rules, or Core Principles, will provide recognized futures exchanges with greater operational flexibility. Prescriptive rules relating to audit trail and conflict of interest procedures, for example, will be replaced by more flexible Core Principles. Moreover, the Commission would not require that it approve an RFE's new contracts prior to listing. In addition, except for the terms and conditions of agricultural commodities enumerated in section 1a(3) of the Act, the Commission would not require its approval of an RFE's rules and rule amendments prior to implementation, although an RFE voluntarily could submit such contracts or rule amendments to the Commission for review and approval. Furthermore, the exchanges would no longer be responsible for auditing intermediaries' sales practices. Instead, enforcement would be the responsibility of a registered futures association. The National Futures Association (NFA) currently is the only such registered organization.

In addition to currently designated contract markets, other multilateral transaction execution facilities could apply for recognition as an RFE. Eligibility for recognition is not limited by the nature of the trader having access to the facility or the nature of the commodities to be traded. Because RFEs may permit unconditioned access to any type of trader, including both institutional and non-institutional customers or participants, and may list contracts on any type of commodity, including those based on commodities that have finite deliverable supplies or cash markets with limited liquidity, RFE markets potentially have a greater susceptibility to price manipulation and raise greater concerns regarding customer protection than those of DTFs. Therefore, the proposed rules in part 38 preserve a higher level of market surveillance, position reporting obligations, customer protections and financial safeguards than do the rules for DTFs.

In order to be recognized as an RFE, an applicant must meet all of the conditions for recognition specified by proposed rule 38.3. Applicants are to demonstrate how the board of trade, facility or entity has provided for: (1) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation; (2) rules relating to trading on its exchange, including rules to deter trading abuses, and adequate authority and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity; (3) rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as defined in the operational rules or specifications; (4) a clear framework for ensuring the financial integrity of transactions entered into by or through its exchange; (5) established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, or expel members, or to deny access to participants or, if provided for, discipline participants; and (6) arrangements to obtain necessary information to perform the above functions, including the capacity and arrangements to carry out the International Information Sharing Agreement and Memorandum of Understanding developed by the Futures Industry Association (FIA) Global Task Force on Financial Integrity and a mechanism to provide to the public ready access to its rules and regulations.

The application is to address how the exchange initially, and on a continuing basis, meets and adheres to each of part 38's fifteen Core Principles: rule enforcement, products, position monitoring and reporting, position limits, emergency authority, public information, transparency, trading system, audit trail, financial standards, customer protection, dispute resolution, governance, recordkeeping and competition. Guidance on meeting the Core Principles is provided in the appendix to part 38. Information addressing these issues should be included in an application for recognition and should explain to the Commission how the applicant meets and adheres to the conditions for recognition.

Appendix A to part 38 offers general guidance for applicants seeking recognition and also includes a number of proposed statements of acceptable practices for compliance with several Core Principles. These acceptable practices are intended to indicate a manner in which an applicant can meet a Core Principle, but are not meant to be the exclusive means for meeting that Core Principle. Rather, these acceptable practices should be viewed as safe harbors. If an RFE follows an acceptable practice included in the appendix to part 38, it is assured of meeting the relevant Core Principle.

A board of trade, facility, or entity seeking recognition as a recognized futures exchanges would be deemed to be recognized sixty days after the Commission received the application unless it appeared that the applicant and/or its rules or procedures might violate a specific provision of the Act or Commission rule that has been reserved under the proposed exemptive rule, or fails to meet one or more of the conditions for recognition in proposed

[16] The Commission is proposing a new part 20 to require traders on DTFs to provide information to the Commission concerning their trading on a DTF in response to a Commission special call for such information. This authority is critical to the Commission's ability to oversee the market. In addition, the Commission is proposing to amend Rule 15.05 by adding paragraphs (e), (f) and (g). The new paragraphs will permit the Commission to obtain information from foreign brokers, any of their customers or a foreign trader trading on a DTF or an RFE regarding their futures or options transactions on the facility or exchange. The amendments extend to foreign persons trading on DTFs or RFEs the requirements of rule 15.05 relative to foreign brokers, their customers and foreign traders whose accounts are maintained by a futures commission merchant or introducing broker.

rule 38.3. In that case, the Commission could notify the applicant that the Commission would review the proposal under section 6 of the Act.

The Commission is proposing amendments to part 5 of its rules to permit RFEs to list new products based only on their certification that the contract and its rules do not violate any applicable provision of the Act or Commission rules. As an aid to exchanges listing new products through this certification procedure, the Commission also is proposing a new statement of guidance relating to Core Principle #2, that contracts listed for trading not be readily susceptible to manipulation. New products listed under this procedure must be labeled as listed pursuant to exchange certification. Alternatively, an RFE could submit a new product for prior Commission review and approval under fast-track procedures. RFEs choosing to submit new contracts for prior approval under fast-track procedures should submit an application which conforms to the requirements of Guideline No. 1, 17 CFR part 5, appendix A.[17] The Commission will approve the terms and conditions of contracts submitted for review. Such contracts may be listed as ''approved by the Commission.''

Similarly, an RFE may request that the Commission approve amendments to its rules under section 5a(a)(12)(A) of the Act and Commission regulations thereunder. The Commission is proposing a voluntary procedure for the review and approval of exchange rules. Under these procedures, all exchange rule amendments could be submitted for forty-five day fast track review and certain rule amendments could be submitted for expedited review as provided previously by the Commission in approving a general authorizing rule. Alternatively, an RFE could amend its rules (other than the terms or conditions of contracts on the agricultural commodities enumerated in section 1a(3) of the Act) by certification to the Commission that a rule does not violate the Act or Commission rules on the day preceding the rule's implementation.

The certification procedure proposed under the changes to rule 1.41 is similar to a certification procedure published by the Commission as proposed rule 1.41(z) in November of 1999.[18] The Commission points out, however, that the currently proposed certification procedure includes a stay provision that was not included in the 1.41(z) proposal. That provision is limited to use during any proceeding to disapprove, alter or amend a rule.[19] The decision to impose a stay would not be delegable to any employee of the Commission. The Commission requests comments on this provision.

The Commission is also proposing that it merely be notified on a weekly basis following the implementation of certain specified exchange rule amendments. The Commission need not be notified, even as part of a weekly update, however, of rule changes relating to exchange administration, including those relating to decorum.

D. Deletion of Part 180 and Amendment of Commission Regulation 170.8

Contract markets are required, under section 5a(a)(11) of the Act, to provide fair and equitable procedures for the settlement of customer claims and grievances against any of its members or such members' employees, whether through arbitration or other dispute resolution programs. The Commission promulgated part 180 (Arbitration or other Dispute Resolution Procedures) to give the contract markets a blueprint for developing the required ''fair and equitable'' procedures. As part of the regulatory reform process discussed earlier the Commission is proposing to delete part 180. Instead of following the detailed requirements of part 180, the Commission is proposing that RFEs be required to meet the Core Principle for dispute resolution. For contracts in section 2(a)(1)(B) commodities which will continue to be designated contract markets, section 5a(a)(11) of the Act would still require the contract market to provide fair and equitable procedures for the settlement of customer claims and grievances.

The Commission has included an appendix to part 38, as explained above, to provide guidance on meeting the conditions for approval under part 38, including acceptable practices for some of the Core Principles. These acceptable practices, as previously explained, are ways to meet a Core Principle but are not meant to be the only method for meeting that Core Principle. Instead, these acceptable practices should be viewed as safe harbors. Therefore, the guidance on Core Principle 12, dispute resolution, includes acceptable practices for exchange dispute resolution programs as one, but not the only, means for meeting the dispute resolution Core Principle. The acceptable practices provided in the appendix were based on the principles for arbitration and other dispute resolution settlement procedures under part 180. The guidance on customer dispute resolution found in the appendix to part 38 would also be applicable to derivative transaction facilities that allowed access to non-institutional participants.[20]

The Commission is also proposing to amend § 170.8 of the Commission's regulations as that provision currently requires that the procedures for settlement of customer disputes promulgated by futures associations be consistent with part 180. Under the proposed amendments to § 170.8, programs for resolution of customer claims and grievances promulgated by futures associations would be required to be consistent with the guidelines and acceptable practices found in the appendix to part 38.

III. Section 4(c) Findings

These rule amendments are being proposed under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions. To grant such an exemption, the Commission must find that the exemption would be consistent with the public interest, that the agreement, contract, or transaction to be exempted would be entered into solely between appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[21]

As explained above, these proposed rules would establish a new regulatory framework. The proposed framework is intended to promote innovation and competition in the trading of derivatives and to permit the markets the flexibility to respond to technological and structural changes in the markets. Specifically, the proposed framework would establish three regulatory tiers with regulations tailored to the nature of

[17] Guideline No. 1 was itself recently amended to reduce unnecessary burdens. By and large it merely requires an applicant to file with the Commission the proposed contract's terms and conditions and a completed checklist. This checklist replaces a previously required narrative explanation and justification of the proposed contract's terms and conditions.

[18] 64 FR 66428 (November 26, 1999).

[19] Proposed rule 1.41(c)(1)(iv).

[20] In light of the deletion of part 180, a new rule 166.5 replacing former rule 180.3 relating to the use of pre-dispute arbitration agreements is being proposed in the companion release on intermediaries in today's edition of the **Federal Register.** The substance of the rule as proposed is unchanged from the current requirement.

[21] See, 7 U.S.C. 6(c).

the commodities traded and the nature of the market participant. As the Commission explained above, access to each of the tiers is dependent upon the appropriateness of the participant. Accordingly, and for the reasons detailed above, the Commission finds that each class of participant eligible to participate in a specific tier is appropriate for that exemptive relief. Moreover, the exemptions for parts 37 and 38 are upon stated terms. As detailed above, these terms include application of regulatory and self-regulatory requirements tailored to the nature of the market. The Commission believes that, in light of these conditions, the exemptive relief would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. The Commission specifically requests the public to comment on these issues.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that agencies, in promulgating rules, consider the impact of these rules on small entities. Information of the type that would be required under the proposed rule does not involve any small organizations.

B. Paperwork Reduction Act of 1995

This proposed rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Rules Relating to part 37, Establishing Procedures for Entities to be Recognized as Derivatives Transaction Facilities (DTFs), OMB Control Number 3038–XXXX.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Annual responses by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 200.

Annual reporting burden: 2,000.

Collection of Information: Rules Relating to part 38, Establishing Procedures for Entities to become a Recognized Futures Exchange (RFE), OMB Control Number 3038–XXXX.

The estimated burden was calculated as follows:

Estimated number of respondents: 10.

Annual responses by each respondent: 1.

Total annual responses: 10.

Estimated average hours per response: 300.

Annual reporting burden: 3,000.

Collection of Information: Rules Pertaining to Large Trader Reports, OMB Control Number 3038–0009

The estimated burden associated with the elimination of large trader reporting requirements for futures exchanges that operate exempt multilateral trade execution facilities was calculated as follows:

Estimated number of respondents: 4,731.

Annual responses by each respondent: 14.67.

Total annual responses: 69,392.

Estimated average hours per response: .35213.

Annual reporting burden: 24,435.

This annual reporting burden of 24,435 hours represents a decrease of 394 hours as a result of the proposed revision.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 1

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 5

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

17 CFR Part 15

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 20

Commodity futures, Contract markets, Reporting and recordkeeping requirements.

17 CFR Part 36

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 37

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 38

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 100

Commodity futures, Commodity Futures Trading Commission.

17 CFR Part 170

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 180

Claims, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4c, 4i, 5, 5a, 6 and 8a thereof, 7 U.S.C. 6, 6c, 6i, 7, 7a, 8, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.37 is proposed to be amended by adding paragraphs (c) and (d) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

* * * * *

(c) Each derivatives transactions facility and each recognized futures exchange shall keep a record in permanent form which shall show the true name; address; and principal occupation or business of any foreign trader executing transactions on the facility or exchange, as well as the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.

(d) Paragraph (c) of this section shall not apply to a derivatives transactions facility or recognized futures exchange on which transactions in futures contracts or options contracts of foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of paragraph (a) of this section.

3. Section 1.41 is proposed to be amended as follows:

a. By removing and reserving paragraph (b),

b. By redesignating paragraph (e) as paragraph (i) and revising it,

c. By revising paragraphs (c) through (e),

d. By amending paragraphs (f) and (g) by adding the words ''or recognized futures exchange'' after the words ''contract market'' each time they appear, and

e. By removing and reserving paragraphs (j) through (t), to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(b) [Reserved]

(c) Exemption from the rule review procedure requirements of Section 5a(a)(12)(A) of the Act and related regulations.

(1) Rules of designated contract markets, recognized futures exchanges and recognized clearing organizations. Notwithstanding the rule approval and filing requirements of Section 5a(a)(12) of the Act, designated contract markets, recognized futures exchanges and recognized clearing organizations may place a rule into effect without prior Commission review or approval if:

(i) The rule is not a term or condition of a contract for future delivery of an agricultural commodity listed in section 1(a)(3) of the Act;

(ii) The entity has filed a submission for the rule, and the Commission has received the submission at its Washington, D.C. headquarters and at the regional office having jurisdiction over the entity by close of business on the business day preceding implementation of the rule; and

(iii) The rule submission includes:

(A) The label, ''Submission of rule by self-certification;''

(B) The text of the rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) A brief explanation of the rule including any substantive opposing views not incorporated into the rule; and

(D) A certification by the eligible entity that the rule does not violate any provision of the Act and regulations thereunder.

(iv) The Commission retains the authority to stay the effectiveness of a rule implemented pursuant to paragraph (c)(1) of this section during the pendency of Commission proceedings to disapprove, alter or amend the rule. The decision to stay the effectiveness of a rule in such circumstances may not be delegable to any employee of the Commission.

(2) Rules of derivatives transaction facilities. Notwithstanding the rule approval and filing requirements of section 5a(a)(12)(A) of the Act, derivatives transaction facilities may place a rule into effect without prior Commission review or approval if the derivatives transaction facility files with the Commission at its Washington, D.C. headquarters a submission labeled, ''DTF Rule Notice'' which includes the text of the rule or rule amendment (brackets must indicate words deleted and underscoring must indicate words added) at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding implementation of the rule.

(d)(1) Voluntary submission of rules for fast-track approval. A designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may submit any rule or proposed rule, except those submitted to the Commission under paragraph (f) of this section, for approval by the Commission pursuant to section 5a(a)(12)(A) of the Act, whether or not so required by section 5a(a)(12) of the Act under the following procedures:

(i) One copy of each rule submitted under this section shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commission at its Washington, DC headquarters. If a hard copy is furnished for submissions under appendix A to part 5 of this chapter, two additional hard copies shall be furnished to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Each submission under this paragraph (d)(1) shall be in the following order:

(A) Label the submission as ''Submission for Commission rule approval:''

(B) Set forth the text of the rule or proposed rule (in the case of a rule amendment, brackets must indicate words deleted and underscoring must indicate words added);

(C) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(D) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, how the rule fits into the contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;

(E) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule which were not incorporated into the proposed rule prior to its submission to the Commission; and

(F) Identify any Commission regulation that the Commission may

need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve or allow into effect the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the change.

(ii) All rules submitted for Commission approval under paragraph (d)(1)(i) of this section shall be deemed approved by the Commission under section 5a(a)(12)(A) of the Act, forty-five days after receipt by the Commission, unless notified otherwise within that period, if:

(A) The submission complies with the requirements of paragraphs (d)(1)(i) (A) through (F) of this section or, for dormant contracts, the requirements of § 5.3 of this chapter;

(B) The submitting entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period; and

(C) The submitting entity has not instructed the Commission in writing during the review period to review the proposed rule under the 180 day review period under section 5a(a)(12)(A) of the Act.

(iii) The Commission, within forty-five days after receipt of a submission filed pursuant to paragraph (d)(1)(i) of this section, may notify the entity making the submission that the review period has been extended for a period of thirty days where the proposed rule raises novel or complex issues which require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required. Upon such notification, the period for review shall be extended for a period of thirty days, and, unless the entity is notified otherwise during that period, the rule shall be deemed approved at the end of the enlarged review time.

(iv) During the forty-five day period for fast-track review, or the thirty-day extension when the period has been enlarged under paragraph (d)(1)(iii) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the 180 day review period of section 5a(a)(12)(A) of the Act, if it appears that the proposed rule may violate a specific provision of the Act, regulations, or form or content requirements of this section. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulations, or form or content requirements of this section that the proposed rule appears to violate. Within fifteen days of receipt of this termination notification, the designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization may:

(A) Withdraw the rule;

(B) Request the Commission to review the rule pursuant to the one hundred and eighty day review procedures set forth in section 5a(a)(12)(A) of the Act; or

(C) Request the Commission to render a decision whether to approve the proposed rule or to institute a proceeding to disapprove the proposed rule under the procedures specified in section 5a(a)(12)(A) of the Act by notifying the Commission that the submitting entity views its submission as complete and final as submitted.

(2) Voluntary submission of rules for expedited approval. Notwithstanding the provisions of paragraph (d)(1) of this section, changes to terms and conditions of a contract that are consistent with the Act and Commission regulations and with standards approved or established by the Commission in a written notification to the market or clearing organization of the applicability of this paragraph (d)(2) shall be deemed approved by the Commission at such time and under such conditions as the Commission shall specify, provided, however, that the Commission may at any time alter or revoke the applicability of such a notice to any particular contract.

(e)(1) Notification of rule amendments. Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges, derivatives transaction facilities and recognized clearing organizations may place the following rules into effect without prior notice to the Commission if the following conditions are met:

(i) The designated contract market, recognized futures exchange, derivatives transaction facility or clearing organization provides to the Commission at least weekly a summary notice of all rule changes made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Changes'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished in hard copy or electronically in a format specified by the Secretary of the Commission to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; and

(ii) The rule change governs:

(A) Non-material revisions. Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of contract terms and conditions that have no effect on the economic characteristics of the contract;

(B) Delivery standards set by third parties. Changes to grades or standards of commodities deliverable on futures contracts that are established by an independent third party and that are incorporated by reference as terms of the contract, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading;

(C) Index contracts. Routine changes in the composition, computation, or method of selection of component entities of an index other than a stock index referenced and defined in the contract's terms, made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option contract;

(D) Transfer of membership or ownership. Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments; or

(E) Administrative Procedures. The organization and administrative procedures of a contract market's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements and procedures or requirements or procedures relating to conflicts of interest.

(2) Notification of rule amendments not required. Notwithstanding the rule approval and filing requirements of section 5a(a)(12) of the Act and of paragraphs (c) and (d) of this section, designated contract markets, recognized futures exchanges, derivatives transaction facilities and recognized clearing organizations may place into effect without notice to the Commission, rules governing:

(i) Administration. The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not

guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; or

(ii) Standards of decorum. Standards of decorum or attire or similar provisions relating to admission to the floor, badges, visitors, but not the establishment of penalties for violations of such rules.

* * * * *

(i) Membership lists. Upon request of the Commission each designated contract market, recognized futures exchange, derivatives transaction facility or recognized clearing organization shall promptly furnish to the Commission a current list of the facility's or entity's members or owners subject to fitness requirements.

4. In part 1, §§ 1.43, 1.45, and 1.50 are proposed to be removed and reserved.

5. Part 5 is proposed to be amended as as follows:

PART 5—PROCEDURES FOR LISTING NEW PRODUCTS

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

Authority: 7 U.S.C. 6(c), 6c, 7, 7a, 8 and 12a.

b. The heading of part 5 is proposed to be revised as set forth above and §§ 5.1 through 5.4 are proposed to be revised to read as follows:

§ 5.1 Listing contracts for trading by exchange certification.

(a) Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a board of trade that has been recognized by the Commission as a recognized futures exchange under § 38.3 of this chapter may list for trading contracts of sale of a commodity for future delivery or commodity option contracts, if the recognized futures exchange:

(1) Lists for trading at least one contract which is not dormant within the meaning of § 5.3 of this part;

(2) In connection with the trading of the contract complies with all requirements of the Act and Commission regulations thereunder applicable to the recognized futures exchange under part 38 of this chapter;

(3) Files with the Commission at its Washington, D.C., headquarters either in electronic or hard-copy form a copy of the contract's initial terms and conditions and a certification by the recognized futures exchange that the contract's initial terms and conditions neither violate nor are inconsistent with any requirement of part 38 of this chapter, any applicable provision of the Commodity Exchange Act or of the rules thereunder, and the filing is received no later than the close of business of the business day preceding the contract's initial listing; and

(4) Identifies the contract in its rules as listed for trading pursuant to exchange certification.

(b) The provisions of this section shall not apply to:

(1) A contract subject to the provisions of section 2(a)(1)(B) of the Act;

(2) A contract to be listed initially for trading that is the same or substantially the same as one for which an application for Commission review and approval pursuant to § 5.2 was filed by another board of trade while the application is pending before the Commission; or

(3) A contract to be listed initially for trading that is the same or substantially the same as one which is the subject of a pending Commission proceeding to disapprove designation under section 6 of the Act, to disapprove a term or condition under section 5a(a)(12) of the Act, to alter or supplement a term or condition under section 8a(7) of the Act, to amend terms or conditions under section 5a(a)(10) of the Act, to declare an emergency under section 8a(9) of the Act, or to any other proceeding the effect of which is to disapprove, alter, supplement, or require a contract market to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 5.2 Listing products for trading by derivatives transaction facilities.

Notwithstanding the provisions of section 4(a)(1) of the Act or § 33.2 of this chapter, a recognized derivatives transaction facility under § 37.3 of this chapter may list contracts for trading if it files with the Commission at its Washington, D.C. headquarters, a submission labeled ''DTF Notice of Product Listing,'' which includes the text of the contract's terms or conditions at the time traders or participants in the market are notified, but in no event later than the close of business on the business day preceding initial listing.

§ 5.3 Voluntary submission of new products for Commission review and approval.

(a) Cash-settled contracts. A new contract to be listed for trading by a recognized futures exchange under § 38.3 of this chapter or a recognized derivatives transaction facility under § 37.3 of this chapter shall be deemed approved by the Commission ten business days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Ten-Day Review;

(2)(i) The application for approval is for a futures contract providing for cash settlement or for delivery of a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; or

(ii) For an option contract that is itself cash-settled, is for delivery of a foreign currency that meets the requirements of paragraph (a)(2)(i) of this section or is to be exercised into a futures contract which has already been designated as a contract market or approved under this section;

(3) The application for approval is for a commodity other than those enumerated in section 1a(3) of the Act or one that is subject to the procedures of section 2(a)(1)(B) of the Act;

(4) The submitting entity trades at least one contract which is not dormant within the meaning of this part;

(5) The submission complies with the requirements of Appendix A of this part—Guideline No. 1;

(6) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(7) The submitting entity has not instructed the Commission in writing during the review period to review the application for designation under the usual procedures under section 6 of the Act.

(b) Contracts for physical delivery. A new contract to be listed for trading by a recognized futures exchange under § 38.3 of this chapter or by a derivatives transaction facility under § 37.3 of this chapter shall be deemed approved by the Commission forty-five days after receipt by the Commission of the application for contract approval, unless notified otherwise within that period, if:

(1) The submitting entity labels the submission as being submitted pursuant to Commission rule 5.2—Fast Track Forty-Five Day Review;

(2) The application for contract approval is for a commodity other than those subject to the procedures of section 2(a)(1)(B) of the Act;

(3) The submitting entity lists for trading at least one contract which is not dormant within the meaning of this part;

(4) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(5) The submitting entity does not amend the terms or conditions of the proposed contract or supplement the application for designation, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period; and

(6) The submitting entity has not instructed the Commission in writing during the forty-five day review period to review the application for designation under the usual procedures under section 6 of the Act.

(c) Notification of extension of time. The Commission, within ten days after receipt of a submission filed under paragraph (a) of this section, or forty-five days after receipt of a submission filed under paragraph (b) of this section, may notify the submitting entity that the review period has been extended for a period of thirty days where the application for approval raises novel or complex issues which require additional time for review. This notification will briefly specify the nature of the specific issues for which additional time for review is required. Upon such notification, the period for fast-track review of paragraphs (a) and (b) of this section shall be extended for a period of thirty days.

(d) Notification of termination of fast-track procedures. During the fast-track review period provided under paragraphs (a) or (b) of this section, or of the thirty-day extension when the period has been enlarged under paragraph (c) of this section, the Commission shall notify the submitting entity that the Commission is terminating fast-track review procedures and will review the proposed rule under the usual procedures of section 6 of the Act, if it appears that the proposed contract may violate a specific provision of the Act, regulations, or form or content requirements of Appendix A to this part. This termination notification will briefly specify the nature of the issues raised and the specific provision of the Act, regulation, or form or content requirement of Appendix A to this part that the proposed contract appears to violate. Within ten days of receipt of this termination notification, the submitting entity may request that the Commission render a decision whether to approve the designation or to institute a proceeding to disapprove the proposed application for designation under the procedures specified in section 6 of the Act by notifying the Commission that the exchange views its application as complete and final as submitted.

(e) Delegation of authority. (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Economic Analysis or to the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to request under paragraphs (a)(6) and (b)(5) of this section that the recognized futures exchange or derivatives transaction facility amend the proposed contract or supplement the application, to notify a submitting entity under paragraph (c) of this section that the time for review of a proposed contract term submitted for review under paragraphs (a) or (b) of this section has been extended, and to notify the submitting entity under paragraph (d) of this section that the fast-track procedures of this section are being terminated.

(2) The Director of the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in paragraph (e)(1) of this section.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

§ 5.4 Dormant contracts.

(a) Definitions. For purposes of this section:

(1) The term dormant contract means any commodity futures or option contract:

(i) In which no trading has occurred in any future or option expiration for a period of six complete calendar months; or

(ii) Which has been certified by a recognized futures exchange or a recognized derivatives transaction facility to the Commission to be a dormant contract market.

(2) [Reserved]

(b) Listing of additional futures trading months or option expiration by certification. A contract that has been listed for trading initially under the procedures of either §§ 5.1 or 5.3 of this part that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(c) by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section. Upon relisting, the contract must be identified by the recognized futures exchange as listed for trading by exchange certification.

(c) Approval for listing of additional futures trading months or option expirations. A contract that has been initially approved by the Commission under § 5.3 of this part and that has become dormant may be relisted for trading additional months pursuant to the procedures of § 1.41(d) by filing the bylaw, rule, regulation or resolution to list additional trading months or expirations with the Commission as specified in that section.

(1) Each such submission shall clearly designate the submission as filed pursuant to Commission Rule 5.3; and

(2) Include the information required to be submitted pursuant to § 5.3 of this part or an economic justification for the listing of additional months or expirations in the dormant contract market, which shall include an explanation of those economic conditions which have changed subsequent to the time the contract became dormant and an explanation of how any new terms and conditions which are now being proposed, or which have been proposed for an option market's underlying futures contract market, would make it reasonable to expect that the futures or option contract will be used on more than an occasional basis for hedging or price basing.

(d) Exemptions. No contract shall be considered dormant until the end of sixty (60) complete calendar months:

(1) Following initial listing; or

(2) Following Commission approval of the contract market bylaw, rule, regulation, or resolution to relist trading months submitted pursuant to paragraph (c) of this section.

c. Appendices C and D are removed and reserved to read as follows:

Appendix C—[Reserved]

Appendix D—[Reserved]

PART 15—REPORTS—GENERAL PROVISIONS

6. The authority citation for Part 15 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6(c), 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21.

7. Section 15.05 is proposed to be amended by adding paragraphs (e) through (h) to read as follows:

§ 15.05 Designation of agent for foreign brokers, customers of a foreign broker and foreign traders.

* * * * *

(e) Any derivatives transaction facility or recognized futures exchange that permits a foreign broker to intermediate transactions in futures contracts or options contracts on the facility or exchange, or permits a foreign trader to effect transactions in futures contracts

or options contracts on the facility or exchange shall be deemed to be the agent of the foreign broker and any of its customers for whom the transactions were executed, or the foreign trader for purposes of accepting delivery and service of any communication issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader with respect to any futures or options contracts executed by the foreign broker or the foreign trader on the derivatives transaction facility or recognized futures exchange. Service or delivery of any communication issued by or on behalf of the Commission to a derivatives transaction facility or recognized futures exchange pursuant to such agency shall constitute valid and effective service upon the foreign broker, any of its customers, or the foreign trader. A derivatives transaction facility or recognized futures exchange who has been served with, or to whom there has been delivered, a communication issued by or on behalf of the Commission to a foreign broker, any of its customers, or a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the foreign broker, any of its customers or the foreign trader.

(f) It shall be unlawful for any derivatives transaction facility or recognized futures exchange to permit a foreign broker, any of its customers or a foreign trader to effect transactions in futures contracts or options contracts unless the derivatives transaction facility or recognized futures exchange prior thereto informs the foreign broker, any of its customers or the foreign trader in any reasonable manner the derivatives transaction facility or recognized futures exchange deems to be appropriate, of the requirements of this section.

(g) The requirements of paragraphs (e) and (f) of this section shall not apply to any transactions in futures contracts or options if the foreign broker, any of its customers or the foreign trader has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the derivatives transaction facility or recognized futures exchange prior to effecting any transactions in futures contracts or options contracts on the derivatives transaction facility or recognized futures exchange. This agreement must authorize the person domiciled in the United States to serve as the agent of the foreign broker, any of its customers or the foreign trader for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the foreign broker, any of its customers or the foreign trader and must provide an address in the United States where the agent will accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the derivatives transaction facility or recognized futures exchange prior to permitting the foreign broker, any of its customers or the foreign trader to effect any transactions in futures contracts or options contracts. Unless otherwise specified by the Commission, the agreements required to be filed with the Commission shall be filed with the Secretary of the Commission at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. A foreign broker, any of its customers or a foreign trader shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the derivatives transaction facility or recognized futures exchange knows or should know that the agreement has expired, been terminated, or is no longer in effect, the derivatives transaction facility or recognized futures exchange shall notify the Secretary of the Commission immediately. If the written agency agreement expires, terminates, or is not in effect, the derivatives transaction facility or recognized futures exchange and the foreign broker, any of its customers or the foreign trader are subject to the provisions of paragraphs (e) and (f) of this section.

(h) The provisions of paragraphs (e), (f) and (g) of this section shall not apply to a derivatives transactions facility or recognized futures exchange on which all transactions in futures contracts or options contracts of foreign brokers, their customers or foreign traders are executed through and the resulting transactions are maintained in accounts carried by a registered futures commission merchant or introducing broker subject to the provisions of Rules 15.05(a), (b), (c) and (d).

8. Chapter I of 17 CFR is proposed to be amended by adding a new Part 20 to read as follows:

PART 20—SPECIAL CALLS RELATING TO TRANSACTIONS ON DERIVATIVES TRANSACTION FACILITIES

Sec.

20.1 Special calls for information from derivatives transaction facilities.
20.2 Special calls for information from futures commission merchants.
20.3 Special calls for information from participants.
20.4 Delegations of authority.

Authority: 7 U.S.C. 6(c), 6i and 12(a)(5).

§ 20.1 Special calls for information from derivatives transaction facilities.

Upon special call by the Commission, a derivatives transaction facility shall provide to the Commission such information related to its business as a derivatives transaction facility, including information relating to data entry and trade details, in the form and manner and within the time as specified by the Commission in the special call.

§ 20.2 Special calls for information from futures commission merchants.

Upon special call by the Commission, each person registered or deemed to be registered as a futures commission merchant that carries or has carried an account for a customer on a derivatives transaction facility shall provide information to the Commission concerning such accounts or related positions carried for the customer on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

§ 20.3 Special calls for information from participants.

Upon special call by the Commission, any person who enters into or has entered into a contract, agreement, or transaction on a derivatives transaction facility shall provide information to the Commission concerning such contracts, agreements, or transactions or related positions on other facilities or markets, in the form and manner and within the time specified by the Commission in the special call.

§ 20.4 Delegation of authority.

The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls for information set forth in §§ 20.1, 20.2 and 20.3 to the Directors of the Division of Economic Analysis and the Division of Trading and Markets to be exercised separately by each Director or by such other employee or employees as the Director may designate from time to time. The Director of the Divisions of Economic Analysis and Trading and Markets may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

9. PART 36 is proposed to be revised to read as follows:

PART 36—EXEMPTION OF TRANSACTIONS ON MULTILATERAL TRANSACTION EXECUTION FACILITIES

Sec.
36.1 Definitions.
36.2 Exemption.
36.3 Enforceability.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 36.1 Definitions.

As used in this part:

(a) Eligible participant means and shall be limited to the parties or entities listed in § 35.1(b)(1)–(11) of this chapter; and

(b) Multilateral transaction execution facility means an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons who conduct business through such market or similar facility, but does not include:

(1) A facility whose participants individually negotiate (or have individually negotiated) with counterparties the material terms applicable to transactions between them, including transactions conducted on the facility, and which are subject to subsequent acceptance by the counterparties;

(2) Any electronic communications system on which the execution of a transaction results from the content of bilateral communications exchanged between the parties and not by the interaction of multiple orders within a predetermined, non-discretionary automated trade matching algorithm; or

(3) Any facility on which only a single firm may participate as market maker and participants other than the market maker may not accept bids or offers of other non-market maker participants.

§ 36.2 Exemption.

A contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such contract, agreement or transaction is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 36.3(a)) provided the following terms and conditions are met:

(a) Only eligible participants, either trading for their own account or through another eligible participant, have trading access to the multilateral transaction execution facility;

(b) The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility is based upon:

(1) A debt obligation;

(2) A foreign currency;

(3) An interest rate;

(4) An exempt security or index thereof, as provided in section 2a(1)(B)(iv) of the Act;

(5) A measure of credit risk or quality, including instruments known as ''total return swaps,'' ''credit swaps'' or ''spread swaps;''

(6) An occurrence, extent of an occurrence or contingency beyond the control of the counterparties to the transaction; or

(7) Cash-settled, based upon an economic or commercial index or measure beyond the control of the counterparties to the transaction and not based upon prices derived from trading in a directly corresponding underlying cash market;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearing organization that is authorized by the Commission under § 39.2 of this chapter: Provided, however, that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such contracts, agreements or transactions;

(d) The multilateral transaction execution facility on or through which such contracts, agreements or transactions are traded and the parties to, participants in, or intermediaries in such a facility that is exempt under this section are prohibited from claiming that the facility is regulated, recognized or approved by the Commission;

(e) The facility must be legally separate from any designated contract market, any recognized futures exchange under part 38 of this chapter and any facility recognized as a derivatives trading facility under part 37 of this chapter;

(f) The facility:

(1) If an electronic system that also lists for trading products pursuant to parts 37 or 38 of this chapter, must provide notice of the agreements, contracts or transactions traded on the facility pursuant to this part 36 and that such transactions are not subject to regulation under the Act; or

(2) If providing a physical trading environment, must provide that products trading pursuant to parts 37 or part 38 of this chapter be traded in a location separate from products traded pursuant to this part 36; and

(g) If the Commission determines by order, after notice and an opportunity for a hearing, that the facility serves as a significant source for the discovery of prices for an underlying commodity, the facility must on a daily basis disseminate publicly trading volume and price ranges and other trading data appropriate to that market as specified in the order.

(h) Any person or entity may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including, but not limited to, the applicability of other regulatory regimes.

§ 36.3 Enforceability.

(a) Notwithstanding the exemption in § 36.2, sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and sections 6(c) and 9(a)(2) of the Act to the extent they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement, or transaction that is with an eligible counterparty (or counterparty reasonably believed by such party to be an eligible counterparty) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement, or transaction is void, voidable or unenforceable, or

(2) To rescind or recover any payment made in respect of such contract, agreement, or transaction, based solely on the failure of such party or such contract, agreement, or transaction to comply with the terms or conditions of the exemption under this part.

10. Chapter I of 17 CFR is proposed to be amended by adding new Part 37 as follows:

PART 37—EXEMPTION OF TRANSACTIONS ON A DERIVATIVES TRANSACTION FACILITY

Sec.
37.1 Scope and definitions.
37.2 Exemption.

37.3 Conditions for recognition as a derivatives transaction facilities.
37.4 Procedures for recognition.
37.5 Enforceability.
37.6 Fraud in connection with Part 37 transactions.
Appendix A to Part 37—Application Guidance

Authority: 7 U.S.C. 2, 6, 6c, 6(c) and 12a.

§ 37.1 Scope and Definitions.

(a) Scope. (i) The derivatives transaction facility and the products listed for trading thereon under this exemption shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a ''board of trade,'' ''board of trade licensed by the Commission,'' ''exchange,'' ''contract market,'' ''designated contract market,'' or ''contract market designated by the Commission'' as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized derivatives transaction facilities pursuant to this section.

(2) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

(b) Definition. As used in this part ''*eligible commercial participant*'' means, and shall be limited to, a party or entity listed in §§ 35.1(b)(1), (b)(2), (b)(3), (b)(6) and (b)(8) of this chapter that in connection with its business, makes and takes delivery of the underlying physical commodity and regularly incurs risks related to such commodity, or is a dealer that regularly provides hedging, risk management or market-making services to the foregoing entities.

§ 37.2 Exemption.

Notwithstanding § 37.1(a)(1), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 37.5(a), provided the following terms and conditions are met:

(a)(1) Only eligible commercial participants trading for their own account have trading access to the derivatives transaction facility for contracts, agreements or transactions in any commodity except for those listed in section 1(a)(3) of the Act,; or

(2)(i) The contract, agreement or transaction listed on or traded through the multilateral transaction execution facility meets the requirements set forth in § 36.2(b) of this chapter or has been found by the Commission on a case-by-case determination to have a sufficiently liquid and deep cash market and a surveillance history based on actual trading experience to provide assurance that the contract is highly unlikely to be manipulated; and

(ii) Participants that are not eligible participants as defined in § 35.1(b) of this chapter may have trading access only through a registered futures commission merchant that operates in accordance with the provisions of § 1.17(a)(1)(ii) of this chapter;

(b) The multilateral transaction execution facility through which the contract agreement or transaction is entered into has been recognized by the Commission as a derivatives transaction facility pursuant to § 37.3;

(c) A multilateral transaction execution facility that applies to be, and is, a recognized derivatives transaction facility must comply with all of the conditions of this part 37 exemption and must disclose to participants transacting on or through its facility that transactions conducted on or through the facility are subject to the provisions of this part 37;

(d) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse that is authorized by the Commission under part 39 of this chapter. Provided, however, that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such contracts, agreements or transactions; and

(e) The products if traded on an electronic system must be clearly identified as traded on a recognized derivatives transaction facility or if traded in a physical trading environment must be traded in a location separate from products traded as designated contract markets, or pursuant to parts 36 and 38 of this chapter;

§ 37.3 Conditions for recognition as a derivatives transaction facility

(a) To be recognized as a derivatives transaction facility, the facility initially must have:

(1) Rules relating to trading on its facility, including, depending on the nature of the trading mechanism:

(i) Rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violation of its trade rules including arrangements to obtain necessary information to perform the functions in paragraph (a)(1)(i) of this section, or

(ii) Use of technology that provides participants with impartial access to transactions and captures information that is available for use in determining whether violations of its rules have occurred;

(2) Rules or terms and conditions defining, or specifications detailing, the operation of the trading mechanism or electronic matching platform;

(3) Rules or terms and conditions detailing the financial framework applying to the transactions or ensuring the financial integrity of transactions entered into by, or through, its facilities; and

(b) Initially, and on a continuing basis, must meet and adhere to the following seven core principles:

(1) Enforcement. Monitor and enforce its rules or terms and conditions including, if applicable, limitations on access.

(2) Market oversight. As appropriate to the market and the contracts traded:

(i) Monitor markets on a routine and nonroutine basis as necessary to ensure orderly trading and have and where appropriate exercise authority to maintain an orderly market; or

(ii) Provide information to the CFTC as requested by the CFTC to satisfy its obligations under the CEA.

(3) Operational information. Disclose to regulators and market participants, to the extent possible, information concerning trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information.

(4) Transparency. Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market and, as appropriate to the market, make available to the public with respect to actively traded products and, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information.

(5) Fitness. As appropriate to the market, have fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations.

(6) Recordkeeping. Keep full books and records of all activities related to its

business as a recognized derivatives transaction facility, including full information relating to data entry and trade details sufficient to reconstruct trading, in a form and manner acceptable to the CFTC for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the CFTC or the U.S. Department of Justice.

(7) Competition. Avoid unreasonable restraints of trade or imposing any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder.

§ 37. 4 Procedures for recognition.

(a) Recognition by certification. A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter will be recognized by the Commission as a derivatives transaction facility upon receipt by the Commission at its Washington, D.C. headquarters of a copy of the derivatives transaction facility's rules and a certification by the board of trade, facility or entity that it meets the conditions for recognition under this part.

(b) Recognition by application. A board of trade, facility or entity shall be recognized by the Commission as a derivatives transaction facility thirty days after receipt by the Commission of an application for recognition as a derivatives transaction facility unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 37;

(3) The submission includes a copy of the derivatives transaction facility's rules and a brief explanation of how the rules satisfy each of the conditions for recognition under § 37.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in § 37.3 could be satisfied.

(c) Termination of Part 37 review. During the thirty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the derivatives transaction facility or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) Delegation of Authority.

(1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) Request for Commission approval of rules and products. (1) An entity seeking recognition as a derivatives transaction facility may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the facility, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41 and 5.3 of this chapter, as applicable. A derivatives transaction facility may label a product in its rules as, ''Listed for trading pursuant to Commission approval,'' if the product's terms or conditions have been approved by the Commission. Rules of the derivatives trading facility not submitted pursuant to § 37.4(b)(3) shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(2) An entity seeking recognition as a derivatives transaction facility may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) *Request for withdrawal of recognition.* A recognized derivatives transaction facility may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was recognized by the Commission.

§ 37.5 Enforceability

(a) Notwithstanding the exemption in § 37.2, sections 1a, 2(a)(1), 4, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), the rule disapproval procedures of 5a(a)(12), 5b, 6(a), 6(b), 6(c), 6b, 6c, 8(a), 8(c), 8a(6), 8a(7), 8a(9) 8c(a), 9(a)(2), 9(a)(3), 9(f), 14, 20 and 22 of the Act and §§ 1.3, 1.31, 1.37, 1.41, 5.3, 33.10, Part 5, Part 20, and Part 37 of this chapter continue to apply.

(b) For purposes of section 22(a) of the Act, a party to a contract, agreement, or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable solely for failure of the parties to a contract, agreement or transaction, or the contract, agreement or transaction itself, to comply with the terms and conditions for the exemption under this part or as a result of:

(1) A violation by the recognized derivatives transaction facility of the provisions of this part 37; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized derivatives transaction facility to adopt a specific term or condition, trading rule or procedure, or to take or refrain from taking a specific action.

§ 37.6 Fraud in connection with Part 37 transactions.

It shall be unlawful for any person, directly or indirectly, in or in

connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part—

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof;

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 37—Application Guidance

This appendix provides guidance to applicants for recognition as derivatives transaction facilities under § 37.3. Addressing the issues and questions set forth below would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the derivatives transaction facilities rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition.

Core Principle #1: Enforcement: Monitoring and enforcement of its rules or terms and conditions including, if applicable, limitations on access

(a) A derivatives transaction facility should have arrangements and resources and authority for effectively and affirmatively enforcing its rules, including the authority and ability to collect or capture information and documents on both a routine and non-routine basis and to investigate effectively possible rule violations.

(b) This should include the authority and ability to discipline, and limit or suspend a member's or participant's activities and/or the authority and ability to terminate a member's or participant's activities or access pursuant to clear and fair standards.

Core Principle #2: Market Oversight: As appropriate to the market and the contracts traded, to: (1) Monitor markets on a routine and non-routine basis as necessary to ensure open and competitive trading and have and, where appropriate, exercise authority to maintain an open and competitive market; or (2) provide information to the Commission as necessary for the Commission to satisfy its obligations under the Act

(a) Arrangements and resources for effective market surveillance programs should facilitate, on both a routine and non-routine basis, direct supervision of the market. Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. The analysis of data collected should be suitable for the type of information collected and should occur in a timely fashion. A derivatives transaction facility should have the authority to collect the information and documents necessary to reconstruct trading for appropriate market analysis as it carries out its market surveillance programs. The derivatives transaction facility also should have the authority to intervene as necessary to maintain an open and competitive market. In carrying out this responsibility, the facility should address access to, and use of, material non-public information by members, owners or operators, participants or facility employees.

