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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM209, Special Conditions No. 25–195–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 Airplane; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an air data display unit that displays critical flight parameters to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 9, 2002. Comments must be received on or before February 21, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM209, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM209. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 7, 2001, Duncan Aviation Inc., 15745 South Airport Road, Battle Creek, MI, 49015, applied for a supplemental type certificate (STC) to modify the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane listed on Type Certificate A33EU. The Model Falcon 10 is a twin engine, small transport airplane. It is capable of carrying two flightcrew members and up to nine passengers. This model is powered by two Airesearch Manufacturing Company of Arizona Model TPE731–2–1C engines. The modification incorporates the installation of an air data display system that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation must show that the AMD/BA Model Falcon 10 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified AMD/BA Model Falcon 10 airplane includes 14 CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–20, as listed in the Type Certificate Data Sheet (TCDS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Model

Falcon 10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 10 airplane must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The AMD/BA Model Falcon 10 airplane will incorporate the following novel or unusual design feature: an air data display unit that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Model Falcon 10 as modified by Duncan Aviation Inc. These special conditions require that new avionic/electronic and electrical systems such as the air data display unit, that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane modified by Duncan Aviation, Inc. Should Duncan apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on AMD/BA Model Falcon 10 airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields*

(HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1507 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–47–AD; Amendment 39–12603; AD 2002–01–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect the throttle friction-shaft and replace the shaft if damaged. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. The CAA reports an incident where the throttle friction adjuster loosened too far, causing the split pin and the washer on the shaft to break.

What Is the Potential Impact if FAA Took No Action?

The loosening of the throttle friction adjustment beyond its normal limits could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 2001 (66 FR 56248). The NPRM proposed to repetitively inspect the throttle friction-shaft and replace the shaft if damaged.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 118 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $60 per hour = $60	$1	$61	$61 × 118 = $7,198.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
16 work hour × $60 per hour = $960	$230	$1,190

Is There a Modification I Can Incorporate Instead of Repetively Inspecting the Throttle Friction-Shaft?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–11 Pilatus Britten-Norman LTD.: Amendment 39–12603; Docket No. 2000–CE–47–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the throttle friction-shaft for damage. Replace the split pin and washer.	Inspect within 100 hours time-in-service (TIS) after February 28, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacements prior to further flight after each inspection.	In accordance with the Procedures section of BN Service Bullitin BN2/SB.272, dated July 1, 2000.
(2) If damage is found on the throttle friction-shaft, replace shaft.	Before further flight after each inspection where damage is found.	In accordance with the Procedures section of BN Service Bulletin BN2/SB.272, dated July 1, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BN Service Bulletin BN2/SB.272, dated July 1, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You can look at copies

at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD 003–07–2000, dated August 22, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Issued in Kansas City, Missouri, on January 11, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1222 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–80–AD; Amendment 39–12602; AD 2002–01–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This AD requires you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks. This AD is the result of reports of many incidents of main landing gear torque knees cracking or breaking on the above-referenced airplanes. The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear and consequent loss of control of the airplane during takeoff, landing, or other ground operations.

DATES: This AD becomes effective on February 22, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 22, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; or on the Internet at <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf*> and <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf*>. These files are in Adobe Portable Document Format. The Acrobat Reader is available at <*http://www.adobe.com/*>. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports of many incidents of fatigue cracks occurring on main landing gear torque knees. There have been at least four reports where the main landing gear separated from the airplane.

The cause of this problem is cumulative fatigue damage on the main landing gear torque knees.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the failure of the main landing gear while the airplane is in operation with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 27, 2001 (66 FR 44988). The NPRM proposed to require you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,124 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to inspect the landing gear torque knees:

Labor cost	Parts cost per airplane	Total cost per airplane	Total cost U.S. operators
20 workhours × $60 per hour = $1200	$50	$1,250	$1,250 × 2,124 = $2,655,000.

The manufacturer will allow warranty credit to the extent noted in the service bulletin.

These costs only take into account the costs of the initial inspection. We have no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplane.

We estimate the following costs to do any necessary torque knee replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per airplane	Total cost per airplane
8 workhours × $60 per hour = $480	$3,286	$3,766

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–10 Raytheon Aircraft Company: Amendment 39–12602; Docket No. 99–CE–80–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
65–90, 65–A90, B90, C90, and C90A.	LJ–1 through LJ–1559.
65–A90–1	LM–1 through LM–141.
65–A90–4	LU–1 through LU–16.
E90	LW–1 through LW–347.
H–90	LL–1 through LL–61.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the main landing gear upper torque knee and lower torque knee for fatigue cracks.	Inspect within the next 100 hours time-in-service (TIS) after February 22, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 1,000 hours TIS.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and the applicable airplane maintenance manual.
(2) If fatigue cracks are found in the main landing gear torque knees during any inspection required by this AD, replace the cracked torque knees.	Before further flight after the inspection	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane model maintenance manual.
(3) When both the left and right main landing gear upper and lower torque knees are replaced with new upper torque knees (part number 50–810032–12) and new lower torque knees (part number 50–810295–25), the repetitive inspection requirement of this AD is no longer required.	You may replace all torque knees at any time, except for those torque knees that are found with evidence of fatigue cracks. Such torque knees must be replaced before further flight, as required by paragraph (d)(2) of this AD.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of

compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and Raytheon Recommended Service Bulletin SB 32–3116, Issued: October 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or on the Internet at <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf*> and <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf*>. These files are in Adobe Portable Document Format. The Acrobat Reader is available at <*http://www.adobe.com/*>. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 22, 2002.

Issued in Kansas City, Missouri, on January 10, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1206 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–01–AD; Amendment 39–12608; AD 2002–01–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also currently requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD. The actions specified in this AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, dated December 27, 2001).

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–01–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On December 17, 2001, the FAA issued AD 2001–26–10, amendment 39–12574 (66 FR 66739, December 27, 2001), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. The actions required by that AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–26–10, the FAA has become aware that some airplanes were inadvertently excluded from the applicability of that AD. The applicability of that AD specified only ''Model A319, A320, and A321 series airplanes, certificated in any category, having manufacturer serial numbers 1035 and 1384 inclusive.'' However, it was our intent for the applicability to be the same as that specified in the effectivity of Airbus Service Bulletin A320–35–1022, dated June 27, 2001. Therefore, we have determined that it is necessary to supersede AD 2001–26–10 to expand the applicability to include the additional airplanes listed in that Airbus service bulletin.

U.S. Type Certification of the Airplane Models

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD

2001–26–10 to continue to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. This action also continues to require the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–01–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12574 (66 FR 66739, December 27, 2001), and by adding a new airworthiness directive (AD), amendment 39–12608, to read as follows:

2002–01–14 Airbus Industrie: Amendment 39–12608. Docket 2002–NM–01–AD. Supersedes AD 2001–26–10, Amendment 39–12574.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization; accomplish the following:

Inspection, Installation, and Other Actions

(a) Within 600 flight hours after the effective date of this AD, do an in-situ one-time detailed visual inspection of Dräeger Type I (three/four-mask) oxygen containers, located in the passenger service units, and Dräeger Type II (two-mask) oxygen containers, located in the utility areas, for the presence of foam pads, per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

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

(1) If all foam pads are installed, before further flight, complete the other actions (including repacking the masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

(2) If any foam pad is missing, before further flight, install a foam pad in the applicable oxygen container, and complete the other actions (including repacking the

masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a Dräeger Type I or Dräeger Type II oxygen container unless it has been inspected and other actions done per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–35–1022, dated June 27, 2001. This incorporation by reference was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, December 27, 2001). Copies may be obtained from Airbus Industrie 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–363(B), dated August 8, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2002.

Issued in Renton, Washington, on January 14, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1419 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–32–AD; Amendment 39–12606; AD 2002–01–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company (GE) GE90 series turbofan engines. This amendment requires removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal. This amendment also requires a new lower life limit for the LIR configuration seal. This amendment is prompted by an uncontained engine failure which occured during a factory development engine ground test. The actions specified by this AD are intended to prevent failure of the HPT interstage seal that could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date February 26, 2002.

ADDRESSES: This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7135; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company (GE) GE90 series turbofan engines was published in the **Federal Register** on September 27, 2001. That action proposed to require removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal, and to require a new lower life limit for the LIR configuration seal.

Comments

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

One commenter requests that paragraph (c) of the proposal be revised or deleted. Paragraph (c) proposed to prohibit the installation of HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into any engine after the effective date of the AD. The commenter believes this requirement may result in an undue burden for lease pool engines since it would require the removal of an interstage seal that had considerable remaining life. The commenter believes there would be no unsafe condition in allowing continued operation of that seal up to the maximum number of cycles-since-new, or up to December 31, 2006, the end date stated in the proposal.

The FAA does not agree. The FAA believes the commenter's request is driven by the economic benefits that would be realized from commenter's lease pool engines. This pool of engines is a very small minority of the total GE90 engine fleet. If the commenter's request were adopted, however, the entire GE90 fleet would have no restrictions on the reuse of a pre-LIR HPT interstage seal, which is not the FAA's intent. The FAA believes that the minority of lease pool engines owned by the commenter can be addressed by the alternative methods of compliance process on a case-by-case basis if required.

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

Economic Analysis

There are approximately 232 GE90–76B, –77B, –85B, –90B, and –94B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 36 engines installed on airplanes of U.S. registry, with one domestic operator, would be affected by this AD. The FAA estimates that the cost for replacing the pre-LIR HPT interstage seals is $536,340, based on an assumption of how many seals will be replaced prior to reaching the full retirement life. The FAA also estimates

that the LIR HPT interstage seal life reduction cost will be $3,396,820, and is based on the pro-rated costs of HPT interstage seals that will be removed due to the reduced life limit. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $3,933,160.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–01–12 General Electric Company: Amendment 39–12606. Docket No. 2001–NE–32–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B, –77B, –85B, –90B, and –94B turbofan engines with high pressure turbine (HPT) interstage seals part numbers (P/N's) 1711M20P08, 1711M20P14, 1711M20P16, 1711M20P17, and 1847M96P02 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT interstage seal that could result in an uncontained engine failure, and damage to the airplane, do the following:

Replacement of HPT Interstage Seals P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17

(a) For GE90–76B, –77B, –85B, –90B engines with HPT interstage seals P/N's 1711M20P08, 1711M20P16, and 1711M20P17 installed, and GE90–76B and –77B engines with interstage seal P/N 1711M20P14 installed, replace seals at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 4,800 cycles-since-new (CSN), or before December 31, 2006, whichever occurs earlier.

(b) For GE90–85B and –90B engines with HPT interstage seal P/N 1711M20P14 installed, replace seal at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 2,800 CSN, or before December 31, 2006, whichever occurs earlier.

(c) After the effective date of this AD, do not install any HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into an engine.

Reduced Life Limit

(d) For engines with HPT interstage seals P/N 1847M96P02 installed, remove engine from service before exceeding the reduced cyclic life limit of 3,500 CSN.

(e) This AD establishes a new cyclic life limit for HPT interstage seal, P/N 1847M96P02. Except as provided in paragraph (g) of this AD, no alternate life limits for this part may be approved.

Definition

(f) For the purpose of this AD, a shop visit piece-part exposure is defined as an engine removal for maintenance that cannot be performed while installed on the airplane, and that the HPT interstage seal is completely disassembled when done in accordance with the disassembly instructions of the engine manual.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(i) This amendment becomes effective on February 26, 2002.

Issued in Burlington, Massachusetts, on January 14, 2002.

Thomas Boudreau,

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

[FR Doc. 02–1453 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–64–AD; Amendment 39–12604; AD 2001–26–52]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–52, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (ECD) Model EC135 helicopters by individual letters. This AD requires, before further Instrument Flight Rule (IFR) flight, inserting a copy of the AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) and replacing each affected Smart Multifunction Display (SMD45H) as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. This AD is prompted by the discovery of an

error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The actions specified by this AD are intended to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued on December 19, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–64–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 19, 2001, the FAA issued Emergency AD 2001–26–52 for ECD Model EC135 helicopters which requires, before further IFR flight, inserting a copy of the AD into the Limitations Section of the RFM and replacing each affected SMD45H as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. That action was prompted by the discovery of an error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The emergency AD was issued to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

The FAA has reviewed ECD Alert Service Bulletin EC135–31A–002, Revision 2, dated November 15, 2001 (ASB). The ASB specifies, in order to resume IFR operation, to immediately replace certain SMD45Hs. The ASB also specifies affixing placards and inserting RFM supplements informing the pilot of display anomalies, certain restrictions, and certain limitations until all SMD45Hs have been replaced.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model EC135 helicopters. The LBA advises that sometimes an inversion of the symbols occurs on some of the SMD45Hs. The LBA classified the ASB as mandatory and issued AD No. 2001–306/3, dated November 15, 2001, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provision of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Emergency AD 2001–26–52 to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter. The AD requires, before further IFR flight, the following:

- Inserting a copy of the AD into the Limitations Section of the RFM to prohibit IFR flight until the affected SMD45Hs are replaced.
- Replacing each affected SMD45H with the corresponding SMD45Hs as specified in the AD.
- After replacing the SMD45Hs in accordance with the AD, removing the AD from the RFM.

Replacing each specified SMD45H and removing the AD from the RFM are terminating actions for the requirements of the AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required before further IFR flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 19, 2001 to all known U.S. owners and operators of ECD Model EC135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 15 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to replace each SMD45H, and that the average labor rate is $60 per work hour. The manufacturer has stated that they will provide the SMD45Hs at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5400 to replace an SMD45H on each affected helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2001–SW–64–AD.'' The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–26–52 Eurocopter Deutschland GMBH: Amendment 39–12604. Docket No. 2001–SW–64–AD.

Applicability: Model EC135 helicopters with a Smart Multifunction Display (SMD45H) as the primary flight display (PFD) or navigation display (ND), certificated in any category.

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

Compliance: Required before further Instrument Flight Rule (IFR) flight, unless accomplished previously.

To prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert a copy of this AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) to prohibit IFR flight until the old part-numbered SMD45Hs listed in Table 1 of this AD are replaced.

(b) Replace each old part-numbered SMD45H with the corresponding new part-numbered SMD45H as specified in Table 1 of this AD.

TABLE 1.—RETROFIT KIT EC135–31A–002–2.C SMD45H

Old Part Number	New Part Number
(1) C19209VF11	C19209VG11
(2) C19267VF11	C19267VG11
(3) C19209SF10	C19209SG10
(4) C19267SF10	C19267SG10
(5) C19267RF10	C19267RG10
(6) C19209NF10	C19209NG10
(7) C19267NF10	C19267NG10
(8) C19209HF09	C19209VG11
(9) C19267GF09	C19267GG09
(10) C19267DF10	C19267DG10

(c) After replacing the old part-numbered SMD45Hs in accordance with paragraph (b) of this AD, remove this AD from the RFM.

(d) Replacing each specified SMD45H and removing this AD from the RFM are terminating actions for the requirements of this AD.

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

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

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued December 19, 2001, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–306/3, dated November 15, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1451 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–70–AD; Amendment 39–12605; AD 2001–26–53]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–53, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters by individual letters. This AD requires, before further flight, removing certain serial-numbered servocontrols. This AD is prompted by a report of manufacturing defects in a batch of main servocontrol rods. The actions specified by this AD are intended to prevent failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued on December 21, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas

76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 21, 2001, the FAA issued Emergency AD 2001–26–53, for ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, which requires, before further flight, removing certain serial-numbered servocontrols. That action was prompted by a report of manufacturing defects in a batch of main servocontrol rods. This condition, if not corrected, could result in failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

The FAA has reviewed ECF Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, which advise replacing certain servocontrols.

The Direction General De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. The DGAC advises of the discovery of a manufacturing defect on a batch of rods of the main servocontrol, the failure of which would lead to the loss of control of the helicopter. The DGAC classified the ECF Alert Telexes as mandatory and issued AD No. T2001–590–087(A) (for AS 350 helicopters) and No. T2001–591–065(A) (for AS 355 helicopters), both dated November 28, 2001, to ensure the continued airworthiness of these helicopters.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the FAA issued Emergency AD 2001–26–53 to prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter. The AD requires, before further flight, removing certain serial-numbered servocontrols. This AD does not apply to certain reconditioned servocontrols identified by the letter ''V'' engraved on the identification plate on the right-hand side of the part number. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, removing certain serial-numbered servocontrols is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 21, 2001 to all known U.S. owners and operators of ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 540 helicopters of U.S. registry will be affected by this AD. It will take approximately 2 work hours per helicopter to remove a main servocontrol. The average labor rate is $60 per work hour. Required parts will cost approximately $9200 per main servocontrol. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,032,800 ($9320 per helicopter), assuming that at least one main servocontrol is replaced on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2001–SW–70–AD.'' The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–26–53 Eurocopter France: Amendment 39–12605. Docket No. 2001–SW–70–AD.

Applicability: Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, with TRW–SAMM main servocontrols, part number (P/N) SC 5083, serial number (S/N) from 1500 to 1515, inclusive, or P/N SC 5084, S/N from 722 to 726, inclusive, installed, except those reconditioned and identified by the letter ''V'' engraved on the identification plate on the right-hand side of the P/N, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove each affected main servocontrol.

Note 2: Eurocopter France Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, pertain to the subject of this AD.

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

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

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued December 21, 2001, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD Nos. T2001–590–087(A) and T2001–591–065(A), both dated November 28, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1450 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–12]

Establishment of Class D Airspace; Titusville, NASA Shuttle Landing Facility, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL. A federal contract tower with a weather reporting system is in operation at the National Aeronautics and Space Administration (NASA) Shuttle Landing Facility. Therefore, the airport meets the criteria for establishment of Class D airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 1,900 feet MSL within a 5.7-mile radius of the NASA Shuttle Landing Facility.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On December 3, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Titusville, NASA Shuttle Landing Facility, FL, (66 FR 60162) to provide adequate controlled airspace to contain IFR operations at the NASA Shuttle Landing Facility. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be published subsequently in the Order.

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

The Rule

The amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Titusville, NASA Shuttle Landing Facility, FL [New]

NASA Shuttle Landing Facility, FL
(Lat. 28° 36′ 54″ N. long. 80° 41′ 40″ W)
Space Coast Regional Airport
(Lat. 28° 30′ 53″ N. long. 80° 47′ 57″ W)

That airspace extending upward from the suface to and including 1,900 feet MSL within a 5.7-mile radius of NASA Shuttle Landing Facility, excluding that portion contained within the Titusville, FL Class D airspace area; excluding that portion along the western boundary of Restricted Area R–2934, west of a line connecting the 2 points of intersection; and excluding the remaining portion within Restricted Areas R–2932 and R–2934 when they are active. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1510 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–AWP–13]

Establishment, Redesignation, and Revocation of Restricted Areas; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action redesignates Restricted Area 4804 (R–4804) Twin Peaks, NV, as R–4804A, and establishes R–4804B from flight level (FL) 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A, and establishes R–4813B from FL 180 to FL 350. This action also revokes R–4802 Lone Rock, NV, and designates the U.S. Navy (USN) Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

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

SUPPLEMENTARY INFORMATION:

History

On December 18, 2000, the FAA proposed the establishment, redesignation, and revocation of restricted areas in Nevada. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received regarding this rulemaking. Except for editorial changes, and the addition of the time of designation for R–4804A Twin Peaks, NV, which remains the same as currently designated but, was inadvertently omitted from the proposal, this amendment is the same as that proposed in the Notice. These rulemaking actions ''are necessary in the interest of national defense,'' as required under 49 U.S.C. 40103(b)(3)(A).

The Rule

This action redesignates R–4804 Twin Peaks, NV, as R–4804A from surface to 17,999 mean sea level (MSL), and establishes R–4804B from FL 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A from surface to 17,999 MSL, and establishes R–4813B from FL 180 to FL 350. The establishment of restricted areas R–4804B and R–4813B respectively, increase the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the restricted areas. The activation of the new areas will be on a real-time basis and follow agreed procedures between the United States Navy (USN) and the Manager of Oakland Center. This action also revokes R–4802 Lone Rock, NV, and designates the USN Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

The USN requested these modifications to meet the Chief of Naval Operations training requirements resulting from a real world threat environment that requires flight crews to develop and maintain an ability to deliver ordnance (bombs, missiles, bullets, etc.) from high altitudes.

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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

Environmental Review

This action was requested by the USN as part of the USN's Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon in Nevada, which also includes non-rulemaking airspace actions. Pursuant to section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable law, the USN and the Bureau of Land Management (BLM) prepared and published a Final Environmental Impact Statement (FEIS) in January 2000 that analyzed the potential environmental impacts associated with the Proposed Fallon Range Training Complex Requirements. The FAA was a cooperating agency on the FEIS. The actions taken in this final rule were among several actions included in the FEIS. According to the FEIS, each of the actions has independent utility and could be implemented separately. See FEIS, p. 1–4 (Table 1–1). The FEIS considered five alternatives, including the ''no action'' alternative. All but the ''no action'' alternative included the actions taken in this final rule. The USN issued a Record of Decision on April 10, 2000.

The FAA has conducted an independent review of the FEIS and is adopting the FEIS for this action pursuant to 40 CFR § 1506.3(a) and (c). This final rule, which increases the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the existing airspace, will not result in significant environmental impacts. The FAA has also approved the non-rulemaking airspace action included in the USN's proposed training requirements at the Fallon Range Training Complex. The record of decision for the non-rulemaking action is contained in a Non-Rulemaking Decision Document (NRDD) dated November 6, 2001. A copy of the NRDD has been placed in the public docket for this rulemaking.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 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.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

* * * * *

R–4802 Lone Rock, NV [Revoke]

R–4804 Twin Peaks, NV [Revoke]

R–4813 Carson Sink, NV [Revoke]

R–4804A Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. Surface to but not including FL 180 excluding 2,000 feet AGL up to but not including 8,500 feet MSL, north of and within 1 NM of U.S. Highway 50 between the intersection of U.S. Highway 50 with long. 118°26′00″W., and long. 118°08′00″W.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA, Oakland ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4804B Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily. Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813A Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00″N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813B Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1374 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30289; Amdt. No. 433]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en routes authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 11, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

§§ 95.48, 95.6001, 95.6159, 95.6437, 95.6441, 95.6450, 95.614, and 95.6538 [Amended]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
Colored Federal Airways		
§ 95.48 Green Federal Airway 8 is Amended to Read in Part		
Campbell Lake, AK NDB	Glennallen, AK NDB	10000
Atlantic Routes		
Atlantic Routes—A315 is Amended to Read in Part		
Jayee, BS FIX *16500—MRA	*Hodgy, BS FIX	7,000
Atlantic Routes—A555 is Amended to Read in Part		
Rajay, BS FIX	Prune, BS FIX	4,000
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME *1500—MOCA	Lepas, BS FIX	*3000
Lepas, BS FIX *1300—MOCA	Bosar, BS FIX	*3000
Atlantic Routes—B503 is Amended to Read in Part		
NAssua, BS VOR/DME *16500—MRA	*Hodgy, BS FIX	7000
Hodgy, BS FIX	Enamo, OA FIX	6000
Atlantic Routes—G437 is Amended to Read in Part		
Mapyl, OA FIX	Elbow, BS FIX	31000
Elbow, BS FIX	Ingra, BS FIX	8000
Ingra, BS FIX	Nassau, BS VOR/DME	2000
Nassau, BS VOR/DME	Welks, BS FIX	2000
Welks, BS FIX	Brono, BS FIX	2000
Brono, BS FIX *14000—MRA	*Jayee, BS FIX	5000
Bahamas Routes		
Bahama Routes—022V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2000
Majur, BS FIX *1500—MOCA	Nassau, BS VOR/DME	*2000
Bahama Routes—049V is Amended to Read in Part		
Nassau, BS VOR/DME	Tinky, BS FIX	4000
Bahama Routes—053V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2000
Nassaue, BS VOR/DME	Guava, BS FIX	3000
Bahama Routes—054V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*1500—MOCA		
Bahama Routes—055V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME	Burrl, BS FIX	*3000
*1500—MOCA		
Burrl, BS FIX	Seaan, BS FIX	*3000
*1500—MOCA		
Seaan, BS FIX	Burgo, BS FIX	*16000
*1500—MOCA		
Bahama Routes—057V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000
*1500—MOCA		
Bahama Routes—058V is Amended to Read in Part		
Nassau, BS VOR/DME	Kuray, BS FIX	*2000
*1500—MOCA		
Kuray, BS FIX	*Melon, BS FIX	**2000
*8000—MRA		
**1300—MOCA		
Melon, BS FIX	Hankx, BS FIX	*2000
*1300—MOCA		
Hankx, BS FIX	Barts, BS FIX	*4000
*1300—MOCA		
Barts, BS FIX	Abaco, BS FIX	10000
Bahama Routes—063V is Amended to Read in Part		
Hankx, BS FIX	*Melon, BS FIX	**2,000
*8,000—MRA		
**1,300—MOCA		
Melon, BS FIX	Kuray, BS FIX	*2,000
*1300—MOCA		
Kuray, BS FIX	Nassau, BS VOR/DME	*2,000
*1,500—MOCA		
Bahamas Routes—065V is Amended to Read in Part		
Nassau, BS VOR/DME	Peach, BS FIX	*2000
*1500—MOCA		
Peach, BS FIX	*Sydny, BS FIX	**2000
*5000—MRA		
**1300—MOCA		
Sydny, BS FIX	Lauth, BS FIX	*5000
*1300—MOCA		
Lauth, BS FIX	Freeport, BS VOR/DME	*2000
*1400—MOCA		
Bahamas Routes—070V is Amended to Read in Part		
Marsh Harbour, BS NDB	Nassau, BS VOR/DME	6000
§ 95.6001 Victor Routes—U.S.		
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Tuskegee, AL VOR/DME	Kentt, AL FIX	*2600
*1900—MOCA		
§ 95.6437 VOR Federal Airway 437 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000
*5000—MRA		
**1300—MOCA		
§ 95.6441 VOR Federal Airway 441 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*5000—MRA **1300—MOCA		
§ 95.6450 VOR Federal Airway 450 is Amended to Read in Part		
Muskegon, MI VORTAC *2400—MOCA	Flint, MI VORTAC	*3000
§ 95.6514 VOR Federal Airway 514 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC *10200—MCA Twentynine Palms, CA VORTAC, NE BND **7600—MOCA	Goffs, CA VORTAC	**12000
§ 95.6538 VOR Federal Airway 538 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC *10200—MCA Twentynine Palms, CA VORTAC, NE BND **7600—MOCA	Goffs, CA VORTAC	**12000

[FR Doc. 02–1376 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ49–235 FRL–7127–8]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by New Jersey that consists of two elements necessary for EPA to grant final full approval of New Jersey's enhanced motor vehicle inspection and maintenance (I/M) program. The first element provides the State's final submittal for compliance with the National Highway Systems Designation Act (NHSDA), which allowed states to claim additional credit for their decentralized inspection and maintenance programs, provided they could validate that credit claim with actual program implementation data. The second element revises New Jersey's performance standard modeling to reflect the State's enhanced I/M program as it is currently implemented. This element satisfies a condition of EPA's May 14, 1997 conditional interim approval of New Jersey's enhanced I/M program SIP. The intended effect of this action is to approve the two evaluations of the enhanced I/M program, in addition to prior minor revisions to the enhanced I/M SIP, and to grant final full approval of the program. The enhanced I/M program will result in emission reductions that will help achieve attainment of the one-hour ozone standard and carbon monoxide standard.

EFFECTIVE DATE: This rule will be effective February 21, 2002.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460. New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2001 (66 FR 47130), EPA published a notice of proposed rulemaking regarding a State Implementation Plan (SIP) revision submitted by the State of New Jersey. The notice proposed to approve revisions to New Jersey's enhanced I/M SIP, and to grant final full approval of the program. The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on May 4, 2001, and the final SIP revision was formally submitted on August 20, 2001. A detailed description of New Jersey's submittals and EPA's rationale for the proposed action were presented in the September 11, 2001 proposal, referenced above, and will not be restated here.

Public Comments/Response to Comments

On October 16, 2001 (66 FR 52560), EPA published a notice extending the comment period for the September 11, 2001 proposal for an additional thirty days. This action was necessary due to the tragic events of September 11, 2001 and the resulting temporary closure of the Region 2 office of the EPA in New York City and the disruption of mail delivery and telephone service. It should be noted that EPA did not receive any comments associated with the proposed approval of New Jersey's enhanced I/M program.

Conclusion

EPA is taking final action to approve New Jersey's August 20, 2001 SIP revision, which contained the remaining elements necessary to grant final full approval of the State's enhanced I/M program. EPA's authority to approve New Jersey's enhanced I/M program is set forth at sections 110 and 182 of the Clean Air Act. In accordance with the parallel processing procedures, EPA has

evaluated New Jersey's final SIP revision submitted on August 20, 2001, and finds that no substantial changes were made from the proposed SIP revision submitted on May 4, 2001. EPA agrees with New Jersey's responses to those comments it received which are related to the enhanced I/M program as an element of the State's SIP.

Based on the analyses included in New Jersey's August 20, 2001 submittal, EPA concludes that the State's NHSDA evaluation validates New Jersey's 80% decentralized test and repair effectiveness rate credit claim. New Jersey's evaluation uses actual program implementation data to show that the decentralized portion of the network is at least 80% as effective as its centralized program, as the State previously claimed. EPA also concludes, based on New Jersey's performance standard modeling which reflects the State's enhanced I/M program as it is currently implemented, that the State's program meets the low enhanced performance standard. Based on these conclusions, EPA is approving New Jersey's August 20, 2001 SIP revision.

EPA is also approving the final and complete test equipment specifications, test procedures and emission standards that New Jersey submitted to satisfy conditions of EPA's May 14, 1997 interim approval. New Jersey made a revision to its SIP on January 31, 1997 which contained those required elements.

EPA is finding that New Jersey's December 14, 1998, SIP revision submittal adequately remedies the eight de minimus deficiencies previously identified.

Finally, as a consequence of EPA's conclusions regarding the approvability of the elements summarized above, EPA is changing the conditional interim status of the approval of New Jersey's enhanced I/M program to final approval.

Administrative 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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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. 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.*).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 21, 2001.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(71) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(71) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on August 20, 2001 by the New Jersey State

Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Amendments to Title 7, Chapter 27 of the New Jersey Administrative Code (NJAC) Subchapter 15, ''Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles,'' effective November 15, 1999.

(B) Amendments to Title 7, Chapter 27B of the NJAC Subchapter 4, ''Air Test Method 4: Testing Procedures for Motor Vehicles,'' effective November 15, 1999.

(C) Amendments to Title 13, Chapter 20 of the NJAC Subchapter 28, ''Inspection of New Motor Vehicles'' (Sections: 28.3, 28.4, 28.6), effective December 6, 1999.

(D) Title 13, Chapter 20 of the NJAC: Subchapter 7, ''Vehicle Inspection'' (Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6); Subchapter 24, ''Motorcycles'' (Section: 24.20); Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles'' (Section: 26.16); Subchapter 29, ''Mobile Inspection Unit'' (Sections: 29.1, 29.2, 29.3); Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities''; Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities''; Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program''; Subchapter 44, ''Private Inspection Facility Licensing''; and Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration'', effective December 6, 1999.

(E) Title 13, Chapter 21 Subchapter 5, ''Registrations'' (Section: 5.12) and Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers'' (Section: 15.7), effective December 6, 1999.

* * * * *

3. In § 52.1605 the table is amended:

a. Revising under Title 7, Chapter 27, the entry for Subchapter 15.

b. Revising under Title 7, Chapter 27B, the entry for Subchapter 4.

c. Revising under Title 13, Chapter 20, the entry for Subchapter 28.

d. Adding new entries for Subchapters 7, 24, 26, 29, 32, 33, 43, 44, and 45 in numerical order under Title 13, Chapter 20.

e. Adding new Chapter 21 under Title 13 and new entries for Subchapters 5 and 15 in numerical order under Chapter 21.

The revisions and additions read as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 15, ''Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles.''	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
* * * * * * *			
Chapter 27B			
* * * * * * *			
Subchapter 4, ''Air Test Method 4: Testing Procedures for Motor Vehicles.''	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
* * * * * * *			
Title 13, Chapter 20			
Subchapter 7, ''Vehicle Inspection.'' Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 24, ''Motorcycles.'' Section: 24.20.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles.'' Section: 26.16.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 28, ''Inspection of New Motor Vehicles.'' Sections: 28.3, 28.4, 28.6.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 29, ''Mobile Inspection Unit.'' Sections: 29.1, 29.2, 29.3.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 44, ''Private Inspection Facility Licensing.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Chapter 21			

State regulation	State effective date	EPA approved date	Comments
Subchapter 5, ''Registrations.'' Section: 5.12.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers.'' Section: 15.7.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
* * * * * * *			

[FR Doc. 02–1345 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–77; FCC 01–355]

Billed Party Preference for InterLATA 0+ Calls.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies that the price disclosure rules apply to all interstate non-access code operator service calls. The Commission confirms that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls. The Commission also clarifies that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider. The Commission retains the requirement that oral rate information must be provided to both parties on a collect call. Finally, the Commission amends the rules to reflect that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

DATES: Effective Date: February 21, 2002.

Compliance Date: The oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Nadel, Attorney, or Michele Walters, Associate Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration in CC Docket No. 92–77, released on December 12, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

Introduction

1. In 1998, the Commission addressed the problem of widespread consumer dissatisfaction with the high rates charged by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as hotels, hospitals, and educational institutions. At that time, an away-from-home caller who dialed ''0'' followed by an interexchange number typically did not know what rates the particular OSP would be charging. The Commission responded to this problem in the *Second Report and Order,* 63 FR 11612, March 10, 1998, by adopting price disclosure rules that apply to providers of interstate operator services from such phones and to providers of inmate operator services from phones set aside for use by inmates at correctional institutions. These rules were designed to ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations, thereby fostering a more competitive OSP marketplace. In this Order, we largely affirm those rules and dispose of outstanding petitions for reconsideration. We make several minor modifications and clarifications to the rules.

2. Specifically, we clarify that the price disclosure rules apply to all interstate non-access code operator service calls, even those that are initiated by dialing 0-, if the consumer will be liable for interstate operator service charges for such calls. We confirm that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls and therefore decline to exempt interstate intraLATA toll calls from the price disclosure obligation under our rules. We also clarify that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider and amend the rules accordingly. In view of the statutory definition of ''consumer'' in the context of operator services, we retain the requirement that oral rate information must be provided to both parties on a collect call. Finally, we amend the rules to reflect the finding in the *Second Report and Order* that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

3. The Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs with respect to calls from public phones at away-from-home aggregator locations. OSPs have historically competed with each other to receive operator service calls by offering commissions to payphone or premises owners on all such calls from a public phone. In exchange for this consideration, premises owners have agreed to designate a particular OSP as the presubscribed interexchange carrier (PIC) serving their payphones. Many OSPs using this strategy agreed to pay very high commissions to both premises owners and sales agents who sign up those premises owners and have claimed, as a consequence, that they had to impose very high usage charges on consumers placing calls from payphones. While this process generated added revenues for premises owners and sales agents, it forced callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP. Because payphone owners and other aggregators did not earn

commissions on these so-called ''dial around'' calls until relatively recently, many aggregators blocked the use of access codes from their phones.