(b) Alternatively, and as appropriate to the market, a derivatives transaction facility may choose to satisfy Core Principle #2 by providing information to the Commission as requested by the Commission to satisfy its obligations under the Act. The derivatives transaction facility should have the authority to collect or capture and retrieve all necessary information.

(c) The Commission will collect reporting data from large traders only upon Special Call as provided in Part 20 of this chapter.

Core Principle #3: Operational Information: Disclose to regulators and market participants, to the extent possible, information concerning trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms, as well as other relevant information

A derivatives transaction facility should have arrangements and resources for the disclosure and explanation of trading terms, contract terms and conditions, trading mechanisms, financial integrity arrangements or mechanisms. Such information may be made publicly available through the operation of a website by the derivatives transaction facility.

Core Principle #4: Transparency: Provide to market participants on a fair, equitable and timely basis information regarding prices, bids and offers, and other information appropriate to the market, make available to the public with respect to actively traded products and, to the extent applicable, information regarding daily opening and closing prices, price range, trading volume and other related market information

All market participants should have information regarding prices, bids and offers, or other information appropriate to the market readily available on a fair and equitable basis. The derivatives transaction facility should provide to the public information regarding daily opening and closing prices, price range, trading volume, open interest and other related market information for actively traded contracts. Provision of information could be through such means as provision of the information to a financial information service or by placement of the information on a facility's web site.

Core Principle #5: Fitness: Appropriate fitness standards for members, operators or owners with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations

A derivatives transaction facility should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which would include standards for fitness and for the collection and verification of information supporting compliance with such standards. Minimum standards of fitness are those bases for refusal to register a person under section 8a(2) of the Act. A demonstration of the fitness of the applicant's members, operators or owners may include providing the Commission with registration information for such persons, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's Counsel or other information substantiating the fitness of such persons.

Core Principle #6: Recordkeeping: Maintenance of full books and records of all activities related to its business as a recognized derivatives transaction facility, including full information relating to data entry and trade details, in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the United States Department of Justice

Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle #7: Competition: To avoid unreasonable restraints of trade or imposing any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder

Guidance on individual rules, terms or practices is available by submitting a rule for Commission approval under the procedures of § 1.41of this chapter or by requesting that the Commission issue an Order considering the rule, term or practice under the provision of section 15 of the Act.

11. Chapter I of 17 CFR is proposed to be amended by adding new Part 38 as follows:

PART 38—EXEMPTION OF TRANSACTIONS ON A RECOGNIZED FUTURES EXCHANGE

Sec.
38.1 Scope.
38.2 Exemption.
38.3 Conditions for recognition as a recognized futures exchange.
38.4 Procedures for recignition.
38.5 Enforceability.
38.6 Fraud in connection with Part 38 transactions.
Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 38.1 Scope.

(a) Except for commodities subject to paragraph (a) of this section, the provisions of the exemption in § 38.2 of this part shall apply to every board of trade that has been designated as a contract market in a commodity under section 6 of the Act. Provided, however,

nothing in this provision affects the eligibility of designated contract markets for exemption under parts 36 or 37 of this chapter.

(b) Recognized futures exchanges that have been recognized by the Commission by application under § 38.3 and the products listed for trading thereon shall be deemed to be subject to all of the provisions of the Act and Commission regulations thereunder which are applicable to a ''board of trade,'' ''board of trade licensed by the Commission,'' ''exchange,'' ''contract market,'' ''designated contract market,'' or ''contract market designated by the Commission'' as though those provisions were set forth in this section and included specific reference to contracts listed for trading by recognized futures exchanges pursuant to this section.

(c) The provisions of this section shall not apply to a commodity or a contract subject to the provisions of section 2(a)(1)(B) of the Act.

§ 38.2 Exemption.

Notwithstanding § 38.1(b), a contract, agreement or transaction traded on a multilateral transaction execution facility as defined in § 36.1(b) of this chapter, the facility and the facility's operator are exempt from all provisions of the Act and from all Commission regulations thereunder for such activity, except for those provisions of the Act and Commission regulations which, as a condition of this exemption, are reserved in § 38.5(a), provided the following terms and conditions are met:

(a) The multilateral transaction execution facility on which the contract agreement or transaction is entered into has been recognized by the Commission as a recognized futures exchange pursuant to § 38.3;

(b) A multilateral transaction execution facility that applies to be, and is, a recognized futures exchange must comply with all of the conditions of this part 38 exemption and must disclose to participants transacting on or through its facilities that transactions conducted on or through the facility are subject to the provisions of this part 38;

(c) If cleared, the submission of such contracts, agreements or transactions for clearance and/or settlement must be to a clearinghouse which is authorized by the Commission under part 39 of this chapter. *Provided, however,* that nothing in this paragraph precludes:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such agreements; or

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such agreements; and

(d) The products if traded on an electronic system must be clearly identified as traded on a recognized futures exchange or if traded in a physical trading environment must be traded in a location separate from products traded pursuant to parts 36 and 37 of this chapter;

§ 38.3 Conditions for recognition as a recognized futures exchange.

(a) To be recognized as a recognized futures exchange, the exchange must demonstrate initially that it has:

(1) A clear framework for conducting programs of market surveillance, compliance, and enforcement, including having procedures in place to make use of collected data for real-time monitoring and for post-event audit and compliance purposes to prevent market manipulation;

(2) Rules relating to trading on the exchange, including rules to deter trading abuses, and adequate power and capacity to detect, investigate and take action against violations of its trading rules, and a dedicated regulatory department or delegation of that function to an appropriate entity;

(3) Rules defining, or specifications detailing, the manner of operation of the trading mechanism or electronic matching platform and a trading mechanism or electronic matching platform that performs as defined in the operational rules or specifications;

(4) A clear framework for ensuring the financial integrity of transactions entered into by or through the exchange;

(5) Established procedures for impartial disciplinary committee(s) or other similar mechanisms empowered to discipline, suspend, and expel members, or to deny access to participants or, if provided for, discipline participants;

(6) Arrangements to obtain necessary information to perform the above functions, including the capacity and arrangements to carry out the International Information Sharing Agreement and Memorandum of Understanding developed by the Futures Industry Association (FIA) Global Task Force on Financial Integrity, and a mechanism to provide to the public ready access to its rules and regulations; and

(b) Initially, and on a continuing basis, must meet and adhere to the following fifteen core principles:

(1) Rule enforcement. Monitor and enforce its rules;

(2) Products. List contracts for trading which are not readily susceptible to manipulation;

(3) Position monitoring and reporting. Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process;

(4) Position limits. Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months;

(5) Emergency authority. Exercise authority to intervene to maintain fair and orderly trading, including where applicable authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin;

(6) Public information. Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public;

(7) Transparency. Provide, appropriate to the market, information to the public regarding prices, bids and offers, including the opening and closing prices and daily range, and information on volume and open interest;

(8) Trading system. Provide a competitive, open, and efficient market;

(9) Audit trail. Have procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the safe storage of such information and systems to enable information to be used in assisting in detecting and deterring customer and market abuse. Such procedures should ensure the quality of data captured;

(10) Financial standards. Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, have rules addressing the financial integrity of the intermediary and the protection of customer funds as appropriate and a program to enforce those requirements;

(11) Customer protection. Have, monitor and enforce rules for customer protection;

(12) Dispute resolution. Provide for alternative dispute resolution mechanisms appropriate to the nature of the market;

(13) Governance. Have fitness standards for members, for owners or operators with greater than ten percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary

determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants;

(14) Recordkeeping. Keep full books and records of all activities related to their business as a recognized futures exchange in a form and manner acceptable to the CFTC for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the CFTC or the U.S. Department of Justice; and

(15) Competition. Avoid unreasonable restraints of trade or impose any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder.

§ 38. 4 Procedures for recognition.

(a) Recognition by prior designation. A board of trade, facility or entity that is designated under sections 4c, 5, 5a(a) or 6 of the Act as a contract market on the effective date of this rule in at least one commodity which is not dormant within the meaning of § 5.2 of this chapter is recognized by the Commission as a recognized futures exchange and each of the contracts traded thereon that has been designated by the Commission as a designated contract market in a commodity may be labeled in the recognized futures exchange's rules as listed for trading pursuant to Commission approval.

(b) Recognition by application. A board of trade, facility or entity shall be recognized by the Commission as a recognized futures exchange sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part 38;

(3) The submission includes a copy of the applicant's rules and a brief explanation of how the rules satisfy each of the conditions for recognition under § 38.3;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Appendix A to this part provides guidance to applicants on how the conditions for recognition enumerated in § 38.3 could be satisfied.

(c) Termination of Part 38 review. During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the futures exchange or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views its submission as complete and final as submitted.

(d) Delegation of Authority. (1) The Commission hereby delegates, until it orders otherwise, to the Directors of the Division of Trading and Markets and the Division of Economic Analysis or their delegatees, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify the entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Directors of the Division of Trading and Markets or the Division of Economic Analysis may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) Request for Commission approval of rules and products. (1) An entity seeking recognition as a recognized futures exchange may request that the Commission approve any or all of its rules and subsequent amendments thereto, including both operational rules and the terms or conditions of products listed for trading on the exchange, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and §§ 1.41 and 5.3 of this chapter, as applicable. A product the terms or conditions of which have been approved by the Commission may be labeled in its rules as listed for trading pursuant to Commission approval. In addition, rules of the recognized futures exchange not submitted pursuant to § 38.4(b)(3) shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(2) An entity seeking recognition as a recognized futures exchange may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies, including both operational rules and the terms or conditions of products listed for trading, at the time of recognition or thereafter.

(f) Request for withdrawal of application for recognition or withdrawal of recognition. An entity may withdraw an application to be a recognized futures exchange or once recognized, may withdraw from Commission recognition by filing with the Commission at its Washington, D.C. headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the exchange was recognized by the Commission.

§ 38.5 Enforceability

(a) Notwithstanding the exemption in § 38.2, sections 1a, 2(a)(1), 4, 4a, 4b, 4c, 4g, 4i, 4o, 5(6), 5(7), the rule disapproval procedures of 5a(a)(12), 5b, 6(a), 6(b), 6(c), 6b, 6c, 8(a), 8(c), 8a(6), 8a(7), 8a(9), 8c(a), 8c(b), 8c(c), 8c(d), 9(a), 9(f), 20 and 22 of the Act and §§ 1.3, 1.31, 1.37, 1.38, 1.41, 33.10, part 5, part 9, parts 15–21 and part 38 of this chapter continue to apply.

(b) For purposes of Section 22(a) of the Act, a party to a contract, agreement, or transaction is exempt from a claim that the contract, agreement or transaction is void, voidable, subject to rescission or otherwise invalidated or rendered unenforceable as a result of:

(1) A violation by the recognized futures exchange of the provisions of this part 38; or

(2) Any Commission proceeding to disapprove a rule, term or condition under section 5a(a)(12) of the Act, to alter or supplement a rule, term or condition under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to disapprove, alter, supplement, or require a recognized futures exchange to adopt a specific term or condition, trading rule

or procedure, or to take or refrain from taking a specific action.

§ 38.6 Fraud in connection with Part 38 transactions.

It shall be unlawful for any person, directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of any transaction entered pursuant to this part:

(a) To cheat or defraud or attempt to cheat or defraud any person;

(b) Willfully to make or cause to be made to any person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any person by any means whatsoever.

Appendix A to Part 38—Guidance for Applicants and Acceptable Practices

This appendix provides guidance and acceptable practices for the Core Principles found in Part 38. Guidance to applicants for recognition as recognized futures exchanges under § 38.3 is offered under subsection (a) following a Core Principle. Addressing the issues and questions set forth therein would help the Commission in its consideration of whether the application has met the conditions for recognition. To the extent that compliance with, or satisfaction of, a core principle is not self-explanatory from the face of the recognized futures exchange's rules or terms, the application should include an explanation or other form of documentation demonstrating that the applicant meets the conditions for recognition. Acceptable practices meeting the requirements of the Core Principles are set forth in subsection (b). Recognized futures exchanges that follow specific practices outlined under subsection (b) for any Core Principle below will meet the applicable Core Principle. Except where otherwise provided, subsection (b) does not state the exclusive means for satisfying a Core Principle.

Core Principle #1: Rule Enforcement: Monitor and enforce its rules

(a) *Application Guidance.*

(1) A recognized futures exchange should have arrangements and resources for effective trade practice surveillance programs, with the authority to collect information and documents on both a routine and non-routine basis including the examination of books and records kept by members/participants of the exchange. The arrangements and resources should facilitate the direct supervision of the market and the analysis of data collected.

(2) A recognized futures exchange should have arrangements, resources and authority for effective rule enforcement. The Commission believes that this should include the authority and ability to discipline and limit or suspend a member's or participant's activities as well as the authority and ability to terminate a member's or participant's activities pursuant to clear and fair standards.

(b) *Acceptable Practices.* An effective trade practice surveillance program should include:

(1) Maintenance of data reflecting the details of each transaction executed on an RFE;

(2) Electronic analysis of these data routinely to detect potential trading violations;

(3) Appropriate and thorough investigative analysis of these and other potential trading violations brought to its attention; and

(4) Prompt and effective disciplinary action for any violation that is found to have been committed. The Commission believes that the latter element should include the authority and ability to discipline and limit or suspend a member's or participant's activities pursuant to clear and fair standards. See, *e.g.*, 17 CFR Part 8.

Core Principle #2 Products: List contracts for trading which are not readily susceptible to manipulation

(a) *Application Guidance.* Applicants should submit their initial product for listing for Commission approval under § 5.1 and Part 5, Appendix A of this chapter. Subsequent products may be listed for trading by self-certification under § 5.3 of this chapter.

(b) *Acceptable Practices.* Guideline No. 1, 17 CFR Part 5, Appendix A may be used as guidance in meeting this Core Principle.

Core Principle #3: Position monitoring and reporting: Monitor markets on a routine and nonroutine basis as necessary to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* (1) An acceptable program for monitoring markets will generally involve the collection of various market data, including information on traders' market activity. Those data should be evaluated on an ongoing basis in order to make an appropriate regulatory response to potential market disruptions or abusive practices.

(2) The recognized futures exchange should collect data in order to assess whether the market price is responding to the forces of supply and demand. Appropriate data usually include various fundamental data about the underlying commodity, its supply, its demand, and its movement through marketing channels. Especially important are data related to the size and ownership of deliverable supplies—the existing supply and the future or potential supply, and to the pricing of the deliverable commodity relative to the futures price and relative to similar, but nondeliverable, kinds of the commodity. For cash-settled markets, it is more appropriate to pay attention to the availability and pricing of the commodity making up the index to which the market will be settled, as well as monitoring the continued suitability of the methodology for deriving the index.

(3) To assess a traders' activity and potential power in a market, at a minimum, every exchange should have routine access to the positions and trading done by the members of its clearing facility. Although clearing member data may be sufficient for some exchanges, an effective surveillance program for exchanges with substantial numbers of customers trading through intermediaries should employ a much more comprehensive large-trader reporting system (LTRS). The Commission operates an industry-wide LTRS. As an alternative to having its own LTRS or contracting out for such a system, exchanges may find it more efficient to use information available from the Commission's LTRS data for position monitoring.

Core Principle #4: Position Limits: Adopt position limits on trading where necessary and appropriate to lessen the threat of market manipulation or congestion during delivery months

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* (1) In order to diminish potential problems arising from excessively large speculative positions, the Commission sets limits on traders' positions for certain commodities. These position limits specifically exempt bona fide hedging, permit other exemptions, and set limits differently by markets, by futures or delivery months, or by time periods. For purposes of evaluating an exchange speculative-limit program, the Commission considers the specified limit levels, aggregation policies, types of exemptions allowed, methods for monitoring compliance with the specified levels, and procedures for enforcement to deal with violations.

(2) In general, position limits are not necessary for markets where the threat of excessive speculation or manipulation is very low. Thus, exchanges do not need to set position-limit levels for futures markets in major foreign currencies and in certain financial futures having very liquid and deep underlying cash markets. Where speculative limits are appropriate, acceptable speculative-limit levels typically are set in terms of a trader's combined position in the futures contract plus its position in the option contract (on a delta-adjusted basis).

(3) Spot-month levels for physical-delivery markets should be based upon an analysis of deliverable supplies and the history of spot-month liquidations. Spot-month limits for physical-delivery markets are appropriately set at no more than 25 percent of the estimated deliverable supply. For cash-settled markets, spot-month position limits may be necessary if the underlying cash market is small or illiquid such that traders can disrupt the cash market or otherwise influence the cash-settlement price to profit on a futures position. In these cases, the limit should be set at a level that minimizes the potential for manipulation or distortion of the futures contract's or the underlying commodity's price. Markets may elect not to provide all-months-combined and non-spot month limits.

(4) An exchange may provide for position accountability provisions in lieu of position limits for contracts on financial instruments, intangible commodities, or certain tangible commodities. Markets appropriate for

position accountability rules include those with large open-interest, high daily trading volumes and liquid cash markets.

(5) Exchanges must have aggregation rules that apply to those accounts under common control, those with common ownership, *i.e.*, where there is a 10 percent or greater financial interest, and those traded according to an expressed or implied agreement. Exchanges will be permitted to set more stringent aggregation policies. For example, one major exchange adopted a policy of automatically aggregating members of the same household, unless they were granted a specific waiver. Exchanges may grant exemptions to their position limits for bona fide hedging (as defined in Commission Rule 1.3(z)) and may grant exemptions for reduced risk positions, such as spreads, straddles and arbitrage positions.

(6) Exchanges must establish a program for effective monitoring and enforcement of these limits. One acceptable enforcement mechanism is a program whereby traders apply for these exemptions by the exchange and are granted a position level higher than the applicable speculative limit. The position levels granted under hedge exemptions are based upon the trader's commercial activity in related markets. Exchanges may allow a brief grace period where a qualifying trader may exceed speculative limits or an existing exemption level pending the submission and approval of appropriate justification. An exchange should consider whether it wants to restrict exemptions during the last several days of trading in a delivery month. Acceptable procedures for obtaining and granting exemptions include a requirement that the exchange approve a specific maximum higher level.

(7) Exchanges with many markets with large numbers of traders should have an automated means of detecting traders' violations of speculative limits or exemptions. Exchanges should monitor the continuing appropriateness of approved exemptions by periodically reviewing each trader's basis for exemption or requiring a reapplication.

(8) Finally, an acceptable speculative limit program must have specific policies for taking regulatory action once a violation of a position limit or exemption is detected. The exchange policy will need to consider appropriate actions where the violation is by a non-member and should address traders carrying accounts through more than one intermediary.

(9) A violation of exchange position limits that have been approved by the Commission is also a violation of section 4a(e) of the Act.

Core Principle #5: Emergency Authority: Exercise authority to intervene to maintain fair and orderly trading markets including where applicable authority to liquidate or transfer open positions, to require the suspension or curtailment of trading, and to require the posting of additional margin

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* A recognized futures exchange should have clear procedures and guidelines for exchange decision-making regarding emergency intervention in the market. An exchange should also have the authority to intervene as necessary to maintain markets with fair and orderly trading as well as procedures for carrying out the intervention. As is necessary to address perceived market threats, the exchange, among other things, should be able to impose position limits in particular in the delivery month, impose or modify price limits, modify circuit breakers, call for additional margin either from customers or clearing members, order the liquidation or transfer of open positions, order the fixing of a settlement price, order the reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member of the exchange to another or alter the delivery terms or conditions. The Commission believes that a recognized futures exchange should also have procedures and guidelines for the notification of the Commission of the exercise of regulatory emergency authority as well as procedures and guidelines for documentation of the exchange's decision-making process and the reasons for use of its emergency action authority.

Core Principle #6: Public Information: Make information concerning the contract terms and conditions and the trading mechanism, as well as other relevant information, readily available to market authorities, users and the public

(a) *Application Guidance.* A recognized futures exchange should have arrangements and resources for the disclosure of contract terms and conditions and trading mechanisms to the Commission, users and the public. Procedures should also include the provision of information on listing new products, rule amendments or other changes to previously disclosed information to the Commission, users and the public.

(b) *Acceptable Practices.* [Reserved].

Core Principle #7: Transparency. Provide, appropriate to the market, information to the public regarding prices, bids and offers, including the opening and closing prices and daily range, and information on volume and open interest

(a) *Application Guidance.* [Reserved].

(b) *Acceptable Practices.* [Reserved].

Core Principle #8: Trading system: Provide, a competitive, open, and efficient market

(a) *Application Guidance.* (1) Appropriate objective testing and review of any automated systems should occur initially and periodically to ensure proper system functioning, adequate capacity and security. A recognized futures exchange's analysis of its automated system should address appropriate principles for the oversight of automated systems, ensuring proper system function, adequate capacity and security. The Commission believes that the guidelines issued by the International Organization of Securities Commissions (''IOSCO'') in 1990 (which have been referred to as the ''Principles for Screen-Based Trading Systems''), subsequently adopted by the Commission on November 21, 1990 (55 FR 48670), are appropriate guidelines for a recognized futures exchange to apply to electronic trading systems. Any program of objective testing and review of the system should be performed by an independent third party. A professional that is a certified member of the Informational Systems Audit and Control Association experienced in the industry would be an acceptable party to carry out such testing and review. The Commission believes that information gathered by analysis, oversight or any program of objective testing and review of any automated systems regarding system functioning, capacity and security should be made available to the Commission and the public.

(2) A recognized futures exchange that determines to allow block trading should have rules which:

(i) Define the block based upon the customary size of large positions in the cash and derivatives market,

(ii) Restrict access to block trading to eligible participants,

(iii) Provide a mechanism for ensuring that the block's price will be fair and reasonable, and

(iv) provide for transparency of the trade by requiring that it be reported for clearing within a reasonable period of time and that it be identified separately in the price reporting system.

(b) *Acceptable Practices.* [Reserved].

Core Principle #9: Audit trail: Have in place procedures to ensure the recording of full data entry and trade details sufficient to reconstruct trading, the safe storage of such information and systems to enable information to be used in assisting in combating customer and market abuse. Such procedures should ensure the quality of data captured

(a) *Application Guidance.* A recognized futures exchange should have arrangements and resources for recording of full data entry and trade details sufficient to reconstruct trading and the safe storage of audit trail data systems enabling information to be used in combating customer and market abuse.

(b) *Acceptable Practices.* (1) The goal of an audit trail is to detect and deter customer and market abuse. An effective exchange audit trail should capture and retain sufficient trade-related information to permit exchange staff to detect trading abuses and to reconstruct all transactions. An audit trail should include specialized electronic surveillance programs that would identify potentially abusive trades and trade patterns, including for instance, withholding or disclosing customer orders, trading ahead, and preferential allocation. An acceptable audit trail must be able to track a customer order from time of receipt through fill allocation. The exchange must create and maintain an electronic transaction history database that contains information with respect to transactions affected on the recognized futures exchange.

(2) An acceptable audit trail, therefore, should include the following: Original source documents, transaction history, electronic analysis capability, and safe storage capability. A registered futures exchange whose audit trail satisfies the following acceptable practices would satisfy Core Principle 9.

(i) *Original Source Documents.* Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. For each customer order, such records reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), and the time of order entry. For floor-based exchanges, the time of report of execution of the order should also be captured.

(ii) *Transaction History.* A transaction history which consists of an electronic history of each transaction, including:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) Whether the trade was for a customer or proprietary account;

(C) Timing and sequencing data adequate to reconstruct trading; and

(D) The identification of each account to which fills are allocated.

(iii) *Electronic Analysis Capability.* An electronic analysis capability that permits sorting and presenting data included in the transaction history so as to reconstruct trading and to identify possible trading violations with respect to both customer and market abuse.

(iv) *Safe Storage Capability.* Safe storage capability provides for a method of storing the data included in the transaction history in a manner that protects the data from unauthorized alteration, as well as from accidental erasure or other loss. Data should be retained in accordance with the recordkeeping standards of Core Principle 14.

Core Principle #10: Financial standards: Have, monitor, and enforce rules regarding the financial integrity of the transactions that have been executed on the exchange and, where intermediaries are permitted, have rules addressing the financial integrity of the intermediary and the protection of customer funds as appropriate and a program to enforce those requirements

(a) *Application Guidance.* Clearing of transactions executed on a recognized futures exchange should be provided through a Commission recognized clearing facility. In addition, a recognized futures exchange should maintain the financial integrity of its transactions by maintaining minimum financial standards and having default rules and procedures. The minimum financial standards should be monitored for compliance purposes. The Commission believes that in order to monitor for minimum financial requirements, a recognized futures exchange should routinely receive financial and related information. Rules addressing the protection of customer funds should address the segregation of customer and proprietary funds, the custody of customer funds and the investment standards for customer funds.

(b) *Acceptable Practices.* [Reserved]

Core Principle #11: Customer protection: Have, monitor and enforce rules for customer protection

(a) *Application Guidance.* A recognized futures exchange should have rules prohibiting conduct by intermediaries that is fraudulent, noncompetitive, unfair, or an abusive practice in connection with the execution of trades and a program to detect and discipline such behavior. Intermediated markets are not required to have, monitor or enforce rules requiring intermediaries to provide risk disclosure or to comply with other sales practices.

(b) *Acceptable Practices.* [Reserved]

Core Principle #12: Dispute resolution: Provide for alternative dispute resolution mechanisms appropriate to the nature of the market

(a) *Application Guidance.* A recognized futures exchange should provide customer dispute resolution procedures that are fair and equitable and that are made available to the customer on a voluntary basis, either directly or through another self-regulatory organization.

(b) *Acceptable Practices.* (1) Core Principle #12 requires a recognized futures exchange to provide for dispute resolution mechanisms that are appropriate to the nature of the market.

(2) In order to satisfy acceptable standards, a recognized futures exchange should provide a customer dispute resolution mechanism that is fundamentally fair and is equitable. The procedure should provide:

(i) The customer with an opportunity to have his or her claim decided by a decision-maker that is objective and impartial,

(ii) Each party with the right to be represented by counsel, at the party's own expense,

(iii) Each party with adequate notice of claims presented against him or her, an opportunity to be heard on all claims, defenses and permitted counterclaims, and an opportunity for a prompt hearing,

(iv) For prompt written final settlement awards that are not subject to appeal within the exchange, and

(v) Notice to the parties of the fees and costs which may be assessed.

(3) The procedure employed also must be voluntary, as provided in § 166.5 of this part. If the recognized futures exchange also provides a procedure for the resolution of disputes which do not involve customers (*i.e.,* member-to-member disputes), the procedure for the resolution of such disputes must be independent of and shall not interfere with or delay the resolution of customers' claims or grievances.

(4) A counterclaim which arises out of a transaction or occurrence that is the subject of a customer's claim or grievance and which does not require for adjudication the presence of essential witnesses, parties or third persons over whom the recognized futures exchanges does not have jurisdiction could be allowed under the recognized futures exchange's dispute resolution procedures. Other counterclaims should be permissible only if the customer agreed to the submission after the counterclaim had arisen, and if the aggregate monetary value of the counterclaim was capable of calculation.

(5) A recognized futures exchange may delegate to another self-regulatory organization or to a registered futures association its responsibility to provide for customer dispute resolution mechanisms, Provided, however, that, if the recognized futures exchange does so delegate that responsibility, the exchange shall in all respects treat any decision issued by such other organization or association as if the decision were its own including providing for the appropriate enforcement of any award issued against a delinquent member.

Core Principle #13: Governance: Have fitness standards for members, for owners or operators with greater than 10 percent interest or an affiliate of such an owner, members of the governing board, and those who make disciplinary determinations. The recognized futures exchange must have a means to address conflicts of interest in making decisions and access to, and use of, material non-public information by the foregoing persons and by exchange employees. For mutually owned futures exchanges, the composition of the governing board must reflect market participants

(a) *Application Guidance.* A recognized futures exchange should have appropriate eligibility criteria for the categories of persons set forth in the Core Principle which should include standards for fitness and for the collection and verification of information supporting compliance with such standards. The standards could be based on the disqualification standards under section 8a(2) of the Act. The Commission believes that such standards should include the provision to the Commission of registration information for such persons, whether registration information, certification to the fitness of such persons, an affidavit of such persons' fitness by the facility's counsel or other information substantiating the fitness of such persons. If an exchange provided certification of the fitness of such a person, the Commission believes that such certification should be based on verified information that the person is fit to be in their position. The means to address conflicts of interest in decision-making should include methods to ascertain the presence of conflicts of interest and to make decisions in the event of such a conflict. In addressing the access to, and use of, material non-public information, the Commission believes that the recognized futures exchange should provide for limitations on exchange employee trading.

(b) *Acceptable Practices.* [Reserved]

Core Principle #14: Recordkeeping: Must keep full books and records of all activities related to their business as a recognized futures exchange in a form and manner acceptable to the Commission for a period of five years, during the first two of which the books and records are readily available, and which shall be open to inspection by any representative of the Commission or the United States Department of Justice

(a) *Application Guidance.* [Reserved]

(b) *Acceptable Practices.* Commission rule 1.31 constitutes the acceptable practice regarding the form and manner for keeping records.

Core Principle #15: Competition: Recognized futures exchanges should avoid unreasonable restraints of trade or impose any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder

(a) *Application Guidance.* A recognized futures exchange should avoid unreasonable restraints of trade in any terms and conditions of access or provision of services or any non-compete clauses or limitations on future activity.

(b) *Acceptable Practices.* [Reserved]

PART 100—[REMOVED AND RESERVED]

12. Part 100 is proposed to be removed and reserved.

PART 170—REGISTERED FUTURES ASSOCIATIONS

13. The authority citation for Part 170 continues to read as follows:

Authority: 7 U.S.C. 6p, 12a, and 21.

14. Section 170.8 is proposed to be revised to read as follows:

§ 170.8 Settlement of customer disputes (section 17(b)(10) of the Act).

A futures association must be able to demonstrate its capacity to promulgate rules and to conduct proceedings which provide a fair, equitable and expeditious procedure, through arbitration or otherwise, for the voluntary settlement of a customer's claim or grievance brought against any member of the association or any employee of a member of the association. Such rules shall conform to and be consistent with section 17(b)(10) of the Act and be consistent with the guidelines and acceptable practices for dispute resolution found within Appendix A and Appendix B to Part 38 of this chapter.

PART 180—ARBITRATION OR OTHER DISPUTE SETTLEMENT PROCEDURES [REMOVED]

15. Part 180 is proposed to be removed.

Issued in Washington, DC, this 8th day of June, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–14914 Filed 6–21–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 140, 155 and 166

RIN 3038–AB56

Rules Relating to Intermediaries of Commodity Interest Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: On February 22, 2000, a staff task force of the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') submitted a report to the CFTC's Congressional oversight committees entitled A New Regulatory Framework. To further the regulatory reform process, the Commission is proposing to revise its rules relating to intermediation of commodity futures and commodity options (''commodity interest'') transactions.

The proposed new rules would provide greater flexibility in several areas. To ease barriers to entry for persons seeking registration as futures commission merchants (''FCMs'') or introducing brokers (''IBs''), the Commission would: Provide a simplified registration procedure for those persons wishing to operate as FCMs or IBs only on recognized derivatives transaction facilities ''DTFs'' for institutional customers, and who are regulated by other federal financial regulatory agencies; and eliminate the requirement to submit a certified financial report as part of the standard registration application for FCMs and IBs. For all registrants, the Commission would eliminate its rule requiring ethics training, replacing it with a Statement of Acceptable Practices. In addition, the Commission would respond favorably to a rule change of the National Futures Association (''NFA'') that would relieve sales personnel dealing only with institutional customers of the requirement to pass a proficiency test. The Commission is also proposing to amend the definition of the term ''principal'' in Rule 3.1(a), mainly to eliminate inclusion of certain types of officers of a firm, and to make conforming amendments to other rules.

Account opening procedures would be simplified to allow for all required disclosures (with the exception of arbitration agreements) to be acknowledged with a single signature, which may be an electronic signature. The obligation for FCMs and IBs to provide a specific disclosure statement would also be eliminated for a greater number of spohisticated customers. Electronic transmission of account statements would also be permitted, and the Commission's rules as to close-out of offsetting positions would be streamlined to allow for customer choice.

Further, the Commission proposes to expand the range of instruments in which FCMs may invest customer funds. The Commission also requests comment concerning whether customers should be allowed to ''opt out'' of the rules requiring segregation of customer funds, and whether FCMs should be allowed to maintain, in the same customer segregated account, funds used for the purpose of securing or margining instruments other than those currently permitted. Finally, the Commission is considering the issuance of a separate order revising its previous pronouncements regarding the treatment of customer funds on deposit with FCMs for the purpose of trading on foreign markets.

DATES: Comments must be received on or before August 7, 2000.

ADDRESSES: Comments on the proposed rules should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Rules Concerning Intermediaries.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Paul H. Bjarnason, Jr., Special Advisor for Accounting Policy (with respect to Rule 1.25 concerning investment of customer funds), or Andrew J. Shipe, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5450.

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I. Introduction

As announced elsewhere in this edition of the **Federal Register**, the Commission has proposed a new regulatory structure that is intended to adapt to the changing needs of the modern marketplace. In reviewing its regulatory structure, the Commission has identified eight Core Principles that it believes are fundamental to assuring proper conduct by intermediaries of commodity interest transactions. While the Commission is not proposing to adopt these Core Principles as rules, they have guided the Commission in its regulatory reform efforts. The Commission has reviewed all of its rules related to intermediaries in light of the Core Principles. To the extent that an existing rule is not discussed herein, and no amendment thereto is being proposed, the rule would apply to intermediaries transacting business on behalf of customers on contract markets, recognized futures exchanges (''RFEs'') and DTFs.

In accordance with these Core Principles, the Commission now proposes reforms contemplating greater flexibility for intermediaries and their customers via a regulatory structure that acknowledges the different levels of safeguards appropriate to the types of instruments, customers and markets involved.[1–3] While the Commission, in this release, is announcing certain proposed changes in its regulatory structure that would be applicable to all categories of Commission registrants (*e.g.,* the principal definition and ethics training requirements discussed below), the Commission is aware that certain proposals would mainly affect FCMs and IBs, and would not be applicable to commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs''). Nevertheless, the Commission seeks comment on these proposals from all categories of Commission registrant.

The Commission also wishes to make clear that its regulatory reform efforts are an ongoing process. Thus, for example, as a part of the regulatory reform process, the Division of Trading and Markets recently permitted designated self-regulatory organizations (''DSROs'') to conduct ''risk-based'' auditing and thereby take into account a firm's business practices in establishing the scope and timing of audits.[4] Similarly, the Commission is considering various changes to the capital requirements for FCMs, including a risk-based approach.

The Commission also intends to consider further rulemaking proposals at a subsequent date that may focus more directly upon Part 4 of the Commission's rules, which govern the activities of CPOs and CTAs. As examples of its reform efforts with regard to such persons, the Commission has recently proposed to bring more persons within the definition of a ''qualified eligible client'' of a CTA or a ''qualified eligible participant'' of a commodity pool, see 65 FR 11253 (March 2, 2000), which would lessen the disclosure, recordkeeping and reporting requirements for CTAs and CPOs, and to permit CTAs to compute the rate of return for partially funded accounts (also known as ''notionally funded accounts'') by dividing net performance by the agreed-upon nominal account size, *see* 64 FR 41843 (Aug. 2, 1999).

Industry representatives have indicated that they would prefer uniform standards for intermediaries dealing with institutional customers without regard to the type of facility on which a trade is executed. Many of the proposals contained herein would have that effect. The Commission requests comment on whether there are other specific requirements that should be modified toward that end.

The Core Principles applicable to intermediaries, which relate to registration, fitness of registrants, financial requirements, risk disclosure, trading standards, supervision of personnel, large position reporting requirements, and recordkeeping, are as follows:

1. Registration Required.

Any person or entity intermediating a transaction on an RFE, or on a DTF that permits intermediation of trading, must be registered in the appropriate capacity with the Commission as an FCM, IB, CTA, CPO, AP of any of the foregoing, or floor broker (''FB''). In addition, a person trading solely for his or her own account on an RFE or DTF with a trading floor must register as a floor trader (''FT'').

2. Fitness of Registrants

Intermediaries and FTs in all MTEF markets recognized by the CFTC must be and remain fit.

3. Financial

FCMs must keep and safeguard customer money and FCMs and IBs must have sufficient capital to ensure their capacity to meet their obligations to customers.

4. Risk Disclosure

Intermediaries must provide to customers risk disclosure appropriate to the particular instrument and the customer.

5. Trading Standards

Intermediaries and their affiliated persons are prohibited from misusing knowledge of their customers' orders.

6. Supervision

All intermediaries, including APs having supervisory responsibilities, must diligently supervise all commodity interest accounts that they carry, operate, advise, introduce, handle or trade, as well as all of the other activities that arise in their business as intermediaries. All intermediaries must establish and maintain supervisory procedures.

7. Reporting of Positions

All intermediaries must report to the Commission, RFE or DTF information that permits the Commission, RFE or DTF to identify concentrations of positions and market composition. Reports of transactions on RFEs would be required on a routine and nonroutine basis as is the case for transactions on contract markets. Reports of transactions on DTFs would be required only on a non-routine basis.

8. Recordkeeping

All intermediaries (and FTs) must keep full books and records of all activities related to their business as an FCM, IB, CPO, CTA, FB or FT, in a form

[1–3] As noted elsewhere in this edition of the **Federal Register**, the Commission is proposing a new market structure, an exempt multilateral transaction execution facility (''MTEF''), wholly exempt from Commission regulation, except for the antifraud and antimanipulation provisions of the Commodity Exchange Act (''Act''). Intermediaries would generally not be subject to regulation as to their activities on such an exempt MTEF. Accordingly, the proposals discussed in this release are applicable generally only to intermediaries on RFEs, DTFs and contract markets. It should also be noted that some DTFs may permit trading only on a principal-to-principal basis. Since the rule amendments proposed herein relate only to intermediaries, they would not be applicable to such a market structure.

[4] *See* Interpretative No. 4–2, CFTC Staff Letter 99–32, [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,745 (August 20, 1999).

and manner acceptable to the Commission for a period of five years. Such information must be readily available during the first two years and be produced to the Commission at the expense of the person required to keep the books or records. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

II. Proposed Rules

A. Core Principle One: Registration

1. Definition of the Term ''Principal''

The second proviso to Section 8a(2) of the Act states that a principal shall mean a general partner of a partnership, any officer, director or beneficial owner of at least ten percent of the voting shares of a corporation, ''and any other person that the Commission by rule, regulation or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of [a firm] which are subject to regulation by the Commission.''

The Commission has implemented this statutory provision by adopting a definition of ''principal'' in its registration rules that includes certain specified persons, such as corporate officers and directors, as well as persons who have the power ''directly or indirectly, through agreement or otherwise, to exercise a controlling influence'' over the activities of a firm.[5] The identification of an applicant's or registrant's principals is crucial to enabling the Commission or the National Futures Association (''NFA''), which performs various registration functions for the Commission pursuant to delegations of authority, to perform a fitness assessment under the Act. It also provides information about individuals and firms who provide commodity interest services to market participants. Because of the important role principals play in the Commission's regulatory structure, CFTC rules impose various listing, disclosure, and recordkeeping requirements on a registrant with regard to its principals.[6]

The Commission staff's current interpretation of Rules 3.1(a)(1) and 4.10(e)(1)(i) is to treat all officers and directors of a registrant as principals, pursuant to the language of the second proviso to Section 8a(2) of the Act.[7] The Commission recognizes, however, that there have been changes in management structures over the last 20 years. The Commission further notes that it has received requests from registrants that certain employees, such as some vice presidents, not be considered principals because they do not exercise a controlling influence over the registrant or any of its activities subject to Commission regulation. While the Commission believes that, under its rules, certain officers should continue to be listed as principals, it also recognizes that listing may be unnecessary for some mid-level officers. The Commission therefore believes it appropriate to amend its rules so that not all of a registrant's officers will be considered to be principals, while ensuring that appropriate personnel remain listed as such.

The Commission proposes to amend Rule 3.1(a)(1) by defining as principals persons within a given organizational structure who hold specific offices. Thus, the principal definition would include, if the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner (including individuals and entities, such as corporations); if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer.[8] and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission. Thus, a registrant would no longer automatically be required to treat every officer as a principal, but only those who met the criteria of the rule.

The principal definition would also include an individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise: (1) Is the owner of ten percent or more of any class of a firm's securities; (2) is entitled to vote ten percent or more of any class of a firm's voting securities; (3) has the power to sell or direct the sale of ten percent or more of any class of a firm's voting securities; (4) has contributed ten percent or more of a firm's capital (excluding unaffiliated banks and insurance companies); or (5) is entitled to receive ten percent or more of a firm's profits. Further, the principal definition would include an *entity* that is the direct owner of ten percent or more of any class of a firm's securities or that has directly contributed ten percent or more of a firm's capital.[9] These proposed amendments would permit the deletion of Rule 3.10(a)(2)(ii), which has proved somewhat unwieldy in practice.[10]

Finally, the principal definition would continue to include the general provision that defines as a principal any person occupying a similar status or performing similar functions, having the

[5] Rule 3.1(a) defines ''principal'' for purposes of the Commission's Part 3 rules, which govern registration. Rule 4.10(e) defines ''principal'' for purposes of the Commission's Part 4 rules, which apply to the activities of commodity pool operators (''CPOs'') and commodity trading advisors (''CTAs''). The rules are substantially equivalent, although Rule 3.1(a)(1) contains the final clause ''to exercise a controlling influence over its activities which are subject to regulation by the Commission'' while Rule 4.10(e)(1)(i) concludes ''to exercise a controlling influence over the activities of the entity.'' This distinction has not been significant in the Commission's analysis of whether a given person is a principal. The Commission nevertheless proposes to conform these definitions, as detailed herein, to remove any possible ambiguity.

[6] *See, e.g.,* CFTC Rule 3.10(a)(2) (principals must complete a Form 8–R and submit a fingerprint card); Rules 4.24(e)(1), 4.24(f)(1)(v) and 4.24(j)(1)(v), applicable to CPOs, and 4.34(e)(1), 4.34(f)(1)(ii), and 4.34(j)(1)(iv), applicable to CTAs (identity of principals, business background of those principals who participate in making trading or operational decisions or supervise persons so engaged, and information about any conflicts of interest regarding principals must be disclosed in the Disclosure Document); Rules 4.23(b)(2)(ii) and 4.33(b)(2)(ii), applicable to CPOs and CTAs, respectively (recordkeeping requirements for transactions of principals); Rules 4.25(a)(8)(ii)(A), 4.25(b)(2), 4.25(c)(2)(i)(B), 4.25(c)(2)(ii), applicable to CPOs, and Rules 4.35(a)(7)(ii)(A) and 4.35(b), applicable to CTAs (disclosure requirements for performance of accounts or pools owned or controlled by principals).

[7] *See, e.g.,* CFTC Staff Letter No. 76–15, [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,194 (Office of General Counsel, Aug. 2, 1976) (the term ''individual principals'' includes officers, directors, principal shareholders and any other person who, directly or indirectly, controls the CTA); CFTC Staff Letter No. 95–19, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,346 (Division of Trading and Markets, Feb. 24, 1995) (CTA required to list corporate secretary as a principal despite contention that her duties were clerical); CFTC Staff Letter No. 98–29, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,312 (Division of Trading and Markets, Apr. 1, 1998) (CTA required to list sixteen employees who were either vice presidents, senior vice presidents or executive vice presidents as principals).

[8] As an indication of the importance of the chief financial officer, the Commission notes that for purposes of filing a Notice of Claim of Exemption (''Notice'') under Rules 4.7, 4.12 or 4.13, if the registrant is organized as a corporation, the rules provide that the chief financial officer may sign the Notice. The Commission also notes that the attestation to the truth and correctness of information contained in a financial report can be made by a chief financial officer. Rule 1.10(d)(4) (applicable to FCMs and IBs).

[9] The portion of the principal definition concerning contribution of capital retains the current provisions of Rule 3.1(a)(3), which does not appear in this release because it is not being amended.

[10] The proposed amendments would also result in the redesignation of Rule 3.10(a)(2)(i) as Rule 3.10(a)(2) and conforming modifications to Rule 3.32(a)(2).

power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over a firm's activities that are subject to regulation by the Commission.[11]

The Commission also proposes to amend Rule 3.1(a) to conform it with certain provisions of Rule 3.32, which governs re-registration and specifies certain events or changes within a firm's management that require a new registration. Absent this proposed amendment, the interplay of Rule 3.32 and Rule 3.1 could create an anomaly when, for example, under Rule 3.1, a firm would not be required to list a person as a principal, but under Rule 3.32 would be required, because of that person, to obtain a new registration.

Thus, to conform to Rule 3.1(a)(1), paragraph (a)(1)(v) of Rule 3.32, addressing corporate registrants, would be amended to include any person who becomes ''the president, chief executive officer, chief operating officer or chief financial officer of a corporate registrant, or becomes in charge of a principal business unit, division or function subject to regulation by the Commission, or comes to occupy a position of similar status or perform a similar function.'' Similarly, with respect to limited liability companies and limited liability partnerships, a new paragraph (a)(1)(vi) would be added so that re-registration would also be required when there is a new person who becomes ''a director, president, chief executive officer, chief operating officer, chief financial officer, manager, managing member or member vested with management authority for the registrant, or * * * in charge of a principal business unit, division or function subject to regulation by the Commission, or comes to occupy a position of similar status or perform a similar function.''[12] In line with new paragraph (a)(1)(vi) of Rule 3.32, which brings within the ambit of the rule changes affecting the management of a limited liability company or limited liability partnership, Rule 3.32(a)(1)(i) would be amended to delete the word ''corporate'' before ''registrant's voting securities'' so as to permit a broader application of that paragraph to registrants other than corporate registrants. To conform Rule 3.32(a)(1)(v) and (a)(1)(vi) to Rule 3.32(e)(1), the latter would be amended by adding a reference to the former.[13]

In addition, the Commission proposes to amend Rule 4.10(e)(1) to incorporate by reference the definition of ''principal'' in amended Rule 3.1(a).[14] Finally, the Commission proposes to amend Rules 4.24(f)(1)(v), 4.25(a)(8)(ii)(A) and 4.25(c)(2)(i)(B), applicable to CPOs and 4.34(f)(1)(ii) and 4.35(a)(7)(ii)(A), applicable to CTAs, to conform these rules to proposed Rule 3.1(a)(1), as incorporated by reference in amended Rule 4.10(e)(1). Thus, a registrant would only be required to provide business backgrounds and proprietary trading results for those principals who participate in making trading or operational decisions, or supervise persons so engaged, and not all officers.

The Commission's intent in proposing these amendments is to provide a uniform definition and treatment of principals under its rules. The amendments would require the filing of fewer individual registration forms (Forms 8–R) and fingerprint cards, and would also require less disclosure by CPOs and CTAs. The Commission does not intend to alter the application of any other CFTC rule that provides relief from registration requirements. For example, the exemption from registration as an associated person (''AP'') that is available to the chief operating officer, general partner or other person in the supervisory chain-of-command of a registrant under Rule 3.12(h)(1)(iii) would remain intact.[15]

2. Special Procedures Available to Firms Subject to Securities or Banking Regulation

As reflected in the Core Principles, intermediaries and FTs in all CFTC recognized markets, absent an exemption, are and will be required to be registered with the CFTC under the Act. Registration requirements, however, could be eased in several ways, depending on the particular markets on which the intermediary transacts business.

Under the proposed rules, persons who intermediate transactions on or subject to the rules of an RFE must be registered under the Act as FCMs, IBs, CPOs, CTAs, APs of any of the foregoing, or FBs, or qualify for an existing statutory or regulatory exemption from registration.[16] If such persons are required to register as FCMs, they must also become and remain a member of a registered futures association.[17] In addition, persons who trade for their own account on the floor of an exchange must register as FTs.

Persons whose business is limited exclusively to transactions conducted on or subject to the rules of a DTF also would be required to register as FCMs, IBs, CPOs, CTAs, FBs or FTs, if they perform those functions. Registration as an FCM or IB, however, would be simplified for persons that conduct business solely for institutional customers[18] on a DTF, if they were already registered with the Securities and Exchange Commission (''SEC'') in a similar registration category or they were authorized to perform these functions by a federal banking authority. Under the proposed changes to Rule 3.10, such applicants would be

[11] While the Commission recognizes that what constitutes ''a controlling influence'' is best left for determination on a case-by-case basis, such influence would be ascribed to, among others, those persons who have policymaking or managerial authority over the activities of an applicant or registrant that are subject to Commission regulation.

[12] The existing paragraphs (a)(1)(vi) and (a)(1)(vii) of Rule 3.32 would be redesignated as paragraphs (a)(1)(vii) and (a)(1)(viii), respectively.

[13] Re-registration can be avoided by following the procedures in paragraph (e)(1) of Rule 3.32, which require a registrant to file a Form 3–R to amend its Form 7–R, and to include a Form 8–R and fingerprint card for the new officer, manager or member, unless a current Form 8–R is already on file for that person. These documents must be submitted to the NFA prior to the date of the change in personnel, which is not considered effective until the NFA provides the registrant with written approval. Therefore, some advance planning by registrants should make this a relatively straightforward process.

[14] Although Rule 4.10(e) was amended in 1981 to conform more closely to the wording of Rule 3.1(a)(1)–(a)(3), the terminology in the Rules remained slightly different. When Rule 4.10(e)(1) was adopted, the Commission explained that ''[b]ecause the term 'principal' is employed in both Part 3 and Part 4 to obtain similar critical information about certain persons associated with a CPO or a CTA, the Commission has determined to use the same term in both parts. To serve the objectives of Part 4, however, the term 'principal' does not need to be defined as broadly as it is in § 3.1(a).'' 46 FR 26004, 26005 (May 8, 1981). Because the amendments to Rule 3.1(a) proposed herein will restrict the definition of principal so that, for example, not all officers of a corporate registrant will be included, the Commission believes it is no longer appropriate to have different definitions of the term ''principal'' in Parts 3 and 4.

[15] That rule provides an exemption from AP registration for certain principals provided that, among other requirements, the sponsoring firm's revenue from commodity interest related activity for customers is no more than ten percent of its total revenue on an annual basis.

[16] *See, e.g.,* Section 4m(1) of the Act, Commission Rules 3.10(c), 4.13 and 4.14.

[17] Commission Rule 170.15. NFA is currently the only registered futures association. NFA Bylaw 1101 essentially provides that no NFA member may deal with another person with respect to an account, order or transaction where the other person is acting in a capacity that requires registration, unless that other person is also a member of a registered futures association. The combination of Commission Rule 170.15 and NFA Bylaw 1101 therefore requires most registrants to become members of NFA.

[18] The Commission proposes a definition of the term ''institutional customer'' in Rule 1.3(g), which would be the same as the definition of ''eligible participant'' in Rule 35.1(b) that is set forth in one of the Commission's other **Federal Register** notices published today.

registered in the corresponding CFTC registration category (FCM or IB) upon filing notice with the NFA of their intent to undertake such limited activities, together with a certification that they are registered or authorized to engage in a similar function by, and are in good standing with, the SEC or a federal banking authority.[19] This would avoid the need to file CFTC registration forms and fingerprints. A firm acting in the capacity of an FCM would, however, be required to become a member of a registered futures association.[20] Because it would be difficult to track individual sales personnel of these firms without registration forms, individuals acting in the capacity of APs for such FCMs or IBs would not be required to be registered or listed, and would not be subject to proficiency testing or ethics training requirements. Finally, such firms and their salespersons would, of course, remain subject to antifraud provisions.

The Commission believes that this proposed structure is appropriate because (i) firms and individuals involved would be permitted to deal only with institutional customers, (ii) they would be subject to oversight by other federal regulatory authorities, and (iii) the Commission anticipates that they will conduct most of their business in the securities or banking fields, with only a minor portion of their activities involving commodity interests. Nevertheless, the Commission wishes to stress that its reform efforts are an ongoing process, and that it seeks comment on all facets of the proposal.

In order to implement these changes, the text of Rule 3.10 would be revised by redesignating paragraph (a)(1)(i) as (a)(1)(i)(A), and a new paragraph (a)(1)(i)(B) would be added. The new paragraph would provide that an applicant for registration as an FCM or IB that will conduct transactions exclusively on or subject to the rules of a DTF for institutional customers, and who is registered with the SEC as a securities broker or dealer or is a bank or any other financial depository institution subject to regulation by the United States, may apply for registration by filing with NFA notice of its intention to undertake transactions exclusively on or subject to the rules of a DTF for institutional customers, together with a certification of registration and good standing with the appropriate authority or of authorization to engage in such transactions by said authority.

Further, paragraph (d) of Rule 3.10 is proposed to be amended by replacing the existing cross-reference to ''paragraph (a)'' with a conforming cross-reference to ''paragraph (a)(1)(i)(A)'' so that those registrants who choose to follow these newly proposed registration procedures will not be required to file an annual update of the basic registration form for firms, Form 7–R.

The Commission also proposes not to require such ''passported'' registrants to meet the Commission's minimum financial requirements if (i) they meet the appropriate net capital requirements of their primary regulator, (ii) their activities are limited to serving institutional customers trading exclusively on DTFs that do not require compliance with CFTC minimum financial requirements, and (iii) they conform to minimum financial standards and related reporting requirements set by such DTF in its bylaws, rules, regulations or resolutions.[21] In this regard the Commission seeks comment on the propriety of such reforms.

The Commission is therefore proposing to add a new paragraph (iii) to Rule 1.17(a)(2), which currently contains two exemptions from the Rule's adjusted net capital requirements. The new paragraph would provide that the basic minimum financial requirements would not apply to an FCM registered under the new ''passporting'' procedures in proposed Rule 3.10(a)(1)(i)(B) whose business is limited to transacting business on behalf of institutional customers on a DTF, and who conforms to minimum financial standards and related reporting requirements set by such DTF in its bylaws, rules, regulations or resolutions. A conforming amendment would be added to Rule 1.52 by adding a new paragraph (m) to relieve a DTF from the requirement that it adopt minimum adjusted net capital standards that are modeled on those of the Commission with respect to these ''passported'' firms.

The Commission notes that as it proposes to simplify the registration process for SEC registrants that may wish to conduct the limited activities in futures markets described above, it encourages the SEC to consider reciprocal amendments to its rules to accommodate FCMs and IBs that are not now dually registered as securities brokers or dealers, but that may wish to act as intermediaries in the securities markets.

Finally, the Commission is considering updating and making more flexible its standard minimum net capital requirements with respect to FCMs by permitting the application of risk-based net capital requirements. At this time, the Commission is not proposing changes to its requirements in this area. Rather, the Commission wishes to solicit input from commenters regarding the most effective approach to developing changes to these rules.

3. Standard Application Procedures for FCMs and IBs

In order to lower a potential barrier to entry for new firms and to conform CFTC practice more closely with that of the SEC, the Commission proposes to streamline further its current application requirements for the registration of FCMs and IBs. Current Commission Rules 3.10(a)(1)(ii) and 1.10(a)(2) require new applicants for registration as FCMs and IBs to file Form 1–FR–FCM or 1–FR–IB, respectively, with their applications. Pursuant to Rule 1.10(a)(2), these forms must be certified by an independent public accountant.

The Commission is proposing that applicants for registration as FCMs or IBs who raise their own capital to satisfy minimum financial requirements would not be required to provide these certified financial statements with their registration applications.[22] Rather, such applicants would be permitted to file an unaudited financial report indicating satisfaction of the minimum requirements. A firm taking advantage of this new procedure would be subject to an on-site review within six months of registration by the firm's DSRO or, at the DSRO's discretion, a conference between appropriate staff of the firm and the DSRO at the DSRO's offices. This alternative procedure is modeled on similar procedures in the securities industry. An applicant would remain

[19] The Commission will, naturally, consult with other agencies to solicit their views and determine the most appropriate method of effecting this proposal.

[20] *See* Rule 170.15. The Commission may consider not requiring NFA membership in the future if reciprocal arrangements were made by the primary regulators of other financial industry segments to recognize CFTC registration without requiring corresponding SRO membership.

[21] Intermediaries engaged in transactions on DTFs that are not registered or licensed by another regulator would be subject to the CFTC's minimum financial requirements, even if all of the transactions they are involved in occur on or subject to the rules of a DTF. It should also be noted that these rule amendments relate only to intermediaries, and are thus inapplicable to persons who participate in transactions on DTFs solely on a principal-to-principal basis in accordance with DTF rules.

[22] Those IB applicants who do not raise their own capital would continue to be required to file a guarantee agreement entered into with an FCM with their registration application.

free to follow the existing rules concerning the filing of a certified financial statement with its application and thereby delay the initial DSRO review.[23] Appropriate rule changes would be made by adding new paragraphs (a)(2)(i)(C) and (a)(2)(ii)(D) to Rule 1.10.

B. Core Principles Two and Six: Fitness and Supervision

1. Proficiency Testing and Ethics Training for Individual Registrants

The second of the Core Principles for intermediaries identified by the Commission is that intermediaries in commodity interest markets must be and remain fit. This requirement is reflected by various provisions of the Act. Section 4p(a) of the Act permits the Commission to require written proficiency examinations for individual applicants for registration. Section 17(p) of the Act further requires that any futures association registered under the Act must submit to the Commission for approval rules to establish training standards and proficiency testing for persons involved in solicitations of transactions, their supervisors and all persons for whom the association has registration responsibilities. The NFA administers this testing program through the facilities of the National Association of Securities Dealers, Inc. NFA rules that the Commission has approved generally require that all applicants for AP registration present evidence of passage of a proficiency test, the basic test being the National Commodity Futures Examination (commonly known as the ''Series 3 Test''). In keeping with the recommendations of A New Regulatory Framework, the Commission believes that those APs dealing only with institutional customers need not pass a specific proficiency examination, and it would consider an NFA rule change to this effect. The Commission notes that under Sections 4p(a) and 17(p) of the Act and Rule 170.10, NFA is currently allowed to adopt such rules as it may deem appropriate, subject to Commission approval. Therefore, no changes to the Commission's rules are deemed necessary to effect these changes.

Section 4p(b) of the Act requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and requiring all registrants to attend such training on a periodic basis. The Commission has issued Rule 3.34 to fulfill this statutory mandate. Rule 3.34 specifies the frequency and duration of such training, the suggested curriculum, qualifications of instructors, and the necessary proof of attendance at such classes.

In order to provide flexibility and ease compliance for all registrants, the Commission proposes to delete Rule 3.34. In place of that rule, the Commission proposes to implement Congressional intent through a Statement of Acceptable Practices consistent with its second Core Principle, which requires intermediaries to be and remain fit. The Commission believes that the maintenance of professional ethical standards is a key element of a registrant's fitness. Further, training standards in the field of ethics are relevant to adherence to the sixth Core Principle, requiring adequate supervision of handling accounts by a firm and its personnel. The Commission therefore proposes to issue this Statement of Acceptable Practices as an Appendix to Part 3 of its Rules. The Commission believes that Section 4p(b) of the Act expresses Congressional intent that futures industry professionals remain abreast of their responsibilities to the public under the Act and rules thereunder. The Commission further believes that there can be greater flexibility concerning acceptable practices to achieve this objective than is permitted under the existing rule. For registrants seeking guidance as to the maintenance of proper ethics training procedures in keeping with the purposes of the Core Principles, the Statement of Acceptable Practices would function as a ''safe harbor.''

For instance, under the Statement of Acceptable Practices, registrants may engage in ethics training programs sponsored by the registrants themselves, their DSROs, trade associations or others. The format of such training, whether by personal or recorded instruction, or by circulation of written materials such as legal cases, interpretative letters or advisories, would also be left to the discretion of registrants and DSROs. It would also be permissible to require training on whatever periodic basis the registrant and DSROs deem appropriate. Thus, the Commission would not specify any particular programs or procedures that must be followed.

2. Reforms Relating to Statutory Disqualification From Registration

The grounds for statutory disqualification from registration, which establish fitness standards based upon disciplinary history, are set forth in Sections 8a(2) and (3) of the Act. One of those provisions states that registration can be denied or conditioned based upon, in addition to specific matters such as revocation of a previous registration or a felony conviction, ''other good cause'' (*see* Section 8a(3)(M) of the Act). In an effort to provide greater clarity in this area, the Commission recently revised the ''Guidance Letter'' issued to NFA concerning the treatment of self-regulatory organization (''SRO'') disciplinary actions in assessing the fitness of FBs, FTs or applicants in either category. *See* CFTC Letter No. 00–56 (April 13, 2000); *CFTC Guidance to NFA Concerning Floor Broker and Floor Trader Registration Actions,* [1996–1998 Transfer Binder] Comm. Fut. L. Rep. ¶ 27,202 (Dec. 4, 1997). The Commission considers these letters to be part of its overall regulatory reform efforts and intends to publish both as an accompanying statement when it publishes final rules. The Commission requests comment as to any further changes that should be considered in this area.

C. Core Principal Three: Financial Requirements

1. Trading by Non-Institutional Customers on DTFs

As noted above, the Commission's proposed new regulatory framework contemplates the recognition of a new form of trading facility that is subject to an intermediate degree of regulatory oversight, the DTF. Under the proposed rules, trading on DTFs generally would be limited to futures and options on specified commodities. In addition, DTFs could permit trading on any commodities if trading is limited to qualifying commercial participants.

Thus, although trading on DTFs would generally be limited to institutional or commercial customers, under certain conditions a DTF might permit non-institutional customers to enter into transactions thereon. Because of the lower regulatory protections offered to participants in these markets, and the higher degree of risk associated therewith, the Commission is proposing that such non-institutional customers' business be transacted through FCMs that are more capable of properly maintaining such accounts and handling the associated risk. This is in accordance with the third Core Principle, which requires intermediaries to maintain adequate capital to ensure they are able to meet their obligations to customers. Thus, non-institutional customers who desire to conduct transactions on or subject to the rules of

[23] Of course, a DSRO retains the authority to inspect its member firms at any time.

a DTF would be required to do so through a registered FCM that (1) is a clearing member of at least one designated contract market or RFE, and (2) has a minimum adjusted net capital of at least $20 million (the basic minimum requirement for FCMs is $250,000). The Commission notes that this would not prevent a DTF from including any similar or greater restrictions in its own rules or bylaws. Further, in order to provide guidance to such customers and their FCMs, NFA will issue a Statement of Acceptable Practices regarding additional disclosures to be made to non-institutional customers trading on DTFs and on related issues involving price dissemination. The Commission presumes that this would be forthcoming as DTFs come into existence. Since DTFs do not yet exist, and it is not known how such institutions would choose to operate, the Commission believes that it is premature at this time to propose a Statement of Acceptable Practices in this area.

Therefore, the Commission proposes to amend Rule 1.17, to add a new paragraph (a)(1)(ii) and to redesignate current paragraph (a)(1)(ii) as (a)(1)(iii). The new paragraph (a)(1)(ii) would provide that an FCM engaged in soliciting or accepting orders and customer funds related thereto from a non-institutional customer for the purchase or sale of any commodity for future delivery on or subject to the rules of a DTF must be a clearing member of a contract market or an RFE and must maintain adjusted net capital at least equal to the greater of $20 million or the other amounts specified in Rule 1.17.

2. Segregation of Funds

The futures industry has a long history of keeping customer funds safe. The Commission believes that segregation of customer funds has worked well and should continue to be required for the funds of all customers trading on an RFE and the funds of all non-institutional customers trading on a DTF that permits such customers. Nevertheless, the Commission is considering whether, and under what circumstances, to permit other customers to ''opt out'' of segregation. Before proposing any rule changes in this area, however, the Commission seeks comment as to how, if at all, this change should be implemented. Commenters may wish to address several issues in this area, including:

- Whether opting out of segregation should be permitted;
- If so, whether it should be limited to the accounts of institutional customers;
- Where such non-segregated funds should be held;
- How such funds would be accounted for, especially for purposes of establishing minimum capital requirements, and computing a firm's adjusted net capital;
- How accounts that have opted out of segregation would be treated under Part 190 of the Commission's rules, and under the Bankruptcy Code;
- What the effects of similar practices have been in other jurisdictions; and
- What an FCM's disclosure obligations should be in this area.

The Commission notes that certain industry participants have also suggested that the Commission revise its regulations to permit FCMs to maintain, in the same customer segregated account, various instruments, such as over-the-counter (''OTC'') derivatives, equity securities, and other cash market positions, as well as the funds used for the purpose of securing or margining such products and positions. The Commission notes that, pursuant to its authority under the second proviso of Section 4d(2) of the Act,[24] it has previously permitted futures and securities options to be held in the same customer segregated account pursuant to cross-margining arrangements.[25] The Commission believes that, under Section 4d(2) of the Act, the segregation requirements could be modified to permit such additional instruments and funds to be held in a single segregated account at both the FCM and the clearing organization level. As with the concept of ''opting out'' of segregation, the Commission believes, however, that further consideration is necessary in this area before a formal proposal can be made. Therefore, the Commission seeks comment as to how such changes might be implemented. Commenters may wish to address several issues in this area, including:

- What protections would be necessary in order to permit FCMs and clearing organizations to maintain, in the same customer segregated account, additional instruments and products and the funds used for the purpose of securing or margining such instruments and products;
- Whether such practices should be limited to the accounts of institutional customers;
- Whether, if this is permitted, it would be desirable to permit ''opting out'' of segregation;
- How such funds would be accounted for, especially for purposes of establishing minimum capital requirements and computing a firm's adjusted net capital;
- How such accounts would be treated under Part 190 of the Commission's Rules, and under the Bankruptcy Code;
- What the effects of similar practices have been in other jurisdictions; and
- What an FCM's disclosure obligations should be in this area.

3. Investment of Customer Funds

The Commission also is proposing to amend Rule 1.25, which sets forth the types of instruments in which FCMs and clearing organizations are permitted to invest (the permitted investments) cash segregated for the benefit of regulated commodity customers pursuant to Section 4d(2) of the Act. Currently, Rule 1.25 permits an FCM or clearing organization to invest segregated funds only in obligations of the U.S., in general obligations of any State or of any political subdivison thereof, or in obligations fully guaranteed as to principal and interest by the U.S. The Commission believes that an expanded list of permitted investments could enhance the yield available to FCMs, clearing organizations and their customers, without compromising the safety of customer funds.

Subject to specific risk-limiting features contained in the proposal, the following additional investments would be permitted: (1) Obligations issued by any agency sponsored by the United States; (2) certificates of deposit issued by a bank, as defined in Section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation; (3) commercial paper; (4) corporate notes; and (5) interests in money market mutual funds. In addition, it is proposed than an FCM or a clearing organization may both buy and sell the permitted investments pursuant to agreements for resale or repurchase of the instruments.

The proposal includes several provisions intended to minimize credit risk, volatility risk and liquidity risk. These features include: (i) A requirement that the investments be highly-rated by a nationally-recognized statistical rating agency (NRSRO), except for U.S. government securities and those money market mutual funds that are not required to be rated; (ii) a requirement that the dollar-weighted

[24] 7 U.S.C. 6d(2) (1994).

[25] *See, e.g.,* Commission Order, In the Matter of the Chicago Mercantile Exchange Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals, (November 26, 1991), reprinted in 56 FR 61404 (December 3, 1991); Commission Order, In the Matter of The Intermarket Clearing Corporation Proposal to Expand its Cross-Margining Program with the Options Clearing Corporation to Include the Cross-Exchange Net Margining of the Positions of Market Professionals (November 26, 1991), reprinted in 56 FR 61406 (December 3, 1991). For each of these programs, the SEC approved parallel rules of the Options Clearing Corporation.

average of the time remaining to maturity of the debt securities held in the segregated portfolio not exceed 24 months, excluding investment in money market mutual funds; (iii) concentration limits on the percentage of the portfolio that may be comprised of the securities of individual issuers; (iv) specific prohibitions against leverage, embedded derivatives, and options; and (v) a requirement that the daily value and gains and losses on each investment be recorded in the records of the FCM or clearing organization. The Commission recognizes that events beyond the control of an FCM or clearing organization could cause a portfolio to exceed the time-to-maturity and concentration requirements. Accordingly, the Commission would permit portfolios to be adjusted within a reasonable period of time to meet these requirements. The Commission plans to modify the segregation computation schedule, which is prepared by FCMs every day, to reflect changes in value of the investments.

As noted above, in addition to expanding the list of permitted investments, the proposal would allow investments to be bought and sold pursuant to agreements for repurchase or resale of the instruments. These transactions are usually simply referred to as ''repurchase transactions.'' This part of the proposal essentially incorporates Division of Trading and Markets Financial and Segregation Interpretation No. 2–1 (Interp. 2–1) [26] with three significant modifications. First, in order to increase the liquidity of the segregated portfolio, repurchase transactions will be permitted for the first time. (Interp. 2–1 currently only permits reverse repurchase transactions.) Second, the 180-day cap on the time-to-maturity of collateral subject to reverse repurchase agreements, contained in footnote No. 13 of Interp. 2–1, has been deleted. The Commission has been persuaded by comment received regarding Interp. 2–1 that collateral of any maturity would serve adequately, subject to other regulatory protections in place such as capital charges. Third, the Depository Trust Corporation has been added as a permitted depository for securities. If this rule proposal is adopted by the Commission, it will take the place of Interp. 2–1, which will be rescinded.

The Commission notes that the specific safeguards applicable to the permitted investments set forth in Rule 1.25 will not be the only protections in place. The Commission's proposed Rule 1.25 would take its place as part of a broad set of protections built into the system intended to guard against financial risk at FCMs. First, FCMs generally must meet the Commission's net capital and segregation requirements, as well as SRO requirements. An FCM that is a contract market clearing member also will likely have capital requirements that are higher than those set by the Commission. Second, Commission regulations require firms to keep current books and records, prepare a daily segregation computation and a formal, monthly capital calculation, among other things. Further, an early-warning system requires FCMs to report certain events to the Commission and the SROs. These requirements serve as elements of the overall system of controls to protect segregated funds.

The Commission recognizes that some adjustments may be desirable before the proposal is adopted in final form. Accordingly, the Commission seeks industry and public comment on a number of issues:

- Whether the proposed list of investments is appropriate for segregated funds investments, considering the primary objective of safety of principal;
- Whether the proposed list of investments would create any risks that are not properly contained by the risk-limiting features of the proposed rule and, if so, what additional features should be provided for in the rule;
- The proposed rule contains credit-rating standards and a cap on the dollar-weighted average for the time-to-maturity of investments held in the portfolio. The Commission notes that certain types of structured notes may have significant prepayment and other risks, because they offer a large variety of payment obligations and, therefore, present substantial market and liquidity risks in addition to credit risk. Does the rule sufficiently address this type of exposure?;
- Whether the proposed standards for money market funds are appropriate;
- Whether there are other categories of funds that could be included, and, if so, pursuant to what standards; and
- As is currently the case under Interp. 2–1, the proposed rule limits the permitted counterparties in purchases or sales of securities subject to a repurchase agreement. The Commission requests comment on whether the class of permitted counterparties should be expanded and, if so, to what extent.

The Commission is also proposing to amend Rules 1.20(a) and 1.26(a) to eliminate the requirement that an FCM obtain a written acknowledgment, from each clearing organization where the FCM has deposited customer funds or instruments purchased with customer funds, that the clearing organization was informed that the customer funds or instruments purchased with customer funds and deposited therein belong to customers and are being held in accordance with the provisions of the Act and rules thereunder. The proposed elimination of the requirement that an FCM obtain a clearing organization acknowledgment is conditioned upon the clearing organization's adoption and submission to the Commission of rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. These proposed rule amendments would codify a staff no-action letter issued three years ago.[27] An FCM's obligation to obtain written acknowledgments from banks, trust companies and other FCMs, and a clearing organization's obligation to obtain written acknowledgments from banks and trust companies, concerning the treatment of customer funds would be unaffected.

D. Core Principle Four: Risk Disclosure and Account Statements

As reflected in the fourth Core Principle, the disclosure of risks by intermediaries is an important customer protection. Over the years, however, certain persons have suggested that customers would be better protected by receiving risk disclosures more attuned to their relative level of sophistication and to the particular instruments they trade. Other commenters have suggested that disclosure obligations could be simplified and streamlined.

In keeping with these observations, the Commission proposes that non-institutional customers continue to receive the risk disclosures regarding futures and options trading that are currently required. Thus, intermediaries will continue to be required to obtain prior acknowledgement by non-institutional customers of their receipt of the basic risk disclosure statements relating to futures and options in accordance with Rules 1.55 and 33.7.

The Commission is proposing that the account opening process be streamlined, however, in certain areas. The Commission would permit certain required disclosures, such as those concerning consent to allow cross-trades or to transfer funds out of segregated accounts to another account (such as a money market account), to be included in a customer agreement and acknowledged through a ''single

[26] 1 Comm. Fut. L. Rep. ¶ 7112A (December 15, 1993).

[27] CFTC Staff Letter No. 97–45, [1996–1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,085 (May 5, 1997).

signature'' (which could include an electronic signature as provided for in recently-adopted Commission Rules 1.3(tt) and 1.4),[28] rather than the multiple signatures that are currently required.[29] In order to enhance the ''single-signature'' format for account opening agreements, the Commission would amend Rules 1.55(d)(1) and (2) by expanding the list of disclosures and consents that may be provided in a single document and acknowledged with a single signature to include: (1) The disclosures required by new Rule 1.33(g) (relating to electronic transmission of statements); [30] (2) the consent referenced in Rule 155.3(b)(2) (relating to customer permission for FCMs to take the opposite side of an order); and (3) a provision for preauthorization of transfers of funds from a customer's segregated account to another account of that customer. Disclosure concerning arbitration of disputes, however, would continue to require a separate signed acknowledgment by non-institutional customers, pursuant to proposed new Rule 166.5 (this proposed new rule would replace and is modeled on current Rule 180.3).[31] The Commission specifically requests comment on whether to continue to require a separate signed acknowledgment by non-institutional customers of a pre-dispute arbitration agreement.

In contrast, for institutional customers, as provided in Rule 1.55(f), there would continue to be no specific disclosure requirements.[32] Because the definition of institutional customer referred to above would include governmental entities, these entities would not be required to receive and to acknowledge a disclosure statement. This reverses the position that the Commission took when it last amended its risk disclosure rules two years ago.[33]

Finally, the Commission is considering developing more streamlined disclosure requirements for domestic exchange-traded options under Rule 33.7. The Commission therefore seeks comments regarding how such disclosure may be more effectively presented to customers while reducing the associated burdens on registrants.

E. Core Principle Five: Trading Standards

Under the Core Principles, intermediaries and their affiliated persons are prohibited from misusing knowledge of their customers' orders. Currently, FCMs and IBs are required to establish and to maintain supervisory procedures to assure that neither they nor any affiliated persons (as defined in Rule 155.1) abuse their knowledge of customer orders to the customer's disadvantage. These rules have proven effective in the Commission's efforts to curb such practices as ''front-running,'' ''trading ahead,'' ''bucketing,'' taking the opposite side of customer orders, or improper disclosure of customer orders to third parties. Indeed, the Commission has found that these rules have generated few comments from industry professionals. The Commission therefore proposes that Rules 155.1, 155.3 and 155.4 will continue to apply to intermediation of trades at contract markets, RFEs, and for non-institutional customers' trades at DTFs. *See* proposed new Rule 155.6(a).

For intermediation of trades by institutional customers at DTFs, the Commission is proposing a new Rule 155.6(b) setting forth a general standard of practice in this area. The rule would simply parallel the language of the Core Principle prohibiting the misuse of knowledge of customer orders. Although the proposed new Rule 155.6(b) would not include as much detail as the current trading standards rules, it is nevertheless intended to proscribe the same trade practice abuses as Rules 155.1–155.5. Such practices as ''front-running,'' ''trading ahead,'' ''bucketing,'' taking the opposite side of customer orders, or disclosure of customer orders to third parties, would thus be deemed to be misuse of knowledge of customer orders and violations of Rule 155.6. The Commission will consider the development of a Statement of Acceptable Practices to be issued at a later date, with the consultation of DTFs, regarding appropriate procedures that should be employed in order to ensure compliance with the general standard.[34]

F. Core Principle Seven: Reporting Requirements

The Commission has found that its reporting system provides a valuable bulwark against illegitimate trade practices. Accordingly, the Commission would continue, and apply to intermediaries on RFEs, its large trader reporting requirements. Thus, FCMs would be required to report to the Commission and RFEs information that permits the identification of concentrations of positions and market composition on a routine and nonroutine basis, and information to detect manipulation, price distortion and disruptions of the delivery or cash settlement process.

With respect to intermediaries transacting business on DTFs, however, because of the nature of the instruments traded or the limited access granted thereto for non-institutional traders, the Commission would reduce its reporting requirements. Such intermediaries would only be subject to large trader reporting requirements by special call. These proposed reforms are detailed elsewhere in today's **Federal Register**.

[28] 65 FR 12466 (March 9, 2000).

[29] This would reverse existing Commission policy. *See* 58 FR 17495, 17499 (April 5, 1993).

[30] *See* proposed changes to Rule 1.33, below.

[31] Part 180 is proposed to be deleted in its entirety, as detailed elsewhere in today's **Federal Register**. The Commission is also proposing to add a new Rule 166.5 to govern the use of pre-dispute arbitration agreements for customer claims and grievances arising out of transactions executed on or subject to the rules of a contract market, an RFE or a DTF. Proposed Rule 166.5 restates current Rule 180.3, while taking into account the additional trading facilities that may be available to customers. Proposed Rule 166.5 also expands the use of the ''single-signature'' format for account opening agreements to include, in addition to entities that are excluded from the definition of a commodity pool operator under Rule 4.5 and ''qualified eligible participants'' as defined in Rule 4.7, institutional customers as defined in proposed Rule 1.3(g) and ''qualified eligible clients'' as defined in Rule 4.7. Since certain of the persons currently eligible to use the single signature format are included within the proposed definition of institutional customer, the provisions of proposed Rule 166.5(c)(2) contain modifications of rule 180.3(b)(2) so as to avoid duplication. The Commission is also proposing to include within the group of persons who need not separately endorse the provisions of a pre-dispute arbitration agreement persons other than those who would be defined as institutional customers. The Commission is making this proposal because the institutional customer definition would not include all of those now eligible for the single signature treatment under Rule 180.3(b)(2) (*e.g.*, a foreign insurance company or a qualified eligible participant) and the Commission does not intend to restrict, but rather intends to expand, this aspect of the rule. The proposed rule further recognizes that a registered futures association may be authorized to act as a decision-maker in customer dispute resolution proceedings involving floor brokers that are not members of the registered futures association and makes additional stylistic changes designed to make the rule more readable.

[32] In this regard, the Commission would, with industry input, issue a Statement of Acceptable Practices on disclosure to institutional customers at a later date.

[33] 63 FR 8566, 8568 (February 20, 1998). Particular governmental entities and trade associations for such entities are, of course, free to establish their own restrictions concerning futures trading through statute, regulation or Statements of Acceptable Practices.

[34] As noted above, the DTF is at this point a proposed new institution, and it is not known how such institutions would choose to operate. Such institutions may choose to sponsor trading in a traditional open-outcry pit trading system with natural persons acting as FBs or FTs. On the other hand, some DTFs may choose a purely automated, electronic trading format, or a combination of open outcry and electronic trading. Because it cannot be known at this time how such entities will choose to organize themselves, and what policies they will wish to pursue, the Commission is not at this time issuing a Statement of Acceptable Practices in this area.

G. Core Principal Eight: Recordkeeping

1. General

The Core Principles maintain that all registrants must keep full books and records of their activities related to their business. Thus, the Commission would maintain recordkeeping requirements as they relate to intermediaries, while considering whether greater use may be made of information technology in this regard. The Commission notes that Rule 1.31 was recently revised to provide for enhanced electronic recordkeeping similar to SEC recordkeeping requirements. *See* 64 FR 36568 (July 7, 1999); 64 FR 28735 (May 27, 1999). The Commission seeks comments regarding Rule 1.31 and on how greater use of information technology may be made in the future for recordkeeping purposes.

2. Customer Account Statements; Close-Out of Offsetting Positions

In keeping with changes in technology and commercial practices, the Commission is proposing to codify its previous Advisory relating to the electronic transmission of account statements, 62 FR 31507 (June 10, 1997), in a new Rule 1.33(g). Thus, an FCM would be permitted, with customer consent, to deliver required confirmation, purchase-and-sale, and monthly account statements electronically in lieu of mailing a paper copy. In keeping with the above-referenced Advisory, FCMs would need only to retain the daily confirmation statement as of the end of the trading session, provided that it reflects all trades made during that session, to satisfy recordkeeping obligations.

Proposed Rule 1.33(g) also provides, as did the above-referenced Advisory, that an FCM must, prior to the transmission of any statement by means of electronic media, disclose (1) The electronic medium or source through which statements will be delivered, (2) the duration, whether indefinite or not, of the period during which consent will be effective, (3) any charges for such service, (4) the information that will be delivered electronically, and (5) that consent to electronic delivery may be revoked at any time. In the case of a non-institutional customer, an FCM must obtain the non-institutional customer's signed consent acknowledging disclosure of this information prior to the transmission of any statement by means of electronic media. This acknowledgment can be included in a customer account agreement and acknowledged through a single signature in accordance with Rule 1.55. Institutional customers would not need to provide written consent, and the Commission recommends that FCMs confirm procedures relating to electronic transmission of statements to institutional customers as described in the above-referenced Advisory. The Commission specifically requests comment, however, as to whether FCMs may treat non-institutional customers in the same manner as institutional customers are proposed to be treated in this area. Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of Rule 1.33 would also be permitted to be furnished by electronic media.

The Commission also proposes to revise Rule 1.46 so that its general standard would function as a default rule in the absence of instruction by a customer or account controller. The Rule currently requires, absent one of several exceptions, that an FCM close out offsetting positions on a first-in, first-out basis, looking across all accounts it carries for the same customer.[35] Under the proposed rule, any customer or account controller could instruct the FCM otherwise, so that offsetting positions could be held open or closed out on other than a first-in, first-out basis. CPOs and CTAs would be required to disclose if they operate in this fashion, by amending Rules 4.24(h)(2) (which applies to CPOs) and 4.34(h) (which applies to CTAs) to include reference to the CPO's or CTA's instructions to FCMs concerning application of offsetting positions pursuant to Rule 1.46.

In order to implement this revision of Rule 1.46, the Commission proposes to amend the rule by inserting, after the words ''omnibus accounts'' in paragraph (a), the phrase ''or where the customer or account controller has instructed otherwise.'' Rule 1.46 also would be amended by revising paragraph (e) to correspond to proposed new Rule 1.33(g) (the substance of the current paragraph (e) of Rule 1.46 would be deleted because it currently relates back to paragraph (d)(6), which is being removed and reserved) to read: ''The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).''

[35] An FCM must take into consideration positions in separate accounts of the same customer that it is carrying in applying Rule 1.46. 57 FR 55082, 55083 n. 2 (November 24, 1992), *citing* U.S. Department of Agriculture, Commodity Exchange Authority Administrative Determination No. 134 (May 25, 1948).

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.* (1994 & Supp. II 1996), requires federal agencies, in proposing rules, to consider the impact of those rules on small businesses. The rule amendments discussed herein would affect FCMs, IBs, CPOs, CTAs, FBs, FTs, leverage transaction merchants (''LTMs'') and agricultural trade option merchants (''ATOMs''), as well as principals thereof. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[36] The Commission has previously determined that registered FCMs, CPOs, LTMs and ATOMs are not small entities for the purpose of the RFA.[37] With respect to IBs, CTAs, FBs and FTs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all of the affected entities should be considered small entities and, if so, to analyze the economic impact on them of any rule.

The amendments proposed herein would not require any registrant to change its current method of doing business. For many registrants, the proposed revisions should decrease the number of persons within the registrant's organization who would be considered principals under the CFTC rules. Further, the proposed revisions should reduce, rather than increase, the regulatory requirements that apply to registrants and applicants for registration, regardless of size. Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], the Commission has submitted a copy of these proposed amendments to its rules to the Office of Management and Budget for its review.

Collection of Information

Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures

[36] 47 FR 18618–18621 (April 30, 1982).

[37] 47 FR 18619–18620 (discussing FCMs and CPOs); 54 FR 19556, 19557 (May 8, 1989) (discussing LTMs); and 63 FR 18821, 18830 (April 16, 1998) (discussing ATOMs).

Commission Merchants, OMB Control Number 3038–0005.

The Commission believes that the amendments to Part 4 of its regulations impose no burden. While these proposed rule amendments have no burden, the group of rules (3038–0005) of which the rules proposed to be amended are a part, has the following burden:

Average burden hours per response: 7.25.

Number of respondents: 7,362.

Frequency of response: Monthly, Quarterly, Annually, On Occasion.

Rules Pertaining to Contract Markets and Their Members, OMB Control Number 3038–0022.

The Commission believes that the amendments to Parts 1 and 155 of its regulations impose no burden. While these proposed rule amendments have no burden, the group of rules (3038–0022) of which the rules proposed to be amended are a part, has the following burden:

Average burden hours per response: 2.

Number of respondents: 15,894.

Frequency of response: On Occasion.

Rules, Regulations and Forms for Domestic and Foreign Futures and Options Relating to Registration with the Commission, OMB Control Number 3038–0023.

The expected effect of the proposed amended rule will be to reduce the burden previously approved by OMB for this collection by 5,521.8 hours.

Specifically: The burden associated with Commission Rule 3.10(a) as applied to FCMs is expected to be decreased by 2 hours:

Estimated number of respondents (after proposed amendment): 6.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.5.

Annual reporting burden: 3 hours.

The burden associated with Commission Rule 3.10(a) as applied to IBs is expected to be decreased by 54.8 hours:

Estimated number of respondents (after proposed amendment): 343.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.4.

Annual reporting burden: 137.2 hours.

The burden associated with Form 8-R is expected to be decreased by 132 hours:

Estimated number of respondents (after proposed amendment): 2,400.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.33.

Annual reporting burden: 792 hours.

The burden associated with Commission Rule 3.32 is expected to be decreased by 1 hour:

Estimated number of respondents (after proposed amendment): 10.

Annual responses by each respondent: 1.

Estimated average hours per response: 0.2.

Annual reporting burden: 2 hours.

The recordkeeping and reporting burdens associated with Commission Rule 3.34 are expected to be decreased by 5,332 hours:

Estimated number of respondents (after proposed amendment): 0.

Annual responses by each respondent: 0.

Estimated average hours per response: 0.

Annual reporting burden: 0 hours.

Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.

The expected effect of the proposed amended rule will be to reduce the burden previously approved by OMB for this collection by 7.5 hours.

Specifically: The burden associated with Commission Rule 1.10 is expected to be decreased by 7.5 hours:

Estimated number of respondents (after proposed amendment): 15.

Annual responses by each respondent: 1.

Estimated average hours per response: 1.

Annual reporting burden: 15 hours.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

Persons wishing to comment on the information collection requirements that would be required by these proposed rules should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581 (202) 418–5160.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Reporting and recordkeeping requirements, Registration, Principals.

17 CFR Part 4

Advertising, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Principals, Commodity pool operators, Commodity trading advisors, Disclosure.

17 CFR Part 140

Authority delegations (Government agencies), Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 155

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 166

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Sections 2, 4b, 4d, 4f, 4m, 4n, 8a, and 19 thereof, 7 U.S.C. 2, 6b, 6d,

6f, 6m, 6n, 12a and 23, the Commission hereby proposes to amend Parts 1, 3, 4, 140, 155 and 166 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.3 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1.3 Definitions.

* * * * *

(g) *Institutional customer*. This term has the same meaning as ''eligible participant'' as defined in § 35.1(b) of this chapter.

* * * * *

3. Section 1.10 is proposed to be amended as follows:

a. Revising paragraph (a)(2)(i)(B);

b. Adding paragraph (a)(2)(i)(C);

c. Designating the undesignated paragraph following paragraph (a)(2)(i)(B) as paragraph (a)(2)(i)(D) and revising it;

d. Designating the undesignated paragraph following paragraph (a)(2)(ii)(C) as paragraph (a)(2)(ii)(E) and revising it;

e. Redesignating paragraph (a)(2)(ii)(C) as (a)(2)(ii)(D) and revising it; and

f. Adding a new paragraph (a)(2)(ii)(C).