4. In 1990, Congress provided the Commission and consumers with tools to address these practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.). Under TOCSIA and the Commission's implementing rules, an aggregator must, among other things, permit consumers to use an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the OSP the aggregator has selected as its PIC for long-distance calls. The Commission also mandates, in accordance with TOCSIA, that each OSP ''brand'' its calls, that is, ''identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. In 1996, in response to the forbearance provisions of the Telecommunications Act of 1996, the Commission sought comment on whether to forbear from applying the informational tariff filing requirements it had imposed under section 226, as well as whether to require all OSPs to disclose their rates on all 0+ calls. Based on that record, the Commission adopted its *Second Report and Order.*

5. In the *Second Report and Order,* the Commission amended its rules to require*, inter alia,* that operator service providers (OSPs) ''[d]isclose audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange, non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call.''

6. The oral price disclosure rule also requires OSPs to instruct consumers that they may obtain applicable rate and surcharge quotations for 0+ calls either by, at the option of the OSP, dialing no more than two digits or remaining on the line. The Commission further amended its rules to require ''all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone.''

7. The Commission ordered that the disclosure rules would become effective generally on July 1, 1998. The Commission extended the compliance date until October 1, 1999, for those carriers using store-and-forward payphones to provide operator services and stated that it would consider waiver requests on a specific factual showing of good cause.

8. Thereafter, Ameritech (now operating as SBC) petitioned for a stay of the new oral price disclosure rules to the extent that the *Second Report and Order* could be deemed to apply to interstate intraLATA toll services. In petitions for clarification or reconsideration, Ameritech and US West, Inc. (now operating as Qwest) asked the Commission to clarify, or, alternatively, to rule on reconsideration, that these rules do not apply to interstate intraLATA service. Because these petitions were pending and would not be resolved by the July 1, 1998 effective date, the Common Carrier Bureau (the Bureau) found that it would be in the public interest for the Commission to determine, prior to the compliance deadline, the applicability of the rules to interstate intraLATA toll operator services. For this reason, the Bureau stayed these requirements with respect to such intraLATA calls until 60 days after the release of an order addressing Ameritech's and US West's petitions. Seven other petitions for clarification and/or reconsideration of the price disclosure requirements were timely filed.

II. Discussion

Applicability of Rules to LECs and IntraLATA Calls

9. We affirm the application of our price disclosure rules to local exchange carriers (LECs) when they provide interstate operator services within their region. We note that the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) expressly defines ''operator services'' to include ''any interstate telecommunications service'' that meets specified criteria. Thus, there is no basis in the statute for exempting LEC-provided interstate operator services, which meet the statutory criteria, from the disclosure requirements. We disagree with US West's contention that LECs should be exempt from these rules because they have never been seen as the source of the kinds of problems that TOCSIA was intended to address. While there may have been relatively few complaints about interstate operator services provided by LECs, this may reflect the fact that LECs have not traditionally provided extensive interstate operator services. In view of the statutory language, and in the absence of forbearance, we do not believe a blanket exemption for LECs providing interstate operator services is warranted simply because companies other than LECs have been the primary subjects of complaints about high rates.

10. Some petitioners and commenters assert that we should decline to apply our price disclosure requirements to interstate intraLATA toll, or isolated so-called ''bubble LATA'' calls for various reasons. For example, Ameritech claims that its operator switches cannot distinguish between interstate and intrastate intraLATA traffic for this purpose and that, as a result, it would have to apply a price disclosure requirement in an overinclusive manner to all intraLATA calls. We recognize that most intraLATA toll calls are intrastate calls within the jurisdiction of the respective state regulatory agencies. We further note that many states have responded to consumer concerns over high rates and surcharges with regulations that cap rates of operator services providers and/or prohibit premises-imposed fees (PIFs). As commenters assert, requiring price disclosures may indirectly impose additional obligations with respect to all intrastate calls even though there are a relatively small number of interstate intraLATA toll calls. Commenters also assert that added expense may be required to ensure that consumers using operator services for interstate intraLATA calls receive price disclosures. Ameritech claims that the history of this proceeding demonstrates that the Commission did not intend to apply the oral disclosure rule adopted in the *Second Report and Order* to any intraLATA calls. Finally, Ameritech contends that the legislative history of TOCSIA supports its view that Congress did not intend for the statute to apply to interstate intraLATA calls, but only to interstate interLATA calls, despite the fact that the statute only uses the term ''interstate.''

11. Because the statute requires price disclosures to be made for any interstate operator service calls, we believe that exempting interstate intraLATA calls from our price disclosure requirement would be inconsistent with the statutory language, and we decline to do so. We will, however, grant US West's request for an additional six months after the release of this ruling to come into compliance with the price disclosure requirement for interstate intraLATA calls.

B. Disclosure of Premises-Imposed Fees

12. We amend our rules to make clear that the only charges that an OSP must disclose to a consumer upon request are those that the OSP, or its billing agent, will bill the consumer, including any location-specific charge or premises-imposed fee (PIF) charged by the OSP, and not those charged separately by the premises owner or aggregator. Our rules already require aggregators to disclose charges they impose and collect independently of OSPs, such as a hotel surcharge billed by a hotel. PIFs often vary widely among locations and premises owners. OSPs often are unaware of the specific surcharges imposed by aggregators, such as hotels, motels, and hospitals, on their guests for phone calls from their rooms. Further, depending on the particular facts and circumstances, aggregators could be subject to regulation as common carriers if they impose per call charges on interstate calls. For these reasons, the Commission has not required informational tariffs filed by OSPs to specify any PIF other than those directly billed and collected from consumers by the OSP, or its billing agent. Accordingly, we clarify that the tariff and rate disclosure requirements apply only to PIFs and other charges collected from consumers by the OSP, or any other entity that bills and collects on behalf of the OSP. We can revisit this determination, upon complaint or on our own motion, if we find that practices of OSPs allow aggregators to impose excessive or otherwise unreasonable surcharges on interstate calls.

C. Applicability of Rate Disclosure Rules to Collect Calls

13. We reject the requests by AT&T and SBC that we only require oral rate disclosures to be made to the party responsible for payment for collect calls, and not to the party initiating the call. We note, rather, that Congress expressly requires that disclosures be made to the ''consumer,'' which it defines as ''a person initiating any interstate telephone call using operator services.'' Under our current rules, the definition of ''consumer'' includes both parties to a collect call. Because we find that the statute specifies that callers making collect calls must receive rate disclosures, we do not eliminate that portion of the requirement. Furthermore, we observe that parties initiating collect calls have the option of selecting among OSPs, so requiring rate disclosures to them can help them make informed selections. Thus, for purposes of the rate disclosures required of the presubscribed OSP under TOCSIA, we will continue to define the term ''consumer'' to include both parties to a collect call.

D. Applicability of Rate Disclosure Rules to Bill-to-Third-Number Calls

14. We make a minor amendment to our rules with respect to bill-to-third-number calls when an OSP contacts the party to be billed to secure billing approval. For such calls, the rules currently only require disclosures to the caller, even if that person is not the party responsible for payment of the charges. Although, in the *Second Report and Order,* the Commission stated that it would ''require OSPs to make additional oral disclosure at the point of purchase of 0+ calls,'' the rules were not amended to reflect this requirement in the context of bill-to-third-number calls. To address this discrepancy, we amend the definition of ''consumer'' so that the oral rate disclosure requirement, in situations involving bill-to-third-number calls, will include the party to be billed if the OSP contacts that person to secure approval for billing. In any case, the OSP must provide the rate disclosure option to the caller, as required by the statute. We note that, in the context of inmate operator services, the Commission defines the term ''consumer'' as ''the party to be billed,'' which would include persons liable for bill-to-third-number calls, if any. Our amendment regarding bill-to-third-number calls will help ensure that consumers have the ability to make informed choices about the rates of OSPs and providers of inmate operator services.

E. Rate Disclosure in Calls by Prison Inmates

15. We retain the requirement of oral rate disclosure for operator service calls from inmates in correctional institutions. We reject the requests by US West that we vacate the Commission's decision to apply our rules to inmate calling or significantly modify those rules. As US West acknowledges, both of its proposed modifications are significantly flawed. US West suggests that we permit carriers to use a ''generic'' system upgrade that would provide a price quote for the highest possible rate the call might entail or, alternatively, that we designate a separate phone number for rate quotes. We believe that each of these alternatives will fail to meet an important goal. US West suggests the first option, the ''generic'' system upgrade, because it believes such an approach would be less expensive than implementing a system capable of providing the more specific rate disclosures required by the current rules. However, as US West observes, this approach would not provide accurate rate quotes, and excessive quotations might unnecessarily discourage calling. Permitting the provision of inflated rate quotes in an inmate environment where OSPs face no competitive pressures would be inconsistent with our statutory obligation to ''ensur[e] that consumers have the opportunity to make informed choices'' in using operator services to place interstate telephone calls. US West proposes the second modification option, the designation of a separate phone number for rate quotes from inmate phones, as another way to minimize the expense of compliance with the current rules. The drawback of this modification option, as US West also notes, is that it would ''open up'' the inmate calling system by giving inmates direct access to ''live outside lines,'' thereby threatening security. We agree that taking this approach could compromise the special security measures the Commission has acknowledged that inmate calls require. Because these two alternatives are problematic, US West urges us to vacate the rate disclosure requirement for operator service calls from inmates in correctional institutions and handle complaints about excessive rates for such calls on a case-by-case basis. We find that US West has not undermined the reasoning underlying the application of the rate disclosure rules to inmate calls, and we decline to vacate our rules. We recognize that, unlike persons making calls from aggregator locations, inmates typically do not have the option of dialing around the (PIC). In the *Second Report and Order,* the Commission concluded that recipients of collect calls from inmates ''require additional safeguards to avoid being charged excessive rates from a monopoly provider.'' The Commission adopted price disclosure rules for providers of inmate operator services that are similar to those applicable to OSPs in order to ''eliminate some of the abusive practices that have led to complaints.'' Finally, while Citizens United For Rehabilitation of Errants (CURE) asks us to require OSPs to provide copies of informational tariffs to prisons and other consumers, we agree with MCI that informational tariffs are already available and that prison officials can easily provide them to prisoners.

F. Rate Disclosure in Air-to-Ground Calls

16. We also retain the requirement of oral rate disclosure for air-to-ground calls. One of the principal reasons underlying the adoption of the rate prompt requirement was to ensure that prospective away-from-home callers are reminded of their right to obtain rate quotations from the presubscribed OSP because its rates generally are not posted at the aggregator location. Although AT&T asserts that oral rate disclosure for air-to-ground calls is unnecessary because airplane passengers typically sit for at least one hour with rate information directly before them, we find that the record is insufficient to support a finding that the applicable rates, including any surcharge billed and collected by the OSP, for air-to-ground operator services always are posted on or near the telephone instrument. Furthermore, for collect calls, such posting would not apprise the called parties, who are responsible for paying for the calls, of their right to know the price of a call at the time of purchase.

G. Use of Visual Rates Display

17. We decline to issue the ruling US West seeks that would permit OSPs to provide the rate quotation visually, if their embedded equipment and future business plans make oral presentations expensive. US West asserts that an oral alert tone, followed by a visual rate display on the caller's phone (*e.g.,* a visual display on the payphone), would enable OSPs to convey rate information effectively without incurring burdensome costs.

18. We disagree. The visual rate display on the telephone would provide rate information only to the caller, not to the called party. As previously noted with respect to inmate calls, as well as bill-to-third-number calls in certain circumstances, the consumer to whom the disclosure must be made is ''the party to be billed,'' which typically is not the caller. In the case of collect calls (and certain types of bill-to-third number calls), under our rules, the ''consumer'' who must receive the required notice includes both the party called and the caller. Furthermore, US West does not explain how persons with impaired vision would access the information in a visual rate display. Accordingly, we will retain the requirement that the rate disclosure must be oral.

H. 0− Calls

19. We clarify that the oral price disclosure requirement does not apply to a 0− call, unless the local operator routes the call to an IXC that completes an interstate non-access code toll call from an aggregator or prison location. As noted by both Bell Atlantic and BellSouth, the *Second Report and Order*, as originally adopted by the Commission, required OSPs to advise consumers how to obtain rate information for ''any interstate, domestic, interexchange 0+ call.'' As they further note, the Bureau subsequently issued an erratum, which, among other things, replaced the term ''0+ call'' with the phrase ''non-access code operator service call,'' in order to make the terminology in our rules more uniform. Bell Atlantic and BellSouth express concern that the change in wording from ''0+ calls'' to ''non-access code operator service calls'' could be interpreted as making a substantive change regarding ''0−'' calls. They observe that expanding the disclosure requirement to cover ''0− '' calls (*i.e.,* calls that merely require the caller to enter or dial ''0''), would be contrary to the express language of the *Second Report and Order*. AT&T asks the Commission to clarify that the erratum was not intended to override the text of the *Second Report and Order*, and it notes that such an interpretation would be inconsistent with the intent of this proceeding manifested in its title.

20. As is clear from the text of the *Second Report and Order*, the Commission intended the new price disclosure rules to apply to interstate 0+ calls from aggregator locations and prison inmates. The Commission stated that ''[a] 0+ call occurs when the caller enters ''0'' plus an interexchange number, without first dialing a carrier access code * * * .'' On the other hand, a 0− call occurs when the caller only dials 0, which routes the call to an operator for assistance in making local calls. We never intended our rules to cover such intrastate calls. As we said, however, our oral price disclosure prompt requirement is applicable if the local operator should route the call to a carrier that completes an interstate non-access code toll call from an aggregator or prison location. To alleviate any possible confusion on this issue, we hereby clarify that these rules are applicable to the carrier that provides an interstate call, or if consumers otherwise would be liable for interstate operator services charges.

I. AT&T's 2000 and 1000 Public Phone Sets

21. We grant AT&T's request for clarification regarding the applicability of the rules to approximately 8,700 of its Public Phone 2000 and Public Phone 1000 sets, which permit callers to ''swipe'' their calling or credit cards into the card-reading devices of the phones. This type of phone stores the card digits until after the caller dials the phone number of the called party and forwards them through the network at the same time that the caller would otherwise hear the announcement regarding the availability of rate information. We agree with AT&T that, under such circumstances, the phones qualify as ''store-and-forward'' payphones for purposes of the operator service rate disclosure rules.

J. Other Changes to Text of the Rules

22. Because a new Commission bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints about OSPs, we are amending § 64.703(b)(4) to require the new bureau's name and address to be posted on payphones in future postings. We are mindful of the need to avoid any unnecessary burdens on current payphone operators, and we therefore will not require them to correct their existing postings until they must replace those postings for other reasons. We will also ensure that consumer complaints sent to the old address (the Common Carrier Bureau's Enforcement Division, which no longer exists) will continue to be delivered to the Consumer Information Bureau.

23. We have removed the term ''domestic'' from the text of our rules. The rules are not applicable to foreign calls, but only to interstate calls, and the term ''domestic,'' which is not defined in the Communications Act, is redundant. We also have removed the term ''interexchange'' because not all interstate interexchange calls are long-distance toll calls covered by the rules. By removing these superfluous terms, we do not intend to change the scope or extent of our rules as clarified here.

24. Finally, as suggested by the CURE, we are revising the text of the rule applicable to providers of inmate operator services to more closely parallel the language of the comparable requirements for OSPs. This revision merely clarifies that each provider of inmate operator services must identify itself and disclose, audibly and distinctly to the consumer, at no charge, and before connecting any interstate, non-access code operator services call, how to obtain the total cost of the call, including any surcharge or premises-imposed fee, or the maximum possible total cost of the call, including any such surcharge or fee. The required oral disclosure must instruct consumers that they may obtain applicable rate and surcharge quotations either, at the

option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. As the CURE and the Inmate Calling Service Providers Coalition observe, this editorial change does not affect the substance of the rule. For the reasons discussed, we do not permit OSPs to use generic, maximum call prices for inmate calls, where they would not have a competitive incentive to provide more accurate prices.

III. Conclusion

25. We believe that the clarifications and amendments adopted in this Order will make our price disclosure rules for operator services even more effective, while removing uncertainty and minimizing administrative costs.

IV. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order*. The Commission received no written public comments on the FRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission is issuing this *Second Order on Reconsideration* to clarify and amend rules it previously adopted in the *Second Report and Order* to protect consumers from excessive charges in connection with interstate non-access code operator services for payphone and prison inmate calls. Those rules sought to ensure that consumers are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

1. Need for, and Objectives of, the Second Order on Reconsideration

27. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

28. In this *Second Order on Reconsideration*, we grant, in part, several petitions seeking clarification of rules the Commission adopted in its *Second Report and Order*, requiring carriers to orally disclose to consumers how to obtain the charges for operator services for interstate calls from aggregator locations and from prison inmate-only telephones. The objective of the rules previously adopted, and as clarified and amended in this Order, is to further implement the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and Congressional concern toward the impact of the 1996 Act on small business entities.

2. Summary of Significant Issues Raised by the Public in Response to the FRFA

29. In the reconsideration petitions received by the Commission, no petitioner commented on the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the revised rules. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. A ''small business concern'' is one that: is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (the SBA). The SBA has defined a small business for North American Industry Classification System (NAICS) codes 51331 and 51333 (Wired Telecommunications Carriers and Telecommunications Resellers) to be small entities when they have no more than 1,500 employees. In the FRFA, we discussed generally the total number of telephone companies falling within these categories and estimated the number of carriers falling within relevant subcategories. Those sub-categories consisted of telephone companies, wireline carriers and service providers, interexchange carriers, resellers, operator service providers, and local exchange carriers. Except for updating the Operator Service Providers category in the following paragraph, we incorporate by reference that discussion into this Supplemental FRFA.

31. *Operator Service Providers.* According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were *primarily* engaged in the provision of operator services, but many other carriers provide operator services as a secondary business. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226 of the Communications Act, and the Commission's rules and orders, to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of September 1, 2000, approximately 725 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 725 or fewer small entity OSPs that may be affected by the amended rules adopted in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The rule amendments adopted in this Order clarify the current requirement that certain carriers disclose audibly to consumers how to obtain the price of a call before it is connected. Nondominant long-distance carriers, including small nondominant interchange carriers, currently are required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate non-access code call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they may be billed for such calls. The rule amendments adopted in this Order should not substantially affect the manner in which OSPs and providers of service from correctional institutions have been required to operate since the rules went into effect on July 1, 1998 (and with respect to store-and-forward telephones, on October 1, 1999). The changes, as noted throughout the text, are mere clarifications. For instance, even when we amend our rules to require disclosures to third parties when OSPs contact those parties to secure

approval for bill-to-third number calls, this merely addresses a discrepancy that existed between the Order and the Commission rules.

33. The rules adopted require that hundreds of non-dominant, long-distance carriers continue to disclose information regarding their rates, as well as any related fees they collect on behalf of the owners of the premises where the telephone instrument is located. Small entities may continue to feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to these policies and rules. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected. To the extent that any statement contained in this Supplemental FRFA Appendix is perceived as creating ambiguity with respect to our rules or statements made in this Order, the rules and statements set forth in the Order control.

35. Previously, in the *Second Report and Order*, we carefully considered and rejected several alternatives to the price disclosure requirements and rules adopted therein, as modified herein, finding them more burdensome to carriers. For example, we rejected a proposed billed party preference routing system, which would have seamlessly routed calls to the callers preferred carrier, due to its estimated implementation cost of one billion dollars. The costs of hardware and software upgrades would have been particularly burdensome to small carriers. We also rejected a benchmark pricing system that would have required small carriers to carefully monitor the rates of the three most popular carriers. Furthermore, we limited our disclosure requirements so that they would not apply to those types of calls for which they appeared unnecessary. This order attempts to clarify and fine tune those distinctions so that disclosure requirements only apply where we believe they are in the public interest. Thus, the rules, as clarified and modified herein, are applicable only to limited interstate, non-access code calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10–10–XXX or 1–800–XXX–XXXX, whereby callers can circumvent placing the call through the long-distance carrier that is presubscribed for that line.

36. Furthermore, although we find that the law requires rate disclosures to be made for interstate intraLATA calls, we are delaying the effective date of that requirement for 6 months. We believe that a 6-month delay should give the affected parties ample opportunity to come into compliance with this requirement.

37. In addition, a new bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints, rather than the Common Carrier Bureau's Enforcement Division, which no longer exists. While we will require the new bureau's name and address to be posted on payphones in future postings, we have acted to avoid any unnecessary burdens on current payphone operators. We will require them to make the appropriate correction whenever they next revise their postings, but we are not requiring them to replace their postings now. Instead, we are ensuring that mail sent to the old address will continue to be delivered to the Consumer Information Bureau.

38. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate non-access code operator services at the point of purchase will continue to facilitate the development of increased competition in this segment of the interstate market, thereby benefiting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate non-access code operator services will continue to enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment.

6. Report to Congress

39. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this *Second Order on Reconsideration*, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration* and this Supplemental FRFA will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

40. *It is ordered*, pursuant to sections 1, 4(i), 4(j), 226, and 405 of the Communications Act of 1934, as amended, that the petitions for clarification or reconsideration filed on April 9, 1998, by Ameritech, AT&T, Bell Atlantic, BellSouth, Citizens United for Rehabilitation of Errants, Inmate Calling Service Providers Coalition, One Call Communications, Inc., US West, Inc., Cleartel Communications, Inc., Operator Services Company, and Teltrust Communications Services, Inc. are granted in part and denied in part to the extent discussed.

41. *It is further ordered* that the Commission's rules are amended as set forth, effective February 21, 2002, except that the oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carrier, Reporting and recordkeeping, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151,154, 201, 202, 205, 218, 220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat.1070, as amended, 47 U.S.C. 2201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Amend § 64.703 by revising paragraph (a)(4), in paragraph (b)(2)

remove the word ''intestate'' and add in its place, the word ''interstate'', and revise paragraph (b)(4) to read as follows:

§ 64.703 Consumer information.

(a) * * *

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call'' as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include additional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

(b) * * *

(4) The name and address of the Consumer Information Bureau of the Commission (Federal Communications Commission, Consumer Information Bureau, Consumer Complaints—Telephone, Washington, D.C. 20554), to which the consumer may direct complaints regarding operator services. An existing posting that displays the address that was required prior to the amendment of this rules (*i.e.,* the address of the Common Carrier Bureau's Enforcement Division, which no longer exists) may remain until such time as the posting is replaced for any other purpose. Any posting made after the effective date of this amendment must display the updated address (*i.e.,* the address of the Consumer Information Bureau).

* * * * *

3. Amend § 64.708 by revising paragraph (f) to read as follows:

§ 64.708 Definitions.

* * * * *

(f) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, the term consumer also includes the party on the terminating end of the call. For bill-to-third-party calling arrangements handled by a provider of operator services, the term consumer also includes the party to be billed for the call if the latter is contacted by the operator service provider to secure billing approval.

* * * * *

4. Amend § 64.709 revising paragraph (a) to read as follows:

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per-call fees, if any, collected from consumers by, or on behalf of, the carrier.

* * * * *

5. Amend § 64.710 by revising paragraph (a)(1) and in paragraphs (b)(1) and (b)(4) remove all references to ''domestic, interexchange'' to read as follows:

§ 64.710 Operator services for prison inmate phones.

(a) * * *

(1) Identify itself and disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, non-access code operator service call, how to obtain the total cost of the call, including any surcharge or premises-imposed-fee. The oral disclosure required in this paragraph shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call,'' as used in this paragraph, means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. Such phrase shall include any per-call surcharge imposed by the correctional institution, unless it is subject to regulation itself as a common carrier for imposing such surcharges, if the contract between the carrier and the correctional institution prohibits both resale and the use of pre-paid calling card arrangements.

* * * * *

[FR Doc. 02–1178 Filed 1–18–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 010823214–2009–02; ID. 080801A]

RIN 0648–AP47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, has issued a modification to regulations and the annual Letter of Authorization (LOA) that authorizes the take of small numbers of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (VAFB). The 30th Space Wing requested that the current monitoring requirements be modified so that biological monitoring is required only during the Pacific harbor seal pupping season (March 1 to June 30). By this document, NMFS is amending the regulations governing the take of marine mammals incidental to rocket launches at VAFB. NMFS, in issuing the regulation to which a modification is sought previously determined that rocket launches at VAFB would have a negligible impact on the affected species and stocks of marine mammals. In order to make the requested amendment to the regulation, NMFS has determined that the monitoring program at VAFB and the resultant data from pre- and post-launch marine mammal observations have effectively shown that rocket launch activities have a negligible impact on marine mammal populations and stocks.

DATES: The amendment to 50 CFR 216.125 is effective on January 25, 2002. The modified annual LOA is effective from January 25, 2002, until May 23, 2002.

ADDRESSES: All inquiries on this final rule and LOA should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101 (a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10–15, the Secretary of Commerce (Secretary) delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration. On December 17, 1990, under NOAA Administrative Order 205–11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission may be granted for periods up to 5 years if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth in regulation. To make such findings, NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' As new information is developed, through monitoring, reporting, or research, NMFS may modify the regulations governing the take, in whole or in part, after notice and opportunity for public review.

Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

On May 17, 2001, NMFS received a request from the 30th Space Wing for modification to the monitoring requirements of the 5–year programmatic regulations governing the incidental take of marine mammals during rocket launch operations at VAFB (50 CFR 216.120-128). The requested modification would reduce the current requirement to perform biological monitoring during all space vehicle launches at VAFB to only those space vehicle launches at VAFB during the Pacific harbor seal (*Phoca vitulina richardsi*) pupping season (March 1 to June 30). The 30th Space Wing's request is based on a scientific research program and the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB (SRS Technologies, 2001). During the pupping season, biological monitoring remains important in verifying that female harbor seals spend the necessary time on the haul-out establishing the female-neonate bond, including nursing of their pups. Although harbor seal numbers are highest during molting (May through July), NMFS did not propose additional biological monitoring during the molting season because research and monitoring results over the last 4 years show that molting Pacific harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not become subject to thermoregulatory stress.

Current Monitoring Requirements and Requested Change

According to 50 CFR 216.125, LOAs that authorize the take of marine mammals incidental to space vehicle and test flight activities must designate qualified on-site individuals to conduct the following monitoring activities:

(1) Observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching;

(2) Monitoring haul-out sites on the Northern Channel Islands if it is determined during consultation with NMFS that a sonic boom could impact those areas;

(3) Investigation of the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction;

(4) Supplemental observation on VAFB and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season; and

(5) Conducting acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

The 30th Space Wing requested to modify the first monitoring activity, observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform on VAFB, to only require observations during the March 1 through June 30 harbor seal pupping season at VAFB.

Comments and Responses

On September 14, 2001 (66 FR 47905), NMFS published a proposed modification to current regulation and opened a 30–day public comment period on the application and proposed rule. No comments were received during this period.

Potential Effect of Modification to Monitoring Requirements on Pacific Harbor Seals at VAFB

Since modification of regulations, in whole or in part, must account for new information that has been collected through monitoring, reporting, or research (see 50 CFR 216.105 (c)), this preamble outlines the 30th Space Wing's research and monitoring results to date. To verify the negligible impact determination made by NMFS as a prerequisite to issuance of the final rule, the monitoring and research programs for VAFB were designed to detect changes in population parameters that indicate the overall condition of the potentially affected populations. Based on the scientific research program and bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB, the 30th Space Wing asserted in its application that modification to the monitoring requirements would not alter the negligible impact determination made by NMFS during the rule making (64 FR 9925, March 1, 1999). Rather, results of the 30th Space Wing's monitoring and research programs have verified that the impacts of rocket launches have had a negligible impact on the harbor seals at VAFB.

Results from the monitoring and research program included an analysis of indicators of population health at the regional and site-specific level. Indicators analyzed included: trends in abundance, pup production and mortality, daily and seasonal haul-out behaviors, measured sound exposure levels from space launch vehicles, behavioral response of Pacific harbor seals to launch noise, and Pacific harbor seal auditory brainstem response (ABR) measurements. For a more detailed

account of the 30th Space Wing's research and monitoring programs and analysis of results, see SRS Technologies (2001).

Pacific Harbor Seal Scientific Research Program at VAFB

Data from the scientific research program conducted from 1997 through 2001 shows that the harbor seal population (including pups) at VAFB is increasing and doing as well or better than other harbor seal populations in California.

Trends in Abundance

The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals at VAFB is estimated to be 1,040 (775 on south VAFB and 265 on north VAFB), where the telemetry data for seals was used to correct for seals that were at sea during the census (SRS Technologies 2001). The harbor seal population has been increasing since 1997 at an annual rate of 12.6 percent. During this period, 5 to 7 space vehicle launches were conducted per year. Recent information by several researchers suggests that harbor seals are only decreasing in areas (e.g., San Miguel Island, California) where they are in competition for haul-out space with California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*). California sea lions and northern elephant seals rarely haul-out at VAFB; therefore, competition for haul-out space should not be a factor in growth of the harbor seal population at VAFB.

Pup Production and Mortality

Annual harbor seal pup production at VAFB has increased by 5.3 percent annually. The only decrease in pup production occurred during the 1998 El Niño season when there was a 13.6 percent decrease from the previous year. In contrast to VAFB haul-out sites, pup production at Point Conception, CA (control site for the VAFB research program located 25 km south of the south VAFB haul-out site) showed an annual increase of 2.9 percent. This smaller percentage in annual pup production may be due to the fact that Point Conception has a limited area where females and pups can haul-out without being harassed by other seals or exposed to high tides and swells. There are more haul-out areas for females with pups at VAFB; therefore, only El Niño type disturbance should affect pup production at VAFB.

There are no documented occurrences of premature pupping at VAFB. In addition, the rate of pup mortality is low (0.6 pups per year), with none of the mortalities associated with any of the launch activities. Because the rough terrain along the VAFB coastline makes seal captures difficult, only 15 seal pups have been tagged; it has been difficult to estimate the long-term survival and recruitment rate of these pups. Based on telemetry data from the 15 tagged individuals and the behavior of pups at other sites, the 30th Space Wing estimates that approximately 54 percent of pups continue to haul-out at VAFB after weaning. There have been no tag returns of dead pups from VAFB, but some pups have been sighted up to 25 km away from the natal haul-out site. This suggests that mortality is low for weaned pups and that up to 35 percent of pups born at VAFB may migrate to other haul-out sites.

Daily and Seasonal Haul-out Behavior

At south VAFB, the daily haul-out behavior of harbor seals is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. At north VAFB haul-out sites, tide has a greater influence on the daily haul-out behavior of seals. Part of the reason for the tidal influence at north VAFB is the coastline's topography, which consists of low lying rocky areas that are substantially covered during high tides. In addition, haul-out behavior at all sites may be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The population is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source would not be adversely affected in their ability to molt and would not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Pacific Harbor Seal Bioacoustic Monitoring at VAFB

Data from the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 shows that haul-out behavior appears to be unaffected by launch operations, and there has been no temporary or permanent threshold shifts evidenced as a result of launch noise.

The types of sounds discussed in this document are airborne and impulsive. For this reason, the document references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second). Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved (Buck, 1995) and is beyond the scope of this document.

In order to obtain details on the launch noise reaching harbor seals on VAFB, acoustic measurements were collected via two independent systems. The first system was designed to measure the low frequency sound associated with rocket launches. The second system was designed to measure background noise levels, ambient noise levels, and sound events that exceed a pre-set minimum sound level.

Measured Sound Exposure Levels from Space Launch Vehicles

To study the effect of noise on wildlife, the sound under study is typically measured using an A-weighted filter. A-weighting is a standard filter used in acoustics that approximates human hearing. However, because most animals do not have hearing similar to humans, A-weighting does not accurately represent sounds as heard by non-human mammals (SRS Technologies, 2001). Several researchers (Mohl, 1968; Terhune, 1991; Terhune and Turnbull, 1995; Kastak and Schusterman, 1998) have measured the

in-air hearing in harbor seals. At 2000 hertz (Hz), harbor seals were found to have hearing sensitivities averaging around 30 dB. In contrast, the quietest sound a human can hear at 2000 Hz registers at -1 dB (Sivian and White, 1933). At 2000 Hz, A-weighting adds 1.2 dB to the sound being analyzed; therefore, A-weighting does not accurately represent sounds as heard by harbor seals. To gain a better understanding of how launch noise is perceived by harbor seals, SRS Technologies created a frequency-weighting filter, similar to what A-weighting is for humans, based on the in-air hearing ability of harbor seals (SRS Technologies, 2001).

Acoustical measurements have been collected and analyzed for 21 space vehicle launches of 7 different types of vehicles using both A-weighted and harbor-seal weighted filters. The average measurements are shown in Table 1:

TABLE 1

Type	Distance from Haul-out (km/mi)	Average A-weighted Sound Exposure Level (dB)	Harbor seal-weighted Sound Exposure Level (dB)
Athena	2.8/1.7	107.5	68.3
Minotaur	2.3/1.4	106.2	67.3
Titan IV	8.5/5.3	100.2	58.9
Taurus	0.55/0.34	125.2	89.8
Delta II	2.0/1.2	114.9	78.6
Minuteman III	15.6/9.7	88.7	42.3
Atlas	11.0/6.8	86.1	47.3

Behavioral Response of Pacific Harbor Seals to Launch Noise

During the biological monitoring at VAFB, the response of harbor seals to rocket launch noise varied depending on the intensity of noise and the age of the seal. When launch noise was below an A-weighted sound exposure level of 100 decibels (dBA)(re 20 micro-Pa2-second), observations showed that not all seals fled the haul-out site and those that remained were exclusively adults. Given the high degree of site fidelity among adult harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches. It is possible that adult seals have become acclimated to the launch noise and react differently than younger inexperienced seals. Of the 20 seals (adult and younger) tagged at VAFB, 8 (40 percent) were exposed to at least one launch disturbance and continued to return to the same haul-out site. Three of these tagged seals were exposed to 2 or more launch disturbances. Six (75 percent) of the tagged seals exposed to launch noise appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch. The 2 tagged seals that left the haul-out site area after the launch had been on shore for at least 6 hours subsequent to the launch and returned to the haul-out site in 24 hours.

ABR Measurements

In order to further determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, the acoustic contractor conducted ABR testing on 10 harbor seals prior to and after the launches of 3 Titan IV rockets, a vehicle type with one of the loudest harbor seal-weighted SELs (see table above). Detailed analysis of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise. However, the 2 to 3.5 hour delay in ABR testing post-launch could mean that the seals had recovered from a temporary threshold shift (TTS) before the testing could begin. However, as there were no detectable changes in the hearing sensitivity of these animals when they were tested after the delay, the 30th Space Wing concludes, with confidence, that the animals did not have permanent hearing changes due to exposure to the launch noise from the Titan IV rockets.

Conclusions

As outlined in this preamble, results of on-going, long-term monitoring efforts designed to track trends in haul-out patterns and seal distribution at VAFB show that the harbor seal population at VAFB is increasing and doing as well or better than other harbor seal populations in California. Acoustic measurements in conjunction with biological monitoring of haul-out sites and tagged seals over these same 4 years, suggest that the haul-out behavior of harbor seals is unaffected by launch operations. This data also provides conclusive evidence that no permanent hearing damage has resulted from space vehicle launches at VAFB. This new information obtained through monitoring, reporting, and research verifies NMFS' previous negligible impact determination by showing that the level, manner, and effects of the marine mammal takes are so small in number that they are inconsequential to the abundance, distribution, and productivity of marine mammal populations in California (Swartz and Hofman, 1991). Therefore, NMFS has concluded that the impact of amending the current regulations to require monitoring observations only during the harbor seal pupping season at VAFB is consistent with NMFS' March 1, 1999 negligible impact determination (64 FR 9925).