The revisions and additions read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) * * *

(2) * * *

(i) * * *

(B) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which such report is filed; or

(C) A Form 1–FR–FCM, *Provided however*, that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of being granted registration.

(D) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii) * * *

(C) A Form 1–FR–IB, *Provided however*, that such applicant shall be subject to a review by the applicant's designated self-regulatory organization within six months of registration; or

(D) A guarantee agreement.

(E) Each person filing in accordance with paragraphs (a)(2)(ii) (A), (B) or (C) of this section must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

4. Section 1.17 is proposed to be amended by redesignating paragraph (a)(1)(ii) as (a)(1)(iii) and by adding new paragraphs (a)(1)(ii) and (a)(2)(iii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(1) * * *

(ii) Each person registered as a futures commission merchant engaged in soliciting or accepting orders and customer funds related thereto for the purchase or sale of any commodity for future delivery on or subject to the rules of a derivatives transaction facility from any non-institutional customer must be a clearing member of a designated contract market or recognized futures exchange, and must maintain adjusted net capital in the amount of the greater of $20,000,000 or the amounts otherwise specified in paragraph (a)(1)(i) of this section.

* * * * *

(2) * * *

(iii) The requirements of paragraph (a)(1) of this section shall not be applicable if the registrant is a futures commission merchant or introducing broker registered in accordance with § 3.10(a)(1)(i)(B) of this chapter, whose business is limited to transacting business on behalf of institutional customers on a derivatives transaction facility, and who conforms to minimum financial standards and related reporting requirements set by such derivatives transaction facility in its bylaws, rules, regulations or resolutions.

* * * * *

5. Section 1.20 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 1.20 Customer funds to be segregated and separately accounted for.

(a) All customer funds shall be separately accounted for and segregated as belonging to commodity or option customers. Such customer funds when deposited with any bank, trust company, clearing organization or another futures commission merchant shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and this part. Each registrant shall obtain and retain in its files for the period provided in § 1.31 a written acknowledgment from such bank, trust company, clearing organization, or futures commission merchant, that it was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and this part: *Provided, however*, that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers. Under no circumstances shall any portion of customer funds be obligated to a clearing organization, any member of a contract market, a futures commission merchant, or any depository except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of commodity or option customers. No person, including any clearing organization or any depository, that has received customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the option or commodity customers of the futures commission merchant which deposited such funds.

* * * * *

(c) Each futures commission merchant shall treat and deal with the customer funds of a commodity customer or of an option customer as belonging to such commodity or option customer. All customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades, contracts or commodity options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however*, That customer funds treated as belonging to

the commodity or option customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company, with another person registered as a futures commission merchant, or with a clearing organization, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the trades, contracts or commodity options of such commodity or option customers or resulting market positions, with the clearing organization or with any other person registered as a futures commission merchant, may be withdrawn and applied to such purposes, including the payment of premiums to option grantors, commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades, contracts or commodity options: *Provided, further*, That customer funds may be invested in instruments described in § 1.25.

6. Section 1.25 is proposed to be revised to read as follows:

§ 1.25 Investment of customer funds.

(a) *Permitted investments*. (1) Subject to the terms and conditions set forth in this section, a futures commission merchant or a clearing organization may invest customer funds in the following instruments (permitted investments):

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision thereof (municipal securities);

(iii) Obligations issued by any agency sponsored by the United States (government sponsored agency securities);

(iv) Certificates of deposit issued by a bank (certificates of deposit) as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation;

(v) Commercial paper;

(vi) Corporate notes; and

(vii) Interests in money market mutual funds.

(2) In addition, a futures commission merchant or a clearing organization may buy and sell the permitted investments listed in paragraphs (a)(1)(i) through (vii) of this section pursuant to agreements for resale or repurchase of the instruments, in accordance with the provisions of paragraph (d) of this section.

(b) *General terms and conditions*. A futures commission merchant or a clearing organization is required to manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity and according to the following specific requirements.

(1) *Ratings*—(i) *Initial requirement.* Instruments that are required to be rated by this section must be rated by a nationally recognized statistical rating organization (NRSRO), as that term is defined in § 270.2a–7 of this title. Ratings are required for permitted investments as follows:

(A) U.S. government securities need not be rated;

(B) Municipal securities, government sponsored agency securities, certificates of deposit, commercial paper, and corporate notes, except notes that are asset-backed, must have the highest short-term rating of an NRSRO or one of the two highest long-term ratings of an NRSRO;

(C) Corporate notes that are asset-backed must have the highest rating of an NRSRO; and

(D) Money market mutual funds that are rated by an NRSRO must be rated at the highest rating of the NRSRO or, if the fund is not rated, investments made by the fund must comply with the requirements applicable to direct investments under this section.

(ii) *Effect of downgrade*. If an NRSRO lowers the rating of an instrument that was previously a permitted investment to below the minimum rating required under this section, the value of the instrument recognized for segregation purposes will be the lesser of:

(A) The current market value of the instrument; or

(B) The market value of the instrument on the business day preceding the downgrade, reduced by 20 percent of that value for each business day that has elapsed since the downgrade.

(2) *Restrictions on instrument features*. (i) With the exception of money market mutual funds, no permitted investment may contain an embedded derivative of any kind, including but not limited to a call option, put option, or collar, cap or floor on interest paid.

(ii) No instrument may contain interest-only payment features.

(iii) No instrument may provide payments linked to a commodity, currency, reference instrument, index, or benchmark except as provided in paragraph (b)(2)(iv) of this section.

(iv) Variable-rate securities are permitted, provided the interest rates paid correlate closely and on an unleveraged basis to a benchmark of either the Federal Funds target or effective rate, the prime rate, the three-month Treasury Bill rate, or the one-month or three-month LIBOR rate.

(v) Certificates of deposit, if negotiable, must be able to be liquidated within one business day or, if not negotiable, must be redeemable at the issuing bank within one business day, with any penalty for early withdrawal limited to any accrued interest earned.

(3) *Concentration*. (i) The aggregate investment in U.S. government securities or in money market mutual funds shall not be subject to a concentration limit.

(ii) The aggregate investment in the securities of any one issuer, or related issuers, of government sponsored agency securities shall not exceed 25 percent of the total assets held in segregation by the futures commission merchant or the clearing organization. Securities issued by an entity that directly or indirectly constitute an interest in securities issued by a government sponsored agency shall be combined and treated as the securities of a single issuer for the purpose of determining the concentration limit.

(iii) The aggregate investment in the obligations of any one issuer, or related issuers, of any permitted investments, other than U.S. government securities, money market mutual funds, and government sponsored agency instruments, may not exceed five percent of the total assets held in segregation by the futures commission merchant or the clearing organization.

(4) *Time-to-maturity*. Except for investments in money market mutual funds, the dollar-weighted average of the time-to-maturity of the portfolio, as that average is computed pursuant to § 270.2a–7 of this title, may not exceed 24 months.

(5) *Investments in instruments issued by affiliates*. (i) Except as provided in paragraph (b)(5)(ii) of this section, a futures commission merchant shall not invest customer funds in obligations of an entity affiliated with the futures commission merchant, and a clearing organization shall not invest customer funds in obligations of an entity affiliated with the clearing organization. An affiliate includes parent companies, including all entities through the ultimate holding company, subsidiaries to the lowest level, and companies under common ownership of such parent company or affiliates.

(ii) A futures commission merchant or clearing organization may invest customer funds in a fund affiliated with that futures commission merchant or clearing organization provided that the

fund itself does not invest in any instrument issued by the futures commission merchant, clearing organization or affiliate thereof.

(6) *Recordkeeping.* A futures commission merchant and a clearing organization shall prepare and maintain a record that will show for each business day with respect to each type of investment made pursuant to this section, the following information:

(i) The type of instruments in which customer funds have been invested;

(ii) The original cost of the instruments; and

(iii) The current market value of the instruments.

(c) *Money market mutual funds.* The following provisions will apply to the investment of customer funds in money market mutual funds (the fund).

(1) Generally, the fund must be registered with the Securities and Exchange Commission as a money market mutual fund, in compliance with applicable requirements. A fund sponsor, however, may petition the Commission for an exemption from this requirement. The Commission may grant such an exemption provided that the fund can demonstrate that it will operate in a manner designed to preserve principal and to maintain liquidity. The application for exemption must describe how the fund's structure, operations and financial reporting are expected to differ from the requirements contained in § 270.2a–7 of this title and the risk-limiting provisions for direct investments contained in this section. The fund must also specify the information that the fund would make available to the Commission on an ongoing basis.

(2) The fund must be sponsored by a federally-regulated financial institution, a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, or a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, except for a fund exempted in accordance with paragraph (c)(1) of this section.

(3) A futures commission merchant or clearing organization shall hold its shares of the fund in a custody account in accordance with § 1.26(a). If the futures commission merchant or the clearing organization holds its shares of the fund with the fund's shareholder servicing agent, the sponsor of the fund and the fund itself are required to provide the acknowledgment letter required by § 1.26.

(4) The net asset value of the fund must be computed daily by 9 a.m. of each business day and made available to the futures commission merchant or clearing organization by that time.

(5) An interest in a fund must be able to be liquidated by the business day following a request to liquidate by the futures commission merchant or clearing organization.

(6) The agreement pursuant to which the futures commission merchant or clearing organization has acquired and is holding its interest in a fund must contain no provision that would prevent the pledging or transferring of shares.

(d) *Repurchase and reverse repurchase agreements.* A futures commission merchant or clearing organization may buy and sell the permitted investments pursuant to agreements for resale or repurchase of the securities (repurchase transactions), provided the agreements for resale or repurchase conform to the following requirements:

(1) The securities are specifically identified by coupon rate, par amount, market value, maturity date, and CUSIP number.

(2) Counterparties are limited to a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, a domestic branch of a foreign bank insured by the Federal Deposit Insurance Corporation, a securities broker or dealer, or a government securities broker or government securities dealer registered with the Securities and Exchange Commission or which has filed notice pursuant to section 15C(a) of the Government Securities Act of 1986.

(3) The transaction is made pursuant to a written agreement signed by the parties to the agreement, which is consistent with the conditions set forth in paragraphs (d)(1) through (d)(11) of this section and which states that the parties thereto intend the transaction to be treated as a purchase and sale of securities.

(4) The term of the agreement is no more than one business day, or reversal of the transaction is possible on demand.

(5) The securities transferred under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a clearing organization or the Depository Trust Corporation in an account that complies with the requirements of § 1.26.

(6) The futures commission merchant or the clearing organization may not use securities received under the agreement in another similar transaction and may not otherwise hypothecate or pledge such securities, except securities may be pledged on behalf of customers at another futures commission merchant or clearing organization. Substitution of securities is allowed, *provided, however,* that:

(i) The qualifying securities being substituted and original securities are specifically identified by date of substitution, market values substituted, coupon rates, par amounts, maturity dates and CUSIP numbers;

(ii) Substitution is made on a ''delivery versus delivery'' basis; and

(iii) The market value of the substituted securities is at least equal to that of the original securities.

(7) The transfer of securities is made on a delivery versus payment basis in immediately available funds. The transfer is not recognized as accomplished until the funds and/or securities are actually received by the custodian of the futures commission merchant's or clearing organization's customer funds or securities purchased on behalf of customers. The transfer or credit of securities covered by the agreement to the futures commission merchant's or clearing organization's customer segregated custodial account is made simultaneously with the disbursement of funds from the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank. On the sale or resale of securities, the futures commission merchant's or clearing organization's customer segregated cash account at the custodian bank must receive same-day funds credited to such segregated account simultaneously with the delivery or transfer of securities from the customer segregated custodial account.

(8) A written confirmation to the futures commission merchant or clearing organization specifying the terms of the agreement and a safekeeping receipt are issued immediately upon entering into the transaction and a confirmation to the futures commission merchant or clearing organization is issued once the transaction is reversed.

(9) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

(10) An actual transfer of securities by book entry is made consistent with Federal or State commercial law, as applicable. At all times, securities received subject to an agreement are reflected as ''customer property.''

(11) The agreement makes clear that, in the event of the bankruptcy of the futures commission merchant or clearing organization, any securities purchased with customer funds that are subject to an agreement may be immediately transferred. The agreement also makes clear that, in the event of a futures commission merchant or clearing organization bankruptcy, the counterparty has no right to compel liquidation of securities subject to an agreement or to make a priority claim for the difference between current market value of the securities and the price agreed upon for resale of the securities to the counterparty, if the former exceeds the latter.

(e) A futures commission merchant shall not be prohibited from directly depositing unencumbered securities of the type specified in this section, which it owns for its own account, into a segregated safekeeping account or from transferring any such securities from a segregated account to its own account, up to the extent of its residual financial interest in customers' segregated funds; provided, however, that such investments, transfers of securities, and disposition of proceeds from the sale or maturity of such securities are recorded in the record of investments required to be maintained by § 1.27. All such securities may be segregated in safekeeping only with a bank, trust company, clearing organization, or other registered futures commission merchant. Furthermore, for purposes of §§ 1.25, 1.26, 1.27, 1.28 and 1.29, investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into such a segregated account shall be considered customer funds until such investments are withdrawn from segregation.

7. Section 1.26 is proposed to be revised to read as follows:

§ 1.26 Deposit of instruments purchased with customer funds.

(a) Each futures commission merchant who invests customer funds in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank, trust company, clearing organization or another futures commission merchant, shall be deposited under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part. Each futures commission merchant upon opening such an account shall obtain and retain in its files an acknowledgment from such bank, trust company, clearing organization or other futures commission merchant that it was informed that the instruments belong to commodity or option customers and are being held in accordance with the provisions of the Act and this part. *Provided, however,* that an acknowledgment need not be obtained from a clearing organization that has adopted and submitted to the Commission rules that provide for the segregation as customer funds, in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder, of all funds held on behalf of customers and all instruments purchased with customer funds. Such acknowledgment shall be retained in accordance with § 1.31. Such bank, trust company, clearing organization or other futures commission merchant shall allow inspection of such obligations at any reasonable time by representatives of the Commission.

(b) Each clearing organization which invests money belonging or accruing to commodity or option customers of its clearing members in instruments described in § 1.25 shall separately account for such instruments and segregate such instruments as belonging to such commodity or option customers. Such instruments, when deposited with a bank or trust company, shall be deposited under an account name which will clearly show that they belong to commodity or option customers and are segregated as required by the Act and this part. Each clearing organization upon opening such an account shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to commodity or option customers of clearing members and are being held in accordance with the provisions of the Act and this part. Such acknowledgment shall be retained in accordance with § 1.31. Such bank or trust company shall allow inspection of such instruments at any reasonable time by representatives of the Commission.

§§ 1.27, 1.28 and 1.29 [Amended]

8. Sections 1.27, 1.28 and 1.29 are proposed to be amended by revising the word ''obligations'' to read ''instruments'' each time it appears.

9. Section 1.33 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1.33 Monthly and confirmation statements.

* * * * *

(g) *Electronic transmission of statements.* (1) The statements required by this section, and by § 1.46, may be furnished to anyt customer by means of electronic media if the customer so requests, *Provided, however,* that a futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time.

(2) In the case of a non-institutional customer, a futures commission merchant must obtain the non-institutional customer's signed consent acknowledging disclosure of the information set forth in paragraph (g)(1) of this section prior to the transmission of any statement by means of electronic media.

(3) Any statement required to be furnished to a person other than a customer in accordance with paragraph (d) of this section may be furnished by electronic media.

(4) A futures commission merchant who furnishes statements to any customer by means of electronic media must retain a daily confirmation statement for such customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31.

10. Section 1.46 is proposed to be amended as follows:

a. By revising paragraph (a), introductory text,

b. By removing and reserving paragraphs (d)(4) through (d)(7),

c. By removing paragraph (d)(9) and

d. By revising paragraph (e) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* Except with respect to purchases or sales which are for omnibus accounts, or where the customer has instructed otherwise, any futures commission merchant who, on or subject to the rules of a contract market:

* * * * *

(e) The statements required by paragraph (a) of this section may be furnished to the customer or the person described in § 1.33(d) by means of electronic transmission, in accordance with § 1.33(g).

11. Section 1.52 is proposed to be amended by adding a new paragraph (m) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

* * * * *

(m) Nothing in this section shall apply to the activities of a derivatives transaction facility or the minimum adjusted net capital requirements it may require of persons operating thereon pursuant to § 1.17(a)(2)(iii).

12. Section 1.55 is proposed to be amended by revising paragraphs (d) and (f) to read as follows:

§ 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

* * * * *

(d) Any futures commission merchant, or in the case of an introduced account any introducing broker, may open a commodity futures account for a customer without obtaining the separate acknowledgments of disclosure and elections required by this section and by § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, provided that:

(1) Prior to the opening of such account, the futures commission merchant or introducing broker obtains an acknowledgment from the customer, which may consist of a single signature at the end of the futures commission merchant's or introducing broker's customer account agreement, or on a separate page, of the disclosure statements and elections specified in this section and § 1.33(g), and in §§ 33.7, 155.3(b)(2), and 190.06 of this chapter, and which may include authorization for the transfer of funds from a segregated customer account to another account of such customer, as listed directly above the signature line, provided the customer has acknowledged by check or other indication next to a description of each specified disclosure statement or election that the customer has received and understood such disclosure statement or made such election;

(2) The acknowledgment referred to in paragraph (d)(1) of this section must be accompanied by and executed contemporaneously with delivery of the disclosures and elective provisions required by this section and § 1.33(g), and by §§ 33.7, 155.3(b)(2), and 190.06 of this chapter.

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for an institutional customer without furnishing such institutional customer the disclosure statements or obtaining the acknowledgements required under paragraph (a) of this section, §§ 1.33(g) and 1.65(a)(3), and §§ 30.6(a), 33.7(a), 155.3(b)(2), and 190.10(c) of this chapter.

* * * * *

PART 3—REGISTRATION

13. The authority citation for Part 3 is revised to read as follows:

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

14. Section 3.1 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

(2)(i) Any individual who directly or indirectly, through agreement, holding company, nominee, trust or otherwise, is the owner of ten percent or more of the outstanding shares of any class of stock, is entitled to vote or has the power to sell or direct the sale of ten percent or more of any class of voting securities, or is entitled to receive ten percent or more of the profits; or

(ii) Any person other than an individual that is the direct owner of ten percent or more of any class of securities; or

* * * * *

15. Section 3.10 is proposed to be amended by revising paragraph (a)(1)(i), by redesignating paragraph (a)(2)(i) as paragraph (a)(2), by removing paragraph (a)(2)(ii), and by revising paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for Registration.* (1)(i)(A) Except as provided in paragraph (a)(1)(i)(B) of this section, application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(B) An applicant for registration as a futures commission merchant or introducing broker that will conduct transactions exclusively on or subject to the rules of a derivatives transaction facility for institutional customers, and which is registered with the Securities and Exchange Commission as a securities broker or dealer, or is a bank or any other financial depository institution subject to regulation by the United States, may apply for registration by filing with the National Futures Association notice of its intention to undertake transactions exclusively on or subject to the rules of a derivatives transaction facility for institutional customers, together with a certification of registration and good standing with the appropriate authority or of authorization to engage in such transactions by said authority.

* * * * *

(d) *Annual filing.* Any person registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a)(1)(i)(A) of this section must file with the National Futures Association a Form 7–R, completed in accordance with the instructions thereto, annually on a date specified by the National Futures Association. The failure to file the Form 7–R within thirty days following such date shall be deemed to be a request for withdrawal from registration. On at least thirty days written notice, and following such action, if any, deemed to be necessary by the Commission or the National Futures Association, the National Futures Association may grant the request for withdrawal from registration.

16. Section 3.32 is proposed to be amended as follows:

a. Adding paragraphs (a)(1)(i)(A) and (B);

b. Revising paragraphs (a)(1)(ii) and (a)(1)(v);

c. Redesignating paragraphs (a)(1)(vi)and (a)(1)(vii) as paragraphs (a)(1)(vii) and (a)(1)(viii), respectively;

d. Adding a new paragraph (a)(1)(vi);

e. Revising paragraph (a)(2)(i); and

f. Revising paragraph (e)(1).

The revisions and additions read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a)(1) * * *

(i) * * *

(A) As an individual, directly or indirectly, through agreement, holding company, nominee, trust or otherwise, becomes the owner of ten percent or more of the outstanding shares of any class of stock or acquires the right to vote or the power to sell or to direct the sale of ten percent or more of the registrant's voting securities;

(B) Any person other than an individual that becomes the direct owner of ten percent or more of any class of a registrant's securities;

(ii) As an individual becomes entitled to receive ten percent or more of the registrant's profits;

* * * * *

(v) Becomes the president, chief executive officer, chief operating officer or chief financial officer of the corporate registrant, or becomes in charge of a principal business unit, division or function subject to regulation by the Commission, or comes to occupy a position of similar status or perform a similar function;

(vi) Becomes a director, president, chief executive officer, chief operating officer, chief financial officer, manager, managing member or a member vested with the management authority for the registrant or becomes in charge of a principal business unit, division or function subject to regulation by the Commission, or comes to occupy a position of similar status or perform a similar function in the case of a limited liability company or limited liability partnership;

* * * * *

(2)(i) If a person becomes a principal of the registrant because of an event described in paragraph (a)(1)(i)(B) of this section, the registrant's registration shall not be deemed to terminate and a new Form 7–R need not be filed: *Provided, however,* that within twenty days of the occurrence of the event described in paragraph (a)(1)(i)(B) of this section, the registrant must notify the National Futures Association of the name of such added principal on Form 3–R and must file written certifications with the National Futures Association stating:

(A) The ultimate day-to-day control of the registrant remains the same,

(B) The addition of the new principal will not affect the conduct or the day-to-day operations of the registrant, and

(C) The insertion of the new principal into the chain of ownership is not being done for the purpose, and will not have the effect, of limiting any liability of the registrant.

* * * * *

(e)(1) Except where a registrant chooses to file an application pursuant to paragraph (d) of this section, if applicable, in the event of a change as described in paragraph (a)(1)(v) or (a)(1)(vi) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the National Futures Association prior to the date of such change in control (and such change does not occur until the registrant receives written approval from the National Futures Association) and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by the person referred to in paragraph (a)(1)(v) or (a)(1)(vi) of this section. The Form 8–R for such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided for that purpose by the National Futures Association: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who has a current Form 8–R on file with the National Futures Association or the Commission.

* * * * *

§ 3.34 [Removed]

17. Section 3.34 is proposed to be removed.

18. Part 3 is proposed to be amended by adding Appendix B to read as follows:

Appendix B to Part 3—Statement of Acceptable Practices With Respect to Ethics Training

(a) The provisions of Section 4p(b) of the Act (7 U.S.C. 6p(b) (1994)) set forth requirements regarding training of registrants as to their responsibilities to the public. This section requires the Commission to issue regulations requiring new registrants to attend ethics training sessions within six months of registration, and all registrants to attend such training on a periodic basis. Consistent with the will of Congress, the Commission believes that a Core Principle for all persons intermediating transactions in recognized multilateral trade execution facilities is fitness. The awareness and maintenance of professional ethical standards are essential elements of a registrant's fitness. Further, the use of ethics training programs is relevant to a registrant's maintenance of adequate supervision, itself a Core Principle, and a requirement under Rule 166.3.

(b)(1) The Commission recognizes that technology has provided new, faster means of sharing and distributing information. In view of the foregoing, the Commission has chosen to allow registrants to develop their own ethics training programs. Nevertheless, futures industry professionals may want guidance as to the role of ethics training. Registrants may wish to consider what ethics training should be retained, its format, and how it might best be implemented. Therefore, the Commission finds it appropriate to issue this Statement of Acceptable Practices regarding appropriate training for registrants, as interpretative guidance for intermediaries on fitness and supervision. Commission registrants may look to this Statement of Acceptable Practices as a ''safe harbor'' concerning acceptable procedures in this area.

(2) The Commission believes that section 4p(b) of the Act reflects an intent by Congress that industry professionals be aware, and remain abreast, of their continuing obligations to the public under the Act and the regulations thereunder. The text of the Act provides guidance as to the nature of these responsibilities. As expressed in section 4p(b) of the Act, personnel in the industry have an obligation to the public to observe the Act, the rules of the Commission, the rules of any appropriate self-regulatory organizations or contract markets (which would also include recognized futures exchanges and recognized derivatives transactions facilities), or other applicable federal or state laws or regulations. Further, section 4p(b) acknowledges that registrants have an obligation to the public to observe ''just and equitable principles of trade.''

(3) Additionally, section 4p(b) reflects Congress' intent that registrants and their personnel retain an up-to-date knowledge of these requirements. The Act requires that registrants receive training on a periodic basis. Thus, it is the intent of Congress that Commission registrants remain current with regard to the ethical ramifications of new technology, commercial practices, regulations, or other changes.

(c) The Commission believes that training should be focused to some extent on a person's registration category, although there will obviously be certain principles and issues common to all registrants and certain general subjects that should be taught. Topics to be addressed include:

(1) An explanation of the applicable laws and regulations, and the rules of self-regulatory organizations or contract markets, recognized futures exchanges and derivatives transaction facilities;

(2) The registrant's obligation to the public to observe just and equitable principles of trade;

(3) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(4) How to establish effective supervisory systems and internal controls;

(5) Obtaining and assessing the financial situation and investment experience of customers;

(6) Disclosure of material information to customers; and

(7) Avoidance, proper disclosure and handling of conflicts of interest.

(d) An acceptable ethics training program would apply to all of a firm's associated persons and its principals to the extent they are required to register as associated persons. Additionally, personnel of firms that rely on their registration with other regulators, such as the Securities and Exchange Commission, should be provided with ethics training to the extent the Act and the Commission's regulations apply to their business.

(e) As to the providers of such training, the Commission believes that classes sponsored by independent persons, firms, or industry associations would be acceptable. It would also be permissible to conduct in-house training programs. Further, registrants should ascertain the credentials of any ethics training providers they retain. Thus, persons who provide ethics training should be required to provide proof of satisfactory completion of the proficiency testing requirements applicable to the registrant and evidence of three years of relevant industry or pedagogical experience in the field. This industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market, recognized futures exchange or derivatives transaction facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market, recognized futures exchange or derivatives transaction facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

19. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

20. Section 4.10 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 4.10 Definitions.

* * * * *

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term principal under § 3.1(a) of this chapter.

* * * * *

21. Section 4.24 is proposed to be amended by revising paragraphs (f)(1)(v) and (h)(2) to read as follows:

§ 4.24 General Disclosures required.

* * * * *

(f) * * *

(1) * * *

(v) Each principal of the foregoing persons who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

* * * * *

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

22. Section 4.34 is proposed to be amended by revising paragraphs (f)(1)(ii) and (h) to read as follows:

§ 4.34 General Disclosures required.

* * * * *

(f) * * *

(1) * * *

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

* * * * *

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

23. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a, 12a.

24. Section 140.91 is proposed to be amended by adding a new paragraph (a)(7) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in § 1.25 of this chapter.

* * * * *

PART 155—TRADING STANDARDS

25. The authority citation for Part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6c, 6g, 6j and 12a unless otherwise noted.

26. Sections 155.2, 155.3, 155.4 and 155.5 are proposed to be amended by adding the words ''or recognized futures exchange'' after the words ''contract market'' each time they appear.

27. Section 155.6 is proposed to be added to read as follows:

§ 155.6. Trading Standards for the Transaction of Business on Derivatives Transaction Facilities.

(a) A futures commission merchant, or affiliated person thereof, transacting business on behalf of a non-institutional customer on a derivatives transaction facility shall comply with the provisions of § 155.3.

(b) No futures commission merchant, introducing broker or affiliated person thereof shall misuse knowledge of any institutional customer's order for execution on a derivatives transaction facility.

PART 166—CUSTOMER PROTECTION RULES

28. The authority citation for Part 166 is proposed to be amended to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7a, 12a, 21 and 23, unless otherwise noted.

29. Section 166.5 is proposed to be added to read as follows:

§ 166.5 Dispute settlement procedures.

(a) *Definitions.*

(1) The term *claim or grievance* as used in this section shall mean any dispute that

(i) Arises out of any transaction executed on or subject to the rules of a contract market, a recognized futures exchange or a derivatives transaction facility,

(ii) Is executed or effected through a member of such facility, a participant transacting on or through such facility or an employee of such facility, and

(iii) Does not require for adjudication the presence of essential witnesses or third parties over whom the facility does not have jurisdiction and who are not otherwise available.

(iv) The term claim or grievance does not include disputes arising from cash market transactions that are not a part of or directly connected with any transaction for the purchase or sale of any commodity for future delivery or commodity option.

(2) The term *customer* as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter) and any person for or on behalf of whom a member of a contract market, a recognized futures exchange or a derivatives transaction facility or a participant transacting on or through such market, exchange or facility effects a transaction on or through such market, exchange or facility, except another member of or participant in such market, exchange or facility.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

(b) *Voluntariness.* The use by customers of dispute settlement procedures shall be voluntary as provided in paragraph (c) of this section.

(c) *Pre-Dispute Arbitration Agreements.* No Commission registrant shall enter into any agreement or understanding with a customer in which the customer agrees, prior to the time a claim or grievance arises, to submit such claim or grievance to any settlement procedure except as follows:

(1) Signing the agreement must not be made a condition for the customer to utilize the services offered by the Commission registrant.

(2) If the agreement is contained as a clause or clauses of a broader agreement, the customer must separately endorse the clause or clauses containing the cautionary language and provisions specified in this section. A futures commission merchant or introducing broker may obtain such endorsement as provided in § 1.55(d) of this chapter for the following classes of customers only:

(i) An institutional customer as defined in § 1.3(g) of this chapter;

(ii) A plan defined as a government plan or church plan in section 3(32) or section 3(33) of title I of the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function subject as such to comparable foreign regulation; and

(iii) A person who is a ''qualified eligible participant'' or a ''qualified eligible client'' as defined in § 4.7 of this chapter.

(3) The agreement may not require the customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter. Accordingly, the customer must be advised in writing that he or she may seek reparations under section 14 of the Act by an election made within 45 days after the Commission registrant notifies the customer that arbitration will be demanded under the agreement. This notice must be given at the time when the Commission registrant notifies the customer of an intention to arbitrate. The customer must also be advised that if he or she seeks reparations under section 14 of the Act and the Commission declines to institute reparation proceedings, the claim or grievance will be subject to the pre-existing arbitration agreement and must also be advised that aspects of the claim or grievance that are not subject to the reparations procedure (*i.e.*, do not constitute a violation of the Act or rules thereunder) may be required to be submitted to the arbitration or other dispute settlement procedure set forth in the pre-existing arbitration agreement.

(4) The agreement must advise the customer that, at such time as he or she may notify the Commission registrant that he or she intends to submit a claim to arbitration, or at such time as such person notifies the customer of its intent to submit a claim to arbitration, the customer will have the opportunity to elect a qualified forum for conducting the proceeding.

(5) *Election of forum.* (i) Within ten business days after receipt of notice from the customer that he or she intends to submit a claim to arbitration, or at the time a Commission registrant notifies the customer of its intent to submit a claim to arbitration, the Commission registrant must provide the customer with a list of organizations whose procedures meet Acceptable Practices established by the Commission for customer dispute resolution, together with a copy of the rules of each forum listed. The list must include:

(A) The contract market, recognized futures exchange or derivatives transaction facility, if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

(B) A registered futures association; and

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the contract market, recognized futures exchange or derivatives transaction facility or employee thereof, and that are not otherwise associated with the contract market, recognized futures exchange or derivatives transaction

facility (mixed panel): *Provided, however,* that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

(ii) The customer shall, within forty-five days after receipt of such list, notify the opposing party of the organization selected. A customer's failure to provide such notice shall give the opposing party the right to select an organization from the list.

(6) *Fees.* The agreement must acknowledge that the Commission registrant will pay any incremental fees that may be assessed by a qualified forum for provision of a mixed panel, unless the arbitrators in a particular proceeding determine that the customer has acted in bad faith in initiating or conducting that proceeding.

(7) *Cautionary Language.* The agreement must include the following language printed in large boldface type:

THREE FORUMS EXIST FOR THE RESOLUTION OF COMMODITY DISPUTES: CIVIL COURT LITIGATION, REPARATIONS AT THE COMMODITY FUTURES TRADING COMMISSION (CFTC) AND ARBITRATION CONDUCTED BY A SELF-REGULATORY OR OTHER PRIVATE ORGANIZATION.

THE CFTC RECOGNIZES THAT THE OPPORTUNITY TO SETTLE DISPUTES BY ARBITRATION MAY IN SOME CASES PROVIDE MANY BENEFITS TO CUSTOMERS, INCLUDING THE ABILITY TO OBTAIN AN EXPEDITIOUS AND FINAL RESOLUTION OF DISPUTES WITHOUT INCURRING SUBSTANTIAL COSTS. THE CFTC REQUIRES, HOWEVER, THAT EACH CUSTOMER INDIVIDUALLY EXAMINE THE RELATIVE MERITS OF ARBITRATION AND THAT YOUR CONSENT TO THIS ARBITRATION AGREEMENT BE VOLUNTARY.

BY SIGNING THIS AGREEMENT, YOU: (1) MAY BE WAIVING YOUR RIGHT TO SUE IN A COURT OF LAW; AND (2) ARE AGREEING TO BE BOUND BY ARBITRATION OF ANY CLAIMS OR COUNTERCLAIMS WHICH YOU OR [NAME] MAY SUBMIT TO ARBITRATION UNDER THIS AGREEMENT. YOU ARE NOT, HOWEVER, WAIVING YOUR RIGHT TO ELECT INSTEAD TO PETITION THE CFTC TO INSTITUTE REPARATIONS PROCEEDINGS UNDER SECTION 14 OF THE COMMODITY EXCHANGE ACT WITH RESPECT TO ANY DISPUTE THAT MAY BE ARBITRATED PURSUANT TO THIS AGREEMENT. IN THE EVENT A DISPUTE ARISES, YOU WILL BE NOTIFIED IF [NAME] INTENDS TO SUBMIT THE DISPUTE TO ARBITRATION. IF YOU BELIEVE A VIOLATION OF THE COMMODITY EXCHANGE ACT IS INVOLVED AND IF YOU PREFER TO REQUEST A SECTION 14 ''REPARATIONS'' PROCEEDING BEFORE THE CFTC, YOU WILL HAVE 45 DAYS FROM THE DATE OF SUCH NOTICE IN WHICH TO MAKE THAT ELECTION.

YOU NEED NOT SIGN THIS AGREEMENT TO OPEN OR MAINTAIN AN ACCOUNT WITH [NAME]. SEE 17 CFR 166.5.

(d) *Enforceability.* A dispute settlement procedure may require parties utilizing such procedure to agree, under applicable state law, submission agreement or otherwise, to be bound by an award rendered in the procedure, provided that the agreement to submit the claim or grievance to the procedure was made in accordance with paragraph (c) of this section or that the agreement to submit the claim or grievance was made after the claim or grievance arose. Any award so rendered shall be enforceable in accordance with applicable law.

(e) *Time limits for submission of claims.* The dispute settlement procedure established by a contract market, recognized futures exchange or derivatives transaction facility shall not include any unreasonably short limitation period foreclosing submission of customers' claims or grievances or counterclaims.

(f) *Counterclaims.* A procedure established by a contract market, recognized futures exchanges or derivatives transaction facility under the Act for the settlement of customers' claims or grievances against a member or employee thereof may permit the submission of a counterclaim in the procedure by a person against whom a claim or grievance is brought. The contract market, recognized futures exchanges or derivatives transaction facility may permit such a counterclaim where the counterclaim arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third persons over whom the contract market, recognized futures exchanges or derivatives transaction facility does not have jurisdiction. Other counterclaims are permissible only if the customer agrees to the submission after the counterclaim has arisen, and if the aggregate monetary value of the counterclaim is capable of calculation.

Issued in Washington, DC on June 8, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–14915 Filed 6–21–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 39

RIN 3038–AB57

A New Regulatory Framework for Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing a new Part 39 of its rules that would apply to clearing organizations, as defined in the proposed rules. This proposal, centered on broad, flexible, core principles, is part of an initiative described in separate companion releases published in this edition of the **Federal Register** proposing a new regulatory framework applicable to multilateral transaction execution facilities and market intermediaries, in addition to clearing organizations. These notices propose far-reaching and fundamental changes to modernize Federal regulation of commodity futures and option markets.

DATE: Comments must be received by August 7, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''clearing organizations reinvention.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Alan L. Seifert, Deputy Director, Division of Trading and Markets, or Lois J. Gregory, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5260 or e-mail [PArchitzel@cftc.gov], [ASeifert@cftc.gov], or [LGregory@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing a new Part 39 regulatory framework that would apply to clearing organizations (*i.e.*, entities that perform a credit enhancement function by becoming a universal counterparty to market participants or by operating a facility for the netting of obligations and payments). This proposal, centered on broad, flexible, core principles, is part of an initiative described in separate companion releases published in this edition of the **Federal Register** proposing a new regulatory framework applicable to multilateral transaction execution facilities and to market intermediaries.

Clearing organizations perform valuable functions in exchange-traded futures and option markets. They serve to mitigate counterparty credit risk, facilitate the netting and offsetting of contractual obligations, and decrease systemic risk. The development of similar clearing facilities for the clearing of over-the-counter derivatives should be encouraged.[1] However, the performance of these functions may raise concerns regarding concentration of financial and credit risk in a single entity. Accordingly, clearing organizations should be subject to regulatory oversight to ensure that such facilities are capitalized sufficiently and that they establish and implement a risk management program that is designed to control the credit concentration risk associated with centralized clearing. The Commission notes that it currently oversees the clearing organizations that are associated or affiliated with U.S. futures and option exchanges.[2]

The Commission is proposing to require, pursuant to proposed part 39 of its regulations, that certain transactions be cleared only by recognized clearing organizations (RCOs). An entity may become recognized by the Commission by effectively demonstrating that it satisfies core principles covering, among other areas, financial resources, risk management, treatment of client funds and settlement procedures. U.S. clearing organizations that currently perform clearing services for transactions executed on domestic futures and option exchanges generally satisfy the core principles and, thus, would not be required to make any additional showing or change their method of operation. Consistent with recommendations made in the President's Working Group report,[3] the Commission recognizes that the form and degree of regulatory oversight imposed upon a clearing organization should be consistent with the types of instruments and markets for which it clears and the class of market participants for whom it clears. Part 39 would specify entities other than and in addition to RCOs that could serve as clearing organizations for transactions executed pursuant to part 35 of the Commission's regulations or effected on an exempt multilateral transaction execution facility under part 36 of the Commission's regulations. These entities may be: (1) A securities clearing agency regulated by the Securities and Exchange Commission (SEC); (2) a clearing system organized as, among other things, a bank, and subject to the jurisdiction of the Board of Governors of the Federal Reserve System; or (3) a foreign clearing organization that demonstrates to the Commission that it: (a) Is subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing organizations under part 39; and (b) is a party to and abides by appropriate and adequate information-sharing agreements.

II. The Proposed Rules

Proposed part 39 rules would require that every transaction effected on a designated contract market, recognized futures exchange or derivatives transaction facility, if cleared, be cleared by an RCO. RCOs also would be authorized to clear transactions that are exempt under part 35 or part 36. RCOs would not be required by part 39 to be affiliated with any of the foregoing entities. Moreover, nothing in the Commission's rules prohibits an RCO from clearing any other type of cash market or derivative instrument.[4] In addition to RCOs, the following entities also are authorized to clear transactions exempt under part 35 or part 36 of the Commission's rules: (1) Securities clearing agencies subject to the supervisory jurisdiction of the SEC; (2) clearing systems organized as a bank, bank subsidiary, bank affiliate, or Edge Act corporation;[5] or (3) foreign clearing organizations that demonstrate to the Commission that they are: (i) Subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing organizations under part 39; and (ii) parties to appropriate and adequate information-sharing agreements. The Commission would defer to oversight by the clearing organization's primary regulator in connection with the clearance of such exempt transactions.

To be recognized as an RCO, an entity must have already been clearing nondormant contracts on a U.S.-designated contract market as of January 1, 2000, or must apply to the Commission for recognition as an RCO under part 39. An application would address how the core principles would be satisfied by the applicant's proposed rules, procedures, and framework for operation by addressing the matters set forth in the guidance provided to applicants in the appendix to part 39.

A clearing organization seeking recognition would be deemed recognized sixty days after the Commission received the application, unless it appeared that the applicant and/or its rules or procedures might violate a specific provision of the Commodity Exchange Act (Act), or the Commission's regulations or the form and content requirements of part 39. In that event, the Commission could notify the applicant that the Commission would review the proposal under the procedures of section 6 of the Act.[6] An

[1] *See* the Report of the President's Working Group on Financial Markets, Over the Counter Derivatives Markets and the Commodity Exchange Act (Nov. 1999).

[2] The Commission is aware of the standards set forth in the Bank of International Settlements' 1993 Lamfalussy Report on multilateral netting systems, the recommendations with respect to clearing and settlement of securities transactions of the Group of Thirty, a private sector group representing leading banking and securities firms from around the world, and the recommendations of the President's Working Group in response to the market break of October, 1987. Currently existing clearing organizations for U.S. futures and options exchanges meet or exceed these standards and recommendations as a result of the Commission's review of these entities' rules and procedures and the Commission's ongoing oversight program. These standards and recommendations, along with others, were taken into account in formulation proposed part 39.

[3] *See* footnote 1, above.

[4] Indeed, the benefits of clearing noted above could be enhanced were RCOs to clear both cash market and derivative instruments. In this regard, the Commission seeks comment on what obstacles, if any, exist to combining such clearing functions in an RCO, whether such obstacles are specific to particular commodities and what steps can be taken to address them.

[5] 12 U.S.C. 611 *et seq.* An Edge Act corporation is an organization chartered by the Federal Reserve to engage in international banking operations. The Federal Reserve Board acts upon applications by U.S. and foreign banking organizations to establish Edge Act corporations. It also examines Edge Act corporations and their subsidiaries. The Edge Act corporation gets its name from Senator Walter Edge of New Jersey, the sponsor of the original legislation to permit formation of such organization.

[6] Section 6 of the Act is applicable to clearing organizations as well as contract markets. Commission Regulation 1.41(a)(3) defines the term ''contract market'' to include a clearing organization that clears trades for a contract market. The authority of the Commission to define and treat a clearing organization as a contract market for purposes of the Act and the Commission's regulations was upheld in Board of Trade Clearing Corporation v. U.S., (DCDC Jan 11, 1978), '77–'80 CCH Dec. ¶ 20,534.

entity seeking recognition as an RCO may request that the Commission approve its initial set of rules under section 5a(a)(12)(A) of the Act and Commission regulations thereunder.

Part 39 rules would provide that, after an entity was recognized as an RCO, it would submit new rules and rule amendments to the Commission pursuant to proposed amended Commission regulation 1.41. An RCO also could request the Commission to approve new rules or rule amendments under section 5a(a)(12)(A) of the Act and Commission regulation 1.41. An RCO also could request the Commission to issue an order considering whether the RCO, in adopting and implementing a rule, endeavored to take the least anticompetitive means of achieving the objective, purposes, and policies of the Act.

The fraud and manipulation provisions of the Act would apply with respect to transactions cleared by an RCO.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing regulations, consider the impact of those regulations on small entities. Information of the type that would be required under the proposed rule does not involve any small organizations.

B. Paperwork Reduction Act

Part 39 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this part to the Office of Management and Budget (''OMB'') for its review.

Collection of Information

Submissions of Applicants for Recognition as Recognized Clearing Organizations, OMB Control Number 3038–XXXX.

The burden associated with the proposed new part is estimated to be 2,000 hours which will result from new submission requirements for first-time applicants for recognition as Recognized Clearing Organizations.

The estimated burden of the proposed new part was calculated as follows:

Estimated number of respondents: 10.

Reports Annually by each respondent: 1.

Total Annual Responses: 10.

Estimated Average Number of Hours Per Response: 200.

Estimated Total Number of Hours of Annual Burden in Fiscal Year: 2,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 39

Clearing, Clearing organizations, Commodity futures, Consumer protection.

In consideration of the foregoing, and pursuant to the authority contained in Sections 2, 6(c), 7a, and 12a(5) of the U.S.C., the Commission proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adding Part 39 to read as follows:

PART 39—RECOGNIZED CLEARING ORGANIZATIONS

Sec.
39.1 Definitions and Scope.
39.2 Permitted Clearing.
39.3 Conditions for Recognition as a Recognized Clearing Organization
39.4 Procedures for Recognition.
39.5 Enforceability.
39.6 Fraud and Manipulation in Connection with transactions cleared by a Recognized Clearing Organizations.
Appendix A to Part 39—Application Guidance

Authority: 7 U.S.C. 2, 6(c), 7a, 12a(5).

§ 39.1 Definitions and Scope.

(a) Definitions. For purposes of this part:

(1) *Clearing organization* means a person, entity or association thereof, which performs a credit enhancement function in connection with transactions executed on a designated contract market or pursuant to parts 35–38 of this chapter by becoming a universal counterparty to market participants or by operating a facility for the netting of obligations and payments of such transactions; but does not include those netting arrangements specified in § 35.2(d)(1) and (d)(2), nor does it include an entity that is a single counterparty offering to enter into, or entering into, bilateral transactions with multiple counterparties.

(b) Scope. (1) This section applies to all cleared transactions effected on or through a designated contract market, a recognized futures exchange under part 38 of this chapter, a derivatives transaction facility under part 37 of this chapter, an exempt multilateral transaction execution facility under part 36 of this chapter, and to exempt bilateral transactions under part 35 of this chapter.

(2) A clearing organization that has been recognized by the Commission under § 39.3 of this part shall be deemed to be a contract market for purposes of the Act, and Commission rules thereunder; provided, however, a recognized clearing organization shall be exempt from all provisions of the Act and Commission regulations thereunder except as reserved in § 39.5 of this part.

§ 39.2 Permitted clearing.

(a) Any transaction effected on a designated contract market, recognized futures exchange, or derivatives transaction facility, if cleared, shall be cleared by a recognized clearing organization.

(b) A transaction effected pursuant to Part 35 or Part 36 of this chapter, if cleared, shall be cleared by any of the following authorized clearing organizations:

(1) A recognized clearing organization under this part;

(2) A securities clearing agency subject to the supervisory jurisdiction of the Securities and Exchange Commission;

(3) A clearing system organized as a bank, bank subsidiary, affiliate of a bank, or Edge Act corporation established under the Federal Reserve Act authorized to engage in international banking or financial activities, and subject to the jurisdiction of the Federal Reserve or Comptroller of the Currency; or

(4) A foreign clearing organization that demonstrates to the Commission that it:

(i) Is subject to home country regulation and oversight comparable to the standards set forth by the Commission for recognition of clearing organizations under this part; and

(ii) Is a party to and abides by appropriate and adequate information-sharing arrangements.

(c) Transactions not specified in § 39.1(b)(1) of this part may also be cleared by a recognized clearing organization.

§ 39.3 Conditions for Recognition as a Recognized Clearing Organization.

To be recognized by the Commission under this part 39 as a recognized clearing organization, an entity:

(a) Need not be affiliated with a designated contract market or recognized futures exchange under part 38 of this chapter, derivatives transaction facility under part 37 of this chapter or exempt multilateral transaction execution facility under part 36 of this chapter;

(b) Must have rules and procedures relating to its governance and the operation of its clearing function; and

(c) Must initially, and on a continuing basis, meet and adhere to the following fourteen core principles:

(1) Financial resources: Adequate capital resources to fulfill its guarantee function without interruption in various market conditions.

(2) Participant and product eligibility: Appropriate admission and continuing eligibility standards for members or participants of the organization and defined criteria for instruments it will accept for clearing.

(3) Risk management: Ability to manage the risks associated with carrying out its guarantee function through the use of appropriate tools and procedures.

(4) Settlement procedures: Ability to complete settlements on a timely basis under varying circumstances, to maintain an adequate record of the flow of funds associated with each transaction it clears, and to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

(5) Treatment of client funds: Adequate standards and procedures designed to protect and ensure the safety of client funds.

(6) Default rules and procedures: Rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the clearing organization.

(7) Rule enforcement: Adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules and for resolution of disputes.

(8) System safeguards: An adequate program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity, security, and emergency and disaster recovery procedures.

(9) Governance: Have fitness standards for owners or operators with greater than ten percent interest or an affiliate of such an owner, and for members of the governing board, and have a means to address conflicts of interest in making decisions.

(10) Reporting: Provision to the Commission of all information necessary for the Commission to conduct its oversight function of the clearing organization's activities.

(11) Recordkeeping: Maintain full books and records of all activities related to business as a recognized clearing organization in a form and manner acceptable to the Commission for a period of five years.

(12) Public information: Public disclosure of information concerning the rules and operating procedures governing its clearing and settlement systems, including default procedures.

(13) Information sharing: Enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements and use relevant information obtained from such agreements in carrying out the clearing organization's risk management program.

(14) Competition: Endeavor to avoid unreasonable restraints of trade or imposing any burden on competition not necessary or appropriate in furtherance of the objectives of the Act or the regulations thereunder.

§ 39.4 Procedures for Recognition.

(a) Recognition by certification. A clearing organization that cleared for at least one nondormant contract within the meaning of § 5.4 of this chapter on January 1, 2000, will be recognized by the Commission as a recognized clearing organization upon receipt by the Commission at its Washington, DC, headquarters of a copy of the clearing organization's rules and a certification by the clearing organization that it meets the conditions for recognition under this part.

(b) Recognition by application. A clearing organization shall be recognized by the Commission as a recognized clearing organization sixty days after receipt by the Commission of an application for recognition unless notified otherwise during that period, if:

(1) The application demonstrates that the applicant satisfies the conditions for recognition under this part;

(2) The submission is labeled as being submitted pursuant to this part;

(3) The submission includes a copy of the applicant's rules and a brief explanation of how the rules satisfy each of the conditions for recognition under § 39.3 of this part;

(4) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period; and

(5) The applicant has not instructed the Commission in writing during the review period to review the application pursuant to procedures under section 6 of the Act.

(6) Attached to this part as Appendix A is guidance to applicants concerning how the core principles set forth above could be satisfied.

(c) Termination of Part 39 Review. During the sixty-day period for review pursuant to paragraph (b) of this section, the Commission shall notify the applicant seeking recognition that the Commission is terminating review under this section and will review the proposal under the procedures of section 6 of the Act, if it appears that the application fails to meet the conditions for recognition under this part. This termination notification will state the nature of the issues raised and the specific condition of recognition that the application appears to violate, is contrary to or fails to meet. Within ten days of receipt of this termination notification, the applicant seeking recognition may request that the Commission render a decision whether to recognize the clearing organization or to institute a proceeding to disapprove the proposed submission under procedures specified in section 6 of the Act by notifying the Commission that the applicant seeking recognition views

its submission as complete and final as submitted.

(d) Delegation of Authority. (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets or the Director's delegatee, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to notify an entity seeking recognition under paragraph (b) of this section that review under those procedures is being terminated.

(2) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in the paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (d)(1) of this section.

(e) Request for Commission Approval of Rules. (1) An applicant for recognition as a recognized clearing organization may request that the Commission approve any or all of its rules and subsequent amendments thereto, at the time of recognition or thereafter, under section 5a(a)(12) of the Act and § 1.41 of this chapter. The recognized clearing organization may label such rules as having been approved by the Commission. In addition, rules of the recognized clearing organization not submitted pursuant to § 39.4(b)(3) shall be submitted to the Commission pursuant to § 1.41 of this chapter.

(2) An applicant seeking recognition as a recognized clearing organization may request that the Commission consider under the provisions of section 15 of the Act any of the entity's rules or policies at the time of recognition or thereafter.

(f) Request for withdrawal of recognition. A recognized clearing organization may withdraw from Commission recognition by filing with the Commission at its Washington, DC, headquarters such a request. Withdrawal from recognition shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the clearing organization was recognized by the Commission.

§ 39.5 Enforceability.

In accordance with the proviso in § 39.1(b)(2), sections 1a, 2(a)(1), 4, 4b, 4c, 4d, 4g, 4i, 4o, 5(7), the rule disapproval procedures of sections 5a(a)(12), 5b, 6, 6b, 6c, 8(a), 8(c), 8a(6), 8a(7), 8a(9), 8c(a), 8c(b), 8(c)(c), 8(c)(d), 9(a), 9(f), 20 and 22 of the Act and §§ 1.3, 1.20, 1.24, 1.25, 1.26, 1.27 1.31, 1.38, 1.41, 33.10, parts 15–21, part 39, and part 190 of this chapter continue to apply.

§ 39.6 Fraud and Manipulation in Connection with transactions cleared by a Recognized Clearing Organization.

It shall be unlawful for any person, directly or indirectly, in or in connection with any transaction cleared by a recognized clearing organization:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) Willfully to make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) Willfully to deceive or attempt to deceive any other person by any means whatsoever.

Appendix A to Part 39—Application Guidance

This appendix provides guidance to applicants for recognition as recognized clearing organizations in connection with satisfying each of the core principles of § 39.4. In addressing the core principles, applicants should address the matters set forth below.

Core Principle 1—Financial Resources. Adequate Capital Resources to Fulfill the Guarantee Function Without Interruption in Various Market Conditions

In addressing core principle 1, applicants should describe or otherwise document:

1. The amount of resources dedicated to supporting the clearing function:

a. The amount of resources available to the clearing organization and the sufficiency of those resources such that no break in clearing operations would occur in a variety of market conditions; and

b. The level of member/participant default such resources could support as demonstrated through use of a hypothetical default scenario that explains assumptions and variables factored into the illustration.

2. The nature of resources dedicated to supporting the clearing function:

a. The type of the resources, including their liquidity, and how they could be accessed and applied by the clearing organization without delay; and

b. Any legal or operational impediments or conditions to access.

Core Principle 2—Participant and Product Eligibility. Appropriate Admission and Continuing Eligibility Standards for Members or Participants of the Organization and Defined Criteria for Instruments it Will Accept for Clearing

In addressing core principle 2, applicants should describe or otherwise document:

1. Member/participant admission criteria:

a. How admission standards for its clearing members would contribute to the soundness and integrity of operations; and

b. Matters such as whether these criteria would be in the form of organization rules that apply to all clearing members, whether different levels of membership would relate to different levels of net worth, income, and creditworthiness of members, and whether margin levels, position limits and other controls would vary in accordance with these levels.

2. Member/participant continuing eligibility criteria:

a. A program for monitoring the financial status of its members; and

b. Whether/how the clearing organization would be able to change continuing eligibility criteria in accordance with changes in a member's financial status.

3. Criteria for instruments acceptable for clearing:

a. How the clearing organization would establish specific criteria for the types of derivatives it will clear; and

b. How those criteria take into account the different risks inherent in clearing different derivatives and how they affect maintenance of assets to support the guarantee function in varying risk environments.

4. Clearing function for each instrument:

a. The clearing function for each instrument the organization undertakes to clear; and

b. How different functions would be made known to participants.

Core Principle 3—Risk Management. Ability to Manage the Risks Associated With Carrying Out the Guarantee Function Through the Use of Appropriate Tools and Procedures

In addressing core principle 3, applicants should describe or otherwise document:

1. Use of risk analysis tools and procedures:

a. How the adequacy of the overall level of financial resources would be tested on an ongoing periodic basis in a variety of market conditions; and

b. How the organization would use specific risk management tools including stress testing and value at risk calculations.

2. Use of collateral:

a. How appropriate forms and levels of collateral would be established and collected;

b. How amounts would be adequate to secure prudentially obligations arising from clearing transactions and performing as central counterparty;

c. Why particular margin levels would be appropriate for a contract cleared and the clearing member clearing the contract;

d. The appropriateness of required or allowed forms of margin given the liquidity and related requirements of the clearing organization;

e. How the clearing organization would ensure appropriate valuation of open positions and valuation of collateral assets; and

f. The proposed margin collection schedule and how it would synchronize with changes in the value of market positions and collateral values.

3. Use of credit limits:

If and how systems would be implemented that would prevent members and other market participants from exceeding appropriate credit limits; and

4. Appropriate use of cross margin reduction programs:

How collateral assets subject to cross-margining programs would provide for clear,

fair, and efficient loss-sharing arrangements in the event of a program participant default.

Core Principle 4—Settlement Procedures. Ability To Complete Settlements on a Timely Basis Under Varying Circumstances, To Maintain an Adequate Record of the Flow of Funds Associated With Each Transaction it Clears, and To Comply With the Terms and Conditions of Any Permitted Netting or Offset Arrangements With Other Clearing Organizations

In addressing core principle 4, applicants should describe or otherwise document:

1. Settlement timeframe:

a. Procedures for completing settlements on a timely basis during times of normal operating conditions; and

b. Procedures for completing settlements on a timely basis in varying market circumstances including during a period when a significant participant or member has defaulted.

2. Recordkeeping:

a. The nature and quality of the information collected concerning the flow of funds involved in clearing and settlement; and

b. How the flow of funds associated with each cleared transaction would be recorded, maintained and easily accessed.

3. Appropriate interfaces with other clearing organizations:

How compliance with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations would be met, including, among others, common banking or common clearing programs.

Core Principle 5—Treatment of Client Funds. Standards and Procedures Designed To Protect and Ensure the Safety of Client Funds

In addressing core principle 5, applicants should describe or otherwise document:

1. Safe custody:

a. The safekeeping of client funds, whether in accounts, in depositories, or with custodians, and how it would meet industry standards of safety;

b. Any written terms regarding the legal status of the funds and the specific conditions or prerequisites for movement of the funds; and

c. How the deposit of client funds in accounts in depositories or with custodians would also ensure adequate diversification of concentration of risk.

2. Segregation between customer and proprietary funds:

a. Requirements for segregation and requiring members or participants that clear trades executed on behalf of customers to segregate customer accounts and funds; and

b. Requirements or restrictions regarding commingling customer with proprietary funds, obligating customer funds for any purpose other than to purchase, clear, and settle the products the clearing organization is clearing, and any other aspects of customer fund segregation.

3. Investment standards:

How customer funds would be invested to meet high standards of safety and the proposed recordkeeping regarding all details of such investments.

Core Principle 6—Default Rules and Procedures. Rules and Procedures Designed To Allow for Efficient, Fair, and Safe Management of Events When Members or Participants Become Insolvent or Otherwise Default on Their Obligations to the Clearing Organization

In addressing core principle 6, applicants should describe or otherwise document:

1. Definition of default:

a. The definition of default and how it would be established and enforced; and

b. How it would address failure to meet margin requirements, the insolvent financial condition of a member or participant, failure to comply with certain rules, failure to maintain eligibility standards, actions taken by other regulatory bodies, or other events.

2. Remedial action:

The authority pursuant to which, and how, the clearing organization would take appropriate action in the event of the default of a member which may include, among other things, closing out positions, replacing positions, set-off, and applying margin;

3. Process to address shortfalls:

Procedures for the prompt, fair, and safe application of Clearing Organization and/or member financial resources to eliminate any monetary shortfall resulting from a default.

4. Customer priority rule:

Rules and procedures regarding priority of customer accounts over proprietary accounts of intermediary members or participants and where applicable, in the context of other programs, such as specialized margin reduction programs like cross-margining or trading links with other exchanges.

Core Principle 7—Rule Enforcement. Adequate Arrangements and Resources for the Effective Monitoring and Enforcement of Compliance With its Rules and for Resolution of Disputes

In addressing core principle 7, applicants should describe or otherwise document:

1. Surveillance:

Arrangements and resources for the effective monitoring of compliance with rules including any clearing practice and financial surveillance programs.

2. Enforcement:

a. Arrangements and resources for effective enforcement of rules and authority and ability to discipline and limit or suspend a member's or participant's activities; and

b. Authority and ability to terminate a member's or participant's activities pursuant to clear and fair standards.

3. Dispute resolution:

Arrangements and resources for resolution of disputes between customers and members, and between members.

Core Principle 8—System Safeguards. An Adequate Program of Oversight and Risk Analysis to Ensure That Its Automated Systems Function Properly and have Adequate Capacity, Security, and Emergency and Disaster Recovery Procedures

In addressing core principle 8, applicants should describe or otherwise document:

1. Oversight/risk analysis program:

a. Any program of oversight and risk analysis and whether it addresses appropriate principles for the oversight of automated systems to ensure that its clearing system functions properly and has adequate capacity and security;

b. Emergency procedures and a plan for disaster recovery; and

c. Periodic testing of back-up facilities and ability to ensure daily processing, clearing, and settlement of transactions.

2. Appropriate periodic objective system reviews/testing:

a. Any program for the periodic objective testing and review of the system; and

b. Confirmation that such testing and review would be performed by an independent third-party professional that is a certified member of the Information Systems Audit and Control Association with an appropriate level of experience in the industry.

Core Principle 9—Governance. Have Fitness Standards for Owners or Operators With Greater Than Ten Percent Interest, or an Affiliate of Such an Owner, and for Members of the Governing Board, and Have a Means to Address Conflicts of Interest in Making Decisions

In addressing core principle 9, applicants should describe or otherwise document:

1. Appropriate standards for fitness for clearing organization owners, operators, affiliates of owners or operators, and members of the governing board based on disqualification standards under section 8a(2) of the Act.

2. Collection and verification of information supporting compliance with standards:

a. Verification information could be registration information or certification of fitness or affidavit of fitness by outside counsel based on other verified information.

3. Methods to ascertain presence of conflicts of interest and methods of making decisions in that event.

Core Principle 10—Reporting. Provision to the Commission of all Information Necessary for the Commission to Conduct its Oversight Function of the Recognized Clearing Organization's Activities

In addressing core principle 10, applicants should describe or otherwise document:

1. Information necessary for the Commission to perform its oversight activities of the recognized clearing organization's activities:

a. All information available to or generated by the clearing organization that will be made available to the Commission as appropriate to enable the Commission to perform properly its oversight function, including counterparties and their positions, stress test results, internal governance, legal proceedings, and other clearing activities;

b. The types of information which are not believed to be necessary to provide to the Commission and why; and

c. The information the organization intends to make routinely available to members/participants or the general public.

2. Provision of information:

a. The manner in which all relevant information will be provided to the Commission whether by electronic or other means; and

b. The means by which any information will be made available to members/participants and/or the general public.

Core Principle 11—Recordkeeping. Maintaining Complete Books and Records of all Activities Related to Business as a Recognized Clearing Organization in a Form and Manner Acceptable to the Commission for a Period of Five Years

In addressing core principle 11, applicants should describe or otherwise document:

1. Maintaining records of all activities related to the function of a clearing organization:

a. The different activities related to the function of the clearing organization for which the organization intends to keep books or records; and

b. Any activity related to the function of a clearing organization for which the organization does not intend to keep books or records and why this is not viewed as necessary.

2. Maintenance of full books and records in a form and manner acceptable to the Commission:

3. How the entity would satisfy the requirements of Commission Regulation 1.31 including:

a. What ''complete'' would encompass with respect to each type of book or record that would be maintained;

b. How books or records would be compiled and maintained with respect to each type of activity for which such books or records would be kept;

c. Confirmation that books and records would be open to inspection by any representative of the Commission or of the U.S. Department of Justice;

d. How long books and records would be readily available and how they would be made readily available during the first two years; and

e. How long books and records would ultimately be maintained (and confirmation that, in any event, they would be maintained for at least five years).

Core Principle 12—Public Information. Disclosure of Information Concerning the Rules and Operating Procedures Governing its Clearing and Settlement Systems, Including Default Procedures

In addressing core principle 12, applicants should describe or otherwise document:

1. Disclosure of information regarding rules and operating procedures governing clearing and settlement systems:

a. Which rules and operating procedures governing clearing and settlement systems should be disclosed to the public, to whom they would be disclosed, and how they would be disclosed;

b. What other information would be available regarding the operation, purpose and effect of rules;

c. How member/participants may become familiar with such procedures before participating in operations; and

d. How member/participants will be informed of their specific rights and obligations preceding a default and upon a default, and of the specific rights, options and obligations of the clearing organization preceding and upon the participant's default.

Core Principle 13—Information Sharing. Entering Into and Abiding by the Terms of all Appropriate and Applicable Domestic and International Information-Sharing Agreements and Using Relevant Information Obtained from such Agreements in Carrying out the Recognized Clearing Organization's Risk Management Program

In addressing core principle 13, applicants should describe or otherwise document:

1. Becoming a party to applicable appropriate domestic and international information-sharing agreements and arrangements:

a. The utility of entering into various types of information-sharing arrangements;

b. The different types of domestic and international information-sharing arrangements, both formal and informal, which the clearing organization views as appropriate and applicable to its operations; and

c. The specific information-sharing agreements or other arrangements to which the clearing organization would become a party and how it would abide by the terms of these agreements.

2. Using information obtained from information-sharing arrangements in carrying out risk management and surveillance programs:

a. How information obtained from any information-sharing arrangements would be used to further the objectives of the clearing organization's risk management program and any of its surveillance programs including financial surveillance and continuing eligibility of its members/participants;

b. How accurate information is expected to be obtained and the mechanisms or procedures which would make timely use and application of all information; and

c. The types of information expected to be shared and how that information would be shared.

Core Principle 14—Competition. Endeavoring to Avoid Unreasonable Restraints of Trade or Imposing Any Burden on Competition not Necessary or Appropriate in Furtherance of the Objectives of the Act or the Regulations Thereunder

In addressing core principle 14, applicants should describe or otherwise document:

1. Avoiding unreasonable restraints of trade:

a. Terms and conditions of access and provision of services;

b. Any contracts or agreements to which the organization is a party which contain any noncompete clauses or limitations on future activity which may compete with the interests of either party to the contract.

2. Avoiding burdening competition:

a. Any practice of the clearing organization that may appear to affect the competitiveness of any other entity or the practice of any entity that may appear to affect the competitive ability of the clearing organization; and

b. The extent to which the entity has endeavored to adopt a rule or practice that is the least anticompetitive means of achieving the objective, purposes and policies of the Act.

Issued in Washington, D.C. on June 8, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–14916 Filed 6–21–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

RIN 3038–AB58

Exemption for Bilateral Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing to clarify the operation of the current swaps exemption, 17 CFR Part 35. In addition, in a companion notice of proposed rulemaking on clearing, the Commission is proposing rules clarifying that transactions under its Part 35 swaps exemption can be cleared. The Commission, in companion releases published in this edition of the **Federal Register**, also is proposing a new regulatory framework to apply to multilateral transaction execution facilities, to market intermediaries and to clearing organizations. This new framework establishes a number of new market categories, including a category of exempt multilateral transaction execution facility. Nothing in these releases, however, would affect the continued vitality of the Commission's exemption for swaps transactions under Part 35 of its rules, or any of its other existing exemptions, policy statements or interpretations.

DATES: Comments must be received by August 7, 2000.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or, by e-mail to secretary@cftc.gov. Reference should be made to ''Exemption for Bilateral Transactions.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1125 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5260. E-mail: [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is proposing to amend its Part 35 exemption to expand and to clarify its operation, including the availability of clearing for these transactions. These proposed amendments would provide greater legal certainty to the OTC markets and reduce systemic risk. The Commission was encouraged in this undertaking by the other Federal financial regulators that comprise the President's Working Group on Financial Markets [1] and by the chairmen of the Commission's Congressional oversight committees.

The proposed amendments to part 35 respond to changes that have occurred in the over-the-counter (OTC) markets since the Commission adopted its Swaps Policy Statement in 1989, and its subsequent part 35 swaps exemption in 1993. In the intervening years, the OTC derivatives markets have experienced dramatic and sustained growth. During this period, OTC financial derivatives have developed into global markets having outstanding contracts with a total notional value of over $80 trillion. OTC derivatives have transformed finance, increasing the range of financial products available for managing risk.

II. Legal Certainty for Bilateral OTC Transactions

The Commission is proposing to amend its part 35 swaps exemption in a number of ways. First, it is proposing to delete specific reference to ''swaps'' within the exemption itself. Instead, the rule would refer to a ''contract, agreement or transaction'' that meets the requisite exemptive conditions. This is being proposed to clarify that an instrument's denomination as a ''swap'' was not, and is not, an independent condition of the exemption. Moreover, as suggested by the PWG Report, the Commission has also proposed to delete the requirement that exempt transactions not be fungible or standardized and has made clear that insofar that such exempt transactions may be cleared, creditworthiness of the counterparty is not a condition of the exemption. PWG Report at 17–18. In addition, the Commission is proposing, through an exemption from the private right of action provision of section 22 of the Act, that transactions entered into in reliance on the part 35 swaps exemption would not be subject to a claim for rescission solely due to a violation of the exemption's requirements. See Id. at 18.

The Commission has proposed these changes to its part 35 swaps exemption in order to enhance the legal certainty for such instruments. These changes would in no way call into question any transaction undertaken under the part 35 rules as currently drafted. Moreover, in recognition of its continuing vitality and to assist the public in locating it, the Commission is proposing to incorporate by reference its 1989 Swaps Policy Statement as Appendix A to part 35.[2] Moreover, the Commission is not proposing any changes to its energy interpretation (55 FR 39188) and energy exemption (58 FR 21286) and affirms their continued applicability.

A condition of the part 35 exemption is that such transactions not be entered into and traded on or through a ''multilateral transaction execution facility'' (MTEF). The Commission is proposing to define MTEF in amendments to part 36 of its rules included in a companion release published in this edition of the **Federal Register**. The Commission is proposing to define MTEF as ''an electronic or non-electronic market or similar facility through which persons, for their own accounts or for the accounts of others, enter into, agree to enter into or execute binding transactions by accepting bids or offers made by one person that are open to multiple persons conducting business through such market or similar facility.'' This definition highlights the essential nature of an MTEF as a place or facility through, or on, which traders have the ability to execute agreements or contracts. It does not, however, require that every trader have access to every transaction offered through the facility. The definition as proposed does not, and is not intended to, ''preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as 'broker screens,' to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.'' See, 58 FR 5587, 5591 (Jan. 22, 1993). Accordingly, the proposed definition makes clear that it does not include facilities merely used as a means of communicating bids or offers nor does it include markets in which a single party offers to enter into bilateral transactions with multiple counterparties who may not transact with each other.

As proposed, the Commission would not make any determination that the exempted transactions are or are not subject to its jurisdiction. When it adopted Section 4(c) in 1992, the Conferees of the Congress stated:

> The Conferees do not intend that the exercise of exemptive authority by the Commission (under section 4(c)) would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward.[3]

III. Section 4(c) Findings

These proposed rule amendments are being proposed under section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission may by rule, regulation or order exempt any class of agreements, contracts or transactions, either unconditionally or on stated terms or conditions. To grant such an exemption, the Commission must find that the exemption would be consistent with the public interest, that the agreement, contract, or transaction to be exempted would be entered into solely between appropriate persons and that the exemption would not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[4]

As explained above, the proposed exemption for bilateral transactions is available only to appropriate persons. Moreover, these amendments to part 35 will promote financial innovation and reduce systemic risk. The Commission further finds that these proposed amendments would have no adverse effect on any of the regulatory or self-regulatory responsibilities imposed by the Act. The Commission specifically

[1] Recognizing the importance of the OTC derivatives markets, the Chairmen of the Senate and House Agriculture Committees requested that the President's Working Group on Financial Markets (PWG) conduct a study of OTC derivatives markets. After studying the existing regulatory framework for OTC derivatives, recent innovations, and the potential for future developments, the PWG on November 9, 1999, reported to Congress its recommendations. See Over-the-Counter Derivative Markets and the Commodity exchange Act, Report of the President's Working Group. The PWG report focused on promoting innovation, competition, efficiency, and transparency in OTC derivatives markets and in reducing systemic risk.

Although specific recommendations about the regulatory structure applicable to exchange-traded futures were beyond the scope of its report, the PWG suggested that the Commission review existing regulatory structures (particularly those applicable to markets for financial futures) to determine whether they were appropriately tailored to serve valid regulatory goals.

[2] The Swaps Policy Statement is found at 54 FR 30694 (July 21, 1989).

[3] H.R. Rep. No. 978, 102d Cong., 2d Sess. 82–83 (1992).

[4] See 7 U.S.C. 6(c).

requests the public to comment on these findings.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of these rules on small entities. Information of the type that would be required under the proposed rule does not involve any small organizations.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), which imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA does not apply to this rule. The Commission believes the proposed amendments to this rule do not contain information collection requirements which require the approval of the Office of Management and Budget. The purpose of these proposed rule amendments is to provide greater legal certainty for the specified OTC transactions.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity Futures Trading Commission.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4, 4(c), and 8a thereof, 7 U.S.C. 2, 6, 6c, and 12a, the Commission hereby proposes to amend Chapter I, Part 35 of Title 17 of the Code of Federal Regulations as follows:

PART 35—EXEMPTION OF BILATERAL AGREEMENTS

1. The authority citation for Part 35 continues to read as follows:

Authority: 7 U.S.C. §§ 2, 6, 6c, and 12a.

2. The heading of part 35 is proposed to be revised as set forth above.

3. Section 35.1 is proposed to be amended by revising paragraph (b) to read as follows:

§ 35.1 Scope and definitions.

* * * * *

(b) *Definition.* As used in this part, ''eligible participant'' means, and shall be limited to, the following persons or classes of persons:

(1) A bank or trust company (acting on its own behalf or on behalf of another eligible participant);

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible participant;

(5) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, provided that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible participant and has total assets exceeding $5,000,000;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible participant:

(i) Which has total assets exceeding $10,000,000, or

(ii) The obligations of which under the agreement are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (b)(6)(i) of this section or by an entity referred to in paragraph (b)(1), (2), (3), (4), (5), (6) or (8) of this section; or

(iii) Which has a net worth of $1,000,000 and enters into the agreement in connection with the conduct of its business; or which has a net worth of $1,000,000 and enters into the agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible participant: Provided, however, that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either paragraph (b)(6) or (11) of this section;

(10) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible participant: Provided, however, that if such futures commission merchant, floor broker, or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader must also meet the requirements of paragraph (b)(6) or (b)(11) of this section; or

(11) Any natural person with total assets exceeding at least $10,000,000.

4. Section 35.2 is proposed to be revised to read as follows:

§ 35.2 Exemption.

A contract, agreement or transaction is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such agreement, is exempt for such activity from all provisions of the Act (except in each case the provisions enumerated in § 35.3(a)) provided the following terms and conditions are met:

(a) The contract, agreement or transaction is entered into solely between eligible participants;

(b) The contract, agreement or transaction is not entered into and traded on or through a multilateral transaction execution facility as defined in § 36.1 of this chapter; and

(c) Except for those contracts, agreements or transactions submitted for clearance or settlement to a clearinghouse as provided under paragraph (d)(3) of this section, the creditworthiness of any party having an actual or potential obligation under the contract, agreement or transaction would be a material consideration in entering into or determining the terms of the contract, agreement or transaction, including pricing, cost, or credit enhancement terms.

(d) The provisions of paragraphs (b) and (c) of this section shall not be deemed to preclude:

(1) Arrangements or facilities between parties to such contracts, agreements or transactions that provide for netting of payment obligations resulting from such contracts, agreements or transactions;

(2) Arrangements or facilities among parties to such contracts, agreements or transactions, that provide for netting of payments resulting from such contracts, agreements or transactions;

(3) The submission of such contracts, agreements or transactions for clearance and/or settlement to a clearing organization which is authorized under § 39.2 of this chapter; or

(4) The use of an electronic or non-electronic market or similar facility used solely as a means of communicating bids or offers by market participants or the use of such a market or facility by a single counterparty to offer to enter into or to enter into bilateral transactions with multiple counterparties.

(e) Any person may apply to the Commission for exemption from any of the provisions of the Act (except section 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

5. Section 35.3 is proposed to be added to read as follows:

§ 35.3 Enforceability.

(a) Notwithstanding the exemption in § 35.2, sections 2(a)(1)(B), 4b, and 4o of the Act, § 32.9 of this chapter as adopted under section 4c(b) of the Act, § 32.13 of this chapter, and sections 6(c) and 9(a)(2) of the Act to the extent that they prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, continue to apply to transactions and persons otherwise subject to those provisions.

(b) A party to a contract, agreement, or transaction that is with an eligible participant (or counterparty reasonably believed by such party to be an eligible counterparty) shall be exempt from any claim, counterclaim or affirmative defense by such counterparty under section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement, or transaction is void, voidable or unenforceable; or

(2) to rescind or recover any payment made in respect of such contract, agreement, or transaction, based solely on the failure of such party or such contract, agreement, or transaction to comply with the terms or conditions of the exemption under this part or from the terms or conditions of the Statement of Policy Concerning Swap Transactions in appendix A to this part 35.

(c) A party to a contract, agreement or transaction that qualifies under the Statement of Policy Concerning Swap Transactions in appendix A to this part 35 or the Statutory Interpretation Concerning Hybrid Instruments, as the same may be revised by the Commission from time to time, shall be exempt from any claim under Section 22(a)(1) of the Act or any other provision of the Act:

(1) That such contract, agreement or transaction is void, voidable, or unenforceable; or

(2) to rescind or recover any payment made in respect of such contract, agreement or transaction, based solely on the failure of such party, or such contract, agreement or transaction, to comply with any provision of the Act or Commission rules, excluding, in the case of this paragraph, any claim for manipulation or fraud arising under a provision of the Act or Commission rules applicable by its terms to a contract, agreement or transaction that is not otherwise subject to regulation under the Act.

6. Part 35 is proposed to be amended by adding new Appendix A to read as follows:

Appendix A to Part 35—Policy Statement Concerning Swap Transactions

(a) Background

(1) Section 2(a)(1)(A) of the Commodity Exchange Act (CEA or Act) grants the Commission exclusive jurisdiction over ''accounts, agreements (including any transaction which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market. * * *'' 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the CFTC.[1] In several recent releases[2] and in response to requests for case-by-case review of various proposed offerings,[3] the Commission has addressed the applicability of the Act and Commission regulations to various forms of commodity-related instruments offered and sold other than on designated contract markets. An overview of off-exchange transactions and issues was commenced by issuance in December 1987 of an Advance Notice of Proposed Rulemaking (Advance Notice). The Advance Notice requested comment concerning, among other things, a proposed no-action position concerning certain commercial transactions, which, as described, would have extended to certain categories of swap transactions.

(2) Based upon careful review of the comments received in response to the Advance Notice, indicating generally a need for greater clarity in this area, representations from market users, and consultations with other federal regulators concerning the issues raised by swap transactions, the Commission is issuing this policy statement to clarify its view of the regulatory status of certain swap transactions. This statement reflects the Commission's view that at this time most swap transactions, although possessing elements of futures or options contracts, are not appropriately regulated as such under the Act and regulations. This policy statement is intended to recognize a non-exclusive safe harbor for transactions satisfying the requirements set forth herein.

[1] 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA provides, *inter alia,* that it is unlawful to enter into a commodity futures contract that is not made ''on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity.'' 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a). The exchange trading requirement reflects Congress's view that such an environment would control speculation and promote hedging. H.R. Rep. No. 44, 67th Cong., 1st Sess. 2 (1921). See also 7 U.S.C. 5 (Congressional findings concerning necessity for regulation of futures and commodity option transactions). Pursuant to Sections 4c(b) and 4c(d), 7 U.S.C. 6c(b) and 6c(d), of the CEA, the Commission has authority to permit transactions in commodity options which do not take place on contract markets. Currently, only two narrow categories of such option transactions exist: trade options (in which the offeree is a ''commercial user'' of the underlying commodity) and dealer options (in which the grantor fulfills the criteria of Section 4c(d)(1) of the CEA). See also 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments); Final Rules Concerning Regulation of Hybrid Instruments, published elsewhere in this issue.

[2] 52 FR 47022 (December 11, 1987) (Advance Notice of Proposed Rulemaking); 54 FR 1139 (January 11, 1989) (Statutory Interpretation Concerning Certain Hybrid Instruments); 54 FR 1128 (January 11, 1989) (Proposed Rules Concerning Regulation of Hybrid Instruments). See also 50 FR 42963 (October 23, 1985) (Statutory Interpretation and Request for Comments Concerning Trading in Foreign Currencies for Future Delivery).

[3] The Commission staff's Task Force on Off-Exchange Instruments has addressed a number of proposed offerings of hybrid instruments in a series of published ''no-action'' letters. See, *e.g.,* CFTC Advisory No. 39–88, June 23, 1988 [Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45–88, July 19, 1988 [Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 48–88, July 26, 1988 [Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate); CFTC Advisory No. 58–88, August 30, 1988 [Interpretative Letter No. 88–16, August 26, 1988, 2 Com. Fut. L. Rep. (CCH) ¶ 24,312] (federally-chartered corporation issuing notes indexed to nationally disseminated measure of inflation published by a U.S. government agency); CFTC Advisory No. 63–88, September 21, 1988 [Interpretative Letter No. 88–17, September 6, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,320] (fixed-rate debentures with additional payments indexed to the price of natural gas over an established base price); CFTC Advisory No. 66–88, September 23, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,321 (certificates of deposit with interest payable at maturity indexed in part to the spot price of gold). See also CFTC Advisory No. 18–19, March 17, 1989 (letter dated November 23, 1988, concerning proposed sale of hay for delayed delivery).

(b) Safe Harbor Standards

(1) In determining whether a transaction constitutes a futures contract, the Commission and the courts have assessed the transaction ''as a whole with a critical eye toward its underlying purpose.''[4] Such an assessment entails a review of the ''overall effect'' of the transaction as well as a determination as to ''what the parties intended.''[5] Although there is no definitive list of the elements of futures contracts, the CFTC and the courts recognize certain elements as common to such contracts.[6] Futures contracts are contracts for the purchase or sale of a commodity for delivery in the future at a price that is established when the contract is initiated, with both parties to the transaction obligated to fulfill the contract at the specified price. In addition, futures contracts are undertaken principally to assume or shift price risk without transferring the underlying commodity. As a result, futures contracts providing for delivery may be satisfied either by delivery or offset.

(2) In addition to these necessary elements, the CFTC and the courts also recognize certain additional elements common to exchange-traded futures contracts, including standardized commodity units, margin requirements related to price movements, clearing organizations which guarantee counterparty performance, open and competitive trading in centralized markets, and public price dissemination.[7] These additional elements facilitate the trading of futures contracts on exchanges and historically have developed in conjunction with the growth of organized contract markets. The presence or absence of these additional elements, however, is not dispositive of whether a transaction is a futures contract.[8]

(3) In general, a swap may be characterized as an agreement between two parties to exchange a series of cash flows measured by different interest rates, exchange rates, or prices with payments calculated by reference to a principal base (notional amount).[9] Commenters have described the swap market as one in which the customary large transaction size effectively limits the market to institutional participants rather than the retail public.[10] Market participants also have noted that swaps typically involve long-term contracts, with maturities ranging up to twelve years.[11] In addition to these characteristics, many comparisons between swaps and futures contracts have stressed the tailored, non-standardized nature of swap terms; the necessity for particularized credit determinations in connection with each swap transaction (or series of transactions between the same counterparties); the lack of public participation in the swap markets; and the predominantly institutional and commercial nature of swap participants. Other commenters have stressed that, despite these distinctions in the manner of trading of swaps and exchange products, the economic reality of swaps nevertheless resembles that of futures contracts.

(4) The Commission recognizes that swaps generally have characteristics, such as individually-tailored terms, predominantly commercial and institutional participants, and expectation of being held to maturity, rather than offset during the term of the agreement, that may warrant distinguishing them from futures contracts. The criteria set forth below identify certain swaps for which regulation under the CEA and Commission regulations is unnecessary. These safe harbor standards are consistent with policies reflected in the CEA's jurisdictional exclusion for forward contracts,[12] the Treasury Amendment,[13] and the trade option exemption,[14] and are otherwise consistent with Section 2(a)(1)(A) of the CEA. Although these jurisdictional and exemptive or exclusionary provisions are not sufficiently broad to provide clear exemptive boundaries for many swaps, they reflect policies relevant to the safe harbor policy set forth herein and may encompass certain swap transactions.[15]

[4] *CFTC* v. *Co. Petro Marketing Group, Inc.*, 680 F.2d 573, 581 (9th Cir. 1982).

[5] *CFTC* v. *Trinity Metals Exchange*, No. 85–1482–CV–W–3 (W.D. Mo. January 21, 1986) [citing *CFTC* v. *National Coal Exchange, Inc.* [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,424 at 26,046 (W.D. Tenn. 1982)].

[6] See generally, 52 FR 47022, 47023 (December 11, 1987) (citing In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 (CFTC 1985)); Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 7–8). The Commission has explained that this does not mean that ''all commodity futures contracts must have all of these elements * * *'' In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 (CFTC 1979). To hold otherwise would permit ready evasion of the CEA.

[7] E.g., Advance Notice, 52 FR at 47023; Letter to the Honorable Patrick Leahy and the Honorable Richard Lugar, Committee on Agriculture, Nutrition and Forestry, United States Senate, from Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, dated May 16, 1989 (Attachment at 8); OGC Statutory and Regulatory Interpretation (Regulation of Leverage Transactions and Other Off-Exchange Future Delivery-Type Instruments), 50 FR 11656, 11657, n.2 (March 25, 1985); *CFTC* v. *Co Petro Marketing Group, Inc.*, 680 F.2d 573 (9th Cir. 1982).

[8] In addition, the Commission and the courts have consistently recognized that ''the requirement that a futures contract be executed on a designated contract market is what makes the contract legal, not what makes it a futures contract.'' In the Matter of First National Monetary Corp., [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,698 at 30,975 (CFTC 1985); In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,776 (CFTC 1979). See, also, Interpretative Statement, ''The Regulation of Leverage Transactions and Other Off-Exchange Future Delivery Type Investments-Statutory Interpretation,'' 50 FR 11656 (March 25, 1985).

[9] See generally, Bank for International Settlements, Recent Innovations in International Banking at 37–60 (April 1986); S. K. Henderson, ''Swap Credit Risk: A Multi-Perspective Analysis,'' 44 Business Lawyer 365 (1989). Interest rate swaps have been described as having three primary forms: coupon swaps (fixed rate to floating rate swaps); basis swaps (swap of one floating rate for another floating rate); and cross-currency interest rate swaps (swaps of fixed rate payments in one currency to floating rate payments in another currency). Currency swap transactions involve agreements between two parties providing for exchanges of amounts in different currencies which are calculated on the basis of a pre-established interest rate, a specified exchange rate, and a specified notional amount. Commodity swaps generally include swap transactions similar in structure to interest rate swaps, except that payments are calculated by reference to the price of a specified commodity, such as oil.

[10] The average notional amount for swaps has been estimated at $24 million. Letter from the New York Clearing House to CFTC, dated April 6, 1989, commenting on Proposed Rule and Statutory Interpretation Concerning Certain Hybrid and Related Instruments.

[11] E.g., Letter to CFTC from the International Swap Dealers Association, Inc., dated April 8, 1988, concerning Advance Notice; letter to CFTC from Morgan Guaranty Trust Company of New York, dated April 11, 1988, concerning Advance Notice.

[12] Section 2(a)(1)(A) of the CEA provides that the term ''future delivery'' does not include sales of any cash commodity for deferred shipment or delivery. 7 U.S.C. 2. Sales of cash commodities for deferred delivery, or forward contracts, generally have been recognized to be commercial, merchandising transactions in physical commodities entered into by commercial counterparties who have the capacity to make or take delivery of the underlying commodity but in which delivery ''may be deferred for purposes of convenience or necessity.'' 52 FR 47027; In re Stovall, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,941 at 23,777–78 (CFTC 1979). The forward contract exclusion may apply to certain types of swap transactions.

[13] The Treasury Amendment provides that ''[n]othing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.'' 7 U.S.C. 2. See generally, 50 FR 42963 (October 23, 1985) (CFTC Statutory Interpretation). See also, *Commodity Futures Trading Commission* v. *American Board of Trade,* 473 F. Supp. 117 (S.D.N.Y. 1979), aff'd, 803 F.2d 1242 (2d Cir. 1986). The Treasury Amendment may apply to some types of transactions also characterized as swaps.