Classification

This action is not significant for purposes of Executive Order 12866.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when the original rule was proposed in 1998 (63 FR 39055, July 21, 1998), that, if adopted, the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The rule only affects the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. Because of this classification, a regulatory flexibility analysis was neither required nor prepared. This action does not alter those conclusions.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact, as part of its request for a small take authorization in 1997. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS adopted the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. In the final rule for this activity (64 FR 9925, March 1, 1999), NMFS found that the issuance of regulations and LOAs to the Air Force would not result in a significant environmental impact on the human environment and that it would be unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments. This action is within the scope of the EA and does not alter its conclusions.

Endangered Species Act (ESA) Consultation History

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC–4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haul out either on the Vandenberg coast or on the NCI during the 5–year period for this proposed authorization, the issuance of regulations is unlikely to adversely affect listed marine mammals (64 FR 9925, March 1, 1999). Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Seafood, Transportation.

Dated: January 14, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.125, paragraph (b) (1) is revised to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) * * *

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

* * * * *

[FR Doc. 02–1533 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011004242–2005–02; I.D. 092401F]

RIN 0648–APO9

Fisheries of the Northeastern United States; 2002 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

ACTION: Final rule; 2002 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs.

SUMMARY: NMFS issues final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2002. These quotas specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43° 50′N. lat. in 2002.

DATES: Effective from January 16, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/FRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Walter Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected should allow sustainable fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council must

also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (5,991 to 35,240 hectoliters (hL)), with an initial amount of 100,000 Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 66 FR 53770, October 24, 2001, and is not repeated here. The comment period for that rule ended on November 23, 2001. No comments were received during the comment period, and the final quotas for 2002, which are unchanged from those in the proposed rule, are shown in the table below. The 2002 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2001 quotas. However, the 2002 surf clam quota is 10 percent higher than the 2001 quota.

2002 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
[1] Surf clam	3,135,000	1,669,000
[1] Ocean quahog	4,500,000	2,396,000
[2] Maine mahogany quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft = 53.24 liters.
[2] 1 bushel = 1.2445 cubic ft = 35.24 liters.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surf clam and ocean quahog fisheries. Individual Transferable Quota shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surf clams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation it is imperative that the vessel owner have the ability to request that NMFS temporarily transfer part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract. Further, allocation holders at times pledge their allocation as security for a loan. This entails the transfer of the individual allocation to the lending institution for the pendency of the loan. Without an effective quota, NMFS cannot make either a partial transfer or an entire allocation effective, permanently or temporarily. This inability on the part of NMFS to make such transfers effective would have a negative economic impact on the surf clam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2002 surf clam, ocean quahog, and Maine mahogany quahog quotas.

NMFS and the Council prepared a FRFA for this action. A copy of the FRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule and specifications included a detailed summary of the analysis contained in the Initial Regulatory Flexibility Analysis (IRFA), which is not repeated here. A summary of the FRFA, focusing upon the impacts of the final measures, follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Public Comments

There were no public comments received in response to the IRFA's analysis of the expected impacts of the proposed regulations on small entities.

Minimizing Significant Economic Impact of Small Entities

These specifications establish a 10-percent increase in the surf clam quota and continue the ocean quahog and Maine mahogany ocean quahog quota without change from the 2001 quotas. Since 2000 harvest levels of 2.561 and 3.161 million bu (1.364 million hL to 1.683 million hL) for surf clams and ocean quahogs, respectively, were below the 2002 quotas implemented by this action, and NMFS and the Council assume no changes in fishing effort or yield-to-effort will take place in 2001, these 2002 quotas are not expected to constrain the overall harvest in the fishery. As a result, harvesters could increase their landings over the 2000 levels, and additional revenues could accrue in 2002.

Vessels

In 2000, a total of 48 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2000 gross income from surf clam harvests was $702,317 per vessel, and $470,854 per vessel from ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 34 vessels reported harvests in the clam logbooks, with an average value of $97,223 per vessel. All of these vessels fall within the definition of a small entity.

For ocean quahogs, the proposed 2002 quota is 4.500-million bu (2.396-million hL). The other alternatives considered were 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000-million bu (2.129-million hL) quota would represent a 12-percent decrease from the current 4.500-million

bu (2.396-million hL) quota and, assuming the entire quota is harvested, a 27-percent increase in harvest from the 2000 harvest level of 3.161 million bu (1.683 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to NMFS and the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 90-percent increase in landings from 2000, assuming that all of the quota is harvested. However, the industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large (two of the most productive ocean quahog vessels sank in January 1999 and have not been replaced). Since all alternatives, including the preferred, would yield increases relative to the actual 2000 landings, increased revenues would be likely to occur.

For surf clams, the proposed 2002 quota is 3.135 million bu (1.669 million hL). The other alternatives considered were 1.850, 2.850, 3.000, and 3.400 million bu (0.985, 1.517, 1.597, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surf clams. Adoption of a 1.850-million bu (0.985-million hL) quota would represent a 35-percent decrease from the current 2.850-million bu (1.517-million hL) quota, and a 28-percent decrease from the 2000 harvest level of 2.561 million bu (1.364 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall ex-vessel revenues. Adoption of the 2.850-million bu (1.517-million hL) quota would most likely have a limited impact on small entities, since it is identical to the 2001 quota. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surf clams would allow for a 19-percent increase in harvest. The Council considered a 5-percent increase in quota from the 2001 level to 3.000 million bu (1.597 million hL), but industry representatives stated that they preferred a 10-percent increase. The preferred alternative allows for the 10-percent increase of 2.850 million bu (1.517 million hL) to 3.135 million bu (1.669 million hL). The only alternative that would reduce revenues to vessels is the 1.850-million bu (0.985-million hL) alternative. Both the status quo quota and the 5-percent increase alternative could be constraining on industry. At best, the 5-percent increase would probably increase revenues by a small amount. The resource can support the 10-percent increase in landings and the industry believes it can harvest and process this additional product.

The proposed 2002 quota for Maine mahogany ocean quahogs is 100,000 Maine bu (35,240 hL), which is the maximum allowed under the FMP. The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. Two other alternatives were considered: 50,000 Maine bu (17,620 hL) and 72,466 Maine bu (25,537 hL). Any quota below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels. The proposed quota is the least constraining allowed under the FMP.

Processors

Nine to 12 processors currently participate in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the vessels and sale of processed clam products in wholesale markets. Impacts to surf clams and ocean quahog processors would most likely mirror the impacts of the various quota alternatives to vessels, as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to depend on the price of processed clams, relative to the price of available clam substitutes.

Allocation Holders

In 2001, there were 99 surf clam allocation holders, while 63 firms or individuals held an ocean quahog allocation. Under the 2002 quotas, the increase in the surf clam quota could benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota, because of reduction in value due to the increased allocation of surf clams to each allocation holder. Some allocation holders who might otherwise have found it necessary or desirable to purchase quota share from others will have sufficient quota available to them in 2002 to make additional quota purchases unnecessary. Because the ocean quahog quota is unchanged from 2001, no impacts on allocation holders are expected.

The RIR/IRFA is available from the Council (see **ADDRESSES**). This final rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132; therefore, preparation of a Federalism assessment is not necessary.

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

Dated: January 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–1500 Filed 1–16–02; 3:22 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM209, Special Conditions No. 25–195–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 Airplane; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an air data display unit that displays critical flight parameters to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 9, 2002. Comments must be received on or before February 21, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM209, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM209. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On November 7, 2001, Duncan Aviation Inc., 15745 South Airport Road, Battle Creek, MI, 49015, applied for a supplemental type certificate (STC) to modify the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane listed on Type Certificate A33EU. The Model Falcon 10 is a twin engine, small transport airplane. It is capable of carrying two flightcrew members and up to nine passengers. This model is powered by two Airesearch Manufacturing Company of Arizona Model TPE731–2–1C engines. The modification incorporates the installation of an air data display system that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation must show that the AMD/BA Model Falcon 10 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified AMD/BA Model Falcon 10 airplane includes 14 CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–20, as listed in the Type Certificate Data Sheet (TCDS) A33EU.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Model

Falcon 10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 10 airplane must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The AMD/BA Model Falcon 10 airplane will incorporate the following novel or unusual design feature: an air data display unit that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the AMD/BA Model Falcon 10 as modified by Duncan Aviation Inc. These special conditions require that new avionic/electronic and electrical systems such as the air data display unit, that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplane modified by Duncan Aviation, Inc. Should Duncan apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on AMD/BA Model Falcon 10 airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields*

(HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1507 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–47–AD; Amendment 39–12603; AD 2002–01–11]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect the throttle friction-shaft and replace the shaft if damaged. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

DATES: This AD becomes effective on February 28, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 28, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–47–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. The CAA reports an incident where the throttle friction adjuster loosened too far, causing the split pin and the washer on the shaft to break.

What Is the Potential Impact if FAA Took No Action?

The loosening of the throttle friction adjustment beyond its normal limits could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, BN–2T–4, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 2001 (66 FR 56248). The NPRM proposed to repetitively inspect the throttle friction-shaft and replace the shaft if damaged.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 118 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $60 per hour = $60	$1	$61	$61 × 118 = $7,198.

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
16 work hour × $60 per hour = $960	$230	$1,190

Is There a Modification I Can Incorporate Instead of Repetively Inspecting the Throttle Friction-Shaft?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–11 Pilatus Britten-Norman LTD.: Amendment 39–12603; Docket No. 2000–CE–47–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct loosening of the throttle friction adjustment beyond its normal limits. Such a condition could lead to damage to the throttle friction-adjuster or the retaining washer and split pin. This could allow the throttle quadrant shaft to laterally shift and impede the operation of the engine controls.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the throttle friction-shaft for damage. Replace the split pin and washer.	Inspect within 100 hours time-in-service (TIS) after February 28, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 100 hours TIS. Accomplish the replacements prior to further flight after each inspection.	In accordance with the Procedures section of BN Service Bullitin BN2/SB.272, dated July 1, 2000.
(2) If damage is found on the throttle friction-shaft, replace shaft.	Before further flight after each inspection where damage is found.	In accordance with the Procedures section of BN Service Bulletin BN2/SB.272, dated July 1, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with BN Service Bulletin BN2/SB.272, dated July 1, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR. You can look at copies

at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in British AD 003–07–2000, dated August 22, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2002.

Issued in Kansas City, Missouri, on January 11, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1222 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–80–AD; Amendment 39–12602; AD 2002–01–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This AD requires you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks. This AD is the result of reports of many incidents of main landing gear torque knees cracking or breaking on the above-referenced airplanes. The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear and consequent loss of control of the airplane during takeoff, landing, or other ground operations.

DATES: This AD becomes effective on February 22, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 22, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; or on the Internet at <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf*> and <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf*>. These files are in Adobe Portable Document Format. The Acrobat Reader is available at <*http://www.adobe.com/*>. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports of many incidents of fatigue cracks occurring on main landing gear torque knees. There have been at least four reports where the main landing gear separated from the airplane.

The cause of this problem is cumulative fatigue damage on the main landing gear torque knees.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the failure of the main landing gear while the airplane is in operation with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, C90A, E90, and H–90 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 27, 2001 (66 FR 44988). The NPRM proposed to require you to repetitively inspect the main landing gear upper torque knees and lower torque knees for evidence of fatigue cracks; and replace any torque knee with evidence of fatigue cracks.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 2,124 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to inspect the landing gear torque knees:

Labor cost	Parts cost per airplane	Total cost per airplane	Total cost U.S. operators
20 workhours × $60 per hour = $1200	$50	$1,250	$1,250 × 2,124 = $2,655,000.

The manufacturer will allow warranty credit to the extent noted in the service bulletin.

These costs only take into account the costs of the initial inspection. We have no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplane.

We estimate the following costs to do any necessary torque knee replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per airplane	Total cost per airplane
8 workhours × $60 per hour = $480	$3,286	$3,766

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–01–10 Raytheon Aircraft Company: Amendment 39–12602; Docket No. 99–CE–80–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
65–90, 65–A90, B90, C90, and C90A.	LJ–1 through LJ–1559.
65–A90–1	LM–1 through LM–141.
65–A90–4	LU–1 through LU–16.
E90	LW–1 through LW–347.
H–90	LL–1 through LL–61.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace cracked main landing gear torque knees, which could result in failure of the main landing gear with consequent loss of control of the airplane during takeoff, landing, or other ground operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the main landing gear upper torque knee and lower torque knee for fatigue cracks.	Inspect within the next 100 hours time-in-service (TIS) after February 22, 2002 (the effective date of this AD), and thereafter at intervals not to exceed 1,000 hours TIS.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and the applicable airplane maintenance manual.
(2) If fatigue cracks are found in the main landing gear torque knees during any inspection required by this AD, replace the cracked torque knees.	Before further flight after the inspection	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane model maintenance manual.
(3) When both the left and right main landing gear upper and lower torque knees are replaced with new upper torque knees (part number 50–810032–12) and new lower torque knees (part number 50–810295–25), the repetitive inspection requirement of this AD is no longer required.	You may replace all torque knees at any time, except for those torque knees that are found with evidence of fatigue cracks. Such torque knees must be replaced before further flight, as required by paragraph (d)(2) of this AD.	Do the action following the Accomplishment Instructions paragraph of Raytheon Aircraft Recommended Service Bulletin SB 32–3116, Issued: October 1999, and the applicable airplane maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of

compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 32–3134, Revision 1, Revised: July 1999, and Raytheon Recommended Service Bulletin SB 32–3116, Issued: October 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or on the Internet at <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3134r1.pdf*> and <*http://www.raytheonaircraft.com/support/pubs/pdf/sb/32–3116.pdf*>. These files are in Adobe Portable Document Format. The Acrobat Reader is available at <*http://www.adobe.com/*>. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 22, 2002.

Issued in Kansas City, Missouri, on January 10, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1206 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–01–AD; Amendment 39–12608; AD 2002–01–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also currently requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD. The actions specified in this AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization. This action is intended to address the identified unsafe condition.

DATES: Effective January 22, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, dated December 27, 2001).

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–01–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–01–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On December 17, 2001, the FAA issued AD 2001–26–10, amendment 39–12574 (66 FR 66739, December 27, 2001), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. That action also requires the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. The actions required by that AD are intended to prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–26–10, the FAA has become aware that some airplanes were inadvertently excluded from the applicability of that AD. The applicability of that AD specified only ''Model A319, A320, and A321 series airplanes, certificated in any category, having manufacturer serial numbers 1035 and 1384 inclusive.'' However, it was our intent for the applicability to be the same as that specified in the effectivity of Airbus Service Bulletin A320–35–1022, dated June 27, 2001. Therefore, we have determined that it is necessary to supersede AD 2001–26–10 to expand the applicability to include the additional airplanes listed in that Airbus service bulletin.

U.S. Type Certification of the Airplane Models

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD

2001–26–10 to continue to require an in-situ one-time detailed visual inspection of Dräeger Type I oxygen containers, located in the passenger service units, and Dräeger Type II oxygen containers, located in the utility areas, for the presence of foam pads. This action also continues to require the installation of a new foam pad, if necessary; and other actions to ensure proper operation of the masks. This amendment retains those requirements and expands the applicability of the existing AD to include additional airplanes that were inadvertently excluded from that AD.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–01–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12574 (66 FR 66739, December 27, 2001), and by adding a new airworthiness directive (AD), amendment 39–12608, to read as follows:

2002–01–14 Airbus Industrie: Amendment 39–12608. Docket 2002–NM–01–AD. Supersedes AD 2001–26–10, Amendment 39–12574.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the oxygen containers to deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization; accomplish the following:

Inspection, Installation, and Other Actions

(a) Within 600 flight hours after the effective date of this AD, do an in-situ one-time detailed visual inspection of Dräeger Type I (three/four-mask) oxygen containers, located in the passenger service units, and Dräeger Type II (two-mask) oxygen containers, located in the utility areas, for the presence of foam pads, per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

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

(1) If all foam pads are installed, before further flight, complete the other actions (including repacking the masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

(2) If any foam pad is missing, before further flight, install a foam pad in the applicable oxygen container, and complete the other actions (including repacking the

masks in the correct position; checking the masks, tubes, and lanyards for correct stowage; and doing a manual release test and an operational test) specified in the Accomplishment Instructions of the service bulletin to ensure proper operation of the masks.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a Dräeger Type I or Dräeger Type II oxygen container unless it has been inspected and other actions done per Airbus Service Bulletin A320–35–1022, dated June 27, 2001.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A320–35–1022, dated June 27, 2001. This incorporation by reference was approved previously by the Director of the Federal Register as of January 11, 2002 (66 FR 66739, December 27, 2001). Copies may be obtained from Airbus Industrie 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–363(B), dated August 8, 2001.

Effective Date

(f) This amendment becomes effective on January 22, 2002.

Issued in Renton, Washington, on January 14, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1419 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–32–AD; Amendment 39–12606; AD 2002–01–12]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Company (GE) GE90 series turbofan engines. This amendment requires removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal. This amendment also requires a new lower life limit for the LIR configuration seal. This amendment is prompted by an uncontained engine failure which occured during a factory development engine ground test. The actions specified by this AD are intended to prevent failure of the HPT interstage seal that could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date February 26, 2002.

ADDRESSES: This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7135; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Company (GE) GE90 series turbofan engines was published in the **Federal Register** on September 27, 2001. That action proposed to require removing from service high pressure turbine (HPT) interstage seals, identified by GE as the pre-life-improved rotor (pre-LIR) configuration, and installing a new design, identified by GE as the life improved rotor (LIR) configuration seal, and to require a new lower life limit for the LIR configuration seal.

Comments

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

One commenter requests that paragraph (c) of the proposal be revised or deleted. Paragraph (c) proposed to prohibit the installation of HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into any engine after the effective date of the AD. The commenter believes this requirement may result in an undue burden for lease pool engines since it would require the removal of an interstage seal that had considerable remaining life. The commenter believes there would be no unsafe condition in allowing continued operation of that seal up to the maximum number of cycles-since-new, or up to December 31, 2006, the end date stated in the proposal.

The FAA does not agree. The FAA believes the commenter's request is driven by the economic benefits that would be realized from commenter's lease pool engines. This pool of engines is a very small minority of the total GE90 engine fleet. If the commenter's request were adopted, however, the entire GE90 fleet would have no restrictions on the reuse of a pre-LIR HPT interstage seal, which is not the FAA's intent. The FAA believes that the minority of lease pool engines owned by the commenter can be addressed by the alternative methods of compliance process on a case-by-case basis if required.

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

Economic Analysis

There are approximately 232 GE90–76B, –77B, –85B, –90B, and –94B series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 36 engines installed on airplanes of U.S. registry, with one domestic operator, would be affected by this AD. The FAA estimates that the cost for replacing the pre-LIR HPT interstage seals is $536,340, based on an assumption of how many seals will be replaced prior to reaching the full retirement life. The FAA also estimates

that the LIR HPT interstage seal life reduction cost will be $3,396,820, and is based on the pro-rated costs of HPT interstage seals that will be removed due to the reduced life limit. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $3,933,160.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the 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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–01–12 General Electric Company: Amendment 39–12606. Docket No. 2001–NE–32–AD.

Applicability: This airworthiness directive (AD) is applicable to General Electric Company (GE) GE90–76B, –77B, –85B, –90B, and –94B turbofan engines with high pressure turbine (HPT) interstage seals part numbers (P/N's) 1711M20P08, 1711M20P14, 1711M20P16, 1711M20P17, and 1847M96P02 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT interstage seal that could result in an uncontained engine failure, and damage to the airplane, do the following:

Replacement of HPT Interstage Seals P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17

(a) For GE90–76B, –77B, –85B, –90B engines with HPT interstage seals P/N's 1711M20P08, 1711M20P16, and 1711M20P17 installed, and GE90–76B and –77B engines with interstage seal P/N 1711M20P14 installed, replace seals at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 4,800 cycles-since-new (CSN), or before December 31, 2006, whichever occurs earlier.

(b) For GE90–85B and –90B engines with HPT interstage seal P/N 1711M20P14 installed, replace seal at next shop visit piece-part exposure with a serviceable HPT interstage seal, after the effective date of this AD, but not to exceed 2,800 CSN, or before December 31, 2006, whichever occurs earlier.

(c) After the effective date of this AD, do not install any HPT interstage seal P/N's 1711M20P08, 1711M20P14, 1711M20P16, and 1711M20P17 into an engine.

Reduced Life Limit

(d) For engines with HPT interstage seals P/N 1847M96P02 installed, remove engine from service before exceeding the reduced cyclic life limit of 3,500 CSN.

(e) This AD establishes a new cyclic life limit for HPT interstage seal, P/N 1847M96P02. Except as provided in paragraph (g) of this AD, no alternate life limits for this part may be approved.

Definition

(f) For the purpose of this AD, a shop visit piece-part exposure is defined as an engine removal for maintenance that cannot be performed while installed on the airplane, and that the HPT interstage seal is completely disassembled when done in accordance with the disassembly instructions of the engine manual.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(i) This amendment becomes effective on February 26, 2002.

Issued in Burlington, Massachusetts, on January 14, 2002.

Thomas Boudreau,

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

[FR Doc. 02–1453 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–64–AD; Amendment 39–12604; AD 2001–26–52]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–52, which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GmbH (ECD) Model EC135 helicopters by individual letters. This AD requires, before further Instrument Flight Rule (IFR) flight, inserting a copy of the AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) and replacing each affected Smart Multifunction Display (SMD45H) as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. This AD is prompted by the discovery of an

error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The actions specified by this AD are intended to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued on December 19, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–64–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Jorge Castillo, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5127, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 19, 2001, the FAA issued Emergency AD 2001–26–52 for ECD Model EC135 helicopters which requires, before further IFR flight, inserting a copy of the AD into the Limitations Section of the RFM and replacing each affected SMD45H as specified. Removing the AD from the RFM is required after replacing each affected SMD45H. That action was prompted by the discovery of an error in the assembly of an internal connector of the SMD45H that sometimes results in an inversion of the display information. The SMD45H provides the flightcrew with essential flight and navigation information. The emergency AD was issued to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter.

The FAA has reviewed ECD Alert Service Bulletin EC135–31A–002, Revision 2, dated November 15, 2001 (ASB). The ASB specifies, in order to resume IFR operation, to immediately replace certain SMD45Hs. The ASB also specifies affixing placards and inserting RFM supplements informing the pilot of display anomalies, certain restrictions, and certain limitations until all SMD45Hs have been replaced.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model EC135 helicopters. The LBA advises that sometimes an inversion of the symbols occurs on some of the SMD45Hs. The LBA classified the ASB as mandatory and issued AD No. 2001–306/3, dated November 15, 2001, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provision of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Emergency AD 2001–26–52 to prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter. The AD requires, before further IFR flight, the following:

- Inserting a copy of the AD into the Limitations Section of the RFM to prohibit IFR flight until the affected SMD45Hs are replaced.
- Replacing each affected SMD45H with the corresponding SMD45Hs as specified in the AD.
- After replacing the SMD45Hs in accordance with the AD, removing the AD from the RFM.

Replacing each specified SMD45H and removing the AD from the RFM are terminating actions for the requirements of the AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions described previously are required before further IFR flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 19, 2001 to all known U.S. owners and operators of ECD Model EC135 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 15 helicopters of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per helicopter to replace each SMD45H, and that the average labor rate is $60 per work hour. The manufacturer has stated that they will provide the SMD45Hs at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5400 to replace an SMD45H on each affected helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2001–SW–64–AD.'' The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–26–52 Eurocopter Deutschland GMBH: Amendment 39–12604. Docket No. 2001–SW–64–AD.

Applicability: Model EC135 helicopters with a Smart Multifunction Display (SMD45H) as the primary flight display (PFD) or navigation display (ND), certificated in any category.

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

Compliance: Required before further Instrument Flight Rule (IFR) flight, unless accomplished previously.

To prevent erroneous flight or navigation display information, produced by a faulty SMD45H, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert a copy of this AD into the Limitations Section of the Rotorcraft Flight Manual (RFM) to prohibit IFR flight until the old part-numbered SMD45Hs listed in Table 1 of this AD are replaced.

(b) Replace each old part-numbered SMD45H with the corresponding new part-numbered SMD45H as specified in Table 1 of this AD.

TABLE 1.—RETROFIT KIT EC135–31A–002–2.C SMD45H

Old Part Number	New Part Number
(1) C19209VF11	C19209VG11
(2) C19267VF11	C19267VG11
(3) C19209SF10	C19209SG10
(4) C19267SF10	C19267SG10
(5) C19267RF10	C19267RG10
(6) C19209NF10	C19209NG10
(7) C19267NF10	C19267NG10
(8) C19209HF09	C19209VG11
(9) C19267GF09	C19267GG09
(10) C19267DF10	C19267DG10

(c) After replacing the old part-numbered SMD45Hs in accordance with paragraph (b) of this AD, remove this AD from the RFM.

(d) Replacing each specified SMD45H and removing this AD from the RFM are terminating actions for the requirements of this AD.

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

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

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–52, issued December 19, 2001, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–306/3, dated November 15, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1451 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–70–AD; Amendment 39–12605; AD 2001–26–53]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, D, and AS355E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–26–53, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters by individual letters. This AD requires, before further flight, removing certain serial-numbered servocontrols. This AD is prompted by a report of manufacturing defects in a batch of main servocontrol rods. The actions specified by this AD are intended to prevent failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2002 to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued on December 21, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 25, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas

76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 21, 2001, the FAA issued Emergency AD 2001–26–53, for ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, which requires, before further flight, removing certain serial-numbered servocontrols. That action was prompted by a report of manufacturing defects in a batch of main servocontrol rods. This condition, if not corrected, could result in failure of a main servocontrol in the flight control system and subsequent loss of control of the helicopter.

The FAA has reviewed ECF Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, which advise replacing certain servocontrols.

The Direction General De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. The DGAC advises of the discovery of a manufacturing defect on a batch of rods of the main servocontrol, the failure of which would lead to the loss of control of the helicopter. The DGAC classified the ECF Alert Telexes as mandatory and issued AD No. T2001–590–087(A) (for AS 350 helicopters) and No. T2001–591–065(A) (for AS 355 helicopters), both dated November 28, 2001, to ensure the continued airworthiness of these helicopters.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the FAA issued Emergency AD 2001–26–53 to prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter. The AD requires, before further flight, removing certain serial-numbered servocontrols. This AD does not apply to certain reconditioned servocontrols identified by the letter ''V'' engraved on the identification plate on the right-hand side of the part number. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, removing certain serial-numbered servocontrols is required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 21, 2001 to all known U.S. owners and operators of ECF Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 540 helicopters of U.S. registry will be affected by this AD. It will take approximately 2 work hours per helicopter to remove a main servocontrol. The average labor rate is $60 per work hour. Required parts will cost approximately $9200 per main servocontrol. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,032,800 ($9320 per helicopter), assuming that at least one main servocontrol is replaced on each helicopter.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2001–SW–70–AD.'' The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–26–53 Eurocopter France: Amendment 39–12605. Docket No. 2001–SW–70–AD.

Applicability: Model AS350B, B1, B2, B3, BA, D, and AS355E helicopters, with TRW–SAMM main servocontrols, part number (P/N) SC 5083, serial number (S/N) from 1500 to 1515, inclusive, or P/N SC 5084, S/N from 722 to 726, inclusive, installed, except those reconditioned and identified by the letter ''V'' engraved on the identification plate on the right-hand side of the P/N, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent failure of a main servocontrol, failure of the flight control system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove each affected main servocontrol.

Note 2: Eurocopter France Alert Telex Nos. 01.00.52 and 01.00.18, both dated November 15, 2001, pertain to the subject of this AD.

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

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

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on February 6, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–26–53, issued December 21, 2001, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, France, AD Nos. T2001–590–087(A) and T2001–591–065(A), both dated November 28, 2001.

Issued in Fort Worth, Texas, on January 11, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–1450 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–12]

Establishment of Class D Airspace; Titusville, NASA Shuttle Landing Facility, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL. A federal contract tower with a weather reporting system is in operation at the National Aeronautics and Space Administration (NASA) Shuttle Landing Facility. Therefore, the airport meets the criteria for establishment of Class D airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 1,900 feet MSL within a 5.7-mile radius of the NASA Shuttle Landing Facility.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On December 3, 2001, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Titusville, NASA Shuttle Landing Facility, FL, (66 FR 60162) to provide adequate controlled airspace to contain IFR operations at the NASA Shuttle Landing Facility. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be published subsequently in the Order.

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

The Rule

The amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Titusville, NASA Shuttle Landing Facility, FL.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Titusville, NASA Shuttle Landing Facility, FL [New]

NASA Shuttle Landing Facility, FL
(Lat. 28° 36′ 54″ N. long. 80° 41′ 40″ W)
Space Coast Regional Airport
(Lat. 28° 30′ 53″ N. long. 80° 47′ 57″ W)

That airspace extending upward from the suface to and including 1,900 feet MSL within a 5.7-mile radius of NASA Shuttle Landing Facility, excluding that portion contained within the Titusville, FL Class D airspace area; excluding that portion along the western boundary of Restricted Area R–2934, west of a line connecting the 2 points of intersection; and excluding the remaining portion within Restricted Areas R–2932 and R–2934 when they are active. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1510 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 00–AWP–13]

Establishment, Redesignation, and Revocation of Restricted Areas; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action redesignates Restricted Area 4804 (R–4804) Twin Peaks, NV, as R–4804A, and establishes R–4804B from flight level (FL) 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A, and establishes R–4813B from FL 180 to FL 350. This action also revokes R–4802 Lone Rock, NV, and designates the U.S. Navy (USN) Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

EFFECTIVE DATE: 0901 UTC, April 18, 2002.

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

SUPPLEMENTARY INFORMATION:

History

On December 18, 2000, the FAA proposed the establishment, redesignation, and revocation of restricted areas in Nevada. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received regarding this rulemaking. Except for editorial changes, and the addition of the time of designation for R–4804A Twin Peaks, NV, which remains the same as currently designated but, was inadvertently omitted from the proposal, this amendment is the same as that proposed in the Notice. These rulemaking actions ''are necessary in the interest of national defense,'' as required under 49 U.S.C. 40103(b)(3)(A).

The Rule

This action redesignates R–4804 Twin Peaks, NV, as R–4804A from surface to 17,999 mean sea level (MSL), and establishes R–4804B from FL 180 to FL 350. Additionally, this action redesignates R–4813 Carson Sink, NV, as R–4813A from surface to 17,999 MSL, and establishes R–4813B from FL 180 to FL 350. The establishment of restricted areas R–4804B and R–4813B respectively, increase the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the restricted areas. The activation of the new areas will be on a real-time basis and follow agreed procedures between the United States Navy (USN) and the Manager of Oakland Center. This action also revokes R–4802 Lone Rock, NV, and designates the USN Naval Strike and Warfare Center, Fallon, NV, as the using agency for R–4804A, R–4804B, R–4813A, and R–4813B.

The USN requested these modifications to meet the Chief of Naval Operations training requirements resulting from a real world threat environment that requires flight crews to develop and maintain an ability to deliver ordnance (bombs, missiles, bullets, etc.) from high altitudes.

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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8H dated September 1, 2000.

Environmental Review

This action was requested by the USN as part of the USN's Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon in Nevada, which also includes non-rulemaking airspace actions. Pursuant to section 102(2) of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable law, the USN and the Bureau of Land Management (BLM) prepared and published a Final Environmental Impact Statement (FEIS) in January 2000 that analyzed the potential environmental impacts associated with the Proposed Fallon Range Training Complex Requirements. The FAA was a cooperating agency on the FEIS. The actions taken in this final rule were among several actions included in the FEIS. According to the FEIS, each of the actions has independent utility and could be implemented separately. See FEIS, p. 1–4 (Table 1–1). The FEIS considered five alternatives, including the ''no action'' alternative. All but the ''no action'' alternative included the actions taken in this final rule. The USN issued a Record of Decision on April 10, 2000.

The FAA has conducted an independent review of the FEIS and is adopting the FEIS for this action pursuant to 40 CFR § 1506.3(a) and (c). This final rule, which increases the vertical limits of two existing restricted areas but does not increase the lateral boundaries of the existing airspace, will not result in significant environmental impacts. The FAA has also approved the non-rulemaking airspace action included in the USN's proposed training requirements at the Fallon Range Training Complex. The record of decision for the non-rulemaking action is contained in a Non-Rulemaking Decision Document (NRDD) dated November 6, 2001. A copy of the NRDD has been placed in the public docket for this rulemaking.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for 14 CFR part 73 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.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

* * * * *

R–4802 Lone Rock, NV [Revoke]

R–4804 Twin Peaks, NV [Revoke]

R–4813 Carson Sink, NV [Revoke]

R–4804A Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. Surface to but not including FL 180 excluding 2,000 feet AGL up to but not including 8,500 feet MSL, north of and within 1 NM of U.S. Highway 50 between the intersection of U.S. Highway 50 with long. 118°26′00″W., and long. 118°08′00″W.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA, Oakland ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4804B Twin Peaks, NV [New]

Boundaries. A 5-nautical-mile radius circle centered at lat. 39°13′00″N., long. 118°12′45″W.; and a 3-nautical-mile radius centered at lat. 39°14′15″N., long. 118°17′33″W.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily. Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813A Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00″N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Times of use. 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

R–4813B Carson Sink, NV [New]

Boundaries. Beginning at lat. 39°51′00″N., long. 118°38′04″W.; to lat. 40°01′00″N., long. 118°15′04″W.; to lat. 40°01′00N., long. 118°01′03″W.; to lat. 39°58′00″N., long. 118°01′03″W.; to lat. 39°38′00″N., long. 118°17′03″W.; thence via the arc of a 15-NM radius circle centered at lat. 39°52′36″N., long. 118°20′31″W.; to lat. 39°45′50″N., long. 118°38′04″W.; thence to the point of beginning.

Designated altitudes. FL 180 to and including FL 350.

Times of use. Intermittent by NOTAM 0715–2330 local time, daily.

Controlling agency. FAA Oakland, ARTCC.