[14] The trade option exemption, which is set forth in Rule 32.4(a), 17 CFR 32.4(a) (1988), authorizes commodity option transactions, other than those on commodities specified in rule 32.2(a), that are not executed on a designated contract market and that are:

Offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

It should be noted that under Rule 32.4(a), only the offeree of the trade option need qualify as a ''commercial user'' or ''merchant.'' Rule 32.4(a) is silent concerning which party to a trade option may be the option buyer of a put or call or ''long,'' and which party may be the option seller of a put or call or ''short.'' As a result, provided that the qualifying commercial offeree is entering the trade option transaction solely for non-speculative purposes demonstrably related to its commercial business in the commodity which is the subject of the option transaction, the requirements of Rule 32.4(a) are met.

[15] The forward contract inclusion facilitates commodity transactions within the commercial

Continued

(5) Consequently, the Commission has determined that a greater degree of clarity may be achieved through safe harbor guidelines establishing specific criteria for swap transactions to which the Commission's regulatory framework will not be applied. Swaps satisfying the requirements set forth below will not be subject to regulation as futures or commodity option transactions under the Act and regulations. This policy statement addresses only swaps settled in cash, with foreign currencies considered to be cash.[16]

(i) Individually-Tailored Terms

(A) Individual tailoring of the terms of swap agreements is frequently cited as indispensable to the operation of the swap market. Commenters have indicated that swap agreements are based upon individualized credit determinations and are tailored to reflect the particular business objectives of the counterparties. Tailoring occurs through private negotiations between the parties and may involve not only financial terms but issues such as representations, covenants, events of default, term to maturity, and any requirement for the posting of collateral or other credit enhancement. Such tailoring and counterparty credit assessment distinguish swap transactions from exchange transactions, where the contract terms are standardized and the counterparty is unknown. In addition, the tailoring of swap terms means that, unlike exchange contracts, which are fungible, swap agreements are not fully standardized.

(B) To qualify for safe harbor treatment, swaps must be negotiated by the parties as to their material terms, based upon individualized credit determinations, and documented by the parties in an agreement or series of agreements that is not fully standardized.[17] This requirement is intended to exclude from safe harbor treatment instruments which are fungible and therefore may be readily transferred and traded.

(ii) Absence of Exchange-Style Offset

(A) Exchange-traded futures contracts generally may be terminated by offset,[18] that is, liquidated through establishment of an equal and opposite position. For exchange-traded futures contracts, the universal counterparty to each cleared position is the clearing organization. Prior consent of the clearing organization, as counterparty, is unnecessary to offset.[19]

(B) In contrast, swap transactions have been described as transactions which create performance obligations terminable only with counterparty consent and which generally are expected to be maintained to maturity. A swap counterparty who seeks to eliminate the economic effect of a swap agreement may enter into a reverse swap agreement, that is, a second swap with the same maturity and payment requirements, with the same or a new counterparty, but in which the party seeking to eliminate its economic exposure assumes the reverse position (in this case the obligations of each party to both transactions continue to maturity). A swap counterparty who seeks to terminate, absent default, its obligations under a swap agreement may: (1) Undertake a swap sale in which, based upon consent of the counterparty, it assigns its rights and obligations under the swap to a third party; or (2) negotiate an early termination of the transaction, or swap ''closeout,'' in which it negotiates a lump-sum payment with its counterparty to terminate the swap.[20] In the latter two cases, termination of the obligations created by a swap is dependent upon consent of the counterparty.

(C) To qualify for safe harbor treatment, the swap must create obligations that are terminable, absent default, only with the consent of the counterparty. If consent to termination is given at the outset of the agreement and a termination formula or price fixed, the consent provision must be privately negotiated. This requirement is intended to confine safe harbor treatment to instruments that are not readily used as trading vehicles, that are entered into with the expectation of performance, and that are terminated as well as entered into based upon private negotiation.

(iii) Absence of Clearing Organization or Margin System

(A) As noted above, the necessity for individualized credit determinations has been described as a hallmark of swap transactions. A number of commenters have stressed both the dependence of the current swap market on such determinations and the absence of a multilateral ''credit support'' mechanism, such as a clearing organization, for swaps. In accordance with the concept of swaps as dependent upon private negotiation and individualized credit determinations as to the capacity of certain parties to perform, this safe harbor is applicable only to swap transactions that are not supported by the credit of a clearing organization and that are not primarily or routinely supported by a market-to-market margin and variation settlement system designed to eliminate individualized credit risk.[21] The ability to impose individualized credit enhancement requirements to secure either changes in the credit risk of a counterparty or increases in the credit exposure between two counterparties consistent with the above criteria would not be affected.

(iv) The Transaction is Undertaken in Conjunction With a Line of Business

(A) The absence of public participation in the swaps market has frequently been cited as a factor supporting different regulatory treatment of swaps and futures contracts. Swap market participants are predominantly institutional and commercial entities such as corporations, commercial and investment banks, thrift institutions, insurance companies, governments, and government-sponsored or chartered entities.[22]

(B) The safe harbor set forth herein is limited to swap transactions undertaken in conjunction with the parties' line of business.[23] This restriction is intended to preclude public participation in qualifying swap transactions and to limit qualifying transactions to those based upon individualized credit determinations. This restriction does not preclude dealer transactions in swaps undertaken in conjunction with a line of business, including financial intermediation services.

(v) Prohibition Against Marketing to the Public

Swap transactions eligible for safe harbor treatment may not be marketed to the public. This restriction reflects the institutional and commercial nature of the existing swap market and the Commission's intention to

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merchandising chain. The trade option exemption similarly may be viewed as facilitating principal-to-principal transactions in which the offeree is a commercial party with respect to the underlying commodity. The Treasury Amendment reflects Congressional intent to avoid duplicative regulation of foreign currency transactions and other transactions in the interbank market supervised by bank regulatory agencies.

[16] As noted previously, certain categories of swap transactions may be subject to the forward contract exclusion, the Treasury Amendment and the trade option exemption. The safe harbor criteria set forth herein apply equally to options on swaps.

[17] Formation of swaps pursuant to a master agreement between two counterparties that establishes some or all contract terms for one or more individual swap transactions between those counterparties is not precluded by this requirement, provided that material terms of the master agreement and transaction specifications are individually tailored by the parties.

[18] In the context of exchange-traded futures, offset refers to the liquidation of a futures position through the acquisition of an opposite position. Availability of such offset, resulting in the liquidation of the position, typically is established by exchange rules governing exchange members' relationships with the clearing house. See, *e.g.,* Chicago Mercantile Exchange Rule 808 (''a clearing member long or short any commodity to the Clearing House as a result of substitution may liquidate the position by acquiring an opposite position for its principal''); Board of Trade Clearing Corporation Regulation 705.00 (''Where a member buys and sells the same commodity for the same delivery, and such contracts are cleared through the Clearing House, the purchases and sales shall be offset to the extent of their equality, and the member shall be deemed a buyer from the Clearing House to the extent that his purchases exceed his sales, or a seller to the Clearing House to the extent that his sales exceed his purchases''); New York Futures Exchange Rule 3–4 (''As between the Clearing Corporation and the original parties to futures contracts and option contracts, such contracts shall be binding upon the original parties until liquidated by offset, delivery, exercise or expiration, as the case may be''). Of course, the ability to offset in any given case depends upon the availability of a counterparty to enter into an offsetting transaction at an acceptable price.

[19] However, the ability to liquidate contractual positions through offset is established by clearing organization rules to which all clearing members consent.

[20] Swap parties may agree in advance upon a termination formula or price for the swap.

[21] Several commenters urged the Commission to adopt a safe harbor for swaps that would be conditioned upon, among other things, the absence of a credit support mechanism. See Letter to CFTC from Sullivan & Cromwell, dated April 8, 1988, concerning Advance Notice, at 41–42; Letter to CFTC from Manufacturers Hanover, dated April 11, 1988, concerning Advance Notice, at 4. The safe harbor standard is based upon individualized credit determinations at the outset and during the pendency of the contract.

[22] Letter dated April 8, 1988, to CFTC from International Swap Dealers Association, Inc. Concerning Advance Notice.

[23] Swap transactions entered into with respect to exchange rate, interest rate, or other price exposure arising from a participant's line of business or the financing of its business would be consistent with this standard.

restrict qualifying swap transactions to those undertaken as an adjunct of the participant's line of business.

(c) *Conclusion.* This policy statement is intended to clarify the regulatory treatment of certain transactions in order to facilitate legitimate market transactions in a field distinguished by innovation and rapid growth. Consequently, the Commission proposes to continue to review on a case-by-case basis transactions that do not meet the above criteria and that are not otherwise excluded from Commission regulation.

Issued in Washington, D.C., this 8th day of June, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–14917 Filed 6–21–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 5, 15, 20, 36, 37, 38, 39, 100, 140, 155, 166, 170, and 180

A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission (''Commission'') will convene two public meetings at which interested members of the public may appear before it to give oral and written statements relating to the Commission's consideration of a new regulatory framework for multilateral transaction execution facilities, intermediaries and clearing organizations.

DATES: Tuesday, June 27, 2000, 10:00 a.m.–4:00 p.m. (multilateral transaction execution facilities); Wednesday, June 28, 2000, 10:00 a.m.–4:00 p.m. (intermediaries and clearing organizations).

PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room located at Room 1000. Status: Open.

ADDRESSES: Requests to appear and statements of interest should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically to [secretary@cftc.gov]. Reference should be made to ''Regulatory Reinvention Meetings.''

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, or Nancy E. Yanofsky, Assistant Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, [PArchitzel@cftc.gov] or [NYanofsky@cftc.gov].

SUPPLEMENTARY INFORMATION: In separate **Federal Register** releases published today, the Commission has proposed a new regulatory framework to apply to multilateral transaction execution facilities that trade derivatives, market intermediaries and clearing organizations. As explained in those **Federal Register** releases, the proposed framework contemplates far reaching and fundamental changes to modernize Federal regulation of the commodity futures and options markets.

The Commission is of the view that, in addition to the receipt of written comments, an opportunity for interested members of the public to appear before it will assist it in its consideration of the issues raised in the **Federal Register** releases and is in the public interest. Accordingly, the Commission will convene two public meetings, one on Tuesday, June 27, 2000 from 10:00 a.m. to 4:00 p.m. relating to the proposed framework as it applies to multilateral transaction execution facilities and one on Wednesday, June 28, 2000 from 10:00 a.m. to 4:00 p.m. relating to the proposed framework as it applies to market intermediaries and clearing organizations.

All individuals or organizations wishing to appear before the Commission should submit to the Commission at the above address, by June 23, 2000, a request to appear at either or both of the meetings, a concise statement of interest and qualifications as they relate to the particular meeting(s) and a brief summary or abstract of the content of his or her statement(s). The Commission will invite a representative number of individuals or organizations to appear at each meeting from those submitting such statements. A transcription of the meetings will be made and entered into the Commission's public comment files, which will remain open for the receipt of written comment until August 7, 2000.

Issued in Washington, D.C., this 8th day of June 2000.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

Concurring Statement of Commissioner Thomas J. Erickson

I concur with the Commission's publication of this Notice of Public Hearing as well as with the simultaneous publication of the related proposed rulemakings entitled (1) Exemption for Bilateral Transactions; (2) A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations; (3) A New Regulatory Framework for Clearing Organizations; and (4) Rules Relating to Intermediaries of Commodity Interest Transactions.

Global derivatives markets are changing at a dramatic pace. Today's **Federal Register** releases represent an equally dramatic effort by Commission staff to modernize our regulatory scheme by accommodating new technologies and providing exchanges with some measure of regulatory relief. Accordingly, I agree with the publication of this and each related release and am hopeful that they will stir considerable thought and comment. With this concurrence—and in addition to the specific requests for comment in the proposed rules—I invite comment on certain aspects of this plan about which I have reservations. Specifically:

- Does the plan promote legal certainty for transactions by providing a regime that is based upon the voluntary submission of certain derivatives markets to Commission regulation?
- Are there enforceability and/or compliance concerns associated with a regulatory regime based on ''broad performance standards'' incorporated as core principles?
- Does the plan take adequate account of the public's interest in the Commission's ability to:
- Deter and detect fraud and manipulation?
- Deter and detect abusive trading practices?
- Ensure the financial integrity of industry participants?

I look forward to receiving comment and testimony that touch upon a full range of issues in addition to those few I have mentioned in this concurrence.

Dated: June 6, 2000.

Thomas J. Erickson,

Commissioner.

[FR Doc. 00–14918 Filed 6–21–00; 8:45 am]

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Federal Register

Thursday,
June 22, 2000

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Thunder Bay National Marine Sanctuary and Underwater Preserve Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970404078–0176–02]

RIN 0648–AE41

Thunder Bay National Marine Sanctuary and Underwater Preserve Regulations

AGENCY: Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule and summary of final management plan.

SUMMARY: NOAA issues final regulations to implement the designation of the Thunder Bay National Marine Sanctuary and Underwater Preserve, which encompasses an area of State of Michigan waters over and surrounding Thunder Bay, and the submerged lands thereunder including the Bay, in western Lake Huron, by regulating activities affecting Sanctuary resources, as defined by and consistent with the provisions of the Designation Document. In addition, this document publishes the Designation Document and summarizes the final management plan for the Sanctuary, detailing the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement activities for the area. The National Marine Sanctuaries Act requires the Secretary of Commerce to issue final regulations to implement the designation of a National Marine Sanctuary. The intended effect of these regulations is to protect the Sanctuary's resources, which are limited to underwater cultural resources.

EFFECTIVE DATE: Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which this document is published unless, the Governor of the State of Michigan certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. Announcement of the effective date of the final regulations will be published in the **Federal Register**.

ADDRESSES: Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared for the designation are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910 (301) 713–3125. Comments regarding the collection-of-information requirements contained in this rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Desk Officer for NOAA) and to Richard Roberts, NOAA, Work Station 8118, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Brody, (734) 741–2270.

SUPPLEMENTARY INFORMATION:

I. Background

On June 23, 1997, NOAA published a notice in the **Federal Register** proposing the designation of an approximately 808 square-mile (2093 square-kilometer) area of waters encompassing and surrounding Thunder Bay, Lake Huron, Michigan, and the submerged lands thereunder as a National Marine Sanctuary (62 FR 33768), based upon the national significance of the area's collection of underwater cultural resources (primarily shipwrecks). The Thunder Bay region contains more than 160 shipwrecks that span more than a century of Great Lakes maritime history. Following publication of the **Federal Register** notice and in response to the State of Michigan, NOAA agreed to reduce the size of the Sanctuary to approximately 448 square miles (1169 square kilometers). This smaller area contains approximately known and suspected 116 shipwrecks. Collectively, Thunder Bay's shipwrecks present a microcosm of the Great Lakes commercial shipping industry. Based on studies undertaken to date, there is strong evidence of Thunder Bay's national historical significance, as the sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers. Additional significance is attached to the collection (or number) of shipwrecks in the Thunder Bay region, if not to individual vessel characteristics. A large array of shipwrecks exists in the Thunder Bay region, including virtually all types of vessels used on the open Great Lakes. These vessels were engaged in nearly every type of trade, thereby linking Thunder Bay inextricably to Great Lakes commerce. Encompassing an extensive array of historical themes, Thunder Bay's collection of shipwrecks presents a broad history of Great Lakes culture and commerce, and from even the most general of observations, may be considered nationally significant historically. A recent study also has investigated the potential of Thunder Bay for possible National Historic Landmark status (Preliminary Comparative and Theme Study of National Historic Landmark Potential for Thunder Bay, Michigan, Martin, 1996).

The designation of this Sanctuary establishes a partnership between NOAA and the State of Michigan to jointly provide long-term protective management to Thunder Bay's underwater cultural resources. The June 23, 1997 notice also announced the availability of the Draft Environmental Impact Statement/Draft Management Plan (DEIS/DMP) prepared for the proposed designation, and provided a public comment period on the DEIS/DMP of approximately three months. Public hearings to receive comments on the proposed designation, proposed regulations, and DEIS/DMP were conducted in Harrisville; Alpena; and Rogers City, MI during September 8–10, 1997. All comments received by NOAA in response to the **Federal Register** notice, and to the public hearings were considered and, where appropriate, were incorporated. A summary of significant comments on the DEIS/DMP and proposed regulations and NOAA's responses to them follow.

Following publication of the FEIS/MP, the State of Michigan and NOAA engaged in detailed discussions about the terms of designation. These discussions focused on the name and boundary of the sanctuary, staffing arrangements, funding commitments, and formal agreements between NOAA and the State. NOAA and the State agreed to reduce the boundary, change the name of the sanctuary, and create the Joint Management Committee. NOAA and the State also agreed to enter into a formal agreement, referred to in this document as a draft Memorandum of Understanding (MOU). This agreement, which will be an interlocal agreement as described in Michigan's Urban Cooperation Act, will detail the relationship between the two parties, and will be based on the draft MOU described in the FEIS/MP.

Federal Presence in State Waters; State Sovereignty

1. Comment: The Thunder Bay Underwater Preserve provides adequate protection to the Bay's underwater cultural resources; there is no need to duplicate efforts.

Response: State of Michigan law protecting the State's underwater preserves (Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended), provides a basic level of protection for abandoned property (the State's term for underwater cultural resources). However, the Sanctuary encompasses an area of approximately 158 square miles (409 square kilometers) outside the Preserve as well as provides additional protection and resources for the Preserve.

Although the Thunder Bay Underwater Preserve has existed since 1981, the State has been unable to provide the necessary financial resources or staff to comprehensively manage it. Thus, while the Thunder Bay Underwater Preserve provides for the protection of underwater cultural resources therein, designation as a National Marine Sanctuary will provide increased resources to carry out the research, education and enforcement activities necessary to more fully know, understand and protect these resources. With the designation of a National Marine Sanctuary, NOAA and the State will become partners in managing the Sanctuary area (which almost fully encompasses the existing Preserve and protects an additional area) by providing, with Sanctuary Program and collaborative partnership funding, support for these types of activities. NOAA, as a partner, will supplement and complement State and/or local efforts to provide protection to, and education and research on, Thunder Bay's underwater cultural resources.

The Sanctuary regulations provide additional protection for the existing Preserve's underwater cultural resources. The State only protects abandoned property, while Sanctuary designation protects all underwater cultural resources. This additional protection applies to non-abandoned shipwrecks, as well as historical remnants of docks and piers (see Section 5, Regulatory Alternatives, of the Final Environmental Impact Statement/Management Plan, for a more complete discussion of the differences between State law and Sanctuary regulations).

Designation of the Sanctuary is intended to build on and strengthen the Thunder Bay Underwater Preserve. Because the Thunder Bay National Marine Sanctuary and Underwater Preserve is an equal partnership with the State of Michigan, NOAA and the State will work together to ensure that they do not duplicate each other's efforts. Given the additional financial resources and legal authorities NOAA has to offer, joint management between the State of Michigan and NOAA will provide opportunities that neither could offer on its own. There are numerous benefits associated with a National Marine Sanctuary, including enhanced opportunities for research and long-term monitoring, additional development of educational materials, and increased support for enforcement. The designation of an area as a Sanctuary draws attention to the fact that the area is nationally significant and worth protecting on a national level.

2. Comment: Any Federal government program or involvement in Alpena or surrounding communities is an intrusion into sovereign State waters. Designation of the Sanctuary will result in the loss of State control of Lake Huron, and a takeover of both management and regulation of the Thunder Bay area by the Federal government.

Response: As has been discussed and demonstrated throughout the Sanctuary feasibility process, the Thunder Bay National Marine Sanctuary and Underwater Preserve will not change the ownership or control of State lands or waters; that is, no loss of State sovereignty will occur as a result of designation of a National Marine Sanctuary. NOAA and the State agree that the State's jurisdiction and rights will be maintained and will not be relinquished. NOAA will not intrude upon or change existing State or local authorities. All existing State laws, regulations, and authorities will remain in effect. An MOU for the joint management of the Thunder Bay National Marine Sanctuary and Underwater Preserve between the State of Michigan and NOAA will contain several provisions to address this concern. A key provision will state: ''The State of Michigan has not conveyed title to or relinquished its sovereign authority over any State-owned submerged lands or other State-owned resources, by agreeing to include those submerged lands and resources within the Sanctuary boundary.''

3. Comment: The Sanctuary should have a provision requiring a review after five years to determine whether the State of Michigan still supports Sanctuary designation.

Response: Section 304(e) of NMSA requires the Secretary of Commerce to review the sanctuary management plan and implementing regulations every five years and revise the management plan as necessary. The MOU between NOAA and the State of Michigan will contain a provision requiring the Secretary to re-designate the Sanctuary and re-propose the management plan and regulations in their entirety as part of the first five-year review. The Governor of the State of Michigan will have the opportunity to review the designation, management plan and regulations in their entirety and indicate if any or all of the terms are unacceptable, in which case, the unacceptable terms will not take effect. In subsequent reviews, NOAA is not required to re-propose the entire Sanctuary but only those changes to the management plan and regulations that are subject to the Governor's approval.

Regulations

Introduction

There were a number of comments related to the breadth and nature of the proposed Sanctuary regulations. In response to public comments, NOAA made several changes to the regulations. The first change is the definition of ''underwater cultural resources.'' Several comments noted that the definition was vague and too broad. NOAA, therefore, revised the definition to make it more consistent with the State definition of ''abandoned property'' and provide more predictability to Sanctuary users as to what resources the Sanctuary is managing and protecting. The second change is the wording of one of the prohibitions in the Sanctuary regulations. To clarify what activities are prohibited, NOAA included language in the final regulations that is similar to language in Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended. The prohibition now reads, ''recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.'' The third change was to add a prohibition on the use of grappling hooks and other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

The Sanctuary regulations are limited to regulating only four categories of activities: (1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess, an underwater cultural resource; (2) drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on

the lakebottom associated with underwater cultural resources (except as an incidental result of anchoring vessels; traditional fishing operations; or minor projects that do not adversely affect underwater cultural resources); (3) using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy; and (4) interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA. The regulations prohibit these four categories of activities.

The Designation Document, which is in essence the constitution for the Sanctuary, contains a section limiting the scope of activities which the Sanctuary can regulate, on other than a temporary emergency basis, to these four categories. In order for an activity outside the scope of the activities listed for possible regulation in the Designation Document to be regulated other than on a temporary emergency basis, the Designation Document would have to be revised following the designation process set forth in Section 304 of the NMSA. This process includes extensive public involvement and review, as well as input and opportunity to veto by the Governor. In order for a temporary emergency regulation to be imposed, the Governor must approve. In order for an activity within the scope of activities listed for possible regulation in the Designation Document to be regulated or for an existing regulation affecting such an activity to be revised, the procedures of the Administrative Procedure Act would have to be followed, and under the terms of the MOU that NOAA and the State will enter into the Governor would have the opportunity to veto the regulation.

The Sanctuary regulations are different from the State law governing the State's underwater cultural resources in four ways: (1) The Sanctuary regulations apply to all shipwrecks, not just those that are abandoned; (2) The use of grappling hooks or other anchoring devices is prohibited on underwater cultural resource sites that are marked with a mooring buoy; (3) ''Hand-taking'' of artifacts outside the Thunder Bay Underwater Preserve, but still within the Sanctuary boundary, is prohibited; and (4) Permit applications to conduct a prohibited activity are more detailed to satisfy the Federal Archaeology Program guidelines.

4. Comment: Fishing should not be regulated or restricted by the Sanctuary. Fishing in Thunder Bay could be affected by designation of a National Marine Sanctuary.

Response: Commercial and recreational fishing activities (including fishery-related research and stocking programs) are not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Of course, fishing within Thunder Bay is subject to State regulation and to non-sanctuary Federal regulation under such authorities as the Endangered Species Act. For example, State regulations require all but diving-tending vessels to not be operated within 200 feet of a buoyed diver's flag. The regulation of who may use the Thunder Bay National Marine Sanctuary and Underwater Preserve and for what purpose is not included within the scope of possible regulated activities.

If a fishing activity alters a Sanctuary underwater cultural resource (an act that is prohibited by 15 CFR 922.193(a)(1)), the fishing activity would be in violation of the Sanctuary regulations regardless of whether it is a traditional fishing activity (defined in 15 CFR 922.191). However, traditional fishing activities are exempt from the prohibition on altering the lakebottom (15 CFR 922.193(a)(2)). A permit would be necessary to conduct a prohibited activity.

5. Comment: The Sanctuary should not restrict diving and access to shipwrecks.

Response: Non-consumptive access to shipwrecks and non-consumptive commercial and recreational diving are not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Of course, diving within Thunder Bay is subject to State regulation, such as the requirement to fly a ''divers'' flag when diving. No Sanctuary permits are required to dive in the Sanctuary. However, the recovery, alteration, destruction, or possession of underwater cultural resources (*i.e.,* the consumption of underwater cultural resources) is prohibited.

It will be the policy of the Thunder Bay National Marine Sanctuary and Underwater Preserve to foster free and open access to all underwater cultural resources. This is the philosophy of the National Marine Sanctuary Program. Non-consumptive diving is allowed and encouraged in all National Marine Sanctuaries. For example, the Florida Keys National Marine Sanctuary has constructed a ''shipwreck trail,'' which encourages access to the shipwrecks. Even on the Monitor (the Civil War ironclad off the coast of North Carolina), which is too deep for most recreational divers, licensed dive operators have been allowed to conduct non-consumptive dives.

On rare occasions, the Thunder Bay National Marine Sanctuary and Underwater Preserve may need to place temporary emergency limits on access to a shipwreck (*e.g.,* if a historically significant shipwreck is newly discovered and NOAA and the State need to document the artifacts). The only way in which NOAA could do this would be through the imposition of an emergency regulation pursuant to 15 CFR 922.196. In accordance with the regulations and the MOU that will be entered into, NOAA cannot impose a temporary emergency regulation without the approval of the Governor.

In the event that NOAA imposes some type of restriction on access to allow documentation of a newly-discovered shipwreck, NOAA envisions using volunteer divers who are trained to assist the agency in collecting information.

6. Comment: The Sanctuary should not prohibit anchoring at shipwreck sites.

Response: Due to damage to underwater cultural resources that could be caused by grappling hooks or anchoring devices, and in response to a recommendation from the Sanctuary Advisory Council (SAC), NOAA added a prohibition on the use of grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy (15 CFR 922.193(a)(3)). If a site is not marked with a mooring buoy, grappling hooks or anchoring devices may be employed. However, because of the potential of damaging an underwater cultural resource, NOAA recommends that such devices only be used at a non-mooring buoy-marked site when there is no alternative. In such case, the person intending to use an anchoring device should consult with the Sanctuary manager to determine ways of avoiding damage to the underwater cultural resource at the site (e.g., obtaining information about how the anchoring device should be placed and oriented to avoid damaging vulnerable parts of the resource).

The State of Michigan considers damage to abandoned property caused by grappling hooks a violation of Part 761, Aboriginal Records and Antiquities of Public Act 451 (1994), as amended. Therefore, the Sanctuary regulation is fully consistent with state law.

As discussed in the response to comment 23, a high priority activity once the Sanctuary is designated is the placement of mooring buoys at all shipwreck sites where a mooring buoy may feasibly be placed. This will allow safe access for divers, allow boats to tie up to the mooring buoys, and eliminate the need for anchoring on the lakebottom.

7. Comment: The Sanctuary should not restrict or regulate private archaeological surveys.

Response: The Sanctuary regulations prohibit the recovering, altering, destroying, or possession of any underwater cultural resource regardless of how that recovering, altering, destroying, or possession occurs (*e.g.,* through the conduct of a private archaeological survey). Even if the conduct of private archaeological surveys is not expected to alter or otherwise adversely impact an underwater cultural resource, NOAA encourages the surveyor to consult with the Sanctuary manager. In general, NOAA and the State encourage research and documentation on underwater cultural resources, as long as the activity does not violate the Sanctuary regulations. If an activity would violate a Sanctuary prohibition, a Sanctuary permit authorizing the activity must first be obtained.

8. Comment: The Sanctuary should not restrict commercial diving charter operations.

Response: See response to comment 5. The regulations do not place any restrictions on the number of commercial dive charter operations in the Sanctuary, nor do they require dive charters to have a license or to register their boats for use in the Sanctuary. NOAA will not charge a user fee for commercial diving charter operations. NOAA and the State will work in partnership with dive operators to educate divers about the Sanctuary.

9. Comment: The Sanctuary should not require registration for divers or boats.

Response: The regulations do not require divers or boat operators to register to be in Sanctuary waters. NOAA will not charge a user fee for divers or boat operators.

10. Comment: The Sanctuary should not grant leases or issue permits for the removal of oil and/or gas from locations under the bottomlands within the Sanctuary boundary.

Response: The State, not the Sanctuary, has ownership rights to and leasing authority over oil, gas, and mineral resources lying beneath the lakebottom. The need to obtain a Sanctuary permit would arise only if the State grants a lease for the removal of oil and/or gas and that activity would affect underwater cultural resources. If such activity would not impact underwater cultural resources, no Sanctuary permit would be required.

The Sanctuary regulations include a prohibition on drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of: (i) anchoring vessels; (ii) traditional fishing operations; or (iii) minor projects that do not adversely affect underwater cultural resources. Any person conducting an activity that adversely impacts underwater cultural resources would be required to obtain a permit pursuant to the Sanctuary regulations. Any such permit would have to meet the requirements of Section 922.195.

11. Comment: The Sanctuary should not restrict property rights and land use.

Response: The Sanctuary will have no effect on existing property rights or on existing land uses. The landward boundary of the Sanctuary extends along the ordinary high water mark between the north and south Alpena County lines. The MOU will contain the following provision: ''NOAA does not have the ability to, and therefore cannot, acquire land to regulate activities landward of the ordinary high water mark (e.g., limiting public access from the shore to Lake Huron). NOAA does have authority to co-manage activities lakeward of the ordinary high water mark pursuant to the Sanctuary regulations.''

12. Comment: The Sanctuary should not regulate hunting activities.

Response: Hunting is not included within the Designation Document's scope of possible activities that could be regulated as part of the Sanctuary regime. See introduction to regulation-related comments and responses. Any hunting activity on land would be outside the Sanctuary boundary and therefore not affected at all by the Sanctuary regulations. Waterfowl hunting on the water is outside the scope of possible activities that could be regulated as part of the Sanctuary regime.

13. Comment: The Sanctuary should not impose more regulations in the future.

Response: The Sanctuary has a very narrow management focus on underwater cultural resources, with virtually no effect on individual activities in Thunder Bay unless these activities would cause a violation of one of the four categorical prohibitions in the regulations.

The Designation Document, which is in essence the constitution for the Sanctuary, contains a section limiting the scope of activities which the Sanctuary can regulate, on other than a temporary emergency basis, to these four categories. In order for an activity outside the scope of the activities listed for possible regulation in the Designation Document to be regulated other than on a temporary emergency basis, the Designation Document would have to be revised following the designation process set forth in Section 304 of the NMSA. This process includes extensive public involvement and review, as well as input and opportunity to veto by the Governor. In order for a temporary emergency regulation to be imposed, the Governor must approve. In order for an activity within the scope of activities listed for possible regulation in the Designation Document to be regulated or for an existing regulation affecting such an activity to be revised, the procedures of the Administrative Procedure Act would have to be followed and under the terms of the MOU that will be entered into the Governor would have the opportunity to veto the regulation.

14. Comment: The definition of traditional fishing does not specifically reference tribal fishing.

Response: NOAA included in the proposed Sanctuary regulations a definition of ''traditional fishing'' because it is an activity that is exempt from 15 CFR 922.193(a)(2), alteration of the lakebottom. NOAA agrees that even though tribal fishing is prohibited in this area under the 1985 Consent Agreement, it is an activity that was ''customarily conducted within the Sanctuary prior to its designation.'' NOAA, therefore, has clarified in the final regulations that tribal fishing falls under the definition of traditional fishing.

15. Comment: The Sanctuary should not be allowed to issue emergency regulations.

Response: Pursuant to 15 CFR 922.196, an activity may be temporarily regulated in an emergency to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource. Eliminating this authority would jeopardize the Sanctuary's ability to react and respond quickly to emergency situations threatening Sanctuary resources. Although the provision for emergency temporary regulation is vitally important to ensure the Program's ability to respond to emergency situations, the mechanism is

very rarely used. The Designation Document and the regulations require that NOAA obtain the approval of the Governor prior to an emergency regulation taking effect. The MOU between NOAA and the State will contain the same provision.

16. Comment: Exempt from prosecution charter boat operators and personal sport divers who dive a wreck without a mooring buoy, if the reason for the absence of a buoy is that it has not been set, or that it has been accidentally destroyed.

Response: The regulations for the Thunder Bay National Marine Sanctuary and Underwater Preserve do not require that divers use mooring buoys. The regulations at 15 CFR 922.193(a)(3), however, prohibit the use of grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy. If the site does not have a mooring buoy, there is no prohibition on the use of grappling hooks or anchoring devices. See response to Comment 6. As discussed in Comment 23, it will be a priority of the Thunder Bay National Marine Sanctuary and Underwater Preserve to install and maintain a mooring buoy system.

17. Comment: Adopt Sanctuary regulations that mirror the State of Michigan regulations protecting underwater cultural resources, per Alternative A, Regulatory Alternatives.

Response: NOAA's preferred regulatory alternative is Alternative B (*see* Section 5 of the FEIS/MP), which is to adopt Sanctuary regulations consistent with the purpose and intent of State regulations under Part 761, Aboriginal Records and Antiquities, of P.A. 451 (1994), as amended, and Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended. The primary advantage of Alternative B is that protective coverage is extended to all shipwrecks within the Sanctuary boundary; not just to ''abandoned'' shipwrecks, as defined under State law and the federal Abandoned Shipwreck Act. In effect, adoption of Alternative B will serve as a safety net for State underwater cultural resources that might be unprotected under either State law or the Abandoned Shipwreck Act.

NOAA has revised the Sanctuary regulations to reflect the language in the State law. For example, NOAA changed the definition of ''underwater cultural resources'' to a definition that uses terms similar to the State definition of ''abandoned property'' (which is the State term for underwater cultural resources). NOAA also changed the wording of a prohibited activity (15 CFR 922.193(a)(1)) to more closely reflect the State prohibition under Part 761, Aboriginal Records and Antiquities of P.A. 451 (1994), as amended. Therefore, while NOAA is still adopting Regulatory Alternative B, this alternative is closer to Regulatory Alternative A than it was in the DEIS/DMP.

18. Comment: What procedures are in place to ensure that NOAA cannot make unilateral changes to the Sanctuary (*e.g.,* changing the scope of regulations)?

Response: See response to comment 13.

Extent of Underwater Cultural Resources in the Boundary

19. Comment: The collection of underwater cultural resources (primarily shipwrecks) in Thunder Bay is not ''nationally significant,'' and thus does not qualify for National Marine Sanctuary status.

Response: The collection of approximately 116 shipwrecks both known and thought to be located within the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve represents a large diversity of vessels that navigated the Great Lakes in the 19th and 20th centuries. Collectively, these shipwrecks reflect transitions in ship architecture and construction methods, from wooden sailing boats to early steel-hulled steamers. In addition to representing important transitions in ship architecture and construction, the collection also conveys many stories of Great Lakes transportation and commerce over the past two hundred years.

Section 303(a)(2) of the NMSA requires that in order to be designated as a National Marine Sanctuary an area contain resources or human-use values of special national significance. NOAA funded a study to determine whether the underwater cultural resources of the Thunder Bay region are nationally significant. There is strong evidence, based on this study, of national historic significance attached to this collection of underwater cultural resources located in the Thunder Bay area (*See* Preliminary Comparative and Theme Study of National Historic Landmark Potential for Thunder Bay, Martin 1996). Martin (1996) indicated that the collection of shipwrecks would likely qualify as a National Historic Landmark. In addition, several of the known shipwrecks individually have potential national historic significance, e.g., Isaac M. Scott, which foundered in the Great Storm of 1913 (*See* Section 4, E. of the FEIS/MP for a complete discussion of these shipwrecks).

20. Comment: The number of shipwrecks occurring outside Alpena County does not warrant extension of the Sanctuary boundary beyond Alpena County.

Response: Although the majority of known and suspected shipwrecks occur in waters off Alpena County, there are also a significant number of known or suspected shipwrecks occurring in waters off both Alcona and Presque Isle Counties, notably near the lighthouses at both locations. (*See* Figure 5.4 of the FEIS/MP, ''Approximate Locations of Shipwrecks in the Thunder Bay Region''). As described in Table 5.1 of the FEIS/MP, ''Number of known, probable, and suspected shipwrecks,'' the greatest increase occurs from Boundary B (Alpena County lines) and Boundary C (Presque Isle Lighthouse as the northern boundary and Sturgeon Point Lighthouse as the southern boundary C NOAA's preferred boundary). The number of known, probable, and suspected shipwrecks increases from 116 in Boundary B to 160 in Boundary C.

In response to a request by the State of Michigan, however, NOAA reduced the size of the boundary from 808 square miles (2093 square kilometers) to 448 square miles (1169 square kilometers). The revised boundary still uses the 83 degrees longitude as the lakeward boundary, but uses the Alpena County lines as the north and south landward boundary points. The State requested a smaller boundary due to the higher concentration of shipwrecks in this area and fewer local governments with whom to coordinate. NOAA agreed to the adoption of Boundary B with the stipulation that an inventory will be conducted of shipwrecks in the larger area (the additional 360 square miles (932 square kilometers)) to determine if boundary expansion is warranted after five years. The Governor has veto authority over boundary expansion.

To achieve the uniformity of regulations, the State intends to make the boundary of the existing state Underwater Preserve coterminous with the National Marine Sanctuary.

21. Comment: The National Marine Sanctuary Program should not be supporting sanctuaries that only protect cultural resources.

Response: Section 301(a)(2) of the NMSA states ''the Congress finds that certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, or esthetic qualities which give them special national, and in some cases, international significance.'' The Secretary of Commerce is not required to designate national marine sanctuaries based upon a finding that *all* of these listed criteria are present. A sanctuary may be designated based on the national

significance of any one of the listed criteria, provided that the requirements of sections 303 and 304 of the NMSA are met.

22. Comment: Arrange the boundaries of the Sanctuary to include only areas with a high concentration of known and probable wrecks.

Response: It would be very difficult administratively to manage a Sanctuary with many noncontiguous areas as envisioned in this comment. While it is estimated the Sanctuary contains approximately 116 shipwrecks, and some of these have been identified, many more are thought to be in the Thunder Bay area and have yet to be located and documented. Provided a shipwreck lies within the boundary of the contiguous area, it is subject to all Sanctuary protections. If as the commenter suggests, a sanctuary was designated consisting of noncontiguous boundaries lying around each known wreck, in order to protect additional wrecks, the expensive and cumbersome sanctuary designation process would have to be repeated.

Management of Shipwrecks

23. Comment: Use State and federal funds to maintain mooring buoys, anchored within 50 feet of each dive site, from May 1st to October 31st of each year, on all identified wrecks within the Sanctuary that are within 130 feet of the surface. Fit the anchor line for each buoy with a permanent guideline that maintains a depth of ±5 feet from the shallowest point of the dive site.

Response: The placement of mooring buoys is an important element of ensuring safe and open public access to Thunder Bay's underwater cultural resources, while also ensuring the protection of these resources. NOAA and the State will pursue placing mooring buoys at identified dive sites, and will also pursue collaboration with private and/or other governmental sources of support to implement full mooring buoy placement and maintenance, as appropriate. The specifics of mooring buoy placement will be addressed following designation, in part through findings and assessments resulting from Sanctuary inventory surveys. As with any activity, however, the placement and maintenance of mooring buoys will be subject to available funding.

24. Comment: Regularly publicize coordinates of existing and newly-found shipwrecks, dates of upcoming studies of wrecks and other research projects, and results of completed and ongoing research projects.

Response: Consistent with goals of the National Marine Sanctuary Program Strategic Plan, NOAA promotes ''coordinated research and monitoring efforts throughout the Program.'' As discussed in the Management Plan (*see* Section 3 of the FEIS/MP), goals of the research/monitoring program at Thunder Bay include inventory and assessment of Sanctuary resources, and development of collaborative programs with other agencies, businesses, and organizations.

NOAA has authority under Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resource and Protection Act to withhold the location of certain shipwrecks. It will be the policy of the Thunder Bay National Marine Sanctuary and Underwater Preserve to make these coordinates available to the public. However, for safety or enforcement purposes, exact locations of newly discovered shipwrecks may not be reported immediately.

Dates of Sanctuary-funded or Sanctuary-permitted studies of shipwrecks and other research projects will be available to the interested public, once those dates are established. Finally, results of completed research also will be made available to the interested public; progress on ongoing research projects will also be made available to the public, as appropriate.

25. Comment: Use State and federal funds, and/or assistance in fundraising, to purchase and install a hyperbaric chamber near the Sanctuary.

Response: Decisions related to the purchase and installation of a hyperbaric chamber near the Sanctuary to support Sanctuary research/monitoring programs will be made as annual detailed research plans for the Sanctuary are developed. Such plans also will include discussion of funding for various equipment and supplies. NOAA acknowledges the importance of having a hyperbaric chamber in close proximity to the Thunder Bay National Marine Sanctuary and Underwater Preserve.

26. Comment: Provide incentives and mechanisms to encourage private individuals and companies to explore shipwrecks not yet discovered; and to share information and documentation they already have, or gather in the future, on shipwrecks in the area.

Response: Among the highest priorities to ensure effective Sanctuary management are research and inventory activities to establish baseline information on the location and status of underwater cultural resources. There will be no restrictions on divers or other public access to known or suspected shipwrecks within the Sanctuary, provided diving activity is conducted in a manner that complies with Sanctuary and other valid regulations. Individuals will be encouraged to explore the Sanctuary for the potential discovery of underwater cultural resources, and to share this information and documentation. NOAA and the State will facilitate these efforts by developing and providing information forums and written and/or visual materials for the public.

27. Comment: Provide State and federal support for selecting, purchasing, cleaning up, and scuttling additional vessels within the Sanctuary.

Response: The selection, purchase, clean-up and scuttling of ''additional'' vessels within the Sanctuary will not be a management activity for the Sanctuary. The purpose of the Sanctuary is to manage and protect existing shipwrecks within the Sanctuary boundary.

Development of Educational Programs

28. Comment: Develop joint State and federal public education programs, including a web page on the Internet, to promote understanding of the resources available in the Sanctuary to the public of the State, nation, and world.

Response: Development of joint State and federal public education and interpretive programs on the maritime heritage of the Thunder Bay area are contemplated in the Management Plan (*see* Section 3, Management Plan, FEIS/MP). Part of such programs will include further and continuing development and maintenance of a web page. A web page has already been developed containing preliminary information about the site and its progress toward National Marine Sanctuary designation. The web page address is: http://www.glerl.noaa.gov/glsr/thunderbay.

29. Comment: Provide joint federal and State support for local educational opportunities to all ages and types of schools about aspects of marine and ecological sciences and history in the Thunder Bay area; train educators in the use of that programming.

Response: As generally described in Section 3, Management Plan, the Sanctuary's goals for education include development and implementation of science-based programs that promote awareness and understanding of the Thunder Bay area's underwater cultural resources and maritime heritage. The primary purpose of the Thunder Bay National Marine Sanctuary and Underwater Preserve is to provide comprehensive, long-term protection—through education, research and management programs—for the

nationally-significant collection of underwater cultural resources found in the Thunder Bay area. Given this singular management focus, development and support for programming (and training in the use of that programming) to educate children, college students, and the public about aspects of marine and ecological science and history in the Thunder Bay area will not be a high management priority for the Sanctuary, unless such inquiries relate to maritime heritage (*e.g.,* the effects of zebra mussels on shipwrecks).

30. Comment: Provide that the Sanctuary Manager or designee shall make presentations as requested to community organizations on the functions, budget, and staff of the Sanctuary.