Using agency. USN Naval Strike and Warfare Center Fallon, NV.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1374 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30289; Amdt. No. 433]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en routes authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 21, 2002.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on January 11, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

§§ 95.48, 95.6001, 95.6159, 95.6437, 95.6441, 95.6450, 95.614, and 95.6538 [Amended]

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
Colored Federal Airways		
§ 95.48 Green Federal Airway 8 is Amended to Read in Part		
Campbell Lake, AK NDB	Glennallen, AK NDB	10000
Atlantic Routes		
Atlantic Routes—A315 is Amended to Read in Part		
Jayee, BS FIX *16500—MRA	*Hodgy, BS FIX	7,000
Atlantic Routes—A555 is Amended to Read in Part		
Rajay, BS FIX	Prune, BS FIX	4,000
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME *1500—MOCA	Lepas, BS FIX	*3000
Lepas, BS FIX *1300—MOCA	Bosar, BS FIX	*3000
Atlantic Routes—B503 is Amended to Read in Part		
NAssua, BS VOR/DME *16500—MRA	*Hodgy, BS FIX	7000
Hodgy, BS FIX	Enamo, OA FIX	6000
Atlantic Routes—G437 is Amended to Read in Part		
Mapyl, OA FIX	Elbow, BS FIX	31000
Elbow, BS FIX	Ingra, BS FIX	8000
Ingra, BS FIX	Nassau, BS VOR/DME	2000
Nassau, BS VOR/DME	Welks, BS FIX	2000
Welks, BS FIX	Brono, BS FIX	2000
Brono, BS FIX *14000—MRA	*Jayee, BS FIX	5000
Bahamas Routes		
Bahama Routes—022V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2000
Majur, BS FIX *1500—MOCA	Nassau, BS VOR/DME	*2000
Bahama Routes—049V is Amended to Read in Part		
Nassau, BS VOR/DME	Tinky, BS FIX	4000
Bahama Routes—053V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2000
Nassaue, BS VOR/DME	Guava, BS FIX	3000
Bahama Routes—054V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*1500—MOCA		
Bahama Routes—055V is Amended to Read in Part		
Prune, BS FIX	Nassau, BS VOR/DME	2,000
Nassau, BS VOR/DME	Burrl, BS FIX	*3000
*1500—MOCA		
Burrl, BS FIX	Seaan, BS FIX	*3000
*1500—MOCA		
Seaan, BS FIX	Burgo, BS FIX	*16000
*1500—MOCA		
Bahama Routes—057V is Amended to Read in Part		
Carey, BS FIX	Majur, BS FIX	2,000
Majur, BS FIX	Nassau, BS VOR/DME	*2,000
*1500—MOCA		
Bahama Routes—058V is Amended to Read in Part		
Nassau, BS VOR/DME	Kuray, BS FIX	*2000
*1500—MOCA		
Kuray, BS FIX	*Melon, BS FIX	**2000
*8000—MRA		
**1300—MOCA		
Melon, BS FIX	Hankx, BS FIX	*2000
*1300—MOCA		
Hankx, BS FIX	Barts, BS FIX	*4000
*1300—MOCA		
Barts, BS FIX	Abaco, BS FIX	10000
Bahama Routes—063V is Amended to Read in Part		
Hankx, BS FIX	*Melon, BS FIX	**2,000
*8,000—MRA		
**1,300—MOCA		
Melon, BS FIX	Kuray, BS FIX	*2,000
*1300—MOCA		
Kuray, BS FIX	Nassau, BS VOR/DME	*2,000
*1,500—MOCA		
Bahamas Routes—065V is Amended to Read in Part		
Nassau, BS VOR/DME	Peach, BS FIX	*2000
*1500—MOCA		
Peach, BS FIX	*Sydny, BS FIX	**2000
*5000—MRA		
**1300—MOCA		
Sydny, BS FIX	Lauth, BS FIX	*5000
*1300—MOCA		
Lauth, BS FIX	Freeport, BS VOR/DME	*2000
*1400—MOCA		
Bahamas Routes—070V is Amended to Read in Part		
Marsh Harbour, BS NDB	Nassau, BS VOR/DME	6000
§ 95.6001 Victor Routes—U.S.		
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Tuskegee, AL VOR/DME	Kentt, AL FIX	*2600
*1900—MOCA		
§ 95.6437 VOR Federal Airway 437 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000
*5000—MRA		
**1300—MOCA		
§ 95.6441 VOR Federal Airway 441 is Amended to Read in Part		
Stary, GA FIX	*Cathy, GA FIX	**5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 433, Effective Date: February 21, 2002]

From	To	MEA
*5000—MRA **1300—MOCA		
§ 95.6450 VOR Federal Airway 450 is Amended to Read in Part		
Muskegon, MI VORTAC *2400—MOCA	Flint, MI VORTAC	*3000
§ 95.6514 VOR Federal Airway 514 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC *10200—MCA Twentynine Palms, CA VORTAC, NE BND **7600—MOCA	Goffs, CA VORTAC	**12000
§ 95.6538 VOR Federal Airway 538 is Amended to Read in Part		
*Twentynine Palms, CA VORTAC *10200—MCA Twentynine Palms, CA VORTAC, NE BND **7600—MOCA	Goffs, CA VORTAC	**12000

[FR Doc. 02–1376 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ49–235 FRL–7127–8]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by New Jersey that consists of two elements necessary for EPA to grant final full approval of New Jersey's enhanced motor vehicle inspection and maintenance (I/M) program. The first element provides the State's final submittal for compliance with the National Highway Systems Designation Act (NHSDA), which allowed states to claim additional credit for their decentralized inspection and maintenance programs, provided they could validate that credit claim with actual program implementation data. The second element revises New Jersey's performance standard modeling to reflect the State's enhanced I/M program as it is currently implemented. This element satisfies a condition of EPA's May 14, 1997 conditional interim approval of New Jersey's enhanced I/M program SIP. The intended effect of this action is to approve the two evaluations of the enhanced I/M program, in addition to prior minor revisions to the enhanced I/M SIP, and to grant final full approval of the program. The enhanced I/M program will result in emission reductions that will help achieve attainment of the one-hour ozone standard and carbon monoxide standard.

EFFECTIVE DATE: This rule will be effective February 21, 2002.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460. New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2001 (66 FR 47130), EPA published a notice of proposed rulemaking regarding a State Implementation Plan (SIP) revision submitted by the State of New Jersey. The notice proposed to approve revisions to New Jersey's enhanced I/M SIP, and to grant final full approval of the program. The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on May 4, 2001, and the final SIP revision was formally submitted on August 20, 2001. A detailed description of New Jersey's submittals and EPA's rationale for the proposed action were presented in the September 11, 2001 proposal, referenced above, and will not be restated here.

Public Comments/Response to Comments

On October 16, 2001 (66 FR 52560), EPA published a notice extending the comment period for the September 11, 2001 proposal for an additional thirty days. This action was necessary due to the tragic events of September 11, 2001 and the resulting temporary closure of the Region 2 office of the EPA in New York City and the disruption of mail delivery and telephone service. It should be noted that EPA did not receive any comments associated with the proposed approval of New Jersey's enhanced I/M program.

Conclusion

EPA is taking final action to approve New Jersey's August 20, 2001 SIP revision, which contained the remaining elements necessary to grant final full approval of the State's enhanced I/M program. EPA's authority to approve New Jersey's enhanced I/M program is set forth at sections 110 and 182 of the Clean Air Act. In accordance with the parallel processing procedures, EPA has

evaluated New Jersey's final SIP revision submitted on August 20, 2001, and finds that no substantial changes were made from the proposed SIP revision submitted on May 4, 2001. EPA agrees with New Jersey's responses to those comments it received which are related to the enhanced I/M program as an element of the State's SIP.

Based on the analyses included in New Jersey's August 20, 2001 submittal, EPA concludes that the State's NHSDA evaluation validates New Jersey's 80% decentralized test and repair effectiveness rate credit claim. New Jersey's evaluation uses actual program implementation data to show that the decentralized portion of the network is at least 80% as effective as its centralized program, as the State previously claimed. EPA also concludes, based on New Jersey's performance standard modeling which reflects the State's enhanced I/M program as it is currently implemented, that the State's program meets the low enhanced performance standard. Based on these conclusions, EPA is approving New Jersey's August 20, 2001 SIP revision.

EPA is also approving the final and complete test equipment specifications, test procedures and emission standards that New Jersey submitted to satisfy conditions of EPA's May 14, 1997 interim approval. New Jersey made a revision to its SIP on January 31, 1997 which contained those required elements.

EPA is finding that New Jersey's December 14, 1998, SIP revision submittal adequately remedies the eight de minimus deficiencies previously identified.

Finally, as a consequence of EPA's conclusions regarding the approvability of the elements summarized above, EPA is changing the conditional interim status of the approval of New Jersey's enhanced I/M program to final approval.

Administrative 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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP 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 SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP 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. 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.*).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 21, 2001.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(71) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(71) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on August 20, 2001 by the New Jersey State

Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Amendments to Title 7, Chapter 27 of the New Jersey Administrative Code (NJAC) Subchapter 15, ''Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles,'' effective November 15, 1999.

(B) Amendments to Title 7, Chapter 27B of the NJAC Subchapter 4, ''Air Test Method 4: Testing Procedures for Motor Vehicles,'' effective November 15, 1999.

(C) Amendments to Title 13, Chapter 20 of the NJAC Subchapter 28, ''Inspection of New Motor Vehicles'' (Sections: 28.3, 28.4, 28.6), effective December 6, 1999.

(D) Title 13, Chapter 20 of the NJAC: Subchapter 7, ''Vehicle Inspection'' (Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6); Subchapter 24, ''Motorcycles'' (Section: 24.20); Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles'' (Section: 26.16); Subchapter 29, ''Mobile Inspection Unit'' (Sections: 29.1, 29.2, 29.3); Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities''; Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities''; Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program''; Subchapter 44, ''Private Inspection Facility Licensing''; and Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration'', effective December 6, 1999.

(E) Title 13, Chapter 21 Subchapter 5, ''Registrations'' (Section: 5.12) and Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers'' (Section: 15.7), effective December 6, 1999.

* * * * *

3. In § 52.1605 the table is amended:

a. Revising under Title 7, Chapter 27, the entry for Subchapter 15.

b. Revising under Title 7, Chapter 27B, the entry for Subchapter 4.

c. Revising under Title 13, Chapter 20, the entry for Subchapter 28.

d. Adding new entries for Subchapters 7, 24, 26, 29, 32, 33, 43, 44, and 45 in numerical order under Title 13, Chapter 20.

e. Adding new Chapter 21 under Title 13 and new entries for Subchapters 5 and 15 in numerical order under Chapter 21.

The revisions and additions read as follows:

§ 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * * * *			
Title 7, Chapter 27			
* * * * * * *			
Subchapter 15, ''Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles.''	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
* * * * * * *			
Chapter 27B			
* * * * * * *			
Subchapter 4, ''Air Test Method 4: Testing Procedures for Motor Vehicles.''	Nov. 15, 1999	January 22, 2002, [Insert FR page citation].	
* * * * * * *			
Title 13, Chapter 20			
Subchapter 7, ''Vehicle Inspection.'' Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 24, ''Motorcycles.'' Section: 24.20.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 26, ''Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles.'' Section: 26.16.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 28, ''Inspection of New Motor Vehicles.'' Sections: 28.3, 28.4, 28.6.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 29, ''Mobile Inspection Unit.'' Sections: 29.1, 29.2, 29.3.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 32, ''Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 33, ''Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 43, ''Enhanced Motor Vehicle Inspection and Maintenance Program.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 44, ''Private Inspection Facility Licensing.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 45, ''Motor Vehicle Emission Repair Facility Registration.''	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Chapter 21			

State regulation	State effective date	EPA approved date	Comments
Subchapter 5, ''Registrations.'' Section: 5.12.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
Subchapter 15, ''New Jersey Licensed Motor Vehicle Dealers.'' Section: 15.7.	Dec. 6, 1999	January 22, 2002 [Insert FR page citation].	
* * * * * * *			

[FR Doc. 02–1345 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 92–77; FCC 01–355]

Billed Party Preference for InterLATA 0+ Calls.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies that the price disclosure rules apply to all interstate non-access code operator service calls. The Commission confirms that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls. The Commission also clarifies that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider. The Commission retains the requirement that oral rate information must be provided to both parties on a collect call. Finally, the Commission amends the rules to reflect that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

DATES: Effective Date: February 21, 2002.

Compliance Date: The oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Nadel, Attorney, or Michele Walters, Associate Chief, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration in CC Docket No. 92–77, released on December 12, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

Introduction

1. In 1998, the Commission addressed the problem of widespread consumer dissatisfaction with the high rates charged by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as hotels, hospitals, and educational institutions. At that time, an away-from-home caller who dialed ''0'' followed by an interexchange number typically did not know what rates the particular OSP would be charging. The Commission responded to this problem in the *Second Report and Order,* 63 FR 11612, March 10, 1998, by adopting price disclosure rules that apply to providers of interstate operator services from such phones and to providers of inmate operator services from phones set aside for use by inmates at correctional institutions. These rules were designed to ensure that consumers receive sufficient information about the rates they will pay for operator services at public phones and other aggregator locations, thereby fostering a more competitive OSP marketplace. In this Order, we largely affirm those rules and dispose of outstanding petitions for reconsideration. We make several minor modifications and clarifications to the rules.

2. Specifically, we clarify that the price disclosure rules apply to all interstate non-access code operator service calls, even those that are initiated by dialing 0-, if the consumer will be liable for interstate operator service charges for such calls. We confirm that section 226 of the Communications Act requires price disclosure for all interstate non-access code operator service calls and therefore decline to exempt interstate intraLATA toll calls from the price disclosure obligation under our rules. We also clarify that the disclosure of price information is limited to those charges that are billed by, or on behalf of, the interstate operator service provider and amend the rules accordingly. In view of the statutory definition of ''consumer'' in the context of operator services, we retain the requirement that oral rate information must be provided to both parties on a collect call. Finally, we amend the rules to reflect the finding in the *Second Report and Order* that, in a bill-to-third-number situation, the rate disclosure option must be offered to the party to be billed, if the OSP contacts that person to secure approval for billing, as well as to the caller. These minor clarifications and changes will better ensure the effectiveness of the rules in enabling consumers to take advantage of competition in the operator services marketplace, while minimizing administrative burdens.

3. The Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs with respect to calls from public phones at away-from-home aggregator locations. OSPs have historically competed with each other to receive operator service calls by offering commissions to payphone or premises owners on all such calls from a public phone. In exchange for this consideration, premises owners have agreed to designate a particular OSP as the presubscribed interexchange carrier (PIC) serving their payphones. Many OSPs using this strategy agreed to pay very high commissions to both premises owners and sales agents who sign up those premises owners and have claimed, as a consequence, that they had to impose very high usage charges on consumers placing calls from payphones. While this process generated added revenues for premises owners and sales agents, it forced callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP. Because payphone owners and other aggregators did not earn

commissions on these so-called ''dial around'' calls until relatively recently, many aggregators blocked the use of access codes from their phones.

4. In 1990, Congress provided the Commission and consumers with tools to address these practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.). Under TOCSIA and the Commission's implementing rules, an aggregator must, among other things, permit consumers to use an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the OSP the aggregator has selected as its PIC for long-distance calls. The Commission also mandates, in accordance with TOCSIA, that each OSP ''brand'' its calls, that is, ''identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. In 1996, in response to the forbearance provisions of the Telecommunications Act of 1996, the Commission sought comment on whether to forbear from applying the informational tariff filing requirements it had imposed under section 226, as well as whether to require all OSPs to disclose their rates on all 0+ calls. Based on that record, the Commission adopted its *Second Report and Order.*

5. In the *Second Report and Order,* the Commission amended its rules to require*, inter alia,* that operator service providers (OSPs) ''[d]isclose audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange, non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call.''

6. The oral price disclosure rule also requires OSPs to instruct consumers that they may obtain applicable rate and surcharge quotations for 0+ calls either by, at the option of the OSP, dialing no more than two digits or remaining on the line. The Commission further amended its rules to require ''all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone.''

7. The Commission ordered that the disclosure rules would become effective generally on July 1, 1998. The Commission extended the compliance date until October 1, 1999, for those carriers using store-and-forward payphones to provide operator services and stated that it would consider waiver requests on a specific factual showing of good cause.

8. Thereafter, Ameritech (now operating as SBC) petitioned for a stay of the new oral price disclosure rules to the extent that the *Second Report and Order* could be deemed to apply to interstate intraLATA toll services. In petitions for clarification or reconsideration, Ameritech and US West, Inc. (now operating as Qwest) asked the Commission to clarify, or, alternatively, to rule on reconsideration, that these rules do not apply to interstate intraLATA service. Because these petitions were pending and would not be resolved by the July 1, 1998 effective date, the Common Carrier Bureau (the Bureau) found that it would be in the public interest for the Commission to determine, prior to the compliance deadline, the applicability of the rules to interstate intraLATA toll operator services. For this reason, the Bureau stayed these requirements with respect to such intraLATA calls until 60 days after the release of an order addressing Ameritech's and US West's petitions. Seven other petitions for clarification and/or reconsideration of the price disclosure requirements were timely filed.

II. Discussion

Applicability of Rules to LECs and IntraLATA Calls

9. We affirm the application of our price disclosure rules to local exchange carriers (LECs) when they provide interstate operator services within their region. We note that the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) expressly defines ''operator services'' to include ''any interstate telecommunications service'' that meets specified criteria. Thus, there is no basis in the statute for exempting LEC-provided interstate operator services, which meet the statutory criteria, from the disclosure requirements. We disagree with US West's contention that LECs should be exempt from these rules because they have never been seen as the source of the kinds of problems that TOCSIA was intended to address. While there may have been relatively few complaints about interstate operator services provided by LECs, this may reflect the fact that LECs have not traditionally provided extensive interstate operator services. In view of the statutory language, and in the absence of forbearance, we do not believe a blanket exemption for LECs providing interstate operator services is warranted simply because companies other than LECs have been the primary subjects of complaints about high rates.

10. Some petitioners and commenters assert that we should decline to apply our price disclosure requirements to interstate intraLATA toll, or isolated so-called ''bubble LATA'' calls for various reasons. For example, Ameritech claims that its operator switches cannot distinguish between interstate and intrastate intraLATA traffic for this purpose and that, as a result, it would have to apply a price disclosure requirement in an overinclusive manner to all intraLATA calls. We recognize that most intraLATA toll calls are intrastate calls within the jurisdiction of the respective state regulatory agencies. We further note that many states have responded to consumer concerns over high rates and surcharges with regulations that cap rates of operator services providers and/or prohibit premises-imposed fees (PIFs). As commenters assert, requiring price disclosures may indirectly impose additional obligations with respect to all intrastate calls even though there are a relatively small number of interstate intraLATA toll calls. Commenters also assert that added expense may be required to ensure that consumers using operator services for interstate intraLATA calls receive price disclosures. Ameritech claims that the history of this proceeding demonstrates that the Commission did not intend to apply the oral disclosure rule adopted in the *Second Report and Order* to any intraLATA calls. Finally, Ameritech contends that the legislative history of TOCSIA supports its view that Congress did not intend for the statute to apply to interstate intraLATA calls, but only to interstate interLATA calls, despite the fact that the statute only uses the term ''interstate.''

11. Because the statute requires price disclosures to be made for any interstate operator service calls, we believe that exempting interstate intraLATA calls from our price disclosure requirement would be inconsistent with the statutory language, and we decline to do so. We will, however, grant US West's request for an additional six months after the release of this ruling to come into compliance with the price disclosure requirement for interstate intraLATA calls.

B. Disclosure of Premises-Imposed Fees

12. We amend our rules to make clear that the only charges that an OSP must disclose to a consumer upon request are those that the OSP, or its billing agent, will bill the consumer, including any location-specific charge or premises-imposed fee (PIF) charged by the OSP, and not those charged separately by the premises owner or aggregator. Our rules already require aggregators to disclose charges they impose and collect independently of OSPs, such as a hotel surcharge billed by a hotel. PIFs often vary widely among locations and premises owners. OSPs often are unaware of the specific surcharges imposed by aggregators, such as hotels, motels, and hospitals, on their guests for phone calls from their rooms. Further, depending on the particular facts and circumstances, aggregators could be subject to regulation as common carriers if they impose per call charges on interstate calls. For these reasons, the Commission has not required informational tariffs filed by OSPs to specify any PIF other than those directly billed and collected from consumers by the OSP, or its billing agent. Accordingly, we clarify that the tariff and rate disclosure requirements apply only to PIFs and other charges collected from consumers by the OSP, or any other entity that bills and collects on behalf of the OSP. We can revisit this determination, upon complaint or on our own motion, if we find that practices of OSPs allow aggregators to impose excessive or otherwise unreasonable surcharges on interstate calls.

C. Applicability of Rate Disclosure Rules to Collect Calls

13. We reject the requests by AT&T and SBC that we only require oral rate disclosures to be made to the party responsible for payment for collect calls, and not to the party initiating the call. We note, rather, that Congress expressly requires that disclosures be made to the ''consumer,'' which it defines as ''a person initiating any interstate telephone call using operator services.'' Under our current rules, the definition of ''consumer'' includes both parties to a collect call. Because we find that the statute specifies that callers making collect calls must receive rate disclosures, we do not eliminate that portion of the requirement. Furthermore, we observe that parties initiating collect calls have the option of selecting among OSPs, so requiring rate disclosures to them can help them make informed selections. Thus, for purposes of the rate disclosures required of the presubscribed OSP under TOCSIA, we will continue to define the term ''consumer'' to include both parties to a collect call.

D. Applicability of Rate Disclosure Rules to Bill-to-Third-Number Calls

14. We make a minor amendment to our rules with respect to bill-to-third-number calls when an OSP contacts the party to be billed to secure billing approval. For such calls, the rules currently only require disclosures to the caller, even if that person is not the party responsible for payment of the charges. Although, in the *Second Report and Order,* the Commission stated that it would ''require OSPs to make additional oral disclosure at the point of purchase of 0+ calls,'' the rules were not amended to reflect this requirement in the context of bill-to-third-number calls. To address this discrepancy, we amend the definition of ''consumer'' so that the oral rate disclosure requirement, in situations involving bill-to-third-number calls, will include the party to be billed if the OSP contacts that person to secure approval for billing. In any case, the OSP must provide the rate disclosure option to the caller, as required by the statute. We note that, in the context of inmate operator services, the Commission defines the term ''consumer'' as ''the party to be billed,'' which would include persons liable for bill-to-third-number calls, if any. Our amendment regarding bill-to-third-number calls will help ensure that consumers have the ability to make informed choices about the rates of OSPs and providers of inmate operator services.

E. Rate Disclosure in Calls by Prison Inmates

15. We retain the requirement of oral rate disclosure for operator service calls from inmates in correctional institutions. We reject the requests by US West that we vacate the Commission's decision to apply our rules to inmate calling or significantly modify those rules. As US West acknowledges, both of its proposed modifications are significantly flawed. US West suggests that we permit carriers to use a ''generic'' system upgrade that would provide a price quote for the highest possible rate the call might entail or, alternatively, that we designate a separate phone number for rate quotes. We believe that each of these alternatives will fail to meet an important goal. US West suggests the first option, the ''generic'' system upgrade, because it believes such an approach would be less expensive than implementing a system capable of providing the more specific rate disclosures required by the current rules. However, as US West observes, this approach would not provide accurate rate quotes, and excessive quotations might unnecessarily discourage calling. Permitting the provision of inflated rate quotes in an inmate environment where OSPs face no competitive pressures would be inconsistent with our statutory obligation to ''ensur[e] that consumers have the opportunity to make informed choices'' in using operator services to place interstate telephone calls. US West proposes the second modification option, the designation of a separate phone number for rate quotes from inmate phones, as another way to minimize the expense of compliance with the current rules. The drawback of this modification option, as US West also notes, is that it would ''open up'' the inmate calling system by giving inmates direct access to ''live outside lines,'' thereby threatening security. We agree that taking this approach could compromise the special security measures the Commission has acknowledged that inmate calls require. Because these two alternatives are problematic, US West urges us to vacate the rate disclosure requirement for operator service calls from inmates in correctional institutions and handle complaints about excessive rates for such calls on a case-by-case basis. We find that US West has not undermined the reasoning underlying the application of the rate disclosure rules to inmate calls, and we decline to vacate our rules. We recognize that, unlike persons making calls from aggregator locations, inmates typically do not have the option of dialing around the (PIC). In the *Second Report and Order,* the Commission concluded that recipients of collect calls from inmates ''require additional safeguards to avoid being charged excessive rates from a monopoly provider.'' The Commission adopted price disclosure rules for providers of inmate operator services that are similar to those applicable to OSPs in order to ''eliminate some of the abusive practices that have led to complaints.'' Finally, while Citizens United For Rehabilitation of Errants (CURE) asks us to require OSPs to provide copies of informational tariffs to prisons and other consumers, we agree with MCI that informational tariffs are already available and that prison officials can easily provide them to prisoners.

F. Rate Disclosure in Air-to-Ground Calls

16. We also retain the requirement of oral rate disclosure for air-to-ground calls. One of the principal reasons underlying the adoption of the rate prompt requirement was to ensure that prospective away-from-home callers are reminded of their right to obtain rate quotations from the presubscribed OSP because its rates generally are not posted at the aggregator location. Although AT&T asserts that oral rate disclosure for air-to-ground calls is unnecessary because airplane passengers typically sit for at least one hour with rate information directly before them, we find that the record is insufficient to support a finding that the applicable rates, including any surcharge billed and collected by the OSP, for air-to-ground operator services always are posted on or near the telephone instrument. Furthermore, for collect calls, such posting would not apprise the called parties, who are responsible for paying for the calls, of their right to know the price of a call at the time of purchase.

G. Use of Visual Rates Display

17. We decline to issue the ruling US West seeks that would permit OSPs to provide the rate quotation visually, if their embedded equipment and future business plans make oral presentations expensive. US West asserts that an oral alert tone, followed by a visual rate display on the caller's phone (*e.g.,* a visual display on the payphone), would enable OSPs to convey rate information effectively without incurring burdensome costs.

18. We disagree. The visual rate display on the telephone would provide rate information only to the caller, not to the called party. As previously noted with respect to inmate calls, as well as bill-to-third-number calls in certain circumstances, the consumer to whom the disclosure must be made is ''the party to be billed,'' which typically is not the caller. In the case of collect calls (and certain types of bill-to-third number calls), under our rules, the ''consumer'' who must receive the required notice includes both the party called and the caller. Furthermore, US West does not explain how persons with impaired vision would access the information in a visual rate display. Accordingly, we will retain the requirement that the rate disclosure must be oral.

H. 0− Calls

19. We clarify that the oral price disclosure requirement does not apply to a 0− call, unless the local operator routes the call to an IXC that completes an interstate non-access code toll call from an aggregator or prison location. As noted by both Bell Atlantic and BellSouth, the *Second Report and Order*, as originally adopted by the Commission, required OSPs to advise consumers how to obtain rate information for ''any interstate, domestic, interexchange 0+ call.'' As they further note, the Bureau subsequently issued an erratum, which, among other things, replaced the term ''0+ call'' with the phrase ''non-access code operator service call,'' in order to make the terminology in our rules more uniform. Bell Atlantic and BellSouth express concern that the change in wording from ''0+ calls'' to ''non-access code operator service calls'' could be interpreted as making a substantive change regarding ''0−'' calls. They observe that expanding the disclosure requirement to cover ''0− '' calls (*i.e.,* calls that merely require the caller to enter or dial ''0''), would be contrary to the express language of the *Second Report and Order*. AT&T asks the Commission to clarify that the erratum was not intended to override the text of the *Second Report and Order*, and it notes that such an interpretation would be inconsistent with the intent of this proceeding manifested in its title.

20. As is clear from the text of the *Second Report and Order*, the Commission intended the new price disclosure rules to apply to interstate 0+ calls from aggregator locations and prison inmates. The Commission stated that ''[a] 0+ call occurs when the caller enters ''0'' plus an interexchange number, without first dialing a carrier access code * * * .'' On the other hand, a 0− call occurs when the caller only dials 0, which routes the call to an operator for assistance in making local calls. We never intended our rules to cover such intrastate calls. As we said, however, our oral price disclosure prompt requirement is applicable if the local operator should route the call to a carrier that completes an interstate non-access code toll call from an aggregator or prison location. To alleviate any possible confusion on this issue, we hereby clarify that these rules are applicable to the carrier that provides an interstate call, or if consumers otherwise would be liable for interstate operator services charges.

I. AT&T's 2000 and 1000 Public Phone Sets

21. We grant AT&T's request for clarification regarding the applicability of the rules to approximately 8,700 of its Public Phone 2000 and Public Phone 1000 sets, which permit callers to ''swipe'' their calling or credit cards into the card-reading devices of the phones. This type of phone stores the card digits until after the caller dials the phone number of the called party and forwards them through the network at the same time that the caller would otherwise hear the announcement regarding the availability of rate information. We agree with AT&T that, under such circumstances, the phones qualify as ''store-and-forward'' payphones for purposes of the operator service rate disclosure rules.

J. Other Changes to Text of the Rules

22. Because a new Commission bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints about OSPs, we are amending § 64.703(b)(4) to require the new bureau's name and address to be posted on payphones in future postings. We are mindful of the need to avoid any unnecessary burdens on current payphone operators, and we therefore will not require them to correct their existing postings until they must replace those postings for other reasons. We will also ensure that consumer complaints sent to the old address (the Common Carrier Bureau's Enforcement Division, which no longer exists) will continue to be delivered to the Consumer Information Bureau.

23. We have removed the term ''domestic'' from the text of our rules. The rules are not applicable to foreign calls, but only to interstate calls, and the term ''domestic,'' which is not defined in the Communications Act, is redundant. We also have removed the term ''interexchange'' because not all interstate interexchange calls are long-distance toll calls covered by the rules. By removing these superfluous terms, we do not intend to change the scope or extent of our rules as clarified here.

24. Finally, as suggested by the CURE, we are revising the text of the rule applicable to providers of inmate operator services to more closely parallel the language of the comparable requirements for OSPs. This revision merely clarifies that each provider of inmate operator services must identify itself and disclose, audibly and distinctly to the consumer, at no charge, and before connecting any interstate, non-access code operator services call, how to obtain the total cost of the call, including any surcharge or premises-imposed fee, or the maximum possible total cost of the call, including any such surcharge or fee. The required oral disclosure must instruct consumers that they may obtain applicable rate and surcharge quotations either, at the

option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. As the CURE and the Inmate Calling Service Providers Coalition observe, this editorial change does not affect the substance of the rule. For the reasons discussed, we do not permit OSPs to use generic, maximum call prices for inmate calls, where they would not have a competitive incentive to provide more accurate prices.

III. Conclusion

25. We believe that the clarifications and amendments adopted in this Order will make our price disclosure rules for operator services even more effective, while removing uncertainty and minimizing administrative costs.

IV. Supplemental Final Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order*. The Commission received no written public comments on the FRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847 (1996). The Commission is issuing this *Second Order on Reconsideration* to clarify and amend rules it previously adopted in the *Second Report and Order* to protect consumers from excessive charges in connection with interstate non-access code operator services for payphone and prison inmate calls. Those rules sought to ensure that consumers are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

1. Need for, and Objectives of, the Second Order on Reconsideration

27. In the 1996 Act, Congress sought to establish ''a pro-competitive, de-regulatory national policy framework'' for the United States telecommunications industry. One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

28. In this *Second Order on Reconsideration*, we grant, in part, several petitions seeking clarification of rules the Commission adopted in its *Second Report and Order*, requiring carriers to orally disclose to consumers how to obtain the charges for operator services for interstate calls from aggregator locations and from prison inmate-only telephones. The objective of the rules previously adopted, and as clarified and amended in this Order, is to further implement the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and Congressional concern toward the impact of the 1996 Act on small business entities.

2. Summary of Significant Issues Raised by the Public in Response to the FRFA

29. In the reconsideration petitions received by the Commission, no petitioner commented on the previous FRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

30. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the revised rules. The RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. A ''small business concern'' is one that: is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the Small Business Administration (the SBA). The SBA has defined a small business for North American Industry Classification System (NAICS) codes 51331 and 51333 (Wired Telecommunications Carriers and Telecommunications Resellers) to be small entities when they have no more than 1,500 employees. In the FRFA, we discussed generally the total number of telephone companies falling within these categories and estimated the number of carriers falling within relevant subcategories. Those sub-categories consisted of telephone companies, wireline carriers and service providers, interexchange carriers, resellers, operator service providers, and local exchange carriers. Except for updating the Operator Service Providers category in the following paragraph, we incorporate by reference that discussion into this Supplemental FRFA.

31. *Operator Service Providers.* According to the most recent *Trends in Telephone Service* data, 21 carriers reported that they were *primarily* engaged in the provision of operator services, but many other carriers provide operator services as a secondary business. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under section 226 of the Communications Act, and the Commission's rules and orders, to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of September 1, 2000, approximately 725 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 725 or fewer small entity OSPs that may be affected by the amended rules adopted in this Order.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. The rule amendments adopted in this Order clarify the current requirement that certain carriers disclose audibly to consumers how to obtain the price of a call before it is connected. Nondominant long-distance carriers, including small nondominant interchange carriers, currently are required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate non-access code call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they may be billed for such calls. The rule amendments adopted in this Order should not substantially affect the manner in which OSPs and providers of service from correctional institutions have been required to operate since the rules went into effect on July 1, 1998 (and with respect to store-and-forward telephones, on October 1, 1999). The changes, as noted throughout the text, are mere clarifications. For instance, even when we amend our rules to require disclosures to third parties when OSPs contact those parties to secure

approval for bill-to-third number calls, this merely addresses a discrepancy that existed between the Order and the Commission rules.

33. The rules adopted require that hundreds of non-dominant, long-distance carriers continue to disclose information regarding their rates, as well as any related fees they collect on behalf of the owners of the premises where the telephone instrument is located. Small entities may continue to feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to these policies and rules. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected. To the extent that any statement contained in this Supplemental FRFA Appendix is perceived as creating ambiguity with respect to our rules or statements made in this Order, the rules and statements set forth in the Order control.

35. Previously, in the *Second Report and Order*, we carefully considered and rejected several alternatives to the price disclosure requirements and rules adopted therein, as modified herein, finding them more burdensome to carriers. For example, we rejected a proposed billed party preference routing system, which would have seamlessly routed calls to the callers preferred carrier, due to its estimated implementation cost of one billion dollars. The costs of hardware and software upgrades would have been particularly burdensome to small carriers. We also rejected a benchmark pricing system that would have required small carriers to carefully monitor the rates of the three most popular carriers. Furthermore, we limited our disclosure requirements so that they would not apply to those types of calls for which they appeared unnecessary. This order attempts to clarify and fine tune those distinctions so that disclosure requirements only apply where we believe they are in the public interest. Thus, the rules, as clarified and modified herein, are applicable only to limited interstate, non-access code calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10–10–XXX or 1–800–XXX–XXXX, whereby callers can circumvent placing the call through the long-distance carrier that is presubscribed for that line.

36. Furthermore, although we find that the law requires rate disclosures to be made for interstate intraLATA calls, we are delaying the effective date of that requirement for 6 months. We believe that a 6-month delay should give the affected parties ample opportunity to come into compliance with this requirement.

37. In addition, a new bureau, the Consumer Information Bureau, is now the appropriate recipient of consumer complaints, rather than the Common Carrier Bureau's Enforcement Division, which no longer exists. While we will require the new bureau's name and address to be posted on payphones in future postings, we have acted to avoid any unnecessary burdens on current payphone operators. We will require them to make the appropriate correction whenever they next revise their postings, but we are not requiring them to replace their postings now. Instead, we are ensuring that mail sent to the old address will continue to be delivered to the Consumer Information Bureau.

38. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate non-access code operator services at the point of purchase will continue to facilitate the development of increased competition in this segment of the interstate market, thereby benefiting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate non-access code operator services will continue to enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment.

6. Report to Congress

39. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with this *Second Order on Reconsideration*, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Order on Reconsideration* and this Supplemental FRFA will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

40. *It is ordered*, pursuant to sections 1, 4(i), 4(j), 226, and 405 of the Communications Act of 1934, as amended, that the petitions for clarification or reconsideration filed on April 9, 1998, by Ameritech, AT&T, Bell Atlantic, BellSouth, Citizens United for Rehabilitation of Errants, Inmate Calling Service Providers Coalition, One Call Communications, Inc., US West, Inc., Cleartel Communications, Inc., Operator Services Company, and Teltrust Communications Services, Inc. are granted in part and denied in part to the extent discussed.