Response: Success of the Thunder Bay National Marine Sanctuary and Underwater Preserve will depend in large part upon its integration into the local and surrounding communities. Outreach and communication efforts made by the Sanctuary staff to those communities will support such integration. In coordination with its State partners and others, the Sanctuary Manager will be available to make presentations to community organizations on Sanctuary activities, programs and administration.

31. Comment: Provide publicity and mechanisms to invite and incorporate the involvement of local residents, who have appropriate credentials and experience, in Sanctuary research projects.

Response: A Sanctuary Research Plan will be developed, identifying research and monitoring activity priorities. As Sanctuary funds are available, some may be competitively awarded to support these research and/or monitoring projects. The funds will be awarded to individuals with appropriate credentials and experience from local residents and those from outside the area.

32. Comment: Provide specific mechanisms for involving the diving community in planning and conducting research and educational projects related to the Sanctuary.

Response: As with area residents interested in potential Sanctuary research and educational projects, the Sanctuary will make information and opportunities for planned research and education projects known to the diving community. One way for interested area residents and representatives of the diving community to become involved in helping to plan for such projects is through the SAC and its subcommittees. The SAC will advise and provide recommendations to the Sanctuary Manager regarding development of priorities for annual research and education plans. In other sanctuaries, NOAA depends on the experience and expertise of divers to provide input to the Sanctuary Manager. NOAA and the State will place a high priority on building a strong relationship with local and regional divers.

33. Comment: Use federal and State funds to document the cultural resources within the Sanctuary and to provide at least one public resource center through each tourist season.

Response: The identification and documentation of underwater cultural resources within the Sanctuary clearly are priority items for planning site management, which includes the provision of complete, current information to the user and other interested publics. NOAA and the State will pursue development of a Maritime Heritage Center with other agencies, businesses, and organizations. This type of Center would provide the public with information on the Sanctuary, its resources, and the maritime heritage of the Thunder Bay area.

User Fees

34. Comment: A number of commenters expressed concern that user fees may be imposed on various Sanctuary users, such as those engaged in fishing, diving or boating activities.

Response: NOAA will not impose user fees on any activity within the Sanctuary. The MOU between NOAA and the State of Michigan will contain a provision stating that any user fee would be subject to a veto by the Governor of Michigan.

Conflict Resolution

35. Comment: Tribal participation must be included in the conflict resolution procedures.

Response: NOAA agrees that tribal interests should be considered in the conflict resolution process. The MOU between the State of Michigan and NOAA will set forth a conflict resolution process. The Chippewa-Ottawa Fishery Treaty Management Authority and other tribes may enter into a separate MOU(s) with NOAA and/or the State to address such concerns.

36. Comment: How will the Sanctuary deal with potential conflicts between fishermen and divers?

Response: State regulations require divers to fly a ''divers'' flag and for all vessels not tendering the divers to not be operated within 200 feet of the flag. This should minimize conflicts between fisherman and divers with minimal interference and inconvenience to fishermen. Accordingly, there would not appear to be a need for separate Sanctuary regulations on this subject matter. If conflicts do arise, there will be a framework for conflict resolution in the MOU. The SAC or other local forum will be critical to the resolution of this type of conflict.

Economic Impact Assessment

37. Comment: There is an error in the Economic Impact Assessment regarding the transcription of projected use data from one table to another.

Response: The DEIS/DMP contained a word processing error in Table 1 of Appendix F and Table 6.1 in Volume 1 of the Draft EIS/DMP (i.e., the use projections for bird watching [overnight trips] were inadvertently duplicated for kayaking/canoeing [day trips]). The word processing error resulted in trip figures after bird watching (overnight trips) to be ''thrown off'' by one line. The Total party trips in Table 1 and Table 6.1 should be 6,150 for FY97; 9,200 for FY98; 14,175 for FY99; 23,000 for FY00; and 31,700 for FY01 (as shown on the last line of Table 2 in Appendix F). The use projections in Table 1 and Table 6.1 should have been consistent with Table 2 in Appendix F of the DEIS/DMP. This correction was made in the FEIS/MP.

38. Comment: The use of kayaking, bird watching and sightseeing as categories for tourism in the economic impact assessment is not appropriate because the Sanctuary is limited to the protection of underwater cultural resources.

Response: Section 6 of the DEIS/DMP (the economic impact assessment) included bird watching, kayaking/canoeing, and sightseers in the impact calculations for an ''underwater'' sanctuary for several reasons. First, the Sanctuary will interpret and promote the entire ''maritime cultural landscape'' in partnership with the community and state, and the landscape includes resources other than shipwrecks. Second, a certain segment of visitors will be attracted to the region simply because there is a National Marine Sanctuary there. They may be primarily interested in cultural heritage, but can realistically be assumed to participate also in recreation associated with natural heritage (in addition, some of this ''natural'' heritage is an important component of the maritime cultural landscape). Finally, social research involving heritage tourism indicates that a primary motivation for visitation is history and human heritage, but that these visitors also participate in other outdoor recreation activities. These are supported by social research

in heritage tourism; aggregate trends and projections of use for bird watching, canoeing/kayaking, and sightseeing (i.e., nature-based tourism along the shorelands and from boats); and some results from the Florida Keys recreation and tourism study (Leeworthy et al. 1996).

39. Comment: The impact of increased visitors on the area's local infrastructure and on the environment is not adequately addressed.

Response: The economic impact assessment was limited in scope due to financial constraints and availability of data. However, NOAA does not believe the projected increase in visitation would cause stresses on the area's infrastructure. The City of Alpena is growing, with new businesses and stores locating there. This growth, which is not a result of the Sanctuary, will prepare the City for increased visitation.

Other

40. Comment: Is State or local matching funding required for the Sanctuary?

Response: The NMSA does not require any State and/or local support for Sanctuary programs and activities. The MOU will contain the following statement to address this concern: ''No local funding is required to implement the Management Plan, its implementing regulations, or any provisions of this MOU.'' Initial NOAA funding levels for the Sanctuary will be at least $250,000 annually. This figure could be higher or lower depending on appropriations. The State of Michigan, as a joint manager of the sanctuary/preserve, has also committed to provide financial support. In addition to this level of support, there are opportunities for revenue enhancement and cost-sharing with a variety of agencies, organizations, institutions, businesses and individuals, to assist in meeting Sanctuary Program objectives. NOAA and the State will continue to promote and encourage means such as partnerships and sponsorships, to raise additional support for Sanctuary programs.

41. Comment: Involve the existing SAC in reviewing and revising the MOU to ensure that it accurately addresses local concerns.

Response: Prior to the release of this FEIS/MP, the SAC was requested to review and make recommendations to NOAA regarding the MOU. Before the FEIS/MP release, the SAC also reviewed and endorsed the Programmatic Agreement among NOAA, the State of Michigan and the Advisory Council on Historic Preservation. The SAC's involvement has been critical in shaping the terms and scope of the Sanctuary.

42. Comment: Who on the state or local level would be responsible for enforcement of the Sanctuary regulations? The Final Management Plan should include a provision for funding enforcement activities.

Response: Enforcement of Sanctuary regulations will be discussed in the MOU, and the MOU will provide for possible deputization of State of Michigan, Michigan State Police, and county marine sheriff enforcement personnel, for the enforcement of Sanctuary regulations. NOAA envisions developing a separate MOU for enforcement. Under such an agreement, the appropriate State agency would be recognized as the lead enforcement entity, and provisions for necessary cost-sharing for law enforcement activities would be made.

43. Comment: NOAA needs to address the impacts of zebra mussels on shipwrecks.

Response: NOAA recognizes that zebra mussels will be a management concern for the Sanctuary. If this is determined to be a priority research activity, funds will be allocated to examine the impact of zebra mussels on shipwrecks.

44. Comment: The availability of the open water placement site for future placement of clean dredged materials is critical for continued maintenance of the Federal navigation channel at Alpena Harbor.

Response: NOAA recognizes the importance of maintaining the navigation channel at Alpena Harbor; it is not aware of adverse impacts to underwater cultural resources caused by the open water placement site. Unless there are adverse impacts, the Sanctuary will not impose restrictions on the continued availability of the open water placement site currently used by the Corps for placement of clean dredged materials resulting from periodic maintenance dredging of navigation channels and harbors located on Lake Huron.

45. Comment: Safety of Sanctuary users should be considered in light of commercial shipping traffic in Thunder Bay. Mooring buoys should be kept out of commercial course lines.

Response: After Sanctuary designation, NOAA and the State will work with the U.S. Coast Guard and the Lake Carriers' Association to develop a safe and effective mooring buoy system, as well as to ensure that mooring buoys are not placed in major shipping channels.

46. Comment: In the event of an oil spill, NOAA should comply with U.S. Coast Guard Area Contingency Plan.

Response: After designation, NOAA will work closely with the U.S. Coast Guard to ensure that NOAA is aware of, and part of, the Area Contingency Plan. NOAA added information in Section 4 of the FEIS/MP on the Area Contingency Plan.

47. Comment: Why isn't the Fame included in the list of shipwrecks?

Response: Upon further research, it is apparent that the ship came to rest on the shores of Presque Isle. The ship's unusually accident-prone history, including its stranding in Thunder Bay early in its career, likely contributed to the confusion regarding its eventual fate. It appears that few remains of the vessel probably exist at the location of its loss because of salvage and shoreland development activities. Due to the adoption of a smaller boundary, however, the Fame will be outside the Sanctuary boundary.

II. Designation Document

Section 304(a)(4) of the Act requires that the terms of designation set forth the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities subject to regulation by the Secretary to protect those characteristics. This section also specifies that the terms of the designation may be modified only by the same procedures by which the original designation is made. Thus the terms of designation serve as a constitution for the Sanctuary.

The Designation Document for the Thunder Bay National Marine Sanctuary and Underwater Preserve follows:

Designation Document for the Proposed Thunder Bay National Marine Sanctuary and Underwater Preserve

Under the authority of the National Marine Sanctuaries Act, as amended (the ''Act'' or ''NMSA''), 16 U.S.C. 1431 *et seq.*, Thunder Bay and its surrounding waters offshore of Michigan, and the submerged lands under Thunder Bay and its surrounding waters, as described in Article II, are hereby designated as the Thunder Bay National Marine Sanctuary and Underwater Preserve for the purposes of providing long-term protection and management to the conservation, recreational, research, educational, and historical resources and qualities of the area.

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and the types of activities that will be

subject to regulation by the Secretary of Commerce to protect those characteristics. The terms of designation may be modified only by the procedures provided in Section 304(a) of the Act (the same procedures by which the original designation is made). Thus, the terms of designation serve as a constitution for the Sanctuary.

Article I. Effect of Designation

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, historical, research, and educational resources and qualities of the Thunder Bay National Marine Sanctuary and Underwater Preserve (the ''Sanctuary''). Section 1 of Article IV of this Designation Document lists those activities that may be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing does not necessarily mean that an activity will be regulated; however, if an activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended to include the type of activity by the same procedures by which the original Sanctuary designation was made, as outlined in Section 304(a) of the NMSA.

Article II. Description of the Area

The Thunder Bay National Marine Sanctuary and Underwater Preserve consists of an area of approximately 448 square miles of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark of the Michigan shoreline from the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in Appendix A to the regulations.

Article III. Characteristics of the Area That Give It Particular Value

Thunder Bay and its surrounding waters contain approximately 116 shipwrecks spanning more than a century of Great Lakes maritime history. Virtually every type of vessel used on open Great Lakes waters has been documented in the Thunder Bay region, linking Thunder Bay inextricably to Great Lakes commerce. Most of the Great Lakes trades had a national, and sometimes an international, significance, and resulted in uniquely-designed vessels. Although not all of Thunder Bay's shipwrecks have been identified, studies undertaken to date indicate strong evidence of the Bay's national historic significance. The sunken vessels reflect transitions in ship architecture and construction methods, from wooden sailboats to early iron-hulled steamers.

Several major conclusions regarding Thunder Bay's shipwrecks may be drawn from research and analysis undertaken to date: they are representative of the composition of the Great Lakes merchant marine from 1840 to 1970; they provide information on the various phases of American westward expansion; they provide information on the growth of American extraction and use of natural resources; they illustrate various phases of American industrialization; one shipwreck (Isaac M. Scott) may be used to study and interpret a specific event (the Great Storm of 1913) that had strong repercussions regionally, nationally, and internationally; and they provide interpretive material for understanding American foreign intercontinental trade within the Great Lakes.

Thunder Bay was established as the first State of Michigan Underwater Preserve in 1981 to protect underwater cultural resources. Increasing public interest in underwater cultural resources underscores the importance of continued efforts to discover, explore, document, study and to provide long-term, comprehensive protection for the Bay's shipwrecks and other underwater cultural resources.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. The following activities are subject to regulation under the NMSA, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, recreational, historical, research and educational resources and qualities of the area:

a. Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy or possess, an underwater cultural resource;

b. Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations (as defined in the regulations); or

(iii) Minor projects as defined upon adoption of this regulation in R.322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (1994), as amended, that do not adversely affect underwater cultural resources (see Appendix B of Subpart R);

c. Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy;

d. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

Section 2. Consistency with International Law. The regulations governing the activities listed in Section 1 of this Article shall apply to United States-flag vessels and to persons who are citizens, nationals, or resident aliens of the United States and shall apply to foreign flagged vessels and persons who are not citizens, nationals, or resident aliens of the United States to the extent consistent with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Section 3. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss, or injury, any and all such activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. Any such emergency regulation shall not take effect without the approval of the Governor of Michigan.

Article V. Effect on Other Regulations, Leases, Permits, Licenses, and Rights

Section 1. Fishing Regulations, Licenses, and Permits. Fishing in the Sanctuary shall not be regulated as part of the Sanctuary management regime authorized by the Act. However, fishing in the Sanctuary may be regulated other than under the Act by Federal, State, Tribal and local authorities of competent jurisdiction, and designation of the Sanctuary shall have no effect on any regulation, permit, or license issued thereunder.

Section 2. Other. If any valid regulation issued by any Federal, State, or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee, in consultation with the State of Michigan, to be more protective of Sanctuary resources shall govern.

Pursuant to Section 304(c)(1) of this Act, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such lease, permit, license, approval, or other authorization, or right of subsistence use or access was issued or in existence as of the effective date of this designation. However, the Secretary of Commerce, or his or her designee, in consultation with the State of Michigan, may regulate the exercise of such authorization or right consistent with the purposes for which the Sanctuary is designated.

Article VI. Alteration of This Designation

The terms of designation, as defined under Section 304(e) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, State, Tribal, regional, and local authorities and agencies, review by the appropriate Congressional committees, and review and non-objection by the Governor of the State of Michigan, and approval by the Secretary of Commerce, or his or her designee. End Designation Document.

III. Summary of the Final Management Plan

The FEIS/MP for the Thunder Bay National Marine Sanctuary and Underwater Preserve recognizes the need for a balanced approach to

management, which reflects the multiple-use character of the area, as well as the paramount need to protect its resources. The Management Plan guides management of the Sanctuary during the first five years of operation. In describing the Sanctuary's location, resources and uses, the Management Plan discusses programs for resource protection, research, and education/interpretation, and details Federal and State agency administrative roles and responsibilities.

The Sanctuary Manager, within a year of being hired, will submit a revised Management Plan to the Joint Management Committee for approval. Revisions will be based on the Management Plan published in the FEIS, the State's August 1999, ''Thunder Bay Underwater Park and National Shipwreck Sanctuary: A Business Plan,'' and on input from the SAC and other affected parties.

Resource Protection

The highest priority management goal is to protect the underwater cultural resources of the Thunder Bay region, in partnership with the State of Michigan, to ensure the long-term use and integrity of those resources for present and future generations. Specific objectives to achieve and maintain this goal are to:

(1) Coordinate management activities with other government and non-government programs that protect underwater cultural resources;

(2) Establish innovative partnerships with local, state, federal, and tribal agencies, organizations, and businesses that support the resource protection mission of the Sanctuary;

(3) Develop active and sustainable community involvement through diverse volunteer and private sector initiatives;

(4) Establish an effective enforcement program for Sanctuary regulations that protect underwater cultural resources;

(5) Develop and implement effective emergency response and resource damage assessment programs; and

(6) Ensure that management decisions are based on the best available information, but where such information is incomplete, follow those options that best protect the Sanctuary's underwater cultural resources.

Research Program

Effective management of the Sanctuary requires the initiation of a Sanctuary research program that supports the overriding management goal of resource protection, through effective and efficient research and monitoring programs, which will:

(1) Inventory and assess Sanctuary resources, and existing and potential threats to those resources;

(2) Monitor Sanctuary resources to ensure their long-term protection and provide for evaluation of management practices;

(3) Develop a research plan that places the highest priority on research addressing threats to Sanctuary resources;

(4) Develop and encourage collaborative programs with other agencies, organizations and businesses;

(5) Identify and evaluate the values associated with Sanctuary resources (*e.g.,* historical, recreational, economic, aesthetic); and

(6) Encourage research targeted at management issues such as resolving multiple-use conflicts, and understanding user impacts.

Education Program

In order to conduct meaningful education programs that focus on underwater cultural resources and the maritime heritage of the region, the goal of the Sanctuary's education program is to improve public awareness, understanding and appreciation of these resources. Management objectives designed to meet this goal are to:

(1) Develop and implement science-based education programs that promote awareness and understanding of the Sanctuary's underwater cultural resources, Thunder Bay's maritime heritage, and the National Marine Sanctuary Program;

(2) Provide educational leadership to develop and implement collaborative education programs that meet the needs and interests of residents, local and regional schools, and visitors to the Sanctuary;

(3) Act as a clearinghouse of quality education materials (*e.g.,* curricula, equipment, technology and expertise), and assist in developing and maintaining an inventory of existing education programs so they are accessible to educators;

(4) Encourage the involvement of volunteers to help foster understanding and participation in the protection and stewardship of Sanctuary resources;

(5) Ensure that education programs support overall management goals for resource protection, research and administration; and

(6) Facilitate the transfer of Sanctuary information and experiences for use locally, regionally, nationally, and globally.

Visitor and Recreational Use

The Sanctuary Program's goal for visitor management and recreational enhancement is to facilitate, to the extent compatible with the primary objective of resource protection, public and private uses of Sanctuary resources which are not prohibited pursuant to other authorities.

Specific management objectives include:

(1) Provide relevant information about Sanctuary regulations, use policies and standards;

(2) Collaborate with public and private organizations in promoting compatible uses of the Sanctuary;

(3) Encourage the public using the Sanctuary to respect the sensitivity and quality of Sanctuary resources; and

(4) Monitor and assess the levels of uses to identify and control potential degradation of Sanctuary resources, and to minimize potential use conflicts.

Sanctuary Administration

The Sanctuary Administration Program focuses on the roles and responsibilities of the agencies, organizations, and businesses that will be involved in operation of the Sanctuary. Successful operation of the Sanctuary will be possible only through cooperative efforts of appropriate local, State, federal and tribal agencies, organizations, and businesses. This section also discusses potential Sanctuary staff and facilities, including staff roles, office establishment in Alpena, with possible satellite offices (if needed in the future), and development of a Maritime Heritage Center to enhance education opportunities for both local residents and visitors to the region. The selection of Alpena, Michigan as the location of the Sanctuary office is premised on its central location on Thunder Bay.

The Sanctuary regulations require the establishment of a state/federal Joint Management Committee. The Joint Management Committee, which will be comprised of one State and one NOAA representative, will exercise decision-making authority over key Sanctuary management issues, such as approval of the Management Plan, approval of annual work plans, and approval, on an annual basis, of the expenditure of available funds.

The Sanctuary Advisory Council will provide advice and recommendations to the Sanctuary Manager and the Joint Management Committee about issues related to Sanctuary programs and implementation. The existence of a SAC encourages community participation in the Sanctuary's management. Membership may not exceed fifteen individuals, and members will be mutually agreed upon by NOAA and the State of Michigan.

Finally, a five-year projection of Sanctuary activities, necessary financial obligations, and economic impacts of the Sanctuary is provided.

IV. Summary of Regulations

The regulations set forth the boundary of the Thunder Bay National Marine Sanctuary and Underwater Preserve; establish a state/federal Joint Management Committee, prohibit a narrow range of activities focused exclusively on the protection of Thunder Bay's underwater cultural resources; establish certification and permitting procedures; provide for the promulgation of emergency regulations; provide for consultation affected federally-recognized Indian tribes; and specify procedures for giving a vessel 50 years or older that sinks in the Sanctuary after the date of designation the status of an underwater cultural resource. Other provisions of the existing National Marine Sanctuary Program regulations also apply to the Sanctuary. These include the regulations for certification of existing permits and other authorizations; notification and review procedures to conduct otherwise prohibited activities; the maximum per day penalties for violating Sanctuary regulations; and the procedures applicable to administrative appeals.

Specifically, the regulations revise the regulations applicable to all National Marine Sanctuaries to include the Thunder Bay National Marine Sanctuary and Underwater Preserve and add a new Subpart R to Part 922, title 15, Code of Federal Regulations, to provide the regulations applicable just to the Thunder Bay National Marine Sanctuary and Underwater Preserve.

It is significant to note that the definition for sanctuary resource in section 922.3, the definition section applicable to all National Marine Sanctuaries, is revised to reflect the fact that the only sanctuary resources in the Thunder Bay National Marine Sanctuary and Underwater Preserve are underwater cultural resources.

In response to a request from the State of Michigan, the name of the Sanctuary has been changed from the ''Thunder Bay National Marine Sanctuary'' to the ''Thunder Bay National Marine Sanctuary and Underwater Preserve.'' This name change recognizes the State's designation of 290 square miles (751 square kilometers) of Thunder Bay as the Thunder Bay Underwater Preserve and the role of the State in jointly managing the sanctuary/preserve with NOAA.

Section 922.190 and Appendix A following § 922.198 set forth the boundary of the Sanctuary. In response to concerns by the State of Michigan, NOAA reduced the size of the boundary from 808 square miles (2093 square kilometers)(preferred boundary alternative A) to 448 square miles (1169 square kilometers)(boundary alternative B). The revised boundary still uses the 83 degrees longitude as the lakeward boundary, but uses the Alpena County lines as the north and south landward boundary points. The State requested a smaller boundary due to the higher concentration of shipwrecks in this area and fewer local governments with whom to coordinate. NOAA agreed to the adoption of boundary alternative B with the stipulation that an inventory will be conducted of shipwrecks in the larger area (the additional 360 square miles (932 square kilometers)) to determine if boundary expansion may be warranted after five years. The Governor has veto authority over any future boundary expansion.

Section 922.191 defines various terms applicable specifically to the Thunder Bay National Marine Sanctuary and Underwater Preserve. Underwater cultural resources are defined to be:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and (2) any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also includes any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

The definition of ''underwater cultural resource'' was modified from the draft regulations. The revised definition reflects terms that are similar to the State of Michigan definition of ''abandoned property.'' NOAA modified the definition to make it clearer to the public the difference between State of Michigan law and the Sanctuary regulations.

NOAA also modified the definition of traditional fishing to clarify that it includes subsistence fishing and all tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

State of Michigan agency representatives suggested that NOAA include resources that are significant primarily due to their recreational attraction and use within the definition of underwater cultural resources, similar to provisions of Part 761, Aboriginal Records and Antiquities of Public Law 451 (1994), as amended. NOAA's focus has been on those resources that are significant due to their historical, cultural, or archaeological qualities. Many of the resources within NOAA's proposed definition include sites that enjoy a substantial amount of recreational use; consequently NOAA has determined that the proposed definition of ''underwater cultural resource'' does not require expansion.

Other terms appearing in the regulations are defined at 15 CFR part 922, subpart A, and/or in the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

Section 922.192 is added to establish a state/federal Joint Management Committee (JMC), in recognition that the underwater cultural resources are in State waters and located wholly on State bottomlands. The JMC will ensure that NOAA and the State of Michigan are equal partners in management of the sanctuary/preserve. The JMC, which will be comprised of one State and one NOAA representative (who cannot be the Sanctuary Manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than the Sanctuary Manager)), will exercise decision-making authority over key sanctuary management issues, such as approval of the Management Plan, approval of annual work plans, and approval, on an annual basis, of the expenditure of available funds consistent with those plans. In the event of a disagreement between NOAA and the State, the parties will adhere to the conflict resolution procedures described in the MOU.

The JMC is also given the responsibility of developing a position description, recruiting prospective candidates, interviewing candidates, and taking part in the annual performance evaluation of the Sanctuary Manager. While the Sanctuary Manager will be a Federal civil servant (as are all sanctuary managers) and thereby subject to Federal civil service regulations including those relating to hiring and firing, the Sanctuary Manager must satisfy the expectations of both parties.

Pursuant to Section 922.192(f), membership in the JMC is limited to NOAA and the State of Michigan. However, the JMC may invite public parties (e.g., local units of governments)

to participate in certain aspects of sanctuary management, as appropriate. The interlocal agreement between NOAA and the State of Michigan (which will be based on the draft MOU published in the FEIS/MP) will describe the process for becoming a party to the interlocal agreement. Local governments may also be members of the SAC, and in that capacity will serve in an advisory role on a range of Sanctuary management issues.

Section 922.193 prohibits a narrow range of activities and thus makes it unlawful to conduct them. However, the prohibited activities could be conducted lawfully if:

(1) Necessary for law enforcement, or to respond to an emergency threatening life or the environment;

(2) Conducted pursuant to a valid lease, permit, license, or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or to any valid right of subsistence use or access, in existence as of the effective date of this designation subject to certification by the Director of the Office of Ocean and Coastal Resource Management under § 922.194 and § 922.47; or

(3) Conducted in accordance with the scope, purpose, terms and conditions of a State or Federal permit issued pursuant to § 922.194, § 922.195, and § 922.49; a National Marine Sanctuary permit issued pursuant to § 922.194, § 922.195, and § 922.49; or a Special Use permit issued pursuant to Section 310 of the NMSA.

The first activity prohibited is recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource, from within the boundary of the Sanctuary. The intent of this regulation is to protect the underwater cultural resources of the Sanctuary for the benefit of the public through, for example, education, observation *in situ,* and research. To clarify what types of activities are subject to the Sanctuary regulations, NOAA included language in the final regulations that is similar to language in State law—Part 761, Aboriginal Records and Antiquities of Public Act 451, as amended.

The second activity prohibited is drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of: (a) Anchoring vessels; (b) traditional fishing operations (as defined in the regulations); or (c) minor projects that the State Archaeologist certifies will not adversely affect underwater cultural resources. Appendix B to Subpart R lists the minor projects that may fall within this latter exception (taken from the current version of State administrative rule—R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451). The intent of this regulation is to protect the underwater cultural resources from the harmful effects of activities such as, but not limited to, dredging, excavations, drilling into the lakebottom, and dumping of dredged materials.

The third activity prohibited, which was added to the final regulations, is using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy. The intent of this regulation is to prevent damage often caused by grappling hooks or other anchoring devices on underwater cultural resources. The State of Michigan also views damage caused by grappling hooks and other anchoring devices to be a violation of State law.

The fourth activity prohibited is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the NMSA or any regulations issued under the NMSA.

Section 922.193(b) specifies that members of federally-recognized Indian tribes may exercise their treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of the prohibitions in Section 922.193. The exercise of these rights, however, must be authorized by the tribe by regulation, license, or permit. This provision was added to the final regulations in response to comments from federally-recognized Indian tribes.

Section 922.194 provides for the certification by the Director of OCRM of activities conducted pursuant to a valid lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any valid right of subsistence use of access, in existence as of the effective date of Sanctuary designation.

Section 922.195 provides for the conduct of activities prohibited by Section 922.193(a)(1) through (3), provided that the activity is conducted in accordance with the scope, purpose, manner, terms and conditions of a State of Michigan permit (State permit), certified by the State Archaeologist as consistent with the Programmatic Agreement among NOAA, the State, and the Advisory Council on Historic Preservation, developed pursuant to the NMSA and Section 106 of the National Historic Preservation Act (NHPA). Such State permits are deemed to have met the ''authorization'' requirements of 15 CFR 922.49 of the National Marine Sanctuary Program regulations. If a State permit is not certified as consistent with the Programmatic Agreement, the applicant would be required to follow the procedures of 15 CFR 922.49 to obtain an individual Sanctuary authorization of the State permit. Such activity would also be subject to section 106 of the NHPA. If there is only a Federal permit applicable to the activity, the applicant must follow the procedures of 15 CFR 922.49 to obtain an individual Sanctuary authorization of the Federal permit, subject to section 106 of the NHPA. Finally, if there is no State or Federal permit required to conduct the prohibited activity, the person must obtain a Sanctuary permit pursuant to 15 CFR 922.48 of the NMSP regulations to conduct such activity, subject to section 106 of the NHPA. For a proposed activity not prohibited by Sanctuary regulations but that may impact Sanctuary resources, NOAA may review State permit applications for such activity during identified public comment periods and provide comments to the Michigan Department of Environmental Quality, the Michigan Department of State, and other management agencies, as appropriate.

Under Section 922.195, NOAA added (d) and (e). Section 922.195 (d) specifies that a permit may be issued if the proposed activity satisfies the requirements for permits, or if the recovery of the underwater cultural resource is in the public interest, is part of research to preserve historic information for public use, and is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

Section 922.195(e) describes the permit application process and criteria. The information required for submitting a permit application is based on requirements in the National Historic Preservation Program.

At the request of the State of Michigan, NOAA added Section 922.196, which provides for the imposition, extension, or renewal of Sanctuary emergency regulations. Section 922.196 specifies that emergency regulations may be imposed to prevent or minimize the destruction of, loss of, or injury to an underwater cultural resource. Emergency

regulations shall not take effect without the approval of the Governor of Michigan. They shall remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The regulations may be extended once for not more than six months.

NOAA added Section 922.197, which states that the Director shall regularly consult with the governing bodies of federally-recognized Indian tribes.

Section 922.198 specifies procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource. The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

V. Miscellaneous Rulemaking Requirements

National Marine Sanctuaries Act

Section 304 of the NMSA requires the Secretary to submit this notice to the appropriate Congressional Committees and to the Governor of the State of Michigan, on the same day this notice is published. The required services are being made.

National Environmental Policy Act

Section 304 of the NMSA, 16 U.S.C. 1434, requires the preparation of a final environmental impact statement (FEIS), as provided by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that the FEIS be made available to the public. NOAA published a FEIS/MP for the proposed designation of the Thunder Bay National Marine Sanctuary in June 1999. The FEIS/MP is available at the addresses listed in the Addresses section of this Notice of Final Rule.

Executive Order 12866: Regulatory Impact

This regulatory action has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132: Federalism

A Federalism Assessment (FA) was prepared for the proposed designation document, proposed management plan, and proposed implementing regulations in accordance with the then in effect Executive Order 12612, Federalism Considerations in Policy Formulation Implementation (52 FR 41685, Oct. 26, 1987). The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in section 2 through 5 of the Executive Order. Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above. Executive Order 12612 was superseded on November 2, 1999, by Executive Order 13132, Federalism. The new Executive Order sets forth Fundamental Federalism Principles (section 2) to guide federal agencies in formulating and implementing policies that have federalism implications and Federalism Policymaking Criteria (section 3) to adhere to, the extent permitted by law, when formulating and implementing policies that have federalism implications. Since these final regulations do not preempt State law, the requirements of section 4 and section 6(c) of the Executive Order do not apply.

Federalism Summary Impact Statement

Pursuant to the requirements of section 6(b)(2), NOAA has consulted regularly with the State of Michigan and local elected officials since beginning the designation process in 1991. On average, NOAA staff met with State agency staff and local governments once every two months. These face-to-face meetings were supplemented with at least weekly telephone conversations to discuss the sanctuary regulations, scope of management, and State or local concerns. During Fall 1997 and Summer 1998, NOAA staff met with the Sanctuary Advisory Council (which includes local elected officials) every two weeks to obtain local input into the sanctuary designation process. In addition, there was correspondence between NOAA and the State of Michigan, including several letters between U.S. Secretary of Commerce William Daley and Michigan Governor John Engler (dated January 24, 2000; February 11, 2000; and May 8, 2000). These communications are being made available to the Director of the Office of Management and Budget.

State and local concerns about the Sanctuary related to federal government intrusion in State waters, a fear that activities (e.g., fishing and diving) would be restricted, and questions about the need for the Sanctuary to protect underwater cultural resources when the State already provides some protection. NOAA addressed these concerns by involving local citizens in writing a draft MOU to address their concerns, amending the Sanctuary regulations to provide veto authority to the Governor of Michigan on many aspects of sanctuary management, agreeing to establish the Joint Management Committee to ensure equal governance of the Sanctuary, and reducing the size of the Sanctuary.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. While minor modifications have been made to the rule proposed, the basis for that certification has not changed. Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection of information requirement subject to the requirements of the PRA. This collection-of-information requirement has been approved by OMB under OMB control number 0648–0141. The collection of information requirement applies to persons seeking permits to conduct otherwise prohibited activities and is necessary to determine whether the final activities are consistent with the management goals for the Sanctuary. The public reporting burden per respondent for the collection of information contained in this rule is estimated to be: 1 hour for a general permit; 15 minutes for a permit amendment; 30 minutes for certification of a preexisting lease, license, permit, approval or authorization; 1 hour for a

notification of other Federal agency permits; and 1.5 hours for appeals.

Send comments on the burden estimate or on any other aspect of the collection-of-information, and ways of reducing the burden, to NOAA and OMB (see **ADDRESSES**).

Unfunded Mandates Reform Act of 1995

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

List of Subjects in CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and record-keeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 16, 2000.

John Oliver,

Chief Financial Officer, National Ocean Service.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—AMENDED

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in Subparts A, D and E apply to all thirteen National Marine Sanctuaries for which site-specific regulations appear in Subparts F through R, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.3 is revised to read as follows:

§ 922.3 Definitions.

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource means an underwater cultural resource as defined at § 922.191.

4. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this Subpart and in Subparts F through R is to implement the designations of the thirteen National Marine Sanctuaries for which site specific regulations appear in Subparts F through R, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

5. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

The boundary for each of the thirteen National Marine Sanctuaries covered by this part is described in Subparts F through R, respectively.

6. Section 922.42 is revised to read as follows:

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through R, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, 922.186, or 922.196, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA), (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

7. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through R set forth site-specific regulations applicable to the activities specified therein.

8. Section 922.44 is revised to read as follows:

§ 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

9. Section 922.47 is amended by revising paragraph (b) as follows:

§ 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

* * * * *

(b) The prohibitions listed in Subparts F through P, and Subpart R do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

10. Section 922.48 is amended by revising paragraphs (a), (b), (d) and (f) as follows:

§ 922.48 National marine sanctuary permits—application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by Subparts F through O, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and Subparts F through O, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by Subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by Subpart R in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by Subparts F through O should be addressed to the Director and sent to the address specified in Subparts F through O, or Subpart R, as appropriate. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and (5) Copies of all other required licenses, permits, approvals or other authorizations.

* * * * *

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in Subparts F through O, or Subpart R, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

* * * * *

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or Subparts F through O, Subpart R or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

11. Paragraphs (a) through (c) of section 922.49 are revised to read as follows:

§ 922.49 Notification and review of applications for leases, licenses, permits, approvals or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by Subparts L through P, or Subpart R, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in Subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in Subpart P, whichever is later;

(2) The applicant complies with the other provisions of this § 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by Subparts L through P, or Subpart R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in Subparts L through P, or Subpart R, as appropriate. A copy of the application must accompany the notification.

* * * * *

12. Paragraph (a) of Section 922.50 is revised to read as follows:

§ 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in Subparts L through P and Subpart R, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) the granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) the conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(iii) for those Sanctuaries described in Subparts L through P and Subpart R, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(b) For those National Marine Sanctuaries described in Subparts F through K, any interested person may also appeal the same actions described in § 922.50(a)(1)(i) and (ii). For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term ''appellant'' includes any such interested persons.

* * * * *

Part 922 is amended by adding a new subpart R immediately following Subpart Q as follows:

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

Sec.

922.190 Boundary.
922.191 Definitions.
922.192 Joint Management Committee.
922.193 Prohibited or otherwise regulated activities.
922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
922.195 Permit procedures and criteria.
922.196 Emergency regulations.
922.197 Consultation with affected federally-recognized Indian tribes.
922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.
Appendix A to Subpart R of Part 922-Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

Appendix B to Subpart R of Part 922-Minor Projects for Purposes of § 922.193(a)(2)(iii)

Subpart R—Thunder Bay National Marine Sanctuary and Underwater Preserve

§ 922.190 Boundary.

The Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 448 square miles (1169 square kilometers) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The boundary forms an approximately rectangular area by extending along the ordinary high water mark between the northern and southern boundaries of Alpena County, cutting across the mouths of rivers and streams, and lakeward from those points along latitude lines to longitude 83 degrees west. The coordinates of the boundary are set forth in Appendix A to this Subpart.

§ 922.191 Definitions.

(a) The following terms are defined for purposes of Subpart R:

Minor project means any project listed in Appendix B to this Subpart.

Programmatic Agreement means the agreement among NOAA, the Federal Advisory Council on Historic Preservation, and the State of Michigan, developed pursuant to the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.* and section 106 of the National Historic Preservation Act of 1966 as amended, 16 U.S.C. 470 *et seq.*, which, in part, sets forth the procedures for review and approval of State Permits that authorize activities prohibited by the Sanctuary regulations.

State Archaeologist means the State Archaeologist, Michigan Historical Center, Michigan Department of State.

State Permit means any lease, permit, license, approval, or other authorization issued by the State of Michigan for the conduct of activities or projects within the Thunder Bay National Marine Sanctuary and Underwater Preserve that are prohibited by the regulations at § 922.193.

Traditional fishing means those commercial, recreational, and subsistence fishing activities that were customarily conducted within the Sanctuary prior to its designation, as identified in the Final Environmental Impact Statement and Management Plan for this Sanctuary. Copies of the Final Environmental Impact Statement/Management Plan (FEIS/MP) are available upon request to the Marine Sanctuaries Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910, (301) 713–3125.

Traditional fishing includes tribal fishing rights as provided for in the 1836 Treaty of Washington and subsequent court decisions related to the Treaty.

Underwater cultural resource means:

(1) Any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sank prior to the effective date of Sanctuary designation; and

(2) Any of the above that sinks on or after the date of Sanctuary designation determined to be an underwater cultural resource by the Director pursuant to § 922.198. Underwater cultural resource also means any historical remnant of docks or piers or associated material, or materials resulting from activities of historic and prehistoric Native Americans.

(b) Other terms appearing in the regulations are defined at 15 CFR part 922 subpart A, and/or in the National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*

§ 922.192 Joint Management Committee.

(a) A state/federal Joint Management Committee shall be established to oversee and engage in decision-making authority for the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(b) The Joint Management Committee shall be comprised of one Federal employee named by the NOAA Administrator and one state employee named by the Governor of Michigan. The Federal employee cannot be the sanctuary manager (the individual who exercises day-to-day management over the Sanctuary) and must have a civil service grade higher than that of the sanctuary manager.

(c) The Joint Management Committee shall:

(1) Develop a position description for, recruit prospective candidates for the position of, interview candidates for the position of, and take part in the annual performance evaluation of, the sanctuary manager;

(2) Approve revisions to the Management Plan;

(3) Approve annual work plans;

(4) Approve, on an annual basis, the expenditure of allocated state and federal funds and other sources of revenue for the Thunder Bay National Marine Sanctuary and Underwater Preserve, in accordance with the Management Plan and the annual work plans; and

(5) Make decisions on other key issues related to management of the Thunder Bay National Marine Sanctuary and Underwater Preserve.

(d) The Joint Management Committee shall meet as agreed to by the members but not less than once annually.

(e) If the Joint Management Committee is unable to reach agreement on an issue, the members shall follow the ''Consultation and Conflict Resolution'' procedures set forth in the Interlocal Agreement between NOAA and the State of Michigan.

(f) The Joint Management Committee may invite affected public parties to participate in selected aspects of Sanctuary management as:

(1) Parties to the Interlocal Agreement pursuant to the Michigan Urban Cooperation Act of 1967, MCL 124.501 *et seq.*; and/or

(2) Pursuant to the NMSA.

§ 922.193 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (d) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Recovering, altering, destroying, possessing, or attempting to recover, alter, destroy, or possess an underwater cultural resource.

(2) Drilling into, dredging or otherwise altering the lakebottom associated with underwater cultural resources, including contextual information; or constructing, placing or abandoning any structure, material or other matter on the lakebottom associated with underwater cultural resources, except as an incidental result of:

(i) Anchoring vessels;

(ii) Traditional fishing operations; or

(iii) Minor projects (as defined in Appendix B of this subpart) that do not adversely affect underwater cultural resources.

(3) Using grappling hooks or other anchoring devices on underwater cultural resource sites that are marked with a mooring buoy.

(4) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulations issued under the Act.

(b) Members of a federally-recognized Indian tribe may exercise treaty-secured

rights, subject to the requirements of other applicable law, without regard to the requirements of this subpart. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary, provided that the rights are authorized by the tribe by regulation, license, or permit.

(c) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to valid law enforcement activities, or any activity necessary to respond to an emergency threatening life or the environment.

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to § 922.195 or a Special Use Permit issued pursuant to section 310 of the NMSA.

(2) Specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with § 922.194 and § 922.47 and with any terms and conditions for the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

§ 922.194 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of Sanctuary designation, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, *provided that:*

(1) for any State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, the State Archaeologist certifies to the Director, within 90 days of the effective date of designation, that the activity authorized under the State or local lease, permit, license, approval, or other authorization, or any right of subsistence use, is being conducted consistent with the Programmatic Agreement, in which case such activity shall be deemed to have met the requirements of this section and § 922.47; or

(2) In the case where either:

(i) The State Archaeologist does not certify that the activity authorized under a State or local lease, permit, license, approval, or other authorization, or right of subsistence use is being conducted consistent with the Programmatic Agreement; or

(ii) The activity is conducted pursuant only to a Federal permit, the holder of the authorization or right complies with paragraphs (b) through (k) of this section.

(b) For an activity described in paragraph (a)(2) of this section, the holder of the authorization or right may conduct the activity prohibited by § 922.193 (a)(1) through (3) *provided that:*

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of § 922.194; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(c) The holder of an authorization or right described in paragraph (a)(2) of this section authorizing an activity prohibited by § 922.193 may conduct the activity without being in violation of applicable provisions of § 922.193, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.194.

(d) Any holder of an authorization or right described in paragraph (a)(2) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by § 922.193, thus requiring certification under this section.

(e) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Manager, Thunder Bay National Marine Sanctuary and Underwater Preserve, 1305 East-West Highway, N/ORM, Silver Spring, Maryland, 20910. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(f) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The Director must receive the information requested within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(g) The Director may amend any certification made under this § 922.194 whenever additional information becomes available justifying such an amendment.

(h) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.194, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(i) Any time limit prescribed in or established under this § 922.194 may be extended by the Director for good cause.

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(k) Any amendment, renewal, or extension made after the effective date of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.195 and § 922.49.

(l) For any activity authorized pursuant to § 922.193 (b), the holder of such license or permit shall notify the Director, in writing, within 90 days of the effective date of Sanctuary designation, of the existence of such authorization or right.

§ 922.195 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.193 (a)(1) through (3), if conducted in accordance with the scope, purpose, terms and conditions of a State Permit *provided that*:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of § 922.49; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent

with the Programmatic Agreement, the person complies with the requirements of § 922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by § 922.193 (a)(1) through (3) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of § 922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to § 922.48 (c) through (f) of this part and the Programmatic Agreement in order to conduct the activity.

(d) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (c) of this section;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(e) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909-7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (see § 922.195(e)(9) of this section. The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

§ 922.196 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to an underwater cultural resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of Michigan.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

§ 922.197 Consultation with affected federally-recognized Indian tribes.

The Director shall regularly consult with the governing bodies of affected federally-recognized Indian tribes regarding areas of mutual concern.

§ 922.198 Procedures for determining watercraft and related items which sink on or after the date of Sanctuary designation to be an underwater cultural resource.

The Director, in consultation with the State of Michigan, appropriate federal agencies, and the governing body of any affected federally-recognized tribe, may determine, after providing 45 days for public comment, that any sunken watercraft, including a ship, boat, canoe, skiff, raft, or barge; the rigging, gear, fittings, trappings, and equipment of any sunken watercraft; the personal property of the officers, crew, and passengers of any sunken watercraft; and the cargo of any sunken watercraft, that sinks on or after the date of Sanctuary designation, to be an underwater cultural resource if such is determined by the Director to be 50 years or older and of special national significance due to architectural significance or association with individuals or events that are significant to local or national history.