41. *It is further ordered* that the Commission's rules are amended as set forth, effective February 21, 2002, except that the oral rate disclosure requirement of § 64.703(a)(4) shall not apply to interstate intraLATA operator services until June 12, 2002.

42. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carrier, Reporting and recordkeeping, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151,154, 201, 202, 205, 218, 220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat.1070, as amended, 47 U.S.C. 2201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Amend § 64.703 by revising paragraph (a)(4), in paragraph (b)(2)

remove the word ''intestate'' and add in its place, the word ''interstate'', and revise paragraph (b)(4) to read as follows:

§ 64.703 Consumer information.

(a) * * *

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate non-access code operator service call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call'' as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. It does not include additional charges that may be assessed and collected without the involvement of the carrier, such as a hotel surcharge billed by a hotel. Such charges are addressed in paragraph (b) of this section.

(b) * * *

(4) The name and address of the Consumer Information Bureau of the Commission (Federal Communications Commission, Consumer Information Bureau, Consumer Complaints—Telephone, Washington, D.C. 20554), to which the consumer may direct complaints regarding operator services. An existing posting that displays the address that was required prior to the amendment of this rules (*i.e.,* the address of the Common Carrier Bureau's Enforcement Division, which no longer exists) may remain until such time as the posting is replaced for any other purpose. Any posting made after the effective date of this amendment must display the updated address (*i.e.,* the address of the Consumer Information Bureau).

* * * * *

3. Amend § 64.708 by revising paragraph (f) to read as follows:

§ 64.708 Definitions.

* * * * *

(f) *Consumer* means a person initiating any interstate telephone call using operator services. In collect calling arrangements handled by a provider of operator services, the term consumer also includes the party on the terminating end of the call. For bill-to-third-party calling arrangements handled by a provider of operator services, the term consumer also includes the party to be billed for the call if the latter is contacted by the operator service provider to secure billing approval.

* * * * *

4. Amend § 64.709 revising paragraph (a) to read as follows:

§ 64.709 Informational tariffs.

(a) Informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per-call fees, if any, collected from consumers by, or on behalf of, the carrier.

* * * * *

5. Amend § 64.710 by revising paragraph (a)(1) and in paragraphs (b)(1) and (b)(4) remove all references to ''domestic, interexchange'' to read as follows:

§ 64.710 Operator services for prison inmate phones.

(a) * * *

(1) Identify itself and disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, non-access code operator service call, how to obtain the total cost of the call, including any surcharge or premises-imposed-fee. The oral disclosure required in this paragraph shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of inmate operator services, by dialing no more than two digits or by remaining on the line. The phrase ''total cost of the call,'' as used in this paragraph, means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the carrier, or its billing agent, may collect from the consumer for the call. Such phrase shall include any per-call surcharge imposed by the correctional institution, unless it is subject to regulation itself as a common carrier for imposing such surcharges, if the contract between the carrier and the correctional institution prohibits both resale and the use of pre-paid calling card arrangements.

* * * * *

[FR Doc. 02–1178 Filed 1–18–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 010823214–2009–02; ID. 080801A]

RIN 0648–AP47

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the 30th Space Wing, U.S. Air Force, has issued a modification to regulations and the annual Letter of Authorization (LOA) that authorizes the take of small numbers of marine mammals incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA (VAFB). The 30th Space Wing requested that the current monitoring requirements be modified so that biological monitoring is required only during the Pacific harbor seal pupping season (March 1 to June 30). By this document, NMFS is amending the regulations governing the take of marine mammals incidental to rocket launches at VAFB. NMFS, in issuing the regulation to which a modification is sought previously determined that rocket launches at VAFB would have a negligible impact on the affected species and stocks of marine mammals. In order to make the requested amendment to the regulation, NMFS has determined that the monitoring program at VAFB and the resultant data from pre- and post-launch marine mammal observations have effectively shown that rocket launch activities have a negligible impact on marine mammal populations and stocks.

DATES: The amendment to 50 CFR 216.125 is effective on January 25, 2002. The modified annual LOA is effective from January 25, 2002, until May 23, 2002.

ADDRESSES: All inquiries on this final rule and LOA should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, (301) 713–2322, ext 106 or Christina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101 (a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations governing the taking are issued. Effective January 26, 1996, by Department Delegation Order 10–15, the Secretary of Commerce (Secretary) delegated authority to perform the functions vested in the Secretary as prescribed by the MMPA to the Administrator of the National Oceanic and Atmospheric Administration. On December 17, 1990, under NOAA Administrative Order 205–11, 7.01, the Under Secretary for Oceans and Atmosphere delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Permission may be granted for periods up to 5 years if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth in regulation. To make such findings, NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' As new information is developed, through monitoring, reporting, or research, NMFS may modify the regulations governing the take, in whole or in part, after notice and opportunity for public review.

Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

Summary of Request

On May 17, 2001, NMFS received a request from the 30th Space Wing for modification to the monitoring requirements of the 5–year programmatic regulations governing the incidental take of marine mammals during rocket launch operations at VAFB (50 CFR 216.120-128). The requested modification would reduce the current requirement to perform biological monitoring during all space vehicle launches at VAFB to only those space vehicle launches at VAFB during the Pacific harbor seal (*Phoca vitulina richardsi*) pupping season (March 1 to June 30). The 30th Space Wing's request is based on a scientific research program and the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB (SRS Technologies, 2001). During the pupping season, biological monitoring remains important in verifying that female harbor seals spend the necessary time on the haul-out establishing the female-neonate bond, including nursing of their pups. Although harbor seal numbers are highest during molting (May through July), NMFS did not propose additional biological monitoring during the molting season because research and monitoring results over the last 4 years show that molting Pacific harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not become subject to thermoregulatory stress.

Current Monitoring Requirements and Requested Change

According to 50 CFR 216.125, LOAs that authorize the take of marine mammals incidental to space vehicle and test flight activities must designate qualified on-site individuals to conduct the following monitoring activities:

(1) Observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch and continue for a period of time not less than 48 hours subsequent to launching;

(2) Monitoring haul-out sites on the Northern Channel Islands if it is determined during consultation with NMFS that a sonic boom could impact those areas;

(3) Investigation of the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction;

(4) Supplemental observation on VAFB and on the Northern Channel Islands, if indicated, with video-recording of mother-pup seal responses for daylight launches during the pupping season; and

(5) Conducting acoustic measurements of those launch vehicles not having sound pressure level measurements made previously.

The 30th Space Wing requested to modify the first monitoring activity, observation of harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform on VAFB, to only require observations during the March 1 through June 30 harbor seal pupping season at VAFB.

Comments and Responses

On September 14, 2001 (66 FR 47905), NMFS published a proposed modification to current regulation and opened a 30–day public comment period on the application and proposed rule. No comments were received during this period.

Potential Effect of Modification to Monitoring Requirements on Pacific Harbor Seals at VAFB

Since modification of regulations, in whole or in part, must account for new information that has been collected through monitoring, reporting, or research (see 50 CFR 216.105 (c)), this preamble outlines the 30th Space Wing's research and monitoring results to date. To verify the negligible impact determination made by NMFS as a prerequisite to issuance of the final rule, the monitoring and research programs for VAFB were designed to detect changes in population parameters that indicate the overall condition of the potentially affected populations. Based on the scientific research program and bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 at VAFB, the 30th Space Wing asserted in its application that modification to the monitoring requirements would not alter the negligible impact determination made by NMFS during the rule making (64 FR 9925, March 1, 1999). Rather, results of the 30th Space Wing's monitoring and research programs have verified that the impacts of rocket launches have had a negligible impact on the harbor seals at VAFB.

Results from the monitoring and research program included an analysis of indicators of population health at the regional and site-specific level. Indicators analyzed included: trends in abundance, pup production and mortality, daily and seasonal haul-out behaviors, measured sound exposure levels from space launch vehicles, behavioral response of Pacific harbor seals to launch noise, and Pacific harbor seal auditory brainstem response (ABR) measurements. For a more detailed

account of the 30th Space Wing's research and monitoring programs and analysis of results, see SRS Technologies (2001).

Pacific Harbor Seal Scientific Research Program at VAFB

Data from the scientific research program conducted from 1997 through 2001 shows that the harbor seal population (including pups) at VAFB is increasing and doing as well or better than other harbor seal populations in California.

Trends in Abundance

The most recent estimate of the Pacific harbor seal population in California is 30,293 seals (Forney *et al.*, 2000). From 1979 to 1995, the California population increased at an estimated annual rate of 5.6 percent. The total population of harbor seals at VAFB is estimated to be 1,040 (775 on south VAFB and 265 on north VAFB), where the telemetry data for seals was used to correct for seals that were at sea during the census (SRS Technologies 2001). The harbor seal population has been increasing since 1997 at an annual rate of 12.6 percent. During this period, 5 to 7 space vehicle launches were conducted per year. Recent information by several researchers suggests that harbor seals are only decreasing in areas (e.g., San Miguel Island, California) where they are in competition for haul-out space with California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*). California sea lions and northern elephant seals rarely haul-out at VAFB; therefore, competition for haul-out space should not be a factor in growth of the harbor seal population at VAFB.

Pup Production and Mortality

Annual harbor seal pup production at VAFB has increased by 5.3 percent annually. The only decrease in pup production occurred during the 1998 El Niño season when there was a 13.6 percent decrease from the previous year. In contrast to VAFB haul-out sites, pup production at Point Conception, CA (control site for the VAFB research program located 25 km south of the south VAFB haul-out site) showed an annual increase of 2.9 percent. This smaller percentage in annual pup production may be due to the fact that Point Conception has a limited area where females and pups can haul-out without being harassed by other seals or exposed to high tides and swells. There are more haul-out areas for females with pups at VAFB; therefore, only El Niño type disturbance should affect pup production at VAFB.

There are no documented occurrences of premature pupping at VAFB. In addition, the rate of pup mortality is low (0.6 pups per year), with none of the mortalities associated with any of the launch activities. Because the rough terrain along the VAFB coastline makes seal captures difficult, only 15 seal pups have been tagged; it has been difficult to estimate the long-term survival and recruitment rate of these pups. Based on telemetry data from the 15 tagged individuals and the behavior of pups at other sites, the 30th Space Wing estimates that approximately 54 percent of pups continue to haul-out at VAFB after weaning. There have been no tag returns of dead pups from VAFB, but some pups have been sighted up to 25 km away from the natal haul-out site. This suggests that mortality is low for weaned pups and that up to 35 percent of pups born at VAFB may migrate to other haul-out sites.

Daily and Seasonal Haul-out Behavior

At south VAFB, the daily haul-out behavior of harbor seals is dependent on time of day rather than tide height. The highest number of seals haul-out at south VAFB between 1100 through 1700 hours. At north VAFB haul-out sites, tide has a greater influence on the daily haul-out behavior of seals. Part of the reason for the tidal influence at north VAFB is the coastline's topography, which consists of low lying rocky areas that are substantially covered during high tides. In addition, haul-out behavior at all sites may be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at any site can vary greatly from day to day based on environmental conditions.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The population is at its highest during the molt which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance by a space vehicle launch or another source would not be adversely affected in their ability to molt and would not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

Pacific Harbor Seal Bioacoustic Monitoring at VAFB

Data from the bioacoustic monitoring of space vehicle launches conducted from 1997 through 2001 shows that haul-out behavior appears to be unaffected by launch operations, and there has been no temporary or permanent threshold shifts evidenced as a result of launch noise.

The types of sounds discussed in this document are airborne and impulsive. For this reason, the document references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second). Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved (Buck, 1995) and is beyond the scope of this document.

In order to obtain details on the launch noise reaching harbor seals on VAFB, acoustic measurements were collected via two independent systems. The first system was designed to measure the low frequency sound associated with rocket launches. The second system was designed to measure background noise levels, ambient noise levels, and sound events that exceed a pre-set minimum sound level.

Measured Sound Exposure Levels from Space Launch Vehicles

To study the effect of noise on wildlife, the sound under study is typically measured using an A-weighted filter. A-weighting is a standard filter used in acoustics that approximates human hearing. However, because most animals do not have hearing similar to humans, A-weighting does not accurately represent sounds as heard by non-human mammals (SRS Technologies, 2001). Several researchers (Mohl, 1968; Terhune, 1991; Terhune and Turnbull, 1995; Kastak and Schusterman, 1998) have measured the

in-air hearing in harbor seals. At 2000 hertz (Hz), harbor seals were found to have hearing sensitivities averaging around 30 dB. In contrast, the quietest sound a human can hear at 2000 Hz registers at -1 dB (Sivian and White, 1933). At 2000 Hz, A-weighting adds 1.2 dB to the sound being analyzed; therefore, A-weighting does not accurately represent sounds as heard by harbor seals. To gain a better understanding of how launch noise is perceived by harbor seals, SRS Technologies created a frequency-weighting filter, similar to what A-weighting is for humans, based on the in-air hearing ability of harbor seals (SRS Technologies, 2001).

Acoustical measurements have been collected and analyzed for 21 space vehicle launches of 7 different types of vehicles using both A-weighted and harbor-seal weighted filters. The average measurements are shown in Table 1:

TABLE 1

Type	Distance from Haul-out (km/mi)	Average A-weighted Sound Exposure Level (dB)	Harbor seal-weighted Sound Exposure Level (dB)
Athena	2.8/1.7	107.5	68.3
Minotaur	2.3/1.4	106.2	67.3
Titan IV	8.5/5.3	100.2	58.9
Taurus	0.55/0.34	125.2	89.8
Delta II	2.0/1.2	114.9	78.6
Minuteman III	15.6/9.7	88.7	42.3
Atlas	11.0/6.8	86.1	47.3

Behavioral Response of Pacific Harbor Seals to Launch Noise

During the biological monitoring at VAFB, the response of harbor seals to rocket launch noise varied depending on the intensity of noise and the age of the seal. When launch noise was below an A-weighted sound exposure level of 100 decibels (dBA)(re 20 micro-Pa2-second), observations showed that not all seals fled the haul-out site and those that remained were exclusively adults. Given the high degree of site fidelity among adult harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches. It is possible that adult seals have become acclimated to the launch noise and react differently than younger inexperienced seals. Of the 20 seals (adult and younger) tagged at VAFB, 8 (40 percent) were exposed to at least one launch disturbance and continued to return to the same haul-out site. Three of these tagged seals were exposed to 2 or more launch disturbances. Six (75 percent) of the tagged seals exposed to launch noise appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch. The 2 tagged seals that left the haul-out site area after the launch had been on shore for at least 6 hours subsequent to the launch and returned to the haul-out site in 24 hours.

ABR Measurements

In order to further determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, the acoustic contractor conducted ABR testing on 10 harbor seals prior to and after the launches of 3 Titan IV rockets, a vehicle type with one of the loudest harbor seal-weighted SELs (see table above). Detailed analysis of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise. However, the 2 to 3.5 hour delay in ABR testing post-launch could mean that the seals had recovered from a temporary threshold shift (TTS) before the testing could begin. However, as there were no detectable changes in the hearing sensitivity of these animals when they were tested after the delay, the 30th Space Wing concludes, with confidence, that the animals did not have permanent hearing changes due to exposure to the launch noise from the Titan IV rockets.

Conclusions

As outlined in this preamble, results of on-going, long-term monitoring efforts designed to track trends in haul-out patterns and seal distribution at VAFB show that the harbor seal population at VAFB is increasing and doing as well or better than other harbor seal populations in California. Acoustic measurements in conjunction with biological monitoring of haul-out sites and tagged seals over these same 4 years, suggest that the haul-out behavior of harbor seals is unaffected by launch operations. This data also provides conclusive evidence that no permanent hearing damage has resulted from space vehicle launches at VAFB. This new information obtained through monitoring, reporting, and research verifies NMFS' previous negligible impact determination by showing that the level, manner, and effects of the marine mammal takes are so small in number that they are inconsequential to the abundance, distribution, and productivity of marine mammal populations in California (Swartz and Hofman, 1991). Therefore, NMFS has concluded that the impact of amending the current regulations to require monitoring observations only during the harbor seal pupping season at VAFB is consistent with NMFS' March 1, 1999 negligible impact determination (64 FR 9925).

Classification

This action is not significant for purposes of Executive Order 12866.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration, when the original rule was proposed in 1998 (63 FR 39055, July 21, 1998), that, if adopted, the rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The rule only affects the U.S. Air Force, large defense companies, and an undetermined number of contractors providing services related to the launches, including the monitoring of launch impacts on marine mammals. Some of the affected contractors may be small businesses. The economic impact on these small businesses depends on the award of contracts for such services. The economic impact cannot be determined with certainty, but will either be beneficial or have no effect, directly or indirectly, on small businesses. Because of this classification, a regulatory flexibility analysis was neither required nor prepared. This action does not alter those conclusions.

National Environmental Policy Act (NEPA)

The U.S. Air Force prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact, as part of its request for a small take authorization in 1997. This EA contains information incorporated by reference in the application that is necessary for determining whether the activities proposed for receiving small take authorizations are having a negligible impact on affected marine mammal stocks. NMFS adopted the U.S. Air Force EA as its own as provided by 40 CFR 1506.3. In the final rule for this activity (64 FR 9925, March 1, 1999), NMFS found that the issuance of regulations and LOAs to the Air Force would not result in a significant environmental impact on the human environment and that it would be unnecessary to either prepare its own NEPA documentation, or to recirculate the Air Force EA for additional comments. This action is within the scope of the EA and does not alter its conclusions.

Endangered Species Act (ESA) Consultation History

The Department of the Air Force consulted with NMFS, as required by section 7 of the ESA, on whether launches of Titan II and IV at SLC–4 would jeopardize the continued existence of species listed as threatened or endangered. NMFS issued a section 7 biological opinion on this activity to the Air Force on October 31, 1988, concluding that launchings of the Titan IV were not likely to jeopardize the continued existence of the Guadalupe fur seal. The Air Force reinitiated consultation with NMFS after the Steller sea lion was added to the list of threatened and endangered species (55 FR 49204, November 26, 1990). However, since Steller sea lions had not been sighted on the Channel Islands between 1984 and the time of the consultation, it was determined that these launchings were not likely to affect Steller sea lions. Additionally, on September 18, 1991, NMFS concluded that the issuance of a small take authorization to the Air Force to incidentally take marine mammals during Titan IV launches was not likely to jeopardize the continued existence of Steller sea lions or Guadalupe fur seals. Because launches of rockets and missiles other than Titan IV are unlikely to produce sonic booms that will impact the NCI and because listed marine mammals are not expected to haul out either on the Vandenberg coast or on the NCI during the 5–year period for this proposed authorization, the issuance of regulations is unlikely to adversely affect listed marine mammals (64 FR 9925, March 1, 1999). Additionally, incidental take authorizations for either of these two species under either the MMPA or the ESA are not warranted.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record keeping requirements, Seafood, Transportation.

Dated: January 14, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.125, paragraph (b) (1) is revised to read as follows:

§ 216.125 Requirements for monitoring and reporting.

* * * * *

(b) * * *

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011004242–2005–02; I.D. 092401F]

RIN 0648–APO9

Fisheries of the Northeastern United States; 2002 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

ACTION: Final rule; 2002 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany ocean quahogs.

SUMMARY: NMFS issues final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2002. These quotas specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43° 50′N. lat. in 2002.

DATES: Effective from January 16, 2002, through December 31, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the EA/RIR/FRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm*.

FOR FURTHER INFORMATION CONTACT: Walter Gardiner, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected should allow sustainable fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council must

also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bushels (bu) (5,991 to 35,240 hectoliters (hL)), with an initial amount of 100,000 Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 66 FR 53770, October 24, 2001, and is not repeated here. The comment period for that rule ended on November 23, 2001. No comments were received during the comment period, and the final quotas for 2002, which are unchanged from those in the proposed rule, are shown in the table below. The 2002 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2001 quotas. However, the 2002 surf clam quota is 10 percent higher than the 2001 quota.

2002 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	2002 final quotas (bu)	2002 final quotas (hL)
[1] Surf clam	3,135,000	1,669,000
[1] Ocean quahog	4,500,000	2,396,000
[2] Maine mahogany quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft = 53.24 liters.
[2] 1 bushel = 1.2445 cubic ft = 35.24 liters.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this final rule would cause a disruption in the ordinary commerce of the surf clam and ocean quahog fisheries. Individual Transferable Quota shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surf clams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation it is imperative that the vessel owner have the ability to request that NMFS temporarily transfer part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract. Further, allocation holders at times pledge their allocation as security for a loan. This entails the transfer of the individual allocation to the lending institution for the pendency of the loan. Without an effective quota, NMFS cannot make either a partial transfer or an entire allocation effective, permanently or temporarily. This inability on the part of NMFS to make such transfers effective would have a negative economic impact on the surf clam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2002 surf clam, ocean quahog, and Maine mahogany quahog quotas.

NMFS and the Council prepared a FRFA for this action. A copy of the FRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule and specifications included a detailed summary of the analysis contained in the Initial Regulatory Flexibility Analysis (IRFA), which is not repeated here. A summary of the FRFA, focusing upon the impacts of the final measures, follows:

A description of the reasons why this action is being taken by the agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Public Comments

There were no public comments received in response to the IRFA's analysis of the expected impacts of the proposed regulations on small entities.

Minimizing Significant Economic Impact of Small Entities

These specifications establish a 10-percent increase in the surf clam quota and continue the ocean quahog and Maine mahogany ocean quahog quota without change from the 2001 quotas. Since 2000 harvest levels of 2.561 and 3.161 million bu (1.364 million hL to 1.683 million hL) for surf clams and ocean quahogs, respectively, were below the 2002 quotas implemented by this action, and NMFS and the Council assume no changes in fishing effort or yield-to-effort will take place in 2001, these 2002 quotas are not expected to constrain the overall harvest in the fishery. As a result, harvesters could increase their landings over the 2000 levels, and additional revenues could accrue in 2002.

Vessels

In 2000, a total of 48 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2000 gross income from surf clam harvests was $702,317 per vessel, and $470,854 per vessel from ocean quahog harvests. In the small artisanal fishery for ocean quahogs in Maine, 34 vessels reported harvests in the clam logbooks, with an average value of $97,223 per vessel. All of these vessels fall within the definition of a small entity.

For ocean quahogs, the proposed 2002 quota is 4.500-million bu (2.396-million hL). The other alternatives considered were 4.000, 4.250, 4.750, and 6.000 million bu (2.129, 2.263, 2.529, and 3.195 million hL). The minimum allowable quota specified in the current OY range is 4.000 million bu (2.129 million hL) of ocean quahogs. Adoption of a 4.000-million bu (2.129-million hL) quota would represent a 12-percent decrease from the current 4.500-million

bu (2.396-million hL) quota and, assuming the entire quota is harvested, a 27-percent increase in harvest from the 2000 harvest level of 3.161 million bu (1.683 million hL). This alternative would take the most conservative approach to managing the fishery that is currently available to NMFS and the Council. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33-percent increase in allowable harvest and a 90-percent increase in landings from 2000, assuming that all of the quota is harvested. However, the industry does not have a market available to absorb such a massive increase in landings and may not have the vessel capacity necessary to harvest a quota this large (two of the most productive ocean quahog vessels sank in January 1999 and have not been replaced). Since all alternatives, including the preferred, would yield increases relative to the actual 2000 landings, increased revenues would be likely to occur.

For surf clams, the proposed 2002 quota is 3.135 million bu (1.669 million hL). The other alternatives considered were 1.850, 2.850, 3.000, and 3.400 million bu (0.985, 1.517, 1.597, and 1.810 million hL). The minimum allowable quota specified in the current OY range is 1.850 million bu (0.985 million hL) of surf clams. Adoption of a 1.850-million bu (0.985-million hL) quota would represent a 35-percent decrease from the current 2.850-million bu (1.517-million hL) quota, and a 28-percent decrease from the 2000 harvest level of 2.561 million bu (1.364 million hL). A reduction in quota of this magnitude would have a substantially negative impact on overall ex-vessel revenues. Adoption of the 2.850-million bu (1.517-million hL) quota would most likely have a limited impact on small entities, since it is identical to the 2001 quota. Adopting the maximum allowable quota of 3.400 million bu (1.810 million hL) for surf clams would allow for a 19-percent increase in harvest. The Council considered a 5-percent increase in quota from the 2001 level to 3.000 million bu (1.597 million hL), but industry representatives stated that they preferred a 10-percent increase. The preferred alternative allows for the 10-percent increase of 2.850 million bu (1.517 million hL) to 3.135 million bu (1.669 million hL). The only alternative that would reduce revenues to vessels is the 1.850-million bu (0.985-million hL) alternative. Both the status quo quota and the 5-percent increase alternative could be constraining on industry. At best, the 5-percent increase would probably increase revenues by a small amount. The resource can support the 10-percent increase in landings and the industry believes it can harvest and process this additional product.

The proposed 2002 quota for Maine mahogany ocean quahogs is 100,000 Maine bu (35,240 hL), which is the maximum allowed under the FMP. The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. Two other alternatives were considered: 50,000 Maine bu (17,620 hL) and 72,466 Maine bu (25,537 hL). Any quota below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels. The proposed quota is the least constraining allowed under the FMP.

Processors

Nine to 12 processors currently participate in the surf clam and ocean quahog fisheries. However, five firms are responsible for the vast majority of purchases in the vessels and sale of processed clam products in wholesale markets. Impacts to surf clams and ocean quahog processors would most likely mirror the impacts of the various quota alternatives to vessels, as discussed above. Revenues earned by processors would be derived from the wholesale market for clam products and, since a large number of substitute products (i.e., other food products) are available, the demand for processed clam products is likely to depend on the price of processed clams, relative to the price of available clam substitutes.

Allocation Holders

In 2001, there were 99 surf clam allocation holders, while 63 firms or individuals held an ocean quahog allocation. Under the 2002 quotas, the increase in the surf clam quota could benefit those who purchase quota (through lower prices (values)) and negatively impact sellers of quota, because of reduction in value due to the increased allocation of surf clams to each allocation holder. Some allocation holders who might otherwise have found it necessary or desirable to purchase quota share from others will have sufficient quota available to them in 2002 to make additional quota purchases unnecessary. Because the ocean quahog quota is unchanged from 2001, no impacts on allocation holders are expected.

The RIR/IRFA is available from the Council (see **ADDRESSES**). This final rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132; therefore, preparation of a Federalism assessment is not necessary.

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

Dated: January 15, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–1500 Filed 1–16–02; 3:22 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM207; Special Conditions No. 25–02–02–SC

Special Conditions: Fairchild Dornier GmbH, Model 728–100; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Dornier GmbH Model 728–100 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions, in part, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions may also be defined.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM207, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM207.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposal for special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH, applied for a type certificate for their new Model 728–100 airplane. The Model 728–100 is a 70–85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier GmbH must show that the Model 728–100 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25–97, 25–98, and 25–104.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 728–100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Fairchild Dornier GmbH Model 728–100 will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions.

These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Fairchild Dornier GmbH Model 728–100. These proposed special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728–100. Should Fairchild Dornier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1). Fairchild Dornier has submitted applications for certification of both increased and reduced passenger capacity derivatives of the 728–100. These derivative models are designated the 928–100, and the 528–100, respectively. As currently proposed, these derivative models share the same design features of an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions as the 728–100, and it is anticipated that they will be be included in the applicability of this proposed special condition.

Conclusion

This action affects only certain novel or unusual design features on the Fairchild Dornier GmbH Model 728–100 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

1. *Protection from Unwanted Effects of High Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1506 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

National Airspace Redesign—Potential Revisions of Air Traffic Control (ATC) Services, Procedures, and Airspace, Juneau Area, Juneau, AK; Public Meeting 02–AAL–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold a public meeting in support of the National Airspace Redesign (NAR) on ATC airspace, service, and procedures affecting the Juneau area, Juneau, AK. The objective of this meeting is to provide interested persons an opportunity to review proposed ATC services and procedures that are under consideration in conjunction with the FAA Alaska Region Capstone Program. The overall Capstone goal is to maximize efficiency and improve safety for aircraft operating in the Juneau area. ATC is exploring ways to implement new technology as it becomes certified for use in the National Airspace System.

DATES: The meeting will be on Thursday, March 7, 2002, 5:30 pm to 9:00 pm.

ADDRESSES: Ray Renshaw Room, Guest House Inn and Suites, 1800 Shell Simmons Drive, Juneau, AK, 99801; phone (907) 790–6435.

FOR FURTHER INFORMATION CONTACT: Ray Collins, Federal Aviation Administration, AAL–539, 222 W. 7th Ave., Box #14, Anchorage, AK 99513–7587; telephone: (907) 271–1664; fax: (907) 271–2850; email: ray.collins@faa.gov.

SUPPLEMENTARY INFORMATION:

History and Background

The Alaskan Region's Capstone program is an accelerated effort to improve aviation safety and efficiency through installation of government-furnished Global Positioning System (GPS)-based avionics and data link communications suites. The initial Capstone location was Bethel, Alaska and Capstone activities may be viewed at: http://www.alaska.faa.gov/capstone/. In addition to the avionics suites, Capstone will install a ground infrastructure for weather observation, data link communications, surveillance, and Flight Information Services (FIS) to improve safety. Under Capstone, it is anticipated that most of the commercial aircraft based in the Juneau area will be equipped, on a voluntary basis, with government-furnished avionics; certain other commercial and government aircraft regularly operating in the area will also be equipped. Services provided through the avionics suite will improve the pilot's flight capabilities and situational awareness.

There have been several user meetings concerning expanding the Capstone program into the Juneau area; the most recent have had Air Traffic Division representation that briefed a range of potential ATC services that might be provided using Capstone technology. These range from Bright Radar Indicator Tower Equipment (BRITE) displays in the Juneau airport traffic control tower, surveillance services for IFR aircraft, ground aircraft/vehicle surveillance, enhanced traffic information in the airport traffic area, and search and rescue services from the AFSS in Southeast Alaska.

Today, the National Airspace Redesign mandates a review of airspace and efficiency nationwide. It is the goal of the Alaskan Region's Air Traffic Division to address airspace, ATC Capstone enhancements, and services from an overall systems perspective in the Juneau area.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Alaskan Region Air Traffic Division. The meeting will not be formally recorded.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient capacity for expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) Any person who wishes to present a position paper to FAA representatives pertinent to the revision of ATC services, airspace or procedures may do so.

(d) An official verbatim transcript or minutes of the informal airspace meeting will not be made. However, a list of the attendees, written statements received from attendees during and after the meeting and a digest of discussions during the meeting will be included in the administrative record for the project.

(e) Every reasonable effort will be made to hear all concerns of interested persons consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the team for up to two weeks (14 days) after the close of the meeting.

Agenda

a. Opening remarks and discussion of meeting procedures

b. Presentation of areas under consideration, user feedback, and aircraft airborne avionics equipment:

(1) Tower BRITE-like Display: Tower surveillance display that depicts ADS–B and transponder Mode A/C and Mode S equipped aircraft. Provides situational awareness for tower controllers. DRAWBACK: Unable to see primary target (non-equipped) aircraft and new transponder display technology must be certified prior to use.

(2) Terminal IFR surveillance service: Discussion has taken place within the Air Traffic Division concerning providing ''low level'' terminal approach control services in the Juneau area to support an IFR structure. As the concept developed, several constraints became obvious: vectors below 5,500 feet MSL are not possible; IFR traffic count does not support the establishment of an approach control facility, and ATC delays, while increasing, are not a significant issue at Juneau. Informal discussion with several operators in the Juneau area reveals these operators do not forsee changes in the way they conduct operations in the near or long term—they operate VFR and do not see this changing. Feedback: will operators equip and fly in an IFR structure.

(3) ARTCC: The potential exists to provide continuous radar like coverage for IFR aircraft operating into and from Juneau. Procedures could possibly be developed to reduce delays using this seamless coverage, however, delays will continue to occur due to terrain limitations effecting aircraft and ATC procedures.

(4) AFSS Display(s): Three areas are under consideration—an airport ground surveillance system where AFSS personnel will be able to ''see'' equipped aircraft and vehicles operating on the ground when the tower is closed; a BRITE type display where specialist can ''see'' equipped aircraft operating in the pattern area when the tower is closed; a monitor system where ADS–B aircraft are displayed and are able to be located at the last known position in the event contact is lost. The AFSS display(s) are contingent on aircraft/vehicle equipage. Additionally, use of display equipment is a significant departure from established FSS functions and extensive coordination and approval with FAA Headquarters and the workforce would be required. Finally, there are technical challenges ahead for any automated flight following system.

(5) Airspace: Currently, Juneau has Class D airspace. Expansion or change to this airspace is not anticipated, however, this meeting is part of the National Airspace Review process.

(c) Question and answer period.

(d) Closing comments.

* * * * *

Issued in Anchorage, AK, on January 11, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–1508 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6]

RIN 2120–AA66

Proposed Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); correction.

SUMMARY: This action includes a graphic depiction of the proposed Cincinnati/Northern Kentucky International Airport Class B airspace area, KY, modification which was inadvertently omitted during the publication of the NPRM. The NPRM proposes to modify the current Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. Specifically, this action proposes to expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G; and raise the upper limit of the entire Class B airspace area from 8,000 feet mean sea level (MSL) to 10,000 feet MSL. Inclusion of this graphic is necessary to depict the proposed modifications of the Class B airspace area.

DATES: Comments must be received on or before March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant/Jan Glivings, 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: On December 31, 2001, Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6, Federal Register Document 01–32007, was published in the **Federal Register** proposing to modify the Cincinnati/Northern Kentucky International Airport Class B airspace area (66 FR 67632). The NPRM inadvertently omitted the graphic depicting the modifications of the Class B airspace area. This action includes the graphic for that modification.

Correction to Proposed Rule

Accordingly, pursuant to the authority delegated to me, the NPRM for the Cincinnati/Northern Kentucky International Airport KY, Class B airspace area as published in the **Federal Register** on December 31, 2001 (66 FR 67632); **Federal Register** Document 01–32007, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

By inserting the graphic behind page 67638 after the text of the NPRM.

Issued in Washington, DC, on January 14, 2002.