Appendix A to Subpart R of Part 92—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

[Based on North American Datum of 1983]

Point	Latitude	Longitude
1	45°12′25.5″	83°23′18.6″
2	45°12′25.5″	83°00′00″
3	44°51′30.5″	83°00′00″
4	44°51′30.5″	83°19′17.3″

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of § 922.193(a)(2)(iii)

Pursuant to Michigan State Administrative Rule R 322.1013 of Part 325, Great Lakes Submerged Lands of Public Act 451 (Michigan State Statute), the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impact, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not

adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) the proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) the structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) the structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) the placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) the structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measures from the toe to bluff, which meet all of the following criteria:

(i) the groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) the groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by Michigan State Administrative Rule R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish or wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Michigan State Act No. 303 of the Public Acts of 1967, as amended, being Section 281.1001 *et seq.* of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall is low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris and spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into pubic waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition; and

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard. Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

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Federal Register

Thursday,
June 22, 2000

Part V

Department of Commerce

Bureau of the Census

American Indian and Alaska Native Areas Geographic Program for Census 2000; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 000531161–0161–01]

RIN 0607–ZA04

American Indian and Alaska Native Areas (AIANAs) Geographic Program for Census 2000

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This notice provides the final program criteria used to designate American Indian and Alaska Native areas (AIANAs) for inclusion in Census 2000 and other U.S. Census Bureau demographic programs, and describes the changes from the criteria used for the 1990 census. It also provides background information and a list of definitions of key terms used in the criteria. This program applies to all AIANAs in the United States. This notice includes the responses to comments received regarding the ''notice of proposed program'' issued in the **Federal Register** on October 21, 1999 (64 FR 56732).

For Census 2000, the U.S. Census Bureau is using the collective term AIANAs to refer to:

- Alaska Native Regional Corporations (ANRCs),
- Alaska Native village statistical areas (ANVSAs),
- Federally recognized American Indian reservations,
- American Indian tribal subdivisions,
- American Indian off-reservation trust lands,
- Tribal designated statistical areas (TDSAs),
- Oklahoma tribal statistical areas (OTSAs) (formerly ''tribal jurisdiction statistical areas (TJSAs)'') [1],

State recognized American Indian reservations, and State designated American Indian statistical areas (SDAISAs).

The above include both legally established geographic entities and geographic entities created solely for statistical reporting (see ''Definitions of Key Terms'' in the **SUPPLEMENTARY INFORMATION** section).

Prior to the 1980 census, the U.S. Office of Management and Budget established an ad hoc interagency committee on the American Indian and Alaska Native populations to identify and examine how the federal government could provide improved data for these populations. One of the primary tasks of the interagency committee, which included the U.S. Census Bureau and federal agencies with responsibility for funding, planning, or administering programs for these populations, was to identify the content requirements and geographic entities for which 1980 census data were needed to fulfill federal legislative and program administration requirements. In addition to the federal effort, the Census Bureau sought information on data needs from American Indian and Alaska Native tribal governments and communities, as well as from state governments.

To meet the diverse data requirements this process documented, as well as provide general-purpose statistics, the Census Bureau needed to identify and define new geographic areas reflecting, to the extent possible, legally established entities, unique historical tribal homelands, and current settlements of tribal activity.

The U.S. Census Bureau's primary purpose for delineating boundaries for geographic entities is to develop the best possible geographic frame of reference for tabulation and presentation of statistical information. While aware of the uses of data by other federal agencies for program purposes, the Census Bureau does not create geographic frames of reference based on specific federal agency uses or needs. The Census Bureau strongly encourages other federal, state, and other types of agencies to review and revise their formulas, if needed, to better administer specific programs. The challenge of developing geographic frames of reference for AIANAs was made more difficult by the lack of one definitive source of information and the differing legal circumstances and geographic settlement patterns of particular tribes. There are both federally recognized and state recognized tribes. Some have reservations and/or established land bases, while others do not have established land bases, even though they conduct tribal activity within a geographically definable area.

For tribal governments with reservations and/or off-reservation trust lands existing under law today, the U.S. Census Bureau had to develop a mechanism to obtain and maintain the most current, legally established boundaries for data tabulation purposes. Because some tribes currently do not have a legally established land base (reservation or off-reservation trust lands) with clearly delineated boundaries and legally recognized authority, the Census Bureau has developed a set of statistically equivalent entities. In doing so, the Census Bureau has focused on the overall objective—producing statistics for a geographically defined entity that has significance for each tribal government as well as for the federal and state agencies administering tribal programs benefitting the tribe.

With this as the objective, the U.S. Census Bureau developed the underlying premise that geographic statistical entities should reflect, to the extent reasonably possible, the area in which there is structured/organized tribal activity *and* a concentration of individuals residing who identify with the particular tribe conducting such activities. These criteria are, of necessity, somewhat amorphous because of the lack of a clearly defined land base for some recognized tribes, and because individuals who identify with other tribes may be concentrated in the same areas.

The effort to produce meaningful data for American Indian and Alaska Native tribal governments has been an evolutionary process that is best evidenced by the steps the Census Bureau has taken for the 1980 and 1990 censuses. A brief description of those procedures is included under the ''Background'' heading in the **SUPPLEMENTARY INFORMATION** section. This historic narrative is followed by a description of the plans for Census 2000.

EFFECTIVE DATE: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the U.S. Census Bureau's geographic programs, contact Mr. Robert Marx, Chief, Geography Division, Bureau of the Census, Room 651, WP–1, Washington, DC 20233–7400, telephone (301) 457–2131, or e-mail (rmarx@geo.census.gov). For information about the statistical data the U.S. Census Bureau will tabulate from Census 2000 for American Indians and Alaska Natives, contact Dr. Jorge del Pinal, Assistant Division Chief for Special Populations, Population Division, Bureau of the Census, Room 2011, FB–3, Washington, DC 20233–8800, telephone (301) 457–4875, or e-mail (jorge.h.delpinal@ccmail.census.gov).

SUPPLEMENTARY INFORMATION: Pursuant to title 13, United States Code, section 141(a), the Secretary of Commerce, as delegated to the U.S. Census Bureau, undertakes every ten years the decennial census ''* * * in such form and content as he may determine.

[1] The designation ''tribal jurisdiction statistical area'' was changed to Oklahoma tribal statistical area to avoid the misperception that such designation constituted recognition or confirmation by the federal government of a particular legal status. The new designation is defined in the ''Definitions of Key Terms'' section.

* * *'' This language gives wide discretion to the Census Bureau in taking the census. The Census Bureau depicts AIANAs solely for purposes of presenting general-purpose statistical data from the decennial census of population and housing and from other large scale surveys. It does not take into account or attempt to anticipate any nonstatistical uses that may be made of AIANAs, nor will the Census Bureau modify the definition of AIANAs to meet the requirements of the programs of other agencies. Where disputes occur between tribes because of overlapping boundaries, the Census Bureau encourages the respective tribal officials to reach a mutually acceptable agreement for the purpose of presenting statistical data. However, there may be instances in which the Census Bureau cannot depict the boundaries submitted to the satisfaction of all parties because the boundaries are in dispute. Representation of boundaries on Census Bureau maps and in Census Bureau databases is solely for the purpose of data collection and data tabulation, and does not convey or confer any rights to land ownership or jurisdictional status.

The U.S. Census Bureau will tabulate data from Census 2000 for the total population and for the American Indian and Alaska Native populations within each ANRC, ANVSA, federally recognized American Indian reservation, off-reservation trust land, tribal subdivision, TDSA, OTSA, state recognized American Indian reservation and SDAISA described in this notice. Data associated with at least 30 of the most populous tribes will be tabulated within selected geographic entities. Data for other tribes within specific geographic entities may be available only by a special tabulation.

Responses to Comments

The U.S. Census Bureau issued a notice of proposed program and request for public comment in a **Federal Register** notice on Thursday, October 21, 1999 (64 FR 56732). That Notice solicited comments about the Census Bureau's proposed geographic program for AIANAs for Census 2000. The Census Bureau received written comments from four tribal governments and one individual. The comments ranged from historical clarification to requests for changes in program criteria. The Census Bureau provides specific responses below to substantive comments and will incorporate all editorial comments meant to clarify or improve the text without a specific response.

Comment 1: An objection that the proposed program includes Alaska Native Regional Corporations (ANRCs).

Response 1: The U.S. Census Bureau will continue to contact the nonprofit associations affiliated with each ANRC to seek assistance in reviewing the boundaries of the ANRCs and in defining boundaries for the Alaska Native village statistical areas (ANVSAs). Officials for the ANRC always are responsible for reviewing the legal ANRC boundaries. The assistance of the ANRC officials is helpful for delineating ANVSAs when there is no response from the tribal leaders of the Alaska Native villages to the Census Bureau's request for the review of their ANVSA boundaries. The Census Bureau is clarifying in the final notice that if both an Alaska Native village (ANV) official and a nonprofit ANRC official provide a boundary to the Census Bureau for an ANVSA, the Census Bureau will use the boundary provided by the ANV official as long as it meets the boundary criteria described in this notice.

Comment 2: Three of the four tribal governments that responded to the notice provided comments that centered around how the Census Bureau plans to define Oklahoma tribal statistical areas (OTSAs). Numerous comments from these governments questioned why the Census Bureau does not use the boundaries of the former reservations as the boundaries for the OTSAs. The comments contended that these boundaries, as documented in the land records held by the Bureau of Indian Affairs (BIA), should represent the ''present day recognized former reservations in accordance with the last treaties on file.''

Response 2: The U.S. Census Bureau uses the boundaries of former reservations as the boundaries for OTSAs with appropriate modifications reflecting agreements with neighboring tribes. The Census Bureau configures statistical entities in Oklahoma in this manner because most tribes continue to reside upon and identify with former reservations. Based on comments to this notice, as well as feedback the Census Bureau received at a meeting held in July 1999 with tribal governments, it is apparent that the explanation of OTSAs in the original notice, and the explanation of TJSAs in the materials used for the 1990 census, caused some confusion. To clarify, the Census Bureau is revising the criteria for establishing an OTSA. For Census 2000, an OTSA will be a tribal statistical entity delineated by those federally recognized tribes in Oklahoma that have no current reservation, but had a former reservation in Oklahoma. The boundary for an OTSA should conform to the boundary of the former reservation, except where modified by agreements between tribes for statistical data presentation purposes.

Comment 3: The Census Bureau should use the metes and bounds descriptions provided by either the federally recognized tribal government or by the BIA to determine the boundaries for an OTSA.

Response 3: The U.S. Census Bureau requires that boundaries for OTSAs, as well as other geographic entities, be provided via a graphic representation rather than by a written metes and bounds description because the Census Bureau's geographic database does not contain the information required to accurately transfer written descriptions. The Census Bureau will provide maps displaying boundaries for AIANAs used in the 1990 census for the purpose of reviewing and revising the boundaries of each AIANA to be included in Census 2000. The Census Bureau also accepts maps provided by tribal governments or the BIA to depict boundaries in its geographic database.

Comment 4: The Census Bureau should delineate objective standards for the proposed geographic areas. The area definitions should be linked specifically to the federal programs served by defining the area.

Response 4: The U.S. Census Bureau is not required to link the establishment of a geographic entity to federal, tribal, or state laws. Wherever possible, the Census Bureau relies on objective criteria to establish geographic frames of reference for the tabulation of statistical data. However, in some instances, such as those in which a tribe has no land base or for which there was no former reservation, the Census Bureau must rely on more subjective information from the tribes. The Census Bureau portrays the boundaries of both legal and statistical entities for the sole purpose of tabulating data from the decennial census and its other large-scale surveys. For legal entities, the Census Bureau is committed to using the most accurate governmental unit boundaries established by law as of January 1 of the census year. For statistical entities, the Census Bureau is committed to delineating the areas to be included in partnership with tribal, state, and local officials using criteria developed in an open process. Statistical entities, other than the OTSAs, which rely on boundaries of former reservations, must rely upon more subjective standards—primarily those based on input from tribal, state, and local officials. Some examples of

statistical geographic entities other than those in the AIANA program that were developed by the Census Bureau, reviewed by public comment in the **Federal Register**, and delineated in partnership with local or tribal agencies and officials interested in using the data tabulated for those areas are: census tracts, block groups, and census designated places.

The statistical entities defined by the Census Bureau in partnership with tribal and local agencies are created for the primary purpose of providing the best possible geographic frame of reference for tabulating and presenting statistical information. The Census Bureau has determined that presenting the data in this manner serves the needs of tribal governments as well as those federal and state agencies administering tribal programs benefitting the tribe.

Comment 5: Why does the Census Bureau propose including tribal subdivisions and what federal laws are associated with these areas?

Response 5: Tribal subdivisions are internal units of self-government or administration that serve social and/or economic purposes for American Indians on reservations and OTSAs. The U.S. Census Bureau is working with tribes that have such subdivisions to delineate tribal subdivisions for Census 2000 in order to provide data for these additional legal or administrative areas. Providing data for tribal subdivisions is analogous to counties within states or, in certain states, minor civil divisions within county. The Census Bureau is not required to link the establishment of a geographic entity to federal, tribal, or state laws.

Executive Order 12866

This notice does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel, Small Business Administration, that this notice will not have a significant economic impact on a substantial number of small entities. This notice sets forth the U.S. Census Bureau's final program to designate AIANAs for Census 2000. The program will be used by the Census Bureau to tabulate and disseminate statistical data it collects for AIANAs in the decennial census and its other large-scale surveys, and these data presentations are solely for statistical purposes.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Bureau of Census Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Definitions of Key Terms

Alaska Native Claims Settlement Act (ANCSA)—Legislation (Pub. L. 92–203) enacted in 1972 recognized the Alaska Native villages and established Alaska Native Regional Corporations (ANRCs) to conduct business and nonprofit activities by and for Alaska Natives.

Alaska Native Regional Corporation (ANRC)—A corporate entity organized to conduct both business and nonprofit affairs of Alaska Natives pursuant to the ANSCA. Twelve ANRCs are geographic entities that cover most of the State of Alaska (the Annette Islands Reserve is excluded from any ANRC). (A thirteenth ANRC represents Alaska Natives who do not live in Alaska and do not identify with any of the 12 corporations; the Census Bureau does not provide data for this ANRC because it has no geographic extent.) The boundaries of ANRCs have been legally established.

Alaska Native village (ANV)—A type of local governmental unit in Alaska that constitutes an association, band, clan, community, group, tribe, or village recognized pursuant to the ANCSA of 1972 (Pub. L. 92–203). Because ANVs do not have boundaries that are easily locatable, the Census Bureau does not delimit ANVs for the purpose of presenting statistical data. Instead, the Census Bureau presents statistical data for Alaska Native village statistical areas (ANVSAs), which represent the settled portion of ANVs.

Alaska Native village statistical area (ANVSA)—A statistical entity that represents the densely settled portion of an ANV. ANVSAs are reviewed and delineated by officials of the ANV (or officials of the ANRC in which the ANV is located if no ANV official chooses to participate in the delineation process) solely for the purpose of presenting statistical data.

American Indian reservation—Federal—An area that has been set aside by the United States for the use of the tribe, the exterior boundaries of which are more particularly defined in the final tribal treaty, agreement, Executive Order, federal statute, Secretarial Order, or judicial determination. The Census Bureau recognizes reservations as territory over which American Indians have primary governmental authority. These entities are known as colonies, communities, pueblos, rancherias, ranches, reservations, reserves, tribal towns, and tribal villages. The Bureau of Indian Affairs (BIA) maintains a list of federally recognized tribal governments.

American Indian reservation—State—Some state governments have established reservations for tribes recognized by the state. A governor-appointed state liaison provides the name and boundary for each state recognized American Indian reservation to the Census Bureau.

American Indian tribal subdivision—An administrative subdivision of a federally recognized American Indian reservation, off-reservation trust lands, or an Oklahoma tribal statistical area (OTSA), known as an area, chapter, community, or district. These entities are internal units of self-government or administration that serve social, cultural, and/or economic purposes for the American Indians on the reservation, off-reservation trust lands, or OTSAs.

American Indian trust land—Area for which the United States holds fee title in trust for the benefit of a tribe (tribal trust land) or for an individual Indian (individual trust land). Trust lands can be alienated or encumbered only by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust lands may be located on or off a reservation. The Census Bureau recognizes and tabulates data for reservations and off-reservation trust lands because the tribe has primary governmental authority over these lands. Primary tribal governmental authority generally is not attached to tribal lands located off the reservation until the lands are placed in trust. In Census Bureau data tabulations, off-reservation trust lands always are associated with a specific federally recognized reservation and/or tribal government.

Boundary and Annexation Survey (BAS)—A Census Bureau survey of counties/county equivalents, minor civil divisions (MCDs), incorporated places, ANRCs, and federally recognized American Indian reservations and/or off-reservation trust lands. Its purpose is to determine, solely for the purposes of data collection and data tabulation, the complete inventory and the correct names, legal descriptions, official status, and official boundaries of the legal

entities with primary governmental jurisdiction over certain lands within the United States as of January 1 of the survey year. The BAS also collects specific information to document the legal actions that established a boundary or imposed a boundary change.

Bureau of Indian Affairs (BIA)—The primary agency of the federal government, located within the Department of the Interior, charged with the trust responsibility between the federal government and federally recognized American Indian and Alaska Native tribal governments and communities.

Fee land (or land in fee simple status)—Area owned in fee simple status (total ownership, not in trust) by a tribe recognized by the federal government or individual members of a tribe. The title to such land is held by the tribe or an individual, and tracts and/or parcels of land can be alienated or encumbered by the owner without the approval of the Secretary of the Interior or his/her authorized representative. This type of land may be located on or off a federally recognized reservation. The Census Bureau does not identify fee land (or land in fee simple status) as a specific geographic category.

Historic Areas of Oklahoma—A geographic area established by the Census Bureau for the 1980 census that encompassed the former American Indian reservations that had legally established boundaries during the period 1890 through 1907, but whose lands were divided by allotment agreements during the period preceding the establishment of Oklahoma as a state in 1907. The Historic Areas of Oklahoma excluded all territory that was in the Census Bureau's 1980 urbanized areas. The 1980 census tabulated data for this single entity, which was replaced for the 1990 census by the designation tribal jurisdiction statistical areas (TJSAs), reflecting, in general, a presentation of the data by individual former reservations. The TJSAs defined for the 1990 census included territory without regard to urbanized areas.

Joint use area—The term, as applied to any AIANA by the U.S. Census Bureau, means that the area is administered jointly and/or claimed by two or more American Indian tribes. The Census Bureau designates both legal and statistical joint use areas as unique geographic entities for the purpose of presenting statistical data.

Legal entity—A geographically defined governmental entity whose origin, boundary, name, and description result from charters, laws, treaties, or other governmental action. Examples are the United States, states and statistically equivalent entities, counties and statistically equivalent entities, MCDs, incorporated places, congressional districts, American Indian reservations and off-reservation trust lands, ANRCs, and American Indian tribal subdivisions. The legal entities recognized for Census 2000 are those that exist on January 1, 2000. (The U.S. Census Bureau does not recognize ANVs for the purpose of presenting statistical data. The Census Bureau presents statistical data for ANVSAs, which represent the settled portion of the ANVs.)

Oklahoma tribal statistical area (OTSA)—A statistical entity identified and delineated by the U.S. Census Bureau in consultation with federally recognized American Indian tribes that have no current reservation, but that had a former reservation in Oklahoma. The boundary of an OTSA will be that of the former reservation in Oklahoma, except where modified by agreements with neighboring tribes for statistical data presentation purposes. OTSA replaces the 1990 census term tribal jurisdiction statistical area (TJSA).

Restricted fee land—Area for which an individual American Indian or a tribe holds fee simple title subject to limitations or restrictions against alienation or encumbrances as set forth in the title and/or by operation of law. Restricted fee lands may be located on or off a federally recognized reservation. The Census Bureau does not identify restricted fee lands as a specific geographic category.

State designated American Indian statistical area (SDAISA)—A statistical entity for state recognized American Indian tribes that do not have a state recognized land base (reservation). SDAISAs are identified and delineated for the Census Bureau by a designated state official. SDAISAs generally encompass a compact and contiguous area that contains a concentration of individuals who identify with a state recognized American Indian tribe and in which there is structured or organized tribal activity.

Statistical entity—A specially defined geographic entity for which the Census Bureau tabulates data. Statistical entity boundaries are not established by law and their designation by the Census Bureau, neither conveys nor confers legal ownership, entitlement, or jurisdictional authority. Examples are metropolitan areas, urbanized areas, census county divisions, census designated places, census tracts, census block groups, census blocks, tribal designated statistical areas (TDSAs), SDAISAs, and OTSAs—formerly called tribal jurisdiction statistical areas (TJSAs)—and ANVSAs.

Subreservation area—See ''American Indian tribal subdivision.''

Surface estate—That portion of the interest, ownership, or property in land that resides on the earth's surface, as distinguished from the subsurface estate (for example, mineral rights). The Census Bureau collects the boundaries of off-reservation trust lands where the surface estate is held in trust; it does not collect the boundaries where only the subsurface estate is held in trust.

Tribal designated statistical area (TDSA)—A statistical entity identified and delineated for the Census Bureau by a federally recognized American Indian tribe that does not currently have a legally established land base (reservation and/or off-reservation trust lands). A TDSA encompasses a compact and contiguous area that contains a concentration of individuals who identify with a federally recognized American Indian tribe and in which there is structured or organized tribal activity.

Tribal jurisdiction statistical area (TJSA)—A statistical entity identified and delineated for the 1990 census to provide a geographic frame of reference for the presentation of statistical data. TJSA boundaries were required to follow census block boundaries and were based upon the boundaries of the former reservations of federally recognized tribes in Oklahoma. The 1990 census TJSAs essentially were defined in the same manner as planned for the OTSAs in Census 2000; the descriptive designation is being changed for 2000 to correct the impression that these statistical entities conveyed or conferred any jurisdictional authority.

Background

1970 Census and Earlier

The U.S. Census Bureau had no program specifically designed to recognize or tabulate data for AIANAs in conjunction with the 1970 or any earlier decennial census.

1980 Census

Although the U.S. Census Bureau did present data from the 1970 census for 115 American Indian reservations, the Census Bureau began to report data systematically for American Indian and Alaska Native areas (AIANAs) in conjunction with the 1980 census, when it identified and presented data for a more complete inventory of American Indian reservations. The Census Bureau worked with the Bureau of Indian Affairs (BIA) and state officials to

identify American Indian reservations and to obtain accurate maps depicting their boundaries, and with officials in Alaska to determine locations for Alaska Native Villages (ANVs). American Indian off-reservation tribal trust lands were identified for the first time as geographic entities. To provide data for tribes recognized by the federal government in Oklahoma that no longer had a reservation, the Census Bureau identified a single geographic entity, called the Historic Areas of Oklahoma, that excluded the territory in Census Bureau-defined urbanized areas. Tribes also identified American Indian subreservation areas as geographic entities; these are internal units of self-government or administration, such as chapters, communities, and districts.

1990 Census

For the 1990 census, the U.S. Census Bureau expanded and improved its geographic identification of American Indian reservations and off-reservation trust lands, of selected areas within ANVs, and increased the involvement of American Indian and Alaska Native officials in the geographic delineations. The Census Bureau also consulted with the Census Advisory Committee on the American Indian and Alaska Native populations. For those tribes identified by the BIA as currently having a legally established land base, defined as a reservation or off-reservation trust lands, the Census Bureau continued to use boundaries certified by the BIA for census purposes. The Census Bureau did not provide data for subreservation areas. It began to report data for American Indian off-reservation individual trust lands (in addition to the off-reservation tribal trust lands) and for Alaska Native Regional Corporations (ANRCs). It developed Alaska Native village statistical areas (ANVSAs) to represent the settled portion of ANVs because of the difficulty in obtaining and representing meaningful boundaries for the ANVs. It established a new geographic entity called the tribal designated statistical area (TDSA) to identify lands associated with federally and state recognized tribes that had no current land base (a reservation and/or off-reservation trust land). The Census Bureau replaced the single-entity Historic Areas of Oklahoma with the several tribal jurisdiction statistical areas (TJSAs). Because tribes in Oklahoma have, for the most part, continued to live on and conduct tribal activities on the lands that were former reservations, most TJSAs delineated for the 1990 census had boundaries that were very similar to the former reservation boundaries. The criteria established by the Census Bureau for the 1990 census included a statement that TJSAs cannot include any reservation or trust lands. In fact, most of the tribes in Oklahoma do have trust lands, but because the parcels are small and in many cases scattered, the 1990 census program allowed one or more tribes to identify as a TJSA, a larger contiguous area associated with the tribe(s), generally that area constituting a former reservation. The TJSAs defined for the 1990 census included territory within Census Bureau-defined urbanized areas.

Census 2000

For Census 2000, the U.S. Census Bureau continues to work with tribal governments and federal and state agencies, as well as the Census Advisory Committee on the American Indian and Alaska Native populations, to improve its geographic identification of AIANAs. For federally recognized tribes, the Census Bureau offered programs to collect updated boundaries directly from the tribal governments using the 1990 census boundaries as a baseline. In 1997, it undertook the Tribal Review Program to enable officials of all federally recognized American Indian tribes with a land base to review and update the maps covering their lands for Census 2000. This involved checking the boundaries of reservations and/or off-reservation trust lands that had been provided to the Census Bureau for the 1990 census by the BIA; providing suggestions for Census 2000 block boundaries in the Block Definition Project; and updating and correcting the road and other base features shown in the Census Bureau's database. The Tribal Review Program also gave tribes in Oklahoma the opportunity to review the delineation of their 1990 census TJSAs.

Beginning in 1998, the U.S. Census Bureau included federally recognized American Indian tribes with a land base in its annual Boundary and Annexation Survey (BAS). The Census Bureau began including ANRCs in the BAS in 1999. All American Indian entities included in the 2000 BAS also will be included in the Census 2000 Boundary Validation Program. This program will enable governmental officials responsible for legal entities to review the Census Bureau's depiction of the boundaries they submitted and provide any corrections needed to ensure those boundaries are shown correctly as of January 1, 2000 (the reference date of the boundaries used for Census 2000 statistical data tabulation). The Census 2000 Boundary Validation Program is scheduled to begin in May 2000 and extend through July 2000. Also, to support tribal requests for data by administrative subdivisions, the Census Bureau will offer tribal officials the opportunity to delineate their chapters, communities, or districts as American Indian tribal subdivisions (similar to the 1980 census subreservation areas).

Also beginning in 1998, the Census Bureau included federally recognized tribes with a land base in its Local Update of Census Addresses (LUCA) program and the ensuing New Construction Program. Although the primary purpose of these programs was to ensure the completeness of the Census 2000 address list within each jurisdiction, the LUCA program also provided an additional opportunity for tribal governments to add or correct roads, road names, and to identify the need for additional boundary corrections.

In addition to offering the above programs, the U.S. Census Bureau has introduced a new geographic entity, the State designated American Indian statistical area (SDAISA); has made some changes to the TDSA criteria; and has changed the definition and criteria for Oklahoma tribal statistical area (OTSAs)—formerly TJSAs. See below for details.

Criteria

A. Legal Entity Criteria for Census 2000

1. The U.S. Census Bureau will use the following criteria for AIANAs that are legal entities as of January 1, 2000.

a. Alaska Native Regional Corporations (ANRCs)

ANRCs are corporate entities organized to conduct both the business and nonprofit affairs of Alaska Natives. The ANRC boundaries were established by the Department of the Interior pursuant to the Alaska Native Claims Settlement Act (ANCSA), and divide Alaska (excluding the Annette Islands Reserve) into 12 geographic regions, with each region composed as far as practicable of Natives who have a common heritage and who share common interests. (A thirteenth ANRC represents Alaska Natives who do not live in Alaska and do not identify with any of the 12 corporations; the Census Bureau does not provide data tabulations for this ANRC.) As part of the 1999 and 2000 BAS, representatives of the 12 nonprofit ANRCs were offered the opportunity to review and correct the ANRC boundaries depicted by the Census Bureau.

The U.S. Census Bureau will identify the ANRCs with the names established under the ANCSA and reviewed by the

ANRC officials during the 1999 and 2000 BAS.

b. American Indian Reservation—Federal

An area that has been set aside by the United States for use of the tribe, the exterior boundaries of which are more particularly defined in the final tribal treaty, agreement, Executive Order, federal statute, Secretarial Order, or judicial determination. The Census Bureau recognizes reservations as territory over which American Indians have primary governmental authority. The reservation of a tribe recognized by the federal government may be located in more than one state. The Census Bureau obtains verification of and changes to the boundaries of federally recognized American Indian reservations and off-reservation trust lands directly from the tribes through the annual BAS. Acceptance of boundary changes requires legal documentation, such as a statute or court order. This documentation is required to support any and all changes to the 1990 census boundary as certified to the Census Bureau by the BIA in preparation for the 1990 census, as well as to confirm the absence of any litigation involving these boundaries. If there is a question about the 1990 census boundary, the Census Bureau will consult with other responsible federal agencies for resolution of the matter.

The U.S. Census Bureau will identify each American Indian reservation with the name submitted and reviewed by the tribal government during the BAS.

c. American Indian Reservation—State

Some state governments have established reservations for tribes recognized by the state. A governor-appointed state liaison provides the names and boundaries for state recognized American Indian reservations to the Census Bureau. State reservation boundaries cannot cross state lines.

The U.S. Census Bureau will identify each state American Indian reservation with the name submitted by the state liaison providing the boundary for the area. The state reservation name should reflect the name cited in the legal land records establishing the state recognized reservation.

d. American Indian Off-Reservation Trust Lands

American Indian trust lands are areas for which the United States holds fee title in trust for the benefit of a tribe (tribal trust land) or for an individual Indian (individual trust land). Trust lands can be alienated or encumbered only by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust lands always are associated with a specific federally recognized reservation and/or tribe, and may be located on or off a reservation. The Census Bureau recognizes and tabulates data separately for reservations and for off-reservation trust lands because the tribe has primary governmental authority over these lands. Primary tribal governmental authority generally is not attached to tribal lands located off the reservation until the lands are placed in trust. The Census Bureau does not identify or compile data for other types of off-reservation American Indian lands, such as restricted fee land (land in fee simple status). (The compilation of land ownership information is not within the mission of the Census Bureau.) The Census Bureau collects the boundaries of off-reservation trust lands only where the surface estate is held in trust. It does not collect the boundaries of parcels and/or tracts of land for which only the subsurface estate has been placed in trust. The Census Bureau collects the boundaries of American Indian off-reservation trust lands through its annual BAS. The tribes are required to provide legal documentation to support any and all legal boundary changes since the BIA provided the boundaries to the Census Bureau that reflected the status as of January 1, 1990 for the 1990 census.

The U.S. Census Bureau will identify the off-reservation trust lands with the name submitted and reviewed by the tribal government during the BAS. The trust land name should correspond with the name of the reservation with which it is associated or, if there is no associated reservation, then the name of the tribe for which the land is held. Individual trust lands also must use the name of either a reservation or the individual's tribal government. The Census Bureau will not depict the name of any individual associated with off-reservation individual trust lands.

e. American Indian Tribal Subdivisions

Some American Indian reservations and/or off-reservation trust land areas and some OTSAs have administrative subdivisions variously designated as areas, chapters, communities, districts, and so forth. These entities are internal units of tribal self-government or administration that serve social, cultural, and/or economic purposes for the American Indians on the reservation or OTSA. Federally recognized tribes interested in data from Census 2000 for such administrative entities will be offered the opportunity to delineate these subdivisions only on their land base (reservation, off-reservation trust lands, or OTSA). The Census Bureau can report statistical data for only one administrative level of subdivisions within a reservation, off-reservation trust lands, or OTSA. Tribes that have multiple levels of administrative units should submit the lowest level. If the reservation, off-reservation trust lands, or OTSA are discontiguous, the tribal subdivisions may be discontiguous. The Census Bureau will collect information for American Indian tribal subdivisions in the 2000 BAS and during OTSA boundary review and will verify the information via the Boundary Validation Program and OTSA verification.

The U.S. Census Bureau will identify each tribal subdivision with the name submitted by the tribal government providing the boundary for the area. The tribal subdivision's name should reflect the name legally cited as the name of the subdivision or the name most commonly used for administrative purposes by the tribal government.

2. Changes in the Legal Entity Criteria for Census 2000: Most provisions of the legal entity AIANA criteria remain unchanged from those used in conjunction with the 1990 census, with the few exceptions summarized below.

- The U.S. Census Bureau will contact all federally recognized tribes directly to obtain updates and supporting documentation regarding boundary information and names, in addition to obtaining updated boundary and name information from the BIA.
- American Indian tribal subdivisions are new for Census 2000 in that the Census Bureau did not identify or report data for them in conjunction with the 1990 census. However, they are similar in many respects to the American Indian subreservation areas for which the Census Bureau collected data in the 1980 census. One difference is that the 1980 census subreservation areas sometimes included territory located beyond the reservation and/or off-reservation trust land boundaries, whereas the tribal subdivisions for Census 2000 will not extend beyond the boundaries of reservations, off-reservation trust lands, or OTSAs.

B. Statistical Entity Criteria for Census 2000

1. The U.S. Census Bureau will recognize and tabulate data for the area identified by a tribe or tribes, or by a state liaison (for state recognized tribes), solely for statistical purposes.

a. Statistical Entities Other Than Oklahoma Tribal Statistical Area (OTSAs)

With the exception of the OTSAs, Census 2000 block boundary criteria apply to all AIANAs that are statistical entities. Census 2000 block boundaries should follow visible, perennial, natural and cultural features, such as roads, rivers, canals, railroads, and above-ground, high-tension power lines. Other features acceptable as census block boundaries are the boundaries of:

- Counties and statistically equivalent entities.
- County subdivisions.
- Incorporated places.
- Federally recognized American Indian reservations and/or off-reservation trust lands.
- OTSAs.
- State recognized American Indian reservations.
- Military reservations.
- National parks.

When these features are not available for selection, the Census Bureau, at its discretion, may approve other nonstandard visible features for use as census block boundaries, such as ridge lines, pipelines, intermittent streams, and fence lines. Additionally, the Census Bureau may accept as census block boundaries, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of local and state parks and forests, cemeteries, other special land use properties, and the straight-line extensions of visible features or other lines-of-sight.

b. Oklahoma Tribal Statistical Areas (OTSAs)

To conform to the boundaries of the former reservations in Oklahoma, OTSA boundaries do not need to follow Census 2000 block boundary criteria.

2. The U.S. Census Bureau will use the following criteria for AIANAs that are statistical entities for Census 2000.

a. Alaska Native Village Statistical Areas (ANVSAs)

An ANVSA represents the concentrated settlement of population within an ANV established as part of the ANCSA of 1972. ANVs have boundaries that are not easy to locate and often include vast areas of land used by Alaska Natives for hunting and fishing. ANVSAs are delineated or reviewed and, if necessary, revised for the purpose of presenting statistical data by officials of the ANV or the ANRC in which the ANV is located. An ANVSA may not overlap the boundary of another ANVSA or an American Indian reservation or TDSA. The Census Bureau will give preference to boundary updates received from an ANV official as long as the boundary meets the boundary criteria outlined above.

The U.S. Census Bureau will identify an ANVSA with the name submitted by the village governing official submitting the boundaries for the area. The ANVSA name should reflect the name of the village identified under ANCSA.

b. State Designated American Indian Statistical Areas (SDAISAs)

The purpose of SDAISAs, a new geographic statistical area established for Census 2000, is to differentiate between state recognized tribes without a land base and tribes recognized by the federal government without a land base. (In 1990, all such tribes were identified as TDSAs). The Census Bureau contacted the governor of each state to determine if that state has state recognized tribes with no land base and to designate a contact for helping the Census Bureau define appropriate geographic areas for these state recognized tribes. There are no minimum population size requirements, but a SDAISA should encompass compact and contiguous areas in which a concentration of people who identify with the tribe reside and in which there is structured or organized tribal activity. Examples of the latter include tribal headquarters buildings or meeting areas, cultural or religious areas of significance, tribal service centers, and tribally owned commercial areas. The SDAISA is not intended to identify all lands once claimed by a particular tribe. A SDAISA may not be located in more than one state, and it may not include area within any reservation, off-reservation trust lands, ANVSA, TDSA, or OTSA. A state liaison identified by the governor will delineate SDAISAs consistent with these criteria.

The U.S. Census Bureau requires that the liaison delineating a SDAISA identify it using the following naming criteria. The name of a SDAISA should reflect one or more of the following: (1) tribes that have significant American Indian population currently residing within the SDAISA; (2) tribes that have historically resided within the SDAISA; and/or (3) the name of tribes commonly associated with the areas encompassed by the SDAISA. The name should not include the name of a tribe if that tribe is specifically identified with another legal or statistical entity.

The selection of a name reasonably identifying a SDAISA is essential because the U.S. Census Bureau's standard statistical tabulations for SDAISAs will provide data only for the total American Indian and Alaska Native populations; data for selected individual tribes within a SDAISA may be available only in response to a request for a special tabulation. For this reason, the data provided as a result of Census 2000 for all AIANA statistical entities will be more meaningful if the entity name provides insight as to which tribes have residents living there today. The Census Bureau will revise the name submitted by the state contact if it is determined that these criteria were not applied properly.

c. Tribal Designated Statistical Areas (TDSAs)

The purpose of TDSAs is to provide data for American Indians recognized by the federal government that do not have a current or, in Oklahoma, a former, legal land base. To be considered for a TDSA, a tribe must be recognized by the federal government. (State recognized tribes can be considered for a SDAISA as described above.) There are no minimum population size requirements, but a TDSA should encompass compact and contiguous areas in which a concentration of people who identify with the tribe reside and in which there is structured or organized tribal activity. Examples of the latter include tribal headquarters buildings or meeting areas, cultural or religious areas of significance, tribal service centers, and tribally owned commercial areas. The TDSA is not intended to identify all lands once claimed by a particular tribe. A TDSA may be located in more than one state, but it may not cross the boundaries of any reservation, off-reservation trust lands, OTSA, ANVSA, or SDAISA. A tribal official will delineate a TDSA that is consistent with these criteria.

The U.S. Census Bureau requires that the tribal government(s) delineating a TDSA identify it using the following naming criteria. The name of a TDSA should reflect one or more of the following: (1) tribes that have significant American Indian population currently residing within the TDSA; (2) tribes that have historically resided within the TDSA; and/or (3) the name of tribes commonly associated with the areas encompassed by the TDSA. The name should not include the name of a tribe if that tribe is specifically identified with another legal or statistical entity.

The selection of a name reasonably identifying the TDSA is essential because the U.S. Census Bureau's standard statistical tabulations for TDSAs will provide data only for the total American Indian and Alaska Native populations; data for selected individual tribes within a TDSA may be

available only in response to a request for a special tabulation. For this reason, the data provided as a result of Census 2000 for all AIANA statistical entities will be more meaningful if the entity name provides insight as to which tribes have residents living there today. The Census Bureau will revise the name submitted by the tribal contact if it is determined that these criteria were not applied properly.

d. Oklahoma Tribal Statistical Areas (OTSAs) (Formerly Tribal Jurisdiction Statistical Areas (TJSAs))

The purpose of OTSAs is to provide a geographic frame of reference for tabulating statistical data for American Indians recognized by the federal government that had a former reservation in the state of Oklahoma. To participate in the U.S. Census Bureau's program for updating boundaries of an OTSA, a tribal government must have had a former reservation in Oklahoma and be federally recognized. An OTSA may not include land that is within the boundary of any reservation or off-reservation trust lands reported by the Census Bureau. Although OTSAs are statistical entities, the boundaries reflect former legal reservation boundaries and, therefore, are not required to conform to a visible feature or other acceptable feature criteria. Boundaries for OTSAs will be those delineated for the 1990 census TJSA program, as updated by eligible, participating tribes. Thus, the boundaries of OTSAs will be those of the former reservation according to the treaty, Executive Orders or Secretarial Orders on file as amended in the land records held by the BIA, except where modified by agreements with neighboring tribes for statistical data presentations. These boundary updates must be submitted using a map rather than by written description.

Federally recognized tribes that had a former reservation in Oklahoma can identify the former reservation as an OTSA or, in the alternative, can submit to the Census Bureau the boundaries for their tribal and/or individual off-reservation trust lands. A tribe must choose to identify only one type of American Indian geographic area for the Census Bureau to use in reporting statistical data. If a tribe chooses to identify their trust lands, they will be shown as separate autonomous legal areas whether they are located within or outside the boundary of an OTSA. As requested by the delineating tribes, the Census Bureau will allow the delineation of a joint use area OTSA to represent common or overlapping land area but only if this designation is agreed upon by the tribes that have the former reservation. If the boundaries of the suggested joint use area are disputed, then the Census Bureau will reflect only the boundaries of the former reservation as the OTSA.

Federally recognized tribes that did not have a former reservation in Oklahoma, but that have tribal and/or individual off-reservation trust lands, can identify those trust lands for Census 2000. As noted above, if a tribe chooses to identify their trust lands, they will be shown as separate autonomous legal areas whether they are located within or outside the boundary of an OTSA.

Federally recognized tribes that have neither a former reservation nor tribal and/or individual off-reservation trust lands in Oklahoma are eligible to delineate TDSAs for Census 2000. However, TDSAs cannot include territory that is included within the boundaries of any reservation, off-reservation trust lands, or OTSA.

The U.S. Census Bureau requires that the tribal government(s) delineating an OTSA identify it using the following naming criteria. The name of an OTSA should reflect one or more of the following: (1) Tribes that have significant American Indian population currently residing within the OTSA; (2) tribes that have historically resided within the OTSA; and/or (3) the name of tribes commonly associated with the areas encompassed by the OTSA. The name should not include the name of a tribe if that tribe is specifically identified with another legal or statistical entity.

The selection of a name reasonably identifying the OTSA is essential because the U.S. Census Bureau's standard statistical tabulations for OTSAs will provide data only for the total American Indian and Alaska Native populations; data for selected individual tribes within an OTSA may be available only in response to a request for a special tabulation. For this reason, the data provided as a result of Census 2000 for all AIANA statistical entities will be more meaningful if the entity name provides insight as to which tribes have residents living there today. The Census Bureau will revise the name submitted by the tribal official(s) if it is determined that these criteria were not applied properly.

3. Changes in the Statistical Entity Criteria for Census 2000: Most provisions of the AIANA criteria for statistical entities remain unchanged from those used in conjunction with the 1990 census, with the exceptions summarized below.

- The TDSAs for Census 2000 will apply only to federally recognized tribes. State recognized tribes without a land base, including those that were recognized as TDSAs in the 1990 census, will be identified as SDAISAs, a new geographic entity.
- Alaska Native tribes and/or villages not established as Alaska Native villages under the Alaska Native Claims Settlement Act of 1972 may be delineated as TDSAs if they are recognized by the federal government and do not have a land base.
- For Census 2000, a TDSA may cross a state boundary. For the 1990 census, TDSAs had to be within state boundaries.
- The U.S. Census Bureau has changed the name and clarified the definition of the geographic areas delineated for the 1990 census in Oklahoma that were called tribal jurisdiction statistical areas (TJSAs). For Census 2000, OTSAs are designed to reflect the former reservations in Oklahoma. Because they represent the boundaries of former legal areas, boundaries for OTSAs do not need to meet the visible feature requirements for census block boundaries. The term OTSA replaces the term TJSA used for the 1990 census.
- The U.S. Census Bureau has clarified how each AIANA entity is named for Census 2000.

Dated: June 16, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

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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.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3293/P.L. 106–214

To amend the law that authorized the Vietnam Veterans Memorial to authorize the placement within the site of the memorial of a plaque to honor those Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service. (June 15, 2000; 114 Stat. 335)

H.R. 4489/P.L. 106–215

Immigration and Naturalization Service Data Management Improvement Act of 2000 (June 15, 2000; 114 Stat. 337)

Last List May 31, 2000

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