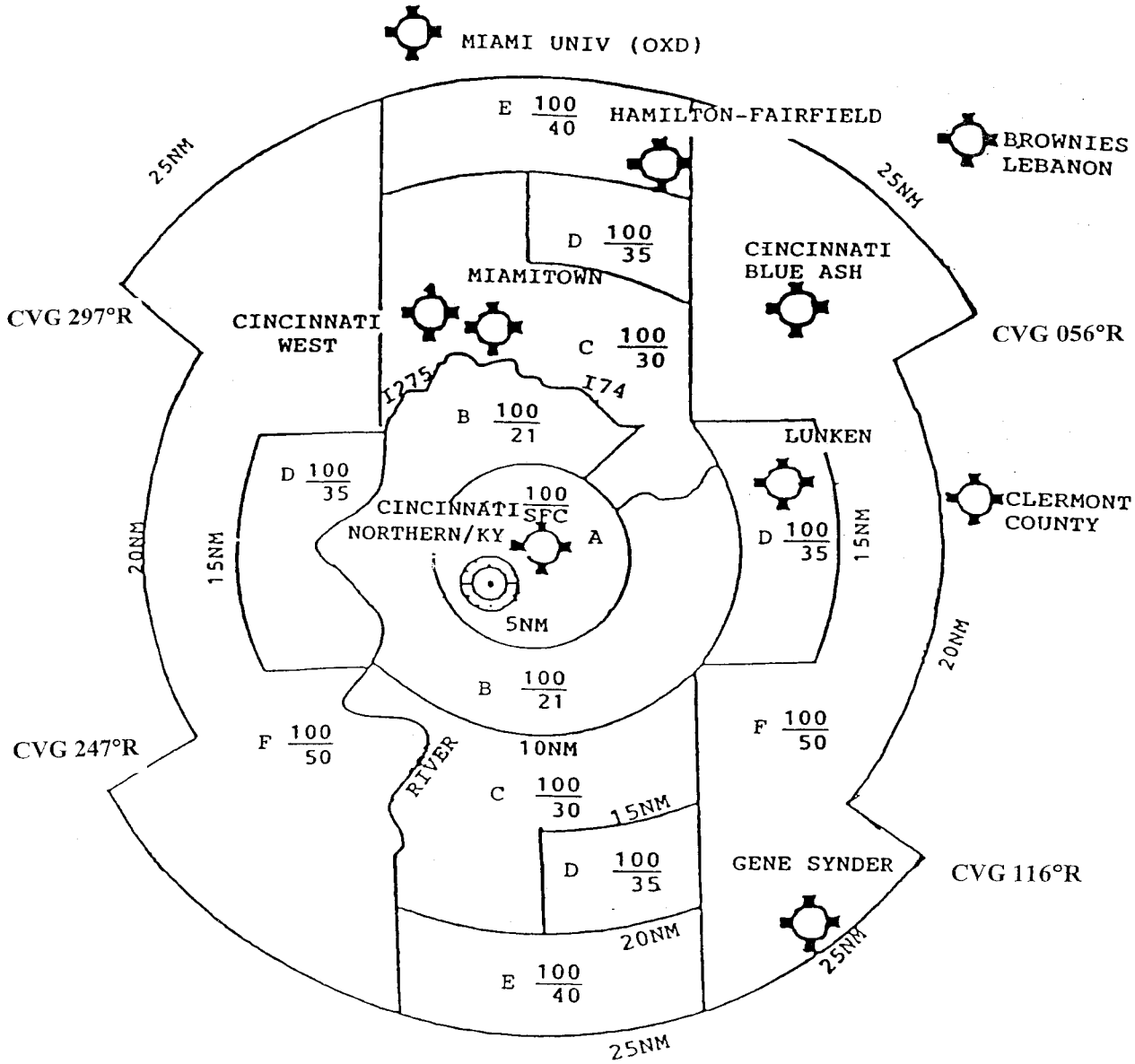
Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–P

PROPOSED MODIFICATION OF CLASS B AIRSPACE

Covington, KY
Cincinnati/Northern Kentucky International Airport
Not for Navigation
(Docket No. 00-AWA-6)



[FR Doc. 02–1372 Filed 1–18–02; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10432; Airspace Docket No. 01–AWA–05]

RIN 2120–AA66

Proposed Modification of the Santa Ana Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Santa Ana, CA, Class C airspace area. Specifically, this proposed rule would standardize and complete the 5 nautical mile (NM) inner circle; re-align the south and southwest quadrants; and, expand the north and east boundaries of the Santa Ana Class C airspace area. The FAA is proposing this action to improve the management of aircraft operations in the Santa Ana, CA, terminal area; enhance safety; reduce the potential for midair collision in the Santa Ana Class C airspace area, and accommodate the concerns of airspace users.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20591–0001. You must identify the docket number FAA–2001–10432/ Airspace Docket No. 01–AWA–05, at the beginning of your comments.

You may also submit comments on the Internet at http://dms.dot.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number: 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–10432/Airspace Docket No. 01–AWA–05.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In early 2001, the Southern California TRACON (SCT), and a California Users Group (an ad hoc committee that represents all major airspace users) reviewed the current Santa Ana Class C airspace area. The revocation of the El Toro Class C airspace area, which left the eastern side of the John Wayne Airport in Class E airspace instead of Class C airspace, prompted the review. The Technical Committee of the Southern California Users Group (SCAUWG) reviewed the Santa Ana Class C airspace area and developed recommendations for modifying the existing airspace design to provide pilots with a greater awareness of arriving and departing turbojet aircraft at John Wayne Airport, Santa Ana, CA.

As announced in the **Federal Register** (66 FR 13122), one pre-NPRM airspace meeting was held on March 28, 2001, at Los Alamitos Army Airfield, Los Alamitos, CA. The purpose of this meeting was to provide local airspace users with an opportunity to present input on planned airspace changes to the Santa Ana Airspace Area prior to initiating any regulatory action.

In response to the informal airspace meeting the FAA received six comments. The following is an analysis and FAA response to those comments.

Analysis of Comments

One commenter requested that the FAA establish a Visual Flight Rules (VFR) Corridor through the Santa Ana Class C airspace. The FAA does not agree with this comment. This proposed design would safely accommodate all flight operations at SNA and a VFR corridor would not significantly enhance VFR operations in the airspace. Because of the small size of the proposed area, those aircraft transiting the area that do not want to establish radio communication with ATC may choose to circumnavigate the Class C airspace area.

One commenter recommended that the Santa Ana Class C be modified to re-open V–8 at all altitudes to non-participating aircraft. The FAA does not agree with this comment. Currently the northwest corner of the existing Class C airspace overlaps a portion of V–8. This proposal does not change the overlap of Class C airspace over this airway. This airspace is needed to accommodate IFR arrivals. California Freeway 91 (Riverside Freeway) will continue to be used as a guide to VFR pilots

transitioning this portion of the Class C airspace.

Several commenters suggested that the proposed Paradise VOR 215° radial might not be suitable for navigation and should be checked for suitability. The FAA re-checked the radial and found it to be within tolerance and completely suitable for navigation.

Several commenters objected to 5,400-foot ceiling south and west of the John Wayne airport but without suggesting an alternative altitude. The FAA has reviewed this area, and has determined that the 5,400-foot ceiling is necessary to accommodate air carrier arrivals and that lowering the ceiling would not provide adequate airspace for these operations.

Several comments stated that the proposed changes in the northeast corner infringe on Santa Ana Canyon by extending the Class C airspace over the canyon. The Airline Pilots Association opposed any reduction in proposed Class C boundaries because the instrument procedures on the east side of the airport must be contained in Class C airspace.

The FAA agrees with these comments and has proposed modifications to address each comment. The LAX 083° radial would be used to redefine the northeast corner of the Class C airspace area. Using this radial as a boundary would provide more Class E airspace between the Santa Ana and Ontario Class C airspace areas (Santa Ana Canyon Area), which would provide a wider route for nonparticipating aircraft. In addition, this change would still accommodate instrument procedures east of the airport and keep them in Class C airspace.

Several commenters stated generally that the proposed 2,000-foot floor should be raised to provide more Class E airspace for non-participating aircraft. The FAA does not agree with these comments because raising the floor above 2,000 feet would not provide adequate Class C airspace to accommodate all instrument procedures.

Comments were received suggesting the FAA use a circular design between 5- and 10-miles to provide additional Class C airspace. The FAA does not agree with these commenters. A standard circular design in this case would not meet the operational requirements around Santa Ana John Wayne Airport. Furthermore, 5- and 10-mile circles centered on the airport reference point would designate more Class C airspace than necessary and adversely impact general aviation operations in the area.

Three commenters recommended that the informal VFR practice area near El Toro remain open ''as it is''. The FAA agrees and has raised the outer floor of the proposed Santa Ana John Wayne Airport (SNA) to accommodate the VFR practice area.

Written comments supporting the proposal were received from the Airline Transport Association; the Airline Pilots Association; International Airlines; America West Airlines; Northwest Airlines; and U.S. Airways. These users also requested that the FAA establish a Class B airspace area for SNA since that airport meets the candidacy requirements for Class B airspace as well. They also suggested that a 20-mile Mode C veil requirement be established around SNA as part of this notice.

Presently, the FAA utilizes certain criteria based on the number of passengers enplaned annually or the number of flight operations at the airport, in considering a given airport as a candidate for a Class B airspace designation. This criteria is only for determining candidacy. Meeting the criteria in and of itself does not guarantee that a Class B airspace area would be established at any particular location. A number of other factors, including traffic density, complexity, and operations conducted, must be carefully evaluated to determine whether a Class B airspace area is warranted. Most importantly, it must be demonstrated that the establishment of a Class B airspace area would enhance the safety and efficiency of airspace management. The FAA studied this airspace and found that the current Class C airspace has areas of inefficiencies, areas where turbojet aircraft are not adequately accommodated, and areas in need of modification. The FAA concluded that enhancement of the existing Class C airspace sufficiently would address these issues and the establishment of Class B airspace was not warranted at this time.

The FAA Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (commonly referred to as the ''Mode C Rule'') requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport, from the surface up to 10,000 feet MSL. The recommendation for the establishment of a 20-mile Mode C veil at SNA is beyond the scope of this rulemaking.

The Proposed Amendment

The FAA proposes to amend 14 Code of Federal Regulations (CFR) part 71 by modifying the Santa Ana, CA, Class C airspace area. Specifically, this action proposes to expand Area A to a complete 5 NM circle, which would standardize the inner circle. Area B to the south and Area C to the southwest would also be re-aligned to provide additional airspace to accommodate Runway 1 arrivals. Proposed changes to Area F in the north would re-align the northern and eastern boundaries to improve efficiencies of Runway 19 arrivals. In addition, a new Area G is proposed on the east to accommodate instrument operations in an area formally within the revoked El Toro Class C airspace area. The FAA is making these changes to enhance safety; reduce the risk of midair collision; and improve the management of air traffic operations in the John Wayne terminal airspace area.

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 proposed action: (1) Is not a ''significant regulation 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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9H, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866, directs that each Federal agency shall propose, or adopt, a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade

Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, make them the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules. This would include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. Department of Transportation Order DOT 2100.5, prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

This NPRM would modify the Santa Ana, CA, Class C airspace Area. Specifically, this proposed rule would complete the 5 nautical mile (NM) inner circle for standardization, realign the south and southwest quadrants, and expand the north and east boundaries. The FAA has determined that the expansion of the north and east boundaries would result in minimal, if any, circumnavigation cost to general aviation operators. This assessment is based on the fact that aircraft operators could request clearance to operate within the proposed Class C airspace rather than navigate around it, and air traffic control will often grant them clearance. The FAA has also determined that the proposed rule would improve the flow of air traffic, while enhancing the level of safety. Therefore, the FAA has determined that the modification of the Santa Ana, CA, Class C airspace area would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the minimal cost impact of the rule, the FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 4000—Subpart C Class C airspace

* * * * *

Santa Ana, CA [Revised]

John Wayne Airport/Orange County, CA
(Lat. 33°40′32″N., long. 117°52′06″W.)

That airspace extending upward from the surface to and including 4400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County (SNA); that airspace extending upward from 1500 feet MSL to and including 5400 feet MSL beginning at a point southeast of SNA where the SNA 5NM radius and the POM 185T/170M radial intersect, then south via the POM 185T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the PDZ 230T/215M radial, then north via the PDZ 230T/215M radial to the SNA 5NM radius, the counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect, then southwest via the PDZ 230T/215M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the 251T/237M degree bearing from SNA at 10NM, then north via a line extending between the SNA 251T/237M degree bearing at 10 NM and the SNA 351T/337M degree bearing at 10NM to the shoreline, then via the shoreline southeast to the point of beginning; that airspace extending upward from 2500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect then west via the shoreline to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM to the San Diego Freeway (I–405), then east via the San Diego Freeway (I–405) to the SNA 5NM radius, then counterclockwise via the 5NM radius to point of beginning; that airspace extended upward from 2500 feet MSL to and including 4400 feet MSL beginning west of SNA at a point where the SNA 5NM radius and the San Diego Freeway (I–405) intersect, then west via the San Diego Freeway (I–405) to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA351T/337M degree bearing at 10NM, the clockwise via the SNA 10NM radius to the SNA 360T/346M degree bearing, then south via the SNA 360T/346M degree bearing to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 2000 feet MSL to and including 4400 feet MSL beginning at a point where the SNA 5NM and the SNA 360T/346M degree bearing intersect, then via the SNA 360T/346M degree bearing to the SNA 10NM radius, then via the SNA 10NM radius clockwise to the SLI 075T/060M radial to the LAX 098T/083M radial, then east via the LAX 098T/083M radial to the ELB 004T/350M radial, then south via the ELB 004T/350M radial to the PDZ 230T/215M radial, then southwest via the PDZ230T/215M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 4400 feet MSL beginning northeast of SNA at a point where the SNA 5NM and the PDZ 230T/215M radial intersect, then northeast via the PDZ 230T/215M radial to the ELB 004T/350M radial, then north via the ELB 004T/350M radial, to the LAX 098T/083M radial to POM 157T/142M radial, then south via the POM 157T/142M radial to the ELB 054T/040M radial, then southwest via ELB 054T/040M radial to ELB, then south via the ELB 184T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the POM 185T/170M radial, then north via POM 185T/170M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning. This Class C airspace area is effective during the specific days and hours of operation of the Orange County Tower as established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1373 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–1]

Proposed Establishment of Class D and Class E4 Airspace; St. Augustine, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace at St. Augustine, FL. A federal contract tower with a weather reporting system is being constructed at the St. Augustine Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the St. Augustine Airport and Class E4 airspace extensions that are 4.8 miles wide and extend 7 miles northwest and southeast of the airport.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–1, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and Class E4 airspace at St. Augustine, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for 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 17.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of St. Augustine Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO FL E4 St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)
St. Augustine VOR/DME, FL
(Lat. 29°57′29″N, long. 81°20′18″W)

That airspace extending upward from the surface within 2.4 miles each side of the St. Augustine VOR/DME 127° and 313° radials, extending from the 4-mile radius to 7 miles northwest and southeast of the VOR/DME. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1509 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–30]

Proposed Modification of Class E Airspace; Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Twentynine Palms, CA. The establishment of a Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 26 SIAP, to Twentynine Palms Airport, Twentynine Palms, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Twentynine Palms Airport, Twentynine Palms, CA.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–30, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AWP–30.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Twentynine Palms, CA. The establishment of a RNAV (GPS) RWY 26 SIAP at Twentynine Palms Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport, Twentynine Palms, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

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

* * * * *

AWP CA E5 Twentynine Palms, CA [Revised]

Twentynine Palms Airport, CA

(Lat. 34°07′56″N, long. 115°56′03″W)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of the Twentynine Palms Airport. That airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 34°17′00″N, long. 115°25′03″W.; to lat. 33°28′00″N, long. 115°25′03″W; to lat. 33°28′00″N., long. 116°18′03″W.; to lat. 34°17′00″N., 116°18″03′W., thence to the point of beginning; excluding that airspace within Restricted Areas R–2501E, R–2501S, and R–2507.

* * * * *

Issued in Los Angeles, California, on December 10, 2001.

Stephen Lloyd,

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

[FR Doc. 02–1375 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA—2000–7122]

RIN 2125–AE88

Discretionary Bridge Candidate Rating Factor

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These proposed changes would make the selection process easier for the FHWA to administer and the application process easier for the States to understand. Except for the formula change for defense highway status, these changes only seek to incorporate selection procedures that have been used effectively for many years. In addition, formerly designated defense highway bridges are included in the national highway system designation, so this change would have minimal impact. None of the proposed changes will have an appreciable effect on either program eligibility or the application process.

DATES: Written comments are due on or before March 25, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington DC 20590, or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e. t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Ernst, Office of Bridge Technology, 202–366–4619, or Mr. Steven Rochlis, Office of the Chief Counsel, 202–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Background

This proposed rule implements 23 U.S.C. 144(g), as amended by sections 1109 and 1311 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (1988). Section 161 of the Surface Transportation Assistance Act of 1982 (STAA), Public Law 97–424, 96 Stat. 2097, at 2135, directed the Secretary of Transportation (Secretary) to establish a rating factor for each discretionary bridge program candidate based on seven specific items. Section 1311 of the TEA–21, as added by Public Law 105–206, 112 Stat. 836 (1998), requires the Secretary to establish criteria for all discretionary programs, including the discretionary bridge program. On November 17, 1983, using the criteria from the STAA, the FHWA published in the **Federal Register** the discretionary bridge regulations (48 FR 52292).

The funding for the discretionary bridge program is derived from contract authority for the bridge program provided in section 1101(a)(3) of the TEA–21. The allocation of the discretionary bridge funding by fiscal year for the discretionary bridge program is codified at 23 U.S.C. 144(g)(1).

These proposed revisions to the regulation propose to include the several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These changes would:

(1) Require that candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

(2) Allow leveraged funds from local, State, county, or private sources to be used to reduce the total project cost for use in the rating factor formula. Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

(3) Disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous fiscal year. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

(4) Change the term ''D'' in the rating factor formula from defense highway status to ''N'' for national highway system status (NHS). This change is necessary because the defense highways are no longer a recognized national system. The factor ''D'' originated in section 161 of the STAA of 1982, and data is no longer collected for this item. Using the national highway system status is a reasonable alternative, since the NHS is recognized as the nation's premier highway system in 23 U.S.C. 103, and one criteria in the code is that the NHS ''meets national defense requirements.'' In addition, formerly designated defense highway bridges are included in the national highway system, and this change will have little effect on project rankings or selection.

In light of the events of September 11, 2001, and the heightened awareness of security issues, we have determined that discretionary bridge funds could be used for security improvements on eligible bridges.

Section-by-Section Analysis

Section 650.703 Eligible Projects

Paragraph (b) would be revised to require that only those projects not previously selected which will be ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for funding. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

Paragraph (c) would be added to make any State that has transferred Highway Bridge Replacement and Rehabilitation funds to other fund categories ineligible for following fiscal year funding. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

Section 650.707 Rating Factor

We propose to revise paragraph (b) to change the term ''D'', ''Defense Highway System Status,'' to ''N'', ''National Highway System Status.'' This revision will bring the formula in line with the current definition of the Federal-Aid Highway Systems found in 23 U.S.C. 103.

Section 161 of the Surface Transportation Assistance Act of 1982 (STAA) required the Secretary of Transportation to develop a selection process for discretionary bridges authorized to be funded under 23 U.S.C. 144(g). Section 161 further outlined the seven criteria that must be considered in evaluating bridge eligibility. One of these seven criteria was the ''defense highway system status.''

Created under the Defense Highway Act of 1941 (Pub. L. 77–295, 55 Stat. 765), the Defense Highway System was designed to be a ''strategic network of highways that conforms to routes designated on the diagrammatic map of principal highway traffic routes of military importance, dated October 25, 1940, revised to May 15, 1941, and approved by the Secretary of War.''

Since the passage of the STAA of 1982, the Defense Highway System is now an element of the National Highway System, created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914 (1991). Section 1006 of the ISTEA redefined the Federal-aid Highway System to include the Interstate System and the National Highway System. One of the components of the National Highway System is ''a strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities of the movement of personnel, materials, and equipment in both peacetime and wartime. The highways may be on or off the Interstate System and shall be designated by the Secretary in consultation with the appropriate Federal agencies and the States.'' (23 U.S.C. 103 (b)(2)(D)).

In comparing the components that make up the National Highway System to the elements of the former Defense Highway System, the ''strategic network of highways'' is an essential element of both of these highway systems. Therefore, the elements of the former Defense Highway System make up one of the components of what is now referred to as the National Highway System. Consequently, by proposing to change the definition of the factor ''D'' in the formula from the Defense Highway System Status to ''N'' for National Highway System Status, we do not propose to change the original intent of the formula as established in the ISTEA.

Section 650.709 Special Considerations

Paragraph (a) would be revised so that leveraged funds from local, State, county, or private sources may be used to reduce the total project cost to calculate the rating factor.Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-Federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

Paragraph (c) would be revised so that only those continuing projects which will be ready to begin construction in the fiscal year in which funds are available for obligation will be considered for funding. This extends the requirement established in § 650.703(b) so that previously selected projects must be ready for construction to the same extent as new projects. As with new projects, previously selected projects that are not ready for construction tie up Federal funds that can be used for ready-to-build projects.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely proposes to amend current regulations. It is not anticipated that these proposed changes would affect the total Federal funding available. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities, such as city and county governments. The modifications are substantially dictated by the statutory provisions of 23 U.S.C. and the TEA–21 and will substantially improve the selection process. Accordingly, the FHWA herby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Comments on these conclusions are welcomed and should be submitted to the docket.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

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

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Soil conservation.

Issued on: January 8, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, part 650, subpart G as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Revise § 650.703(b) and add § 650.703(c) to read as follows:

§ 650.703 Eligible projects.

* * * * *

(b) After February 21, 2002, only candidate bridges not previously selected with a computed rating factor of 100 or less and ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for consideration.

(c) Projects from States that have transferred Highway Bridge Replacement and Rehabilitation funds to other funding categories will not be eligible for funding the following fiscal year.

3. Revise § 650.707(a) and (b) to read as follows:

§ 650.707 Rating factor.

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{\text{SR}}{\text{N}} \times \frac{\text{TPC}}{\text{ADT}'} \times \left[1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}}\right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

SR is Sufficiency Rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted.

The ADTT should be the annual average volume, not peak or seasonal.

N is National Highway System Status

N=1 if not on the National Highway System

N=1.5 if bridge carries a National Highway System road

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than $10 million, use zero balance);

TPC is Total Project Cost in millions of dollars;

HBRRP is Highway Bridge Replacement and Rehabilitation Program;

ADT′ is ADT plus ADTT.

4. In § 650.709, revise paragraphs (a) and (c) to read as follows:

§ 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds. In addition, consideration will be given to candidates with leveraged funds from local, State, county, or private sources, but not from Federal sources. Leveraged funds may be used to reduce the total project cost for use in the rating factor formula.

* * * * *

(c) Priority consideration will be given to the continuation and completion of projects previously begun with discretionary bridge funds which will be ready to begin construction in the fiscal year in which funds are available for obligation.

[FR Doc. 02–1028 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115054–01]

RIN 1545–AY83

Treatment of Community Income for Certain Individuals Not Filing Joint Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of community income under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115054–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115054–01), room 5226, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robin M. Tuczak, 202–622–4940; concerning submissions of comments and requests for a public hearing, Guy Traynor, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by March 25, 2002.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.66–4. An individual who wishes to be relieved of the operation of community property law under § 1.66–4 must request relief from joint and several liability by timely filing Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or a written statement, signed under penalties of perjury, indicating why he or she should be relieved of the operation of community property law. This collection of information is required for an individual to request relief from the operation of community property law. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The burden contained in § 1.66–4 is reflected in the burden of Form 8857.

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

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

Background

For married taxpayers living in community property states, income that is community property under the laws of the state or jurisdiction in which the spouses reside is generally taxed in equal shares to the husband and the wife. Thus, if a husband and wife do not elect to file a joint individual Federal income tax return (joint return) under section 6013, each spouse is generally required to report one-half of the community income on his or her married filing separate individual Federal income tax return (separate return). Section 66 contains four exceptions to the general rule that community income is taxed in equal shares to the husband and the wife.

Section 66(a) provides rules for the treatment of community income when the spouses live apart and do not share income for the entire taxable year. Section 66(b) authorizes the Secretary to disregard community property laws where one spouse is not notified of the nature and amount of items of community income. Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law in certain other cases. This provision is analogous to the relief provision in section 6015(b) relating to joint filers. Section 66(c) also authorizes the

Secretary to grant equitable relief from the operation of community property laws where the other requirements of section 66(c) are not met. This provision is analogous to the equitable relief provision in section 6015(f) relating to joint filers.

The four exceptions in section 66 apply to community income that spouses receive while they are married. Thus, community income that is received during any taxable year in which the spouses are married at any time during that taxable year, including the taxable year during which the spouses divorce, may be subject, in whole or in part, to the provisions of section 66. If spouses file a joint return for a taxable year, section 66 does not apply to their community income for that taxable year. If a spouse files a joint return with a new spouse in the same year that the spouse divorces his or her former spouse, section 66 may be applicable to any community income of the spouse and former spouse earned prior to their divorce. For rules regarding relief from joint and several liability when a joint return is filed, see section 6015 and the regulations thereunder.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 66.

Explanation of Provisions

Treatment of Community Income Under Section 66(a) Where Spouses Live Apart

Section 879(a) provides that under certain circumstances, community income is taxed to the spouse who earned the income rather than according to community property laws. Under section 66(a), a spouse may report community income in accordance with the rules provided by section 879(a) if the following requirements are satisfied: (1) The spouses must have been married to each other at some time during the calendar year; (2) the spouses must have lived apart at all times during the calendar year; (3) the spouses must not have filed a joint return under section 6013 for a taxable year beginning or ending in the calendar year; (4) at least one of the spouses must have earned income during the taxable year that is community income; and (5) the spouses must not have transferred any of the income (directly or indirectly) to each other before the close of the calendar year. The proposed regulations provide that de minimis amounts are not considered transfers for purposes of section 66(a). In addition, the proposed regulations provide that amounts that are transferred or paid to, or on behalf of, the couple's child are not considered indirect transfers to one spouse merely because such transfers satisfy a support obligation of that spouse. See H.R. Rep. No. 96–1278, 96th Cong., 2d Sess. 7 (1980).

Denial of Benefits of Community Property Law Under Section 66(b) Where Spouse Not Notified of Community Income

Section 66(b) provides the Secretary with the authority to deny the benefits of community property law to a spouse who does not notify the other spouse of the nature and amount of an item of community income and who acts as if solely entitled to such income. The proposed regulations provide that in such a case, the item of community income will be included in the gross income of the spouse for whom the benefits of community property law were denied.

Request for Relief From the Operation of Community Property Law Under Section 66(c)

Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law (specific relief) if: (1) The requesting spouse files a separate return for a taxable year; (2) the requesting spouse does not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse; (3) the requesting spouse establishes that he or she did not know, and had no reason to know, of the item of community income; and (4) taking into account all of the facts and circumstances, it is inequitable to include the item of community income in the gross income of the requesting spouse.

The proposed regulations provide that if a requesting spouse is relieved of the operation of community property law under section 66(c) for an item of community income, the item will be included in the gross income of the nonrequesting spouse, and not in the gross income of the requesting spouse. In addition, the proposed regulations provide that when a requesting spouse is granted relief from the operation of community property law under section 66(c), community income will be treated in accordance with the rules provided by section 879(a). The proposed regulations also provide that relief under section 66(c) is not available if one spouse transferred assets to the other spouse as part of a fraudulent scheme, or if the requesting spouse signed a closing agreement or offer in compromise for the taxable year for which relief from the operation of community property law is sought.

Request for Equitable Relief Under Section 66(c)

Section 66(c) also authorizes the Secretary to grant equitable relief from the operation of community property law to requesting spouses who do not otherwise meet the qualifications for relief set forth in section 66(c). This provision, which was added by section 3201(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, is only available for liabilities that were unpaid as of July 22, 1998, or that arise after July 22, 1998.

Section 66(c) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. Such procedures are detailed in Revenue Procedure 2000–15 (2000–1 C.B. 447). The proposed regulations provide general information on the equitable relief provision in section 66(c) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic.

Time and Manner of Requesting Relief

Under the proposed regulations, a spouse seeking specific relief from the operation of community property law under section 66(c) generally may only seek relief after a deficiency for such year has been asserted. A deficiency is considered ''asserted'' on the date that the requesting spouse either receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year.

The requesting spouse must notify the Secretary of the spouse's request for treatment under section 66(c) in a timely manner so that the Secretary can assess the tax on the community income against the nonrequesting spouse before the statute of limitations on making such an assessment under section 6501 expires. Thus, the proposed regulations provide that a requesting spouse seeking relief from the operation of community property law under section 66(c) must request such relief no later than 6 months before the statute of limitations on assessment of section 6501 expires with regard to the nonrequesting spouse. The proposed regulations further provide that if the examination of the requesting spouse's return commences during that 6 month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

A spouse seeking equitable relief from the operation of community property law under section 66(c) for a liability that was properly reported but not paid may seek relief on or after the date the return for such year is filed.

In order to request either specific or equitable relief from the operation of community property law under section 66(c), the requesting spouse must file Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or a written statement, signed under penalties of perjury, with the Secretary indicating why such treatment or relief is appropriate. The statement must also include the name of the nonrequesting spouse and the taxpayer identification number of the nonrequesting spouse, as well as any other information reasonably requested by the Secretary that will help the Secretary identify and locate the nonrequesting spouse.

Interests of the Nonrequesting Spouse

The legislative history of section 6015 indicates that the Secretary must consider the nonrequesting spouse's views when making a determination of relief from joint liability under that section. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). Because the liability of the requesting spouse under section 66 will shift from the requesting spouse to the nonrequesting spouse, notification and participation requirements similar to those in section 6015 are appropriate for section 66 cases. In addition, information provided by a nonrequesting spouse may help to determine the appropriate amount of relief, if any.

The proposed regulations provide that the Secretary must notify the nonrequesting spouse of the requesting spouse's claim for relief and provide the nonrequesting spouse with an opportunity to participate in the administrative determination of whether relief is appropriate. The nonrequesting spouse may submit relevant information to the IRS employee making the determination.

In fashioning rules regarding the notification and participation of the nonrequesting spouse, the IRS and Treasury Department attempted to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. The IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from the operation of community property law, or submit information regarding the other spouse's request for relief, due to privacy concerns or for fear of reprisal by the other spouse. To address this concern, the Internal Revenue Manual provides that the Service will omit from shared documents any information that could reasonably identify a spouse's location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations, and on how the proposed regulations can be made easier to understand. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the timing limitations that would be imposed on a request for relief under § 1.66–4(g)(2). All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the regulations are Robin M. Tuczak and Bridget E. Finkenaur of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.66–4 also issued under 26 U.S.C. 66(c). * * *

Par. 2. Sections 1.66–1 through 1.66–5 are added to read as follows:

§ 1.66–1 Treatment of community income.

(a) *In general.* Married individuals in community property states who do not elect to file a joint individual Federal income tax return under section 6013 generally are required to report one-half of the total community income earned by the spouses during the taxable year unless one of the following exceptions applies:

(1) When the spouses live apart and meet the qualifications of § 1.66–2.

(2) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–3, because the nonrequesting spouse failed to notify the requesting spouse of the nature and amount of the income prior to the due date for filing the return.

(3) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–4(a).

(4) When a requesting spouse qualifies for equitable relief from the operation of community property law under § 1.66–4(b).

(b) *Marital status.* The rules of this section apply to the community income earned during a marriage for any taxable year beginning or ending during a calendar year in which the spouses are married, including the calendar year in which the spouses divorce. Section 66 does not apply to income earned after the spouses divorce.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to income tax on community income under § 1.66–2 or 1.66–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

§ 1.66–2 Treatment of community income where spouses live apart.

(a) Income of spouses residing in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses each file a separate Federal income tax return for a taxable year beginning or ending in the calendar year on which the taxpayer reports his or her income in accordance with section 66(a);

(4) One or both spouses have earned income for the calendar year which is community income and which was earned during the spouses' marriage; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the taxable year.

(b) *Transferred income.* For purposes of this section, transferred income does not include a de minimis amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred or paid to, or for the benefit of, the spouses' child will not be treated as an indirect transfer to one spouse solely because the payment or transfer satisfies an obligation of support imposed on that spouse.

§ 1.66–3 Denial of benefits of community property law where spouse not notified.

The Secretary may deny the benefits of community property law to any spouse with respect to any item of community income if that spouse acted as if he or she was solely entitled to the item of income and failed to notify the other spouse of the nature and amount of the income before the due date (including extensions) for filing the return for the taxable year in which the income was derived. Such item of community income will be included, in its entirety, in the gross income of the spouse for whom the benefits of community property law were denied. The tax liability arising from such item of community income must be assessed in accordance with section 6212 against the spouse for whom the benefits of community property law were denied.

§ 1.66–4 Request for relief from the operation of community property law.

(a) *Specific relief*—(1) *In general.* A requesting spouse will be relieved of the operation of community property law for an item of community income if—

(i) The requesting spouse filed a separate return for the taxable year for which relief is sought;

(ii) The requesting spouse did not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse;

(iii) The requesting spouse establishes that he or she did not know of, and had no reason to know of, such item of community income; and

(iv) Taking into account all of the facts and circumstances, it is inequitable to include such item of community income in the requesting spouse's individual gross income.

(2) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she either actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(3) *Inequitable.* All of the facts and circumstances are also considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the omitted income. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Revenue Procedure 2000–15 (2000–1 C.B. 447), or other guidance subsequently published by the Secretary. Relief under this paragraph (a) only applies to deficiencies arising out of items of omitted income.

(b) *Equitable relief.* Equitable relief may be available when the four requirements of paragraph (a) of this section are not satisfied but it would be inequitable to include the item of community income in the requesting spouse's gross income. For the criteria to be used in making a determination under this paragraph, see Revenue Procedure 2000–15 (2000–1 C.B. 447), and other guidance subsequently published by the Secretary. Relief under this paragraph (b) applies only to deficiencies arising out of items of omitted income or any unpaid tax arising from community income attributable to the nonrequesting spouse and is only available for liabilities that were unpaid as of July 22, 1998, and for liabilities that arise after July 22, 1998.

(c) *Effect of relief.* (1) When the requesting spouse qualifies for relief under paragraph (a) or (b) of this section, the item of community income will be included in the nonrequesting spouse's individual gross income and will not be included in the requesting spouse's individual gross income. The tax liability arising from such item of community income must be assessed against the nonrequesting spouse in accordance with section 6212.

(2) If a requesting spouse is granted relief from the operation of community property law with respect to an item of community income under paragraph (a) or (b) of this section, any community income of the spouses will be treated in accordance with the rules provided by section 879(a). Thus, if a requesting spouse is granted relief under paragraph (a) or (b) of this section, any item of community income that is attributable to the requesting spouse will be

included, in its entirety, in the requesting spouse's gross income for such taxable year, and will not be included in the nonrequesting spouse's gross income for such taxable year. If additional tax were to result upon granting relief under this section, the requesting spouse may withdraw his or her request for relief.

(3) *Example.* The following example illustrates the rule of this paragraph (c):

Example. H and W are married and live in State Z (a community property state). Both H and W file returns for taxable year 2002 as ''married filing separately'' on April 15, 2003. H earns $56,000 in wages, and W earns $46,000 in wages in 2002. H reports half of his wage income as shown on his Form W–2, in the amount of $28,000, and half of W's wage income as shown on her Form W–2, in the amount of $23,000. W reports half of her wage income as shown on her W–2, in the amount of $23,000, and half of H's wage income as shown on his Form W–2, in the amount of $28,000. Neither H nor W reports W's income from her sole proprietorship of $34,000 or W's investment income of $5,000 for taxable year 2002. The Internal Revenue Service proposes deficiencies with respect to H's and W's taxable year 2002 returns due to the omission of W's income from her sole proprietorship and investments. H timely files a claim for relief under section 66(c). Because the Internal Revenue Service determines that H satisfies the four requirements of section 66(c) with respect to W's omitted income, the Internal Revenue Service grants H's claim for relief. Thus, the income of H and W will be treated in accordance with the rules provided by section 879(a). H is liable for the tax on his earned income, as shown on his Form W–2, in the amount of $56,000. (See section 879(a)(1).) W is liable for the tax on her earned income, as shown on her Form W–2, in the amount of $46,000, and on the trade or business income from her sole proprietorship, in the amount of $34,000. (See section 879(a)(1) and (2).) W's investment income will be treated as provided under the community property laws of State Z. (See section 879(a)(3) and (4).)

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under this section. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Secretary or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who does not file a joint individual Federal income tax return with the nonrequesting spouse for the taxable year in question, and who requests relief from the operation of community property law under this section for the portion of the liability arising from his or her share of community income for such taxable year.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual to whom the requesting spouse was married when the community income which gave rise to the claim for relief was earned.

(f) *Effect of prior closing agreement or offer in compromise.* A requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(g) *Time and manner for requesting relief*—(1) *Requesting relief.* To request relief from the operation of community property law under this section, a requesting spouse must file, within the time period prescribed in paragraph (g)(2) of this section, Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or other written request, signed under penalties of perjury, indicating why such relief is appropriate. The requesting spouse must include the nonrequesting spouse's name and taxpayer identification number in the written request. The requesting spouse must also comply with any of the Secretary's reasonable requests for information that will assist the Secretary in identifying and locating the nonrequesting spouse.

(2) *Time period for filing a request for relief*—(i) *Specific relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (a) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. The latest time for requesting relief under paragraph (a) of this section is 6 months before the expiration of the statute of limitations on assessment, including extensions, against the nonrequesting spouse for the taxable year that is the subject of the claim for relief, unless the examination of the requesting spouse's return commences during that 6-month period. If the examination of the requesting spouse's return commences during that 6-month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

(ii) *Equitable relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (b) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. Requests for equitable relief from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid may be submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed.

(iii) *Premature requests for relief.* (A) The Secretary will not consider premature claims for relief under this section. In the case of a claim for specific relief, a premature claim is a claim for relief from an item of community income that is omitted from the requesting spouse's individual Federal income tax return that is filed for a taxable year prior to the date that a deficiency for such year is asserted. A deficiency is considered asserted as of the date the requesting spouse receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings.

(B) In the case of a claim for equitable relief, a premature claim is a claim for relief from an item of community income that is received prior to the date that the requesting spouse files an individual Federal income tax return for the taxable year in question.

(h) *Nonrequesting spouse's notice and opportunity to participate in administrative proceedings*—(1) *In general.* When the Secretary receives a request for relief from the operation of community property law under this section, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting

spouse should be granted relief from the operation of community property law. The Secretary will share with both spouses the information submitted by the other spouse, unless the Secretary determines that the sharing of such information will impair tax administration.

(2) *Information submitted.* The Secretary will consider all of the information (as relevant to the particular relief provision) that the nonrequesting spouse submits in determining whether relief from the operation of community property law under this section is appropriate.

§ 1.66–5 Effective date.

Sections 1.66–1 through 1.66–4 are applicable on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1385 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; notice of open meeting.

SUMMARY: The Occupational Safety and Health Administration announces a meeting of the Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee. OSHA invites all interested persons to attend. The committee members represent groups interested in, or significantly affected by, the outcome of the rulemaking. They include representatives of shipyards, labor unions, professional associations, and government agencies. The committee will continue its discussions on a proposed standard to protect workers from fire hazards in shipyard employment, including the following areas: scope and application; administrative, engineering, and work practice controls; fire brigades; written fire plans; technological advances; cost of fire protection; and the content of appendices. The committee's goal is to reach consensus on a draft proposed standard and explanatory preamble that it will recommend to OSHA.

DATES: The meeting will take place Tuesday and Wednesday, February 5–6, 2002 from 8 a.m. to about 4 p.m. daily, and Thursday, February 7, 2002 from 8 a.m. to 12 p.m. Submit comments, requests for oral presentations, and requests for disability accommodations by January 31, 2002.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston TX 77061 (713) 645–3000. Mail comments and requests for oral presentations to U.S. Department of Labor, OSHA, Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, 200 Constitution Avenue, NW., Room N–3609, Washington, DC 20210 or e-mail at *joe.daddura@osha.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, OSHA (202 693–2067) or e-mail at *joe.daddura@osha.gov.* For disability accommodations, contact Ms. Theda Kenney (202 693–2044).

SUPPLEMENTARY INFORMATION:

Meeting Agenda

The Committee will review a working draft of the regulatory text of proposed subpart P of 29 CFR 1915 and a preamble section entitled ''Summary and Explanation'', which reflects the Committee's earlier work; as well as a summary of the industry profile, prepared by OSHA based on information received at earlier Committee meetings. The committee will attempt to resolve any substantive discrepancies that remain in contention, giving special consideration to small business concerns.

Public Participation

Send written comments, data, views, or statements for the Committee's consideration to Mr. Joseph V. Daddura. You may also request the opportunity to make an oral presentation to the committee by providing Mr. Daddura with a summary of the proposed presentation, an estimate of the time desired, and a statement of the interest you represent. The committee's facilitator will allow such presentations if there is adequate time in the meeting schedule.

Authority: This document is issued pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 et seq.) and Section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1589 Filed 1–17–02; 1:40 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7130–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions for OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 21, 2002.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXIV.

This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXIV, Environmental Protection agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What rule revisions were submitted to update 40 CFR part 55?

1. After review of the rule submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to sources for which the Santa Barbara County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
325	Crude Oil Production and Separations	7/19/01

2. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the South Coast AQMD is designated as the COA (**Note:** No requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule #	Rule Names	Adoption Date
301	Permitting and Associated Fees (except (e)(7)) and Table IV	5/11/01
304	Equipment, Materials, and Ambient Air Analyses	5/11/01
304.1	Analyses Fee	5/11/01
306	Plan Fees	5/11/01
309	Fees for Regulation XVI	5/11/01
1125	Metal Container, Closure, and Coil Coating Operations	1/13/95
1303	Requirements	4/20/01
2000	General	5/11/01
2002	Allocations for Oxides of Nitrogen (Nox) and Oxides of Sulfur (Sox)	5/11/01
2004	Requirements (except 1)	5/11/01
2005	New Source Review for RECLAIM (except i)	4/20/01

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Rule #	Rule Names	Adoption Date
2006	Permits	5/11/01
2007	Trading Requirements	5/11/01
2010	Administrative Remedies and Sanctions	5/11/01
2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (Sox).	5/11/01
2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (Nox) Emissions.	5/11/01
2015	Backstop Provisions (b)(1)(G) and (b)(3)(B)	5/11/01
Reg. IX	Standards of Performance for New Stationary Sources (NSPS)	5/11/01
Reg. X	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	5/11/01

The following new rule was submitted:

Rule #	Rule Name	Adoption Date
2020	RECLAIM Reserve	5/11/01

The following rule was submitted but will not be incorporated because it is an administrative or procedural rule:

Rule #	Rule Name	Adoption Date
1309.1	Priority Reserve	4/20/01

The following rules have been rescinded by the District and will be removed from South Coast AQMD requirements applicable to apply to OCS sources:

Rule #	Rule Name	Rescinded Date
704	Episode Declaration	9/08/95
707	Radio-Communication System	9/08/95
708.1	Stationary Sources Required To File Plans	9/08/95
708.2	Content of Stationary Source Curtailment Plans	9/08/95
708.4	Procedural Requirements for Plans	9/08/95
709	First-Stage Episode Actions	9/08/95
710	Second-Stage Episode Actions	9/08/95
711	Third-Stage Episode Actions	9/08/95
712	Sulfate Episode Actions	9/08/95
715	Burning of Fossil Fuel on Episode Days	9/08/95

3. After review of the rule submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
33.1	Part 70 Permits—Definitions	4/10/01
33.2	Part 70 Permits—Application Contents	4/01/01
33.3	Part 70 Permits—Permit Content	4/01/01
33.4	Part 70 Permits—Operational Flexibility	4/01/01
33.7	Part 70 Permits—Notification	4/01/01
33.9	Part 70 Permits—Compliance Provisions	4/01/01
42	Permit Fees	4/01/01
72	New Source Performance Standards (NSPS)	4/01/01
73	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	4/01/01
74.23	Stationary Gas Turbines	6/12/01

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

C. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to

ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled 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 proposed 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 acts on 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 proposed rule.

E. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules 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 proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii) (F), (G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

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(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (b)(6), (7) and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

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(b) Local requirements.

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(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 7/19/01)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted1/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/18/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1, and D only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/01/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Parts I, II and III):

Rule 102 Definition of Terms (Adopted 4/9/99)
Rule 103 Definition of Geographaical Areas (Adopted 1/9/76)
Rule 104 Reporting of source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice of Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standard for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)

Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adoopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 9/11/98)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emissions Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/17/00)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 5/14/99)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (Adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Tubines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 9/15/00)
Rule 1171 Solvent Cleaning Operations (Adopted 10/8/99)
Rule 1173 Fugtive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 10/20/00)
Rule 1303 Requirements (Adopted 4/20/01)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 10/20/00)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)

Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 04/10/01)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 8/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 6/12/01)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

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[FR Doc. 02–1497 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM207; Special Conditions No. 25–02–02–SC

Special Conditions: Fairchild Dornier GmbH, Model 728–100; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Dornier GmbH Model 728–100 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions, in part, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions may also be defined.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM207, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM207.* Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposal for special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH, applied for a type certificate for their new Model 728–100 airplane. The Model 728–100 is a 70–85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier GmbH must show that the Model 728–100 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25–97, 25–98, and 25–104.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 728–100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Fairchild Dornier GmbH Model 728–100 will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions.

These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Fairchild Dornier GmbH Model 728–100. These proposed special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in Table 1 for the frequency ranges indicated. Both peak and average field strength components from Table 1 are to be demonstrated.

TABLE 1

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728–100. Should Fairchild Dornier apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1). Fairchild Dornier has submitted applications for certification of both increased and reduced passenger capacity derivatives of the 728–100. These derivative models are designated the 928–100, and the 528–100, respectively. As currently proposed, these derivative models share the same design features of an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions as the 728–100, and it is anticipated that they will be be included in the applicability of this proposed special condition.

Conclusion

This action affects only certain novel or unusual design features on the Fairchild Dornier GmbH Model 728–100 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

1. *Protection from Unwanted Effects of High Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 9, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–1506 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

National Airspace Redesign—Potential Revisions of Air Traffic Control (ATC) Services, Procedures, and Airspace, Juneau Area, Juneau, AK; Public Meeting 02–AAL–1

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold a public meeting in support of the National Airspace Redesign (NAR) on ATC airspace, service, and procedures affecting the Juneau area, Juneau, AK. The objective of this meeting is to provide interested persons an opportunity to review proposed ATC services and procedures that are under consideration in conjunction with the FAA Alaska Region Capstone Program. The overall Capstone goal is to maximize efficiency and improve safety for aircraft operating in the Juneau area. ATC is exploring ways to implement new technology as it becomes certified for use in the National Airspace System.

DATES: The meeting will be on Thursday, March 7, 2002, 5:30 pm to 9:00 pm.

ADDRESSES: Ray Renshaw Room, Guest House Inn and Suites, 1800 Shell Simmons Drive, Juneau, AK, 99801; phone (907) 790–6435.

FOR FURTHER INFORMATION CONTACT: Ray Collins, Federal Aviation Administration, AAL–539, 222 W. 7th Ave., Box #14, Anchorage, AK 99513–7587; telephone: (907) 271–1664; fax: (907) 271–2850; email: ray.collins@faa.gov.

SUPPLEMENTARY INFORMATION:

History and Background

The Alaskan Region's Capstone program is an accelerated effort to improve aviation safety and efficiency through installation of government-furnished Global Positioning System (GPS)-based avionics and data link communications suites. The initial Capstone location was Bethel, Alaska and Capstone activities may be viewed at: http://www.alaska.faa.gov/capstone/. In addition to the avionics suites, Capstone will install a ground infrastructure for weather observation, data link communications, surveillance, and Flight Information Services (FIS) to improve safety. Under Capstone, it is anticipated that most of the commercial aircraft based in the Juneau area will be equipped, on a voluntary basis, with government-furnished avionics; certain other commercial and government aircraft regularly operating in the area will also be equipped. Services provided through the avionics suite will improve the pilot's flight capabilities and situational awareness.

There have been several user meetings concerning expanding the Capstone program into the Juneau area; the most recent have had Air Traffic Division representation that briefed a range of potential ATC services that might be provided using Capstone technology. These range from Bright Radar Indicator Tower Equipment (BRITE) displays in the Juneau airport traffic control tower, surveillance services for IFR aircraft, ground aircraft/vehicle surveillance, enhanced traffic information in the airport traffic area, and search and rescue services from the AFSS in Southeast Alaska.

Today, the National Airspace Redesign mandates a review of airspace and efficiency nationwide. It is the goal of the Alaskan Region's Air Traffic Division to address airspace, ATC Capstone enhancements, and services from an overall systems perspective in the Juneau area.

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Alaskan Region Air Traffic Division. The meeting will not be formally recorded.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient capacity for expected participation. There will be neither admission fee nor other charge to attend and participate.

(c) Any person who wishes to present a position paper to FAA representatives pertinent to the revision of ATC services, airspace or procedures may do so.

(d) An official verbatim transcript or minutes of the informal airspace meeting will not be made. However, a list of the attendees, written statements received from attendees during and after the meeting and a digest of discussions during the meeting will be included in the administrative record for the project.

(e) Every reasonable effort will be made to hear all concerns of interested persons consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the team for up to two weeks (14 days) after the close of the meeting.

Agenda

a. Opening remarks and discussion of meeting procedures

b. Presentation of areas under consideration, user feedback, and aircraft airborne avionics equipment:

(1) Tower BRITE-like Display: Tower surveillance display that depicts ADS–B and transponder Mode A/C and Mode S equipped aircraft. Provides situational awareness for tower controllers. DRAWBACK: Unable to see primary target (non-equipped) aircraft and new transponder display technology must be certified prior to use.

(2) Terminal IFR surveillance service: Discussion has taken place within the Air Traffic Division concerning providing ''low level'' terminal approach control services in the Juneau area to support an IFR structure. As the concept developed, several constraints became obvious: vectors below 5,500 feet MSL are not possible; IFR traffic count does not support the establishment of an approach control facility, and ATC delays, while increasing, are not a significant issue at Juneau. Informal discussion with several operators in the Juneau area reveals these operators do not forsee changes in the way they conduct operations in the near or long term—they operate VFR and do not see this changing. Feedback: will operators equip and fly in an IFR structure.

(3) ARTCC: The potential exists to provide continuous radar like coverage for IFR aircraft operating into and from Juneau. Procedures could possibly be developed to reduce delays using this seamless coverage, however, delays will continue to occur due to terrain limitations effecting aircraft and ATC procedures.

(4) AFSS Display(s): Three areas are under consideration—an airport ground surveillance system where AFSS personnel will be able to ''see'' equipped aircraft and vehicles operating on the ground when the tower is closed; a BRITE type display where specialist can ''see'' equipped aircraft operating in the pattern area when the tower is closed; a monitor system where ADS–B aircraft are displayed and are able to be located at the last known position in the event contact is lost. The AFSS display(s) are contingent on aircraft/vehicle equipage. Additionally, use of display equipment is a significant departure from established FSS functions and extensive coordination and approval with FAA Headquarters and the workforce would be required. Finally, there are technical challenges ahead for any automated flight following system.

(5) Airspace: Currently, Juneau has Class D airspace. Expansion or change to this airspace is not anticipated, however, this meeting is part of the National Airspace Review process.

(c) Question and answer period.

(d) Closing comments.

* * * * *

Issued in Anchorage, AK, on January 11, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–1508 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6]

RIN 2120–AA66

Proposed Modification of the Cincinnati/Northern Kentucky International Airport Class B Airspace Area, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); correction.

SUMMARY: This action includes a graphic depiction of the proposed Cincinnati/Northern Kentucky International Airport Class B airspace area, KY, modification which was inadvertently omitted during the publication of the NPRM. The NPRM proposes to modify the current Cincinnati/Northern Kentucky International Airport (CVG) Class B airspace area. Specifically, this action proposes to expand the lateral limits of Area C; reduce the lateral limits of Area F; eliminate Area G; and raise the upper limit of the entire Class B airspace area from 8,000 feet mean sea level (MSL) to 10,000 feet MSL. Inclusion of this graphic is necessary to depict the proposed modifications of the Class B airspace area.

DATES: Comments must be received on or before March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Paul Gallant/Jan Glivings, 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: On December 31, 2001, Docket No. FAA–2001–10912; Airspace Docket No. 00–AWA–6, Federal Register Document 01–32007, was published in the **Federal Register** proposing to modify the Cincinnati/Northern Kentucky International Airport Class B airspace area (66 FR 67632). The NPRM inadvertently omitted the graphic depicting the modifications of the Class B airspace area. This action includes the graphic for that modification.

Correction to Proposed Rule

Accordingly, pursuant to the authority delegated to me, the NPRM for the Cincinnati/Northern Kentucky International Airport KY, Class B airspace area as published in the **Federal Register** on December 31, 2001 (66 FR 67632); **Federal Register** Document 01–32007, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

By inserting the graphic behind page 67638 after the text of the NPRM.

Issued in Washington, DC, on January 14, 2002.

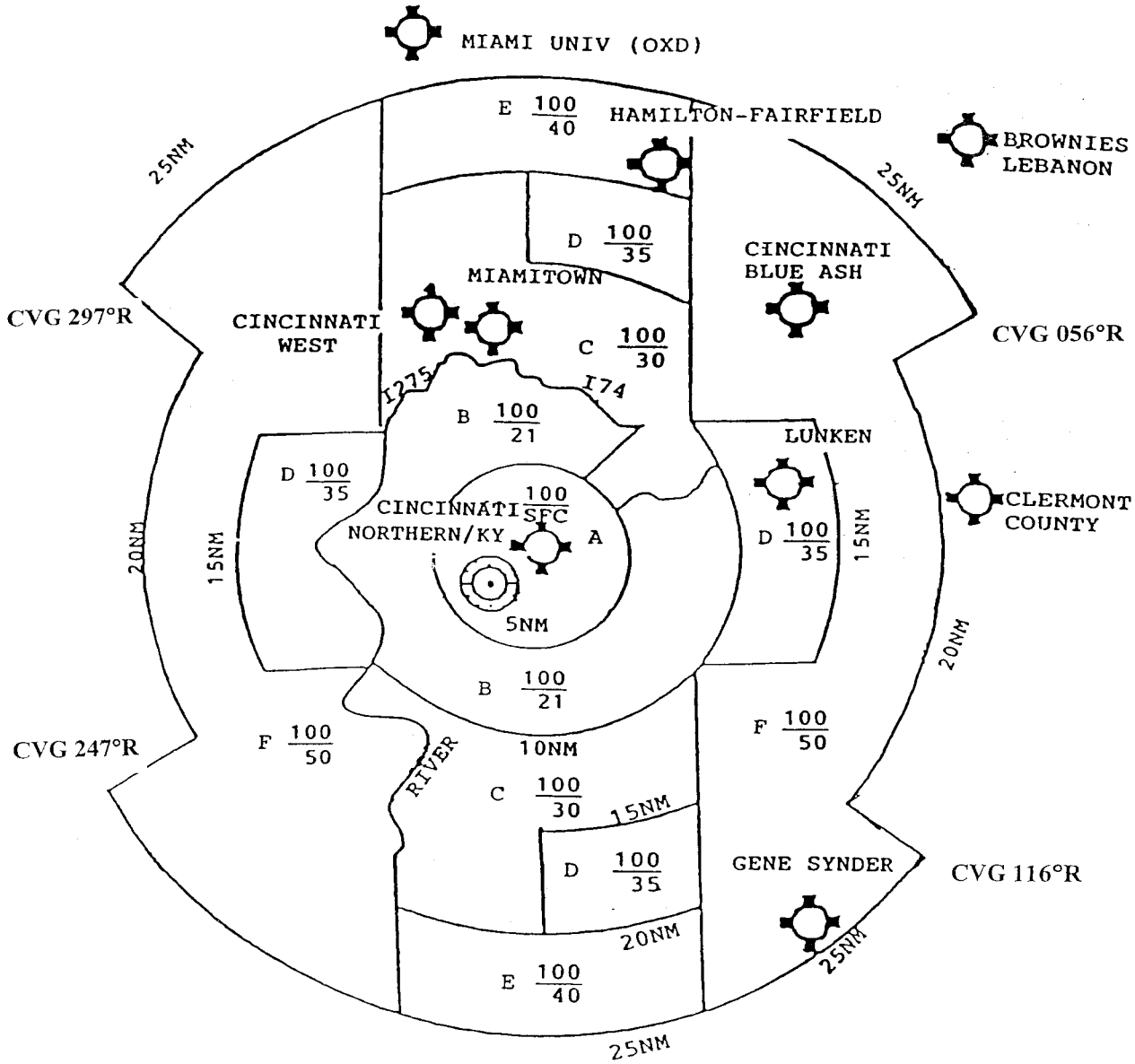
Reginald C. Matthews,

Manager, Airspace and Rules Division.

BILLING CODE 4910–13–P

PROPOSED MODIFICATION OF CLASS B AIRSPACE

Covington, KY
Cincinnati/Northern Kentucky International Airport
Not for Navigation
(Docket No. 00-AWA-6)



[FR Doc. 02–1372 Filed 1–18–02; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2001–10432; Airspace Docket No. 01–AWA–05]

RIN 2120–AA66

Proposed Modification of the Santa Ana Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Santa Ana, CA, Class C airspace area. Specifically, this proposed rule would standardize and complete the 5 nautical mile (NM) inner circle; re-align the south and southwest quadrants; and, expand the north and east boundaries of the Santa Ana Class C airspace area. The FAA is proposing this action to improve the management of aircraft operations in the Santa Ana, CA, terminal area; enhance safety; reduce the potential for midair collision in the Santa Ana Class C airspace area, and accommodate the concerns of airspace users.

DATES: Comments must be received on or before March 8, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20591–0001. You must identify the docket number FAA–2001–10432/ Airspace Docket No. 01–AWA–05, at the beginning of your comments.

You may also submit comments on the Internet at http://dms.dot.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number: 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, 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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2001–10432/Airspace Docket No. 01–AWA–05.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In early 2001, the Southern California TRACON (SCT), and a California Users Group (an ad hoc committee that represents all major airspace users) reviewed the current Santa Ana Class C airspace area. The revocation of the El Toro Class C airspace area, which left the eastern side of the John Wayne Airport in Class E airspace instead of Class C airspace, prompted the review. The Technical Committee of the Southern California Users Group (SCAUWG) reviewed the Santa Ana Class C airspace area and developed recommendations for modifying the existing airspace design to provide pilots with a greater awareness of arriving and departing turbojet aircraft at John Wayne Airport, Santa Ana, CA.

As announced in the **Federal Register** (66 FR 13122), one pre-NPRM airspace meeting was held on March 28, 2001, at Los Alamitos Army Airfield, Los Alamitos, CA. The purpose of this meeting was to provide local airspace users with an opportunity to present input on planned airspace changes to the Santa Ana Airspace Area prior to initiating any regulatory action.

In response to the informal airspace meeting the FAA received six comments. The following is an analysis and FAA response to those comments.

Analysis of Comments

One commenter requested that the FAA establish a Visual Flight Rules (VFR) Corridor through the Santa Ana Class C airspace. The FAA does not agree with this comment. This proposed design would safely accommodate all flight operations at SNA and a VFR corridor would not significantly enhance VFR operations in the airspace. Because of the small size of the proposed area, those aircraft transiting the area that do not want to establish radio communication with ATC may choose to circumnavigate the Class C airspace area.

One commenter recommended that the Santa Ana Class C be modified to re-open V–8 at all altitudes to non-participating aircraft. The FAA does not agree with this comment. Currently the northwest corner of the existing Class C airspace overlaps a portion of V–8. This proposal does not change the overlap of Class C airspace over this airway. This airspace is needed to accommodate IFR arrivals. California Freeway 91 (Riverside Freeway) will continue to be used as a guide to VFR pilots

transitioning this portion of the Class C airspace.

Several commenters suggested that the proposed Paradise VOR 215° radial might not be suitable for navigation and should be checked for suitability. The FAA re-checked the radial and found it to be within tolerance and completely suitable for navigation.

Several commenters objected to 5,400-foot ceiling south and west of the John Wayne airport but without suggesting an alternative altitude. The FAA has reviewed this area, and has determined that the 5,400-foot ceiling is necessary to accommodate air carrier arrivals and that lowering the ceiling would not provide adequate airspace for these operations.

Several comments stated that the proposed changes in the northeast corner infringe on Santa Ana Canyon by extending the Class C airspace over the canyon. The Airline Pilots Association opposed any reduction in proposed Class C boundaries because the instrument procedures on the east side of the airport must be contained in Class C airspace.

The FAA agrees with these comments and has proposed modifications to address each comment. The LAX 083° radial would be used to redefine the northeast corner of the Class C airspace area. Using this radial as a boundary would provide more Class E airspace between the Santa Ana and Ontario Class C airspace areas (Santa Ana Canyon Area), which would provide a wider route for nonparticipating aircraft. In addition, this change would still accommodate instrument procedures east of the airport and keep them in Class C airspace.

Several commenters stated generally that the proposed 2,000-foot floor should be raised to provide more Class E airspace for non-participating aircraft. The FAA does not agree with these comments because raising the floor above 2,000 feet would not provide adequate Class C airspace to accommodate all instrument procedures.

Comments were received suggesting the FAA use a circular design between 5- and 10-miles to provide additional Class C airspace. The FAA does not agree with these commenters. A standard circular design in this case would not meet the operational requirements around Santa Ana John Wayne Airport. Furthermore, 5- and 10-mile circles centered on the airport reference point would designate more Class C airspace than necessary and adversely impact general aviation operations in the area.

Three commenters recommended that the informal VFR practice area near El Toro remain open ''as it is''. The FAA agrees and has raised the outer floor of the proposed Santa Ana John Wayne Airport (SNA) to accommodate the VFR practice area.

Written comments supporting the proposal were received from the Airline Transport Association; the Airline Pilots Association; International Airlines; America West Airlines; Northwest Airlines; and U.S. Airways. These users also requested that the FAA establish a Class B airspace area for SNA since that airport meets the candidacy requirements for Class B airspace as well. They also suggested that a 20-mile Mode C veil requirement be established around SNA as part of this notice.

Presently, the FAA utilizes certain criteria based on the number of passengers enplaned annually or the number of flight operations at the airport, in considering a given airport as a candidate for a Class B airspace designation. This criteria is only for determining candidacy. Meeting the criteria in and of itself does not guarantee that a Class B airspace area would be established at any particular location. A number of other factors, including traffic density, complexity, and operations conducted, must be carefully evaluated to determine whether a Class B airspace area is warranted. Most importantly, it must be demonstrated that the establishment of a Class B airspace area would enhance the safety and efficiency of airspace management. The FAA studied this airspace and found that the current Class C airspace has areas of inefficiencies, areas where turbojet aircraft are not adequately accommodated, and areas in need of modification. The FAA concluded that enhancement of the existing Class C airspace sufficiently would address these issues and the establishment of Class B airspace was not warranted at this time.

The FAA Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (commonly referred to as the ''Mode C Rule'') requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport, from the surface up to 10,000 feet MSL. The recommendation for the establishment of a 20-mile Mode C veil at SNA is beyond the scope of this rulemaking.

The Proposed Amendment

The FAA proposes to amend 14 Code of Federal Regulations (CFR) part 71 by modifying the Santa Ana, CA, Class C airspace area. Specifically, this action proposes to expand Area A to a complete 5 NM circle, which would standardize the inner circle. Area B to the south and Area C to the southwest would also be re-aligned to provide additional airspace to accommodate Runway 1 arrivals. Proposed changes to Area F in the north would re-align the northern and eastern boundaries to improve efficiencies of Runway 19 arrivals. In addition, a new Area G is proposed on the east to accommodate instrument operations in an area formally within the revoked El Toro Class C airspace area. The FAA is making these changes to enhance safety; reduce the risk of midair collision; and improve the management of air traffic operations in the John Wayne terminal airspace area.

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 proposed action: (1) Is not a ''significant regulation 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 proposed 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.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9H, dated September 1, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document would be published subsequently in the order.

Regulatory Evaluation Summary

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866, directs that each Federal agency shall propose, or adopt, a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade

Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, make them the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules. This would include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. Department of Transportation Order DOT 2100.5, prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

This NPRM would modify the Santa Ana, CA, Class C airspace Area. Specifically, this proposed rule would complete the 5 nautical mile (NM) inner circle for standardization, realign the south and southwest quadrants, and expand the north and east boundaries. The FAA has determined that the expansion of the north and east boundaries would result in minimal, if any, circumnavigation cost to general aviation operators. This assessment is based on the fact that aircraft operators could request clearance to operate within the proposed Class C airspace rather than navigate around it, and air traffic control will often grant them clearance. The FAA has also determined that the proposed rule would improve the flow of air traffic, while enhancing the level of safety. Therefore, the FAA has determined that the modification of the Santa Ana, CA, Class C airspace area would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the minimal cost impact of the rule, the FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 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 FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 4000—Subpart C Class C airspace

* * * * *

Santa Ana, CA [Revised]

John Wayne Airport/Orange County, CA
(Lat. 33°40′32″N., long. 117°52′06″W.)

That airspace extending upward from the surface to and including 4400 feet MSL within a 5-mile radius of the John Wayne Airport/Orange County (SNA); that airspace extending upward from 1500 feet MSL to and including 5400 feet MSL beginning at a point southeast of SNA where the SNA 5NM radius and the POM 185T/170M radial intersect, then south via the POM 185T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the PDZ 230T/215M radial, then north via the PDZ 230T/215M radial to the SNA 5NM radius, the counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect, then southwest via the PDZ 230T/215M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the 251T/237M degree bearing from SNA at 10NM, then north via a line extending between the SNA 251T/237M degree bearing at 10 NM and the SNA 351T/337M degree bearing at 10NM to the shoreline, then via the shoreline southeast to the point of beginning; that airspace extending upward from 2500 feet MSL to and including 5400 feet MSL beginning at a point south of the SNA where the SNA 5NM radius and the PDZ 230T/215M radial intersect then west via the shoreline to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM to the San Diego Freeway (I–405), then east via the San Diego Freeway (I–405) to the SNA 5NM radius, then counterclockwise via the 5NM radius to point of beginning; that airspace extended upward from 2500 feet MSL to and including 4400 feet MSL beginning west of SNA at a point where the SNA 5NM radius and the San Diego Freeway (I–405) intersect, then west via the San Diego Freeway (I–405) to a line extending between the SNA 251T/237M degree bearing at 10NM and the SNA 351T/337M degree bearing at 10NM, then north via the line extending between the SNA 251T/237M degree bearing at 10NM and the SNA351T/337M degree bearing at 10NM, the clockwise via the SNA 10NM radius to the SNA 360T/346M degree bearing, then south via the SNA 360T/346M degree bearing to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 2000 feet MSL to and including 4400 feet MSL beginning at a point where the SNA 5NM and the SNA 360T/346M degree bearing intersect, then via the SNA 360T/346M degree bearing to the SNA 10NM radius, then via the SNA 10NM radius clockwise to the SLI 075T/060M radial to the LAX 098T/083M radial, then east via the LAX 098T/083M radial to the ELB 004T/350M radial, then south via the ELB 004T/350M radial to the PDZ 230T/215M radial, then southwest via the PDZ230T/215M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning; that airspace extending upward from 3500 feet MSL to and including 4400 feet MSL beginning northeast of SNA at a point where the SNA 5NM and the PDZ 230T/215M radial intersect, then northeast via the PDZ 230T/215M radial to the ELB 004T/350M radial, then north via the ELB 004T/350M radial, to the LAX 098T/083M radial to POM 157T/142M radial, then south via the POM 157T/142M radial to the ELB 054T/040M radial, then southwest via ELB 054T/040M radial to ELB, then south via the ELB 184T/170M radial to the SNA 10NM radius, then clockwise via the SNA 10NM radius to the POM 185T/170M radial, then north via POM 185T/170M radial to the SNA 5NM radius, then counterclockwise via the SNA 5NM radius to the point of beginning. This Class C airspace area is effective during the specific days and hours of operation of the Orange County Tower as established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility directory.

* * * * *

Issued in Washington, DC, on January 14, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–1373 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–1]

Proposed Establishment of Class D and Class E4 Airspace; St. Augustine, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace at St. Augustine, FL. A federal contract tower with a weather reporting system is being constructed at the St. Augustine Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the St. Augustine Airport and Class E4 airspace extensions that are 4.8 miles wide and extend 7 miles northwest and southeast of the airport.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–1, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and Class E4 airspace at St. Augustine, FL. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace areas designated as an extension to a Class D airspace area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for 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 17.1 of Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of St. Augustine Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO FL E4 St. Augustine, FL [New]

St. Augustine Airport, FL
(Lat. 29°57′33″N, long. 81°20′23″W)
St. Augustine VOR/DME, FL
(Lat. 29°57′29″N, long. 81°20′18″W)

That airspace extending upward from the surface within 2.4 miles each side of the St. Augustine VOR/DME 127° and 313° radials, extending from the 4-mile radius to 7 miles northwest and southeast of the VOR/DME. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 14, 2002.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–1509 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–30]

Proposed Modification of Class E Airspace; Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Twentynine Palms, CA. The establishment of a Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 26 SIAP, to Twentynine Palms Airport, Twentynine Palms, CA has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 26 to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Twentynine Palms Airport, Twentynine Palms, CA.

DATES: Comments must be received on or before February 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 01–AWP–30, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views,

or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AWP–30.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Twentynine Palms, CA. The establishment of a RNAV (GPS) RWY 26 SIAP at Twentynine Palms Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 26 SIAP to Twentynine Palms Airport, Twentynine Palms, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposal regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

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

* * * * *

AWP CA E5 Twentynine Palms, CA [Revised]

Twentynine Palms Airport, CA

(Lat. 34°07′56″N, long. 115°56′03″W)

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of the Twentynine Palms Airport. That airspace extending upward from 1200 feet above the surface bounded by a line beginning at lat. 34°17′00″N, long. 115°25′03″W.; to lat. 33°28′00″N, long. 115°25′03″W; to lat. 33°28′00″N., long. 116°18′03″W.; to lat. 34°17′00″N., 116°18″03′W., thence to the point of beginning; excluding that airspace within Restricted Areas R–2501E, R–2501S, and R–2507.

* * * * *

Issued in Los Angeles, California, on December 10, 2001.

Stephen Lloyd,

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

[FR Doc. 02–1375 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA—2000–7122]

RIN 2125–AE88

Discretionary Bridge Candidate Rating Factor

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to revise its regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These proposed changes would make the selection process easier for the FHWA to administer and the application process easier for the States to understand. Except for the formula change for defense highway status, these changes only seek to incorporate selection procedures that have been used effectively for many years. In addition, formerly designated defense highway bridges are included in the national highway system designation, so this change would have minimal impact. None of the proposed changes will have an appreciable effect on either program eligibility or the application process.

DATES: Written comments are due on or before March 25, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the docket number that appears in the heading of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington DC 20590, or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e. t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Ernst, Office of Bridge Technology, 202–366–4619, or Mr. Steven Rochlis, Office of the Chief Counsel, 202–366–1395, FHWA, 400 Seventh Street, SW., Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resources locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara*.

Background

This proposed rule implements 23 U.S.C. 144(g), as amended by sections 1109 and 1311 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107 (1988). Section 161 of the Surface Transportation Assistance Act of 1982 (STAA), Public Law 97–424, 96 Stat. 2097, at 2135, directed the Secretary of Transportation (Secretary) to establish a rating factor for each discretionary bridge program candidate based on seven specific items. Section 1311 of the TEA–21, as added by Public Law 105–206, 112 Stat. 836 (1998), requires the Secretary to establish criteria for all discretionary programs, including the discretionary bridge program. On November 17, 1983, using the criteria from the STAA, the FHWA published in the **Federal Register** the discretionary bridge regulations (48 FR 52292).

The funding for the discretionary bridge program is derived from contract authority for the bridge program provided in section 1101(a)(3) of the TEA–21. The allocation of the discretionary bridge funding by fiscal year for the discretionary bridge program is codified at 23 U.S.C. 144(g)(1).

These proposed revisions to the regulation propose to include the several administrative considerations that have proven effective in the project selection process and to update the rating factor formula to reflect the most current highway system designation. These changes would:

(1) Require that candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

(2) Allow leveraged funds from local, State, county, or private sources to be used to reduce the total project cost for use in the rating factor formula. Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

(3) Disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous fiscal year. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

(4) Change the term ''D'' in the rating factor formula from defense highway status to ''N'' for national highway system status (NHS). This change is necessary because the defense highways are no longer a recognized national system. The factor ''D'' originated in section 161 of the STAA of 1982, and data is no longer collected for this item. Using the national highway system status is a reasonable alternative, since the NHS is recognized as the nation's premier highway system in 23 U.S.C. 103, and one criteria in the code is that the NHS ''meets national defense requirements.'' In addition, formerly designated defense highway bridges are included in the national highway system, and this change will have little effect on project rankings or selection.

In light of the events of September 11, 2001, and the heightened awareness of security issues, we have determined that discretionary bridge funds could be used for security improvements on eligible bridges.

Section-by-Section Analysis

Section 650.703 Eligible Projects

Paragraph (b) would be revised to require that only those projects not previously selected which will be ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for funding. This will incorporate the administrative practice that has proven effective to provide that candidate projects are sufficiently developed and ready for construction and that funds are used in a timely manner. Projects that are not ready for construction may languish for years, encountering design, environmental, or funding problems that tie up scarce Federal funding and deny funding for other projects which are ready to build.

Paragraph (c) would be added to make any State that has transferred Highway Bridge Replacement and Rehabilitation funds to other fund categories ineligible for following fiscal year funding. Transferring bridge funds to other categories is an indication that a State does not have a pressing need for bridge funds. This administrative requirement has been used effectively to assure that States first exhaust their regularly apportioned bridge funds before applying for discretionary funds.

Section 650.707 Rating Factor

We propose to revise paragraph (b) to change the term ''D'', ''Defense Highway System Status,'' to ''N'', ''National Highway System Status.'' This revision will bring the formula in line with the current definition of the Federal-Aid Highway Systems found in 23 U.S.C. 103.

Section 161 of the Surface Transportation Assistance Act of 1982 (STAA) required the Secretary of Transportation to develop a selection process for discretionary bridges authorized to be funded under 23 U.S.C. 144(g). Section 161 further outlined the seven criteria that must be considered in evaluating bridge eligibility. One of these seven criteria was the ''defense highway system status.''

Created under the Defense Highway Act of 1941 (Pub. L. 77–295, 55 Stat. 765), the Defense Highway System was designed to be a ''strategic network of highways that conforms to routes designated on the diagrammatic map of principal highway traffic routes of military importance, dated October 25, 1940, revised to May 15, 1941, and approved by the Secretary of War.''

Since the passage of the STAA of 1982, the Defense Highway System is now an element of the National Highway System, created by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914 (1991). Section 1006 of the ISTEA redefined the Federal-aid Highway System to include the Interstate System and the National Highway System. One of the components of the National Highway System is ''a strategic highway network consisting of a network of highways that are important to the United States strategic defense policy and that provide defense access, continuity, and emergency capabilities of the movement of personnel, materials, and equipment in both peacetime and wartime. The highways may be on or off the Interstate System and shall be designated by the Secretary in consultation with the appropriate Federal agencies and the States.'' (23 U.S.C. 103 (b)(2)(D)).

In comparing the components that make up the National Highway System to the elements of the former Defense Highway System, the ''strategic network of highways'' is an essential element of both of these highway systems. Therefore, the elements of the former Defense Highway System make up one of the components of what is now referred to as the National Highway System. Consequently, by proposing to change the definition of the factor ''D'' in the formula from the Defense Highway System Status to ''N'' for National Highway System Status, we do not propose to change the original intent of the formula as established in the ISTEA.

Section 650.709 Special Considerations

Paragraph (a) would be revised so that leveraged funds from local, State, county, or private sources may be used to reduce the total project cost to calculate the rating factor.Reducing the total project cost with leveraged funds provides an efficient and equitable assessment of the non-Federal participation, over and above the usual State match. This also continues the FHWA commitment to provide an accurate cost-benefit analysis of candidate projects.

Paragraph (c) would be revised so that only those continuing projects which will be ready to begin construction in the fiscal year in which funds are available for obligation will be considered for funding. This extends the requirement established in § 650.703(b) so that previously selected projects must be ready for construction to the same extent as new projects. As with new projects, previously selected projects that are not ready for construction tie up Federal funds that can be used for ready-to-build projects.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to the late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 nor significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. This rulemaking merely proposes to amend current regulations. It is not anticipated that these proposed changes would affect the total Federal funding available. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities, such as city and county governments. The modifications are substantially dictated by the statutory provisions of 23 U.S.C. and the TEA–21 and will substantially improve the selection process. Accordingly, the FHWA herby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities for the purposes of the Regulatory Flexibility Act. Comments on these conclusions are welcomed and should be submitted to the docket.

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

The proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have a substantial direct affect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

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

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Soil conservation.

Issued on: January 8, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise title 23, Code of Federal Regulations, part 650, subpart G as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. Revise the authority citation for part 650 to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

2. Revise § 650.703(b) and add § 650.703(c) to read as follows:

§ 650.703 Eligible projects.

* * * * *

(b) After February 21, 2002, only candidate bridges not previously selected with a computed rating factor of 100 or less and ready to begin construction in the fiscal year in which funds are available for obligation will be eligible for consideration.

(c) Projects from States that have transferred Highway Bridge Replacement and Rehabilitation funds to other funding categories will not be eligible for funding the following fiscal year.

3. Revise § 650.707(a) and (b) to read as follows:

§ 650.707 Rating factor.

(a) The following formula is to be used in the selection process for ranking discretionary bridge candidates:

$$\text{Rating Factor (RF)} = \frac{\text{SR}}{\text{N}} \times \frac{\text{TPC}}{\text{ADT}'} \times \left[1 + \frac{\text{Unobligated HBRRP Balance}}{\text{Total HBRRP Funds Received}}\right]$$

The lower the rating factor, the higher the priority for selection and funding.

(b) The terms in the rating factor are defined as follows:

SR is Sufficiency Rating computed as illustrated in appendix A of the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges, USDOT/FHWA (latest edition); (If SR is less than 1.0, use SR=1.0);

ADT is Average Daily Traffic in thousands taking the most current value from the national bridge inventory data;

ADTT is Average Daily Truck Traffic in thousands (Pick up trucks and light delivery trucks not included);

For load posted bridges, the ADTT furnished should be that which would use the bridge if traffic were not restricted.

The ADTT should be the annual average volume, not peak or seasonal.

N is National Highway System Status

N=1 if not on the National Highway System

N=1.5 if bridge carries a National Highway System road

The last term of the rating factor expression includes the State's unobligated balance of funds received under 23 U.S.C. 144 as of June 30 preceding the date of calculation, and the total funds received under 23 U.S.C. 144 for the last four fiscal years ending with the most recent fiscal year of the FHWA's annual call for discretionary bridge candidate submittals; (if unobligated HBRRP balance is less than $10 million, use zero balance);

TPC is Total Project Cost in millions of dollars;

HBRRP is Highway Bridge Replacement and Rehabilitation Program;

ADT′ is ADT plus ADTT.

4. In § 650.709, revise paragraphs (a) and (c) to read as follows:

§ 650.709 Special considerations.

(a) The selection process for new discretionary bridge projects will be based upon the rating factor priority ranking. However, although not specifically included in the rating factor formula, special consideration will be given to bridges that are closed to all traffic or that have a load restriction of less than 10 tons. Consideration will also be given to bridges with other unique situations, and to bridge candidates in States which have not previously been allocated discretionary bridge funds. In addition, consideration will be given to candidates with leveraged funds from local, State, county, or private sources, but not from Federal sources. Leveraged funds may be used to reduce the total project cost for use in the rating factor formula.

* * * * *

(c) Priority consideration will be given to the continuation and completion of projects previously begun with discretionary bridge funds which will be ready to begin construction in the fiscal year in which funds are available for obligation.

[FR Doc. 02–1028 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115054–01]

RIN 1545–AY83

Treatment of Community Income for Certain Individuals Not Filing Joint Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of community income under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the Internal Revenue Service Restructuring and Reform Act of 1998.

DATES: Written or electronically generated comments and requests for a public hearing must be received by April 22, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115054–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115054–01), room 5226, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/tax_regs/regslist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robin M. Tuczak, 202–622–4940; concerning submissions of comments and requests for a public hearing, Guy Traynor, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by March 25, 2002.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.66–4. An individual who wishes to be relieved of the operation of community property law under § 1.66–4 must request relief from joint and several liability by timely filing Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or a written statement, signed under penalties of perjury, indicating why he or she should be relieved of the operation of community property law. This collection of information is required for an individual to request relief from the operation of community property law. This information will be used to carry out the internal revenue laws. The likely respondents are individuals.

The burden contained in § 1.66–4 is reflected in the burden of Form 8857.

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

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

Background

For married taxpayers living in community property states, income that is community property under the laws of the state or jurisdiction in which the spouses reside is generally taxed in equal shares to the husband and the wife. Thus, if a husband and wife do not elect to file a joint individual Federal income tax return (joint return) under section 6013, each spouse is generally required to report one-half of the community income on his or her married filing separate individual Federal income tax return (separate return). Section 66 contains four exceptions to the general rule that community income is taxed in equal shares to the husband and the wife.

Section 66(a) provides rules for the treatment of community income when the spouses live apart and do not share income for the entire taxable year. Section 66(b) authorizes the Secretary to disregard community property laws where one spouse is not notified of the nature and amount of items of community income. Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law in certain other cases. This provision is analogous to the relief provision in section 6015(b) relating to joint filers. Section 66(c) also authorizes the

Secretary to grant equitable relief from the operation of community property laws where the other requirements of section 66(c) are not met. This provision is analogous to the equitable relief provision in section 6015(f) relating to joint filers.

The four exceptions in section 66 apply to community income that spouses receive while they are married. Thus, community income that is received during any taxable year in which the spouses are married at any time during that taxable year, including the taxable year during which the spouses divorce, may be subject, in whole or in part, to the provisions of section 66. If spouses file a joint return for a taxable year, section 66 does not apply to their community income for that taxable year. If a spouse files a joint return with a new spouse in the same year that the spouse divorces his or her former spouse, section 66 may be applicable to any community income of the spouse and former spouse earned prior to their divorce. For rules regarding relief from joint and several liability when a joint return is filed, see section 6015 and the regulations thereunder.

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that are necessary to carry out the provisions of section 66.

Explanation of Provisions

Treatment of Community Income Under Section 66(a) Where Spouses Live Apart

Section 879(a) provides that under certain circumstances, community income is taxed to the spouse who earned the income rather than according to community property laws. Under section 66(a), a spouse may report community income in accordance with the rules provided by section 879(a) if the following requirements are satisfied: (1) The spouses must have been married to each other at some time during the calendar year; (2) the spouses must have lived apart at all times during the calendar year; (3) the spouses must not have filed a joint return under section 6013 for a taxable year beginning or ending in the calendar year; (4) at least one of the spouses must have earned income during the taxable year that is community income; and (5) the spouses must not have transferred any of the income (directly or indirectly) to each other before the close of the calendar year. The proposed regulations provide that de minimis amounts are not considered transfers for purposes of section 66(a). In addition, the proposed regulations provide that amounts that are transferred or paid to, or on behalf of, the couple's child are not considered indirect transfers to one spouse merely because such transfers satisfy a support obligation of that spouse. See H.R. Rep. No. 96–1278, 96th Cong., 2d Sess. 7 (1980).

Denial of Benefits of Community Property Law Under Section 66(b) Where Spouse Not Notified of Community Income

Section 66(b) provides the Secretary with the authority to deny the benefits of community property law to a spouse who does not notify the other spouse of the nature and amount of an item of community income and who acts as if solely entitled to such income. The proposed regulations provide that in such a case, the item of community income will be included in the gross income of the spouse for whom the benefits of community property law were denied.

Request for Relief From the Operation of Community Property Law Under Section 66(c)

Section 66(c) directs the Secretary to prescribe regulations regarding relief from the operation of community property law (specific relief) if: (1) The requesting spouse files a separate return for a taxable year; (2) the requesting spouse does not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse; (3) the requesting spouse establishes that he or she did not know, and had no reason to know, of the item of community income; and (4) taking into account all of the facts and circumstances, it is inequitable to include the item of community income in the gross income of the requesting spouse.

The proposed regulations provide that if a requesting spouse is relieved of the operation of community property law under section 66(c) for an item of community income, the item will be included in the gross income of the nonrequesting spouse, and not in the gross income of the requesting spouse. In addition, the proposed regulations provide that when a requesting spouse is granted relief from the operation of community property law under section 66(c), community income will be treated in accordance with the rules provided by section 879(a). The proposed regulations also provide that relief under section 66(c) is not available if one spouse transferred assets to the other spouse as part of a fraudulent scheme, or if the requesting spouse signed a closing agreement or offer in compromise for the taxable year for which relief from the operation of community property law is sought.

Request for Equitable Relief Under Section 66(c)

Section 66(c) also authorizes the Secretary to grant equitable relief from the operation of community property law to requesting spouses who do not otherwise meet the qualifications for relief set forth in section 66(c). This provision, which was added by section 3201(b) of the Internal Revenue Service Restructuring and Reform Act of 1998, is only available for liabilities that were unpaid as of July 22, 1998, or that arise after July 22, 1998.

Section 66(c) directs the Secretary to prescribe procedures regarding when equitable relief may be granted. Such procedures are detailed in Revenue Procedure 2000–15 (2000–1 C.B. 447). The proposed regulations provide general information on the equitable relief provision in section 66(c) and refer individuals seeking more detailed guidance to the relevant revenue rulings, revenue procedures, or other published guidance issued on this topic.

Time and Manner of Requesting Relief

Under the proposed regulations, a spouse seeking specific relief from the operation of community property law under section 66(c) generally may only seek relief after a deficiency for such year has been asserted. A deficiency is considered ''asserted'' on the date that the requesting spouse either receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year.

The requesting spouse must notify the Secretary of the spouse's request for treatment under section 66(c) in a timely manner so that the Secretary can assess the tax on the community income against the nonrequesting spouse before the statute of limitations on making such an assessment under section 6501 expires. Thus, the proposed regulations provide that a requesting spouse seeking relief from the operation of community property law under section 66(c) must request such relief no later than 6 months before the statute of limitations on assessment of section 6501 expires with regard to the nonrequesting spouse. The proposed regulations further provide that if the examination of the requesting spouse's return commences during that 6 month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

A spouse seeking equitable relief from the operation of community property law under section 66(c) for a liability that was properly reported but not paid may seek relief on or after the date the return for such year is filed.

In order to request either specific or equitable relief from the operation of community property law under section 66(c), the requesting spouse must file Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or a written statement, signed under penalties of perjury, with the Secretary indicating why such treatment or relief is appropriate. The statement must also include the name of the nonrequesting spouse and the taxpayer identification number of the nonrequesting spouse, as well as any other information reasonably requested by the Secretary that will help the Secretary identify and locate the nonrequesting spouse.

Interests of the Nonrequesting Spouse

The legislative history of section 6015 indicates that the Secretary must consider the nonrequesting spouse's views when making a determination of relief from joint liability under that section. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 251, 255 (1998). Because the liability of the requesting spouse under section 66 will shift from the requesting spouse to the nonrequesting spouse, notification and participation requirements similar to those in section 6015 are appropriate for section 66 cases. In addition, information provided by a nonrequesting spouse may help to determine the appropriate amount of relief, if any.

The proposed regulations provide that the Secretary must notify the nonrequesting spouse of the requesting spouse's claim for relief and provide the nonrequesting spouse with an opportunity to participate in the administrative determination of whether relief is appropriate. The nonrequesting spouse may submit relevant information to the IRS employee making the determination.

In fashioning rules regarding the notification and participation of the nonrequesting spouse, the IRS and Treasury Department attempted to balance the rights and interests of both the requesting spouse and the nonrequesting spouse. The IRS and Treasury Department recognize that some spouses may be reluctant to apply for relief from the operation of community property law, or submit information regarding the other spouse's request for relief, due to privacy concerns or for fear of reprisal by the other spouse. To address this concern, the Internal Revenue Manual provides that the Service will omit from shared documents any information that could reasonably identify a spouse's location.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations, and on how the proposed regulations can be made easier to understand. Although public comment is sought on all of the issues in the proposed regulations, the IRS and Treasury Department are particularly interested in receiving comments on the timing limitations that would be imposed on a request for relief under § 1.66–4(g)(2). All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the regulations are Robin M. Tuczak and Bridget E. Finkenaur of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.66–4 also issued under 26 U.S.C. 66(c). * * *

Par. 2. Sections 1.66–1 through 1.66–5 are added to read as follows:

§ 1.66–1 Treatment of community income.

(a) *In general.* Married individuals in community property states who do not elect to file a joint individual Federal income tax return under section 6013 generally are required to report one-half of the total community income earned by the spouses during the taxable year unless one of the following exceptions applies:

(1) When the spouses live apart and meet the qualifications of § 1.66–2.

(2) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–3, because the nonrequesting spouse failed to notify the requesting spouse of the nature and amount of the income prior to the due date for filing the return.

(3) When a requesting spouse qualifies for relief from the operation of community property law under § 1.66–4(a).

(4) When a requesting spouse qualifies for equitable relief from the operation of community property law under § 1.66–4(b).

(b) *Marital status.* The rules of this section apply to the community income earned during a marriage for any taxable year beginning or ending during a calendar year in which the spouses are married, including the calendar year in which the spouses divorce. Section 66 does not apply to income earned after the spouses divorce.

(c) *Transferee liability.* The provisions of section 66 do not negate liability that arises under the operation of other laws. Therefore, a spouse who is not subject to income tax on community income under § 1.66–2 or 1.66–4 may nevertheless remain liable for the unpaid tax (including additions to tax, penalties, and interest) to the extent provided by Federal or state transferee liability or property laws (other than community property laws). For the rules regarding the liability of transferees, see sections 6901 through 6904 and the regulations thereunder.

§ 1.66–2 Treatment of community income where spouses live apart.

(a) Income of spouses residing in a community property state will be treated in accordance with the rules provided by section 879(a) if all of the following requirements are satisfied—

(1) The spouses are married at any time during the calendar year;

(2) The spouses live apart at all times during the calendar year;

(3) The spouses each file a separate Federal income tax return for a taxable year beginning or ending in the calendar year on which the taxpayer reports his or her income in accordance with section 66(a);

(4) One or both spouses have earned income for the calendar year which is community income and which was earned during the spouses' marriage; and

(5) No portion of such earned income is transferred (directly or indirectly) between such spouses before the close of the taxable year.

(b) *Transferred income.* For purposes of this section, transferred income does not include a de minimis amount of earned income that is transferred between the spouses. In addition, any amount of earned income transferred or paid to, or for the benefit of, the spouses' child will not be treated as an indirect transfer to one spouse solely because the payment or transfer satisfies an obligation of support imposed on that spouse.

§ 1.66–3 Denial of benefits of community property law where spouse not notified.

The Secretary may deny the benefits of community property law to any spouse with respect to any item of community income if that spouse acted as if he or she was solely entitled to the item of income and failed to notify the other spouse of the nature and amount of the income before the due date (including extensions) for filing the return for the taxable year in which the income was derived. Such item of community income will be included, in its entirety, in the gross income of the spouse for whom the benefits of community property law were denied. The tax liability arising from such item of community income must be assessed in accordance with section 6212 against the spouse for whom the benefits of community property law were denied.

§ 1.66–4 Request for relief from the operation of community property law.

(a) *Specific relief*—(1) *In general.* A requesting spouse will be relieved of the operation of community property law for an item of community income if—

(i) The requesting spouse filed a separate return for the taxable year for which relief is sought;

(ii) The requesting spouse did not include in gross income for the taxable year an item of community income properly includible therein, which, in accordance with the rules contained in section 879(a), would be treated as the income of the nonrequesting spouse;

(iii) The requesting spouse establishes that he or she did not know of, and had no reason to know of, such item of community income; and

(iv) Taking into account all of the facts and circumstances, it is inequitable to include such item of community income in the requesting spouse's individual gross income.

(2) *Knowledge or reason to know.* A requesting spouse has knowledge or reason to know of an understatement if he or she either actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. All of the facts and circumstances are considered in determining whether a requesting spouse had reason to know of an understatement. The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns (e.g., omitted income from an investment regularly reported on prior years' returns).

(3) *Inequitable.* All of the facts and circumstances are also considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the omitted income. A significant benefit is any benefit in excess of normal support. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. Thus, for example, if a requesting spouse receives property (including life insurance proceeds) from the nonrequesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonrequesting spouse, the requesting spouse will be considered to have received significant benefit from those items. Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. For more information on factors relevant to determining whether it is inequitable to hold a requesting spouse liable, see Revenue Procedure 2000–15 (2000–1 C.B. 447), or other guidance subsequently published by the Secretary. Relief under this paragraph (a) only applies to deficiencies arising out of items of omitted income.

(b) *Equitable relief.* Equitable relief may be available when the four requirements of paragraph (a) of this section are not satisfied but it would be inequitable to include the item of community income in the requesting spouse's gross income. For the criteria to be used in making a determination under this paragraph, see Revenue Procedure 2000–15 (2000–1 C.B. 447), and other guidance subsequently published by the Secretary. Relief under this paragraph (b) applies only to deficiencies arising out of items of omitted income or any unpaid tax arising from community income attributable to the nonrequesting spouse and is only available for liabilities that were unpaid as of July 22, 1998, and for liabilities that arise after July 22, 1998.

(c) *Effect of relief.* (1) When the requesting spouse qualifies for relief under paragraph (a) or (b) of this section, the item of community income will be included in the nonrequesting spouse's individual gross income and will not be included in the requesting spouse's individual gross income. The tax liability arising from such item of community income must be assessed against the nonrequesting spouse in accordance with section 6212.

(2) If a requesting spouse is granted relief from the operation of community property law with respect to an item of community income under paragraph (a) or (b) of this section, any community income of the spouses will be treated in accordance with the rules provided by section 879(a). Thus, if a requesting spouse is granted relief under paragraph (a) or (b) of this section, any item of community income that is attributable to the requesting spouse will be

included, in its entirety, in the requesting spouse's gross income for such taxable year, and will not be included in the nonrequesting spouse's gross income for such taxable year. If additional tax were to result upon granting relief under this section, the requesting spouse may withdraw his or her request for relief.

(3) *Example.* The following example illustrates the rule of this paragraph (c):

Example. H and W are married and live in State Z (a community property state). Both H and W file returns for taxable year 2002 as ''married filing separately'' on April 15, 2003. H earns $56,000 in wages, and W earns $46,000 in wages in 2002. H reports half of his wage income as shown on his Form W–2, in the amount of $28,000, and half of W's wage income as shown on her Form W–2, in the amount of $23,000. W reports half of her wage income as shown on her W–2, in the amount of $23,000, and half of H's wage income as shown on his Form W–2, in the amount of $28,000. Neither H nor W reports W's income from her sole proprietorship of $34,000 or W's investment income of $5,000 for taxable year 2002. The Internal Revenue Service proposes deficiencies with respect to H's and W's taxable year 2002 returns due to the omission of W's income from her sole proprietorship and investments. H timely files a claim for relief under section 66(c). Because the Internal Revenue Service determines that H satisfies the four requirements of section 66(c) with respect to W's omitted income, the Internal Revenue Service grants H's claim for relief. Thus, the income of H and W will be treated in accordance with the rules provided by section 879(a). H is liable for the tax on his earned income, as shown on his Form W–2, in the amount of $56,000. (See section 879(a)(1).) W is liable for the tax on her earned income, as shown on her Form W–2, in the amount of $46,000, and on the trade or business income from her sole proprietorship, in the amount of $34,000. (See section 879(a)(1) and (2).) W's investment income will be treated as provided under the community property laws of State Z. (See section 879(a)(3) and (4).)

(d) *Fraudulent scheme.* If the Secretary establishes that a spouse transferred assets to the other spouse as part of a fraudulent scheme, relief is not available under this section. For purposes of this section, a fraudulent scheme includes a scheme to defraud the Secretary or another third party, including, but not limited to, creditors, ex-spouses, and business partners.

(e) *Definitions*—(1) *Requesting spouse.* A requesting spouse is an individual who does not file a joint individual Federal income tax return with the nonrequesting spouse for the taxable year in question, and who requests relief from the operation of community property law under this section for the portion of the liability arising from his or her share of community income for such taxable year.

(2) *Nonrequesting spouse.* A nonrequesting spouse is the individual to whom the requesting spouse was married when the community income which gave rise to the claim for relief was earned.

(f) *Effect of prior closing agreement or offer in compromise.* A requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into a closing agreement (other than an agreement entered into pursuant to section 6224(c) relating to partnership items) with the Commissioner that disposes of the same liability that is the subject of the claim for relief. In addition, a requesting spouse is not entitled to relief from the operation of community property law under section 66 for any taxable year for which the requesting spouse has entered into an offer in compromise with the Commissioner. For rules relating to the effect of closing agreements and offers in compromise, see sections 7121 and 7122, and the regulations thereunder.

(g) *Time and manner for requesting relief*—(1) *Requesting relief.* To request relief from the operation of community property law under this section, a requesting spouse must file, within the time period prescribed in paragraph (g)(2) of this section, Form 8857, ''Request for Innocent Spouse Relief'' (or other specified form), or other written request, signed under penalties of perjury, indicating why such relief is appropriate. The requesting spouse must include the nonrequesting spouse's name and taxpayer identification number in the written request. The requesting spouse must also comply with any of the Secretary's reasonable requests for information that will assist the Secretary in identifying and locating the nonrequesting spouse.

(2) *Time period for filing a request for relief*—(i) *Specific relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (a) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. The latest time for requesting relief under paragraph (a) of this section is 6 months before the expiration of the statute of limitations on assessment, including extensions, against the nonrequesting spouse for the taxable year that is the subject of the claim for relief, unless the examination of the requesting spouse's return commences during that 6-month period. If the examination of the requesting spouse's return commences during that 6-month period, the latest time for requesting relief under this section is 30 days after the commencement of the examination.

(ii) *Equitable relief.* The earliest time for submitting a request for relief from the operation of community property law under paragraph (b) of this section for an amount that was underreported on, or omitted from, the requesting spouse's separate return, is the date that a deficiency for the taxable year for which relief is sought is asserted against the requesting spouse. Requests for equitable relief from the operation of community property law under paragraph (b) of this section for a liability that is properly reported but unpaid may be submitted with the requesting spouse's individual Federal income tax return, or after the requesting spouse's individual Federal income tax return is filed.

(iii) *Premature requests for relief.* (A) The Secretary will not consider premature claims for relief under this section. In the case of a claim for specific relief, a premature claim is a claim for relief from an item of community income that is omitted from the requesting spouse's individual Federal income tax return that is filed for a taxable year prior to the date that a deficiency for such year is asserted. A deficiency is considered asserted as of the date the requesting spouse receives a notification of an audit or a letter or notice from the Secretary indicating that there may be an outstanding liability with regard to that year. Such notices or letters do not include notices issued pursuant to section 6223 relating to TEFRA partnership proceedings.

(B) In the case of a claim for equitable relief, a premature claim is a claim for relief from an item of community income that is received prior to the date that the requesting spouse files an individual Federal income tax return for the taxable year in question.

(h) *Nonrequesting spouse's notice and opportunity to participate in administrative proceedings*—(1) *In general.* When the Secretary receives a request for relief from the operation of community property law under this section, the Secretary must send a notice to the nonrequesting spouse's last known address that informs the nonrequesting spouse of the requesting spouse's claim for relief. The notice must provide the nonrequesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting

spouse should be granted relief from the operation of community property law. The Secretary will share with both spouses the information submitted by the other spouse, unless the Secretary determines that the sharing of such information will impair tax administration.

(2) *Information submitted.* The Secretary will consider all of the information (as relevant to the particular relief provision) that the nonrequesting spouse submits in determining whether relief from the operation of community property law under this section is appropriate.

§ 1.66–5 Effective date.

Sections 1.66–1 through 1.66–4 are applicable on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–1385 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee; notice of open meeting.

SUMMARY: The Occupational Safety and Health Administration announces a meeting of the Fire Protection for Shipyard Employment Negotiated Rulemaking Advisory Committee. OSHA invites all interested persons to attend. The committee members represent groups interested in, or significantly affected by, the outcome of the rulemaking. They include representatives of shipyards, labor unions, professional associations, and government agencies. The committee will continue its discussions on a proposed standard to protect workers from fire hazards in shipyard employment, including the following areas: scope and application; administrative, engineering, and work practice controls; fire brigades; written fire plans; technological advances; cost of fire protection; and the content of appendices. The committee's goal is to reach consensus on a draft proposed standard and explanatory preamble that it will recommend to OSHA.

DATES: The meeting will take place Tuesday and Wednesday, February 5–6, 2002 from 8 a.m. to about 4 p.m. daily, and Thursday, February 7, 2002 from 8 a.m. to 12 p.m. Submit comments, requests for oral presentations, and requests for disability accommodations by January 31, 2002.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport, 8181 Airport Blvd., Houston TX 77061 (713) 645–3000. Mail comments and requests for oral presentations to U.S. Department of Labor, OSHA, Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, 200 Constitution Avenue, NW., Room N–3609, Washington, DC 20210 or e-mail at *joe.daddura@osha.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Daddura (Acting Director) Office of Maritime Standards, OSHA (202 693–2067) or e-mail at *joe.daddura@osha.gov.* For disability accommodations, contact Ms. Theda Kenney (202 693–2044).

SUPPLEMENTARY INFORMATION:

Meeting Agenda

The Committee will review a working draft of the regulatory text of proposed subpart P of 29 CFR 1915 and a preamble section entitled ''Summary and Explanation'', which reflects the Committee's earlier work; as well as a summary of the industry profile, prepared by OSHA based on information received at earlier Committee meetings. The committee will attempt to resolve any substantive discrepancies that remain in contention, giving special consideration to small business concerns.

Public Participation

Send written comments, data, views, or statements for the Committee's consideration to Mr. Joseph V. Daddura. You may also request the opportunity to make an oral presentation to the committee by providing Mr. Daddura with a summary of the proposed presentation, an estimate of the time desired, and a statement of the interest you represent. The committee's facilitator will allow such presentations if there is adequate time in the meeting schedule.

Authority: This document is issued pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 et seq.) and Section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–1589 Filed 1–17–02; 1:40 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7130–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions for OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 21, 2002.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXIV.

This docket is available for public inspection and copying Monday-Friday during regular business hours at the following locations:

EPA Air Docket (Air-4), Attn: Docket No. A–93–16 Section XXIV, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXIV, Environmental Protection agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background information

A. Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

B. What rule revisions were submitted to update 40 CFR part 55?

1. After review of the rule submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revision applicable to sources for which the Santa Barbara County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
325	Crude Oil Production and Separations	7/19/01

2. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the South Coast AQMD is designated as the COA (**Note:** No requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule #	Rule Names	Adoption Date
301	Permitting and Associated Fees (except (e)(7)) and Table IV	5/11/01
304	Equipment, Materials, and Ambient Air Analyses	5/11/01
304.1	Analyses Fee	5/11/01
306	Plan Fees	5/11/01
309	Fees for Regulation XVI	5/11/01
1125	Metal Container, Closure, and Coil Coating Operations	1/13/95
1303	Requirements	4/20/01
2000	General	5/11/01
2002	Allocations for Oxides of Nitrogen (Nox) and Oxides of Sulfur (Sox)	5/11/01
2004	Requirements (except 1)	5/11/01
2005	New Source Review for RECLAIM (except i)	4/20/01

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

Rule #	Rule Names	Adoption Date
2006	Permits	5/11/01
2007	Trading Requirements	5/11/01
2010	Administrative Remedies and Sanctions	5/11/01
2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (Sox).	5/11/01
2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (Nox) Emissions.	5/11/01
2015	Backstop Provisions (b)(1)(G) and (b)(3)(B)	5/11/01
Reg. IX	Standards of Performance for New Stationary Sources (NSPS)	5/11/01
Reg. X	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	5/11/01

The following new rule was submitted:

Rule #	Rule Name	Adoption Date
2020	RECLAIM Reserve	5/11/01

The following rule was submitted but will not be incorporated because it is an administrative or procedural rule:

Rule #	Rule Name	Adoption Date
1309.1	Priority Reserve	4/20/01

The following rules have been rescinded by the District and will be removed from South Coast AQMD requirements applicable to apply to OCS sources:

Rule #	Rule Name	Rescinded Date
704	Episode Declaration	9/08/95
707	Radio-Communication System	9/08/95
708.1	Stationary Sources Required To File Plans	9/08/95
708.2	Content of Stationary Source Curtailment Plans	9/08/95
708.4	Procedural Requirements for Plans	9/08/95
709	First-Stage Episode Actions	9/08/95
710	Second-Stage Episode Actions	9/08/95
711	Third-Stage Episode Actions	9/08/95
712	Sulfate Episode Actions	9/08/95
715	Burning of Fossil Fuel on Episode Days	9/08/95

3. After review of the rule submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule revisions applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule #	Rule Name	Adoption Date
33.1	Part 70 Permits—Definitions	4/10/01
33.2	Part 70 Permits—Application Contents	4/01/01
33.3	Part 70 Permits—Permit Content	4/01/01
33.4	Part 70 Permits—Operational Flexibility	4/01/01
33.7	Part 70 Permits—Notification	4/01/01
33.9	Part 70 Permits—Compliance Provisions	4/01/01
42	Permit Fees	4/01/01
72	New Source Performance Standards (NSPS)	4/01/01
73	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	4/01/01
74.23	Stationary Gas Turbines	6/12/01

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

C. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to

ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled 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 proposed 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 acts on 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 proposed rule.

E. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules 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 proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

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

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 6, 2001.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii) (F), (G) and (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (b)(6), (7) and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 7/19/01)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted1/18/01)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 1/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/18/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1, and D only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/01/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Parts I, II and III):

Rule 102 Definition of Terms (Adopted 4/9/99)
Rule 103 Definition of Geographaical Areas (Adopted 1/9/76)
Rule 104 Reporting of source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice of Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standard for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)

Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adoopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 9/11/98)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emissions Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/17/00)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 5/14/99)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (Adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Tubines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 9/15/00)
Rule 1171 Solvent Cleaning Operations (Adopted 10/8/99)
Rule 1173 Fugtive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 10/20/00)
Rule 1303 Requirements (Adopted 4/20/01)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 10/20/00)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_X (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)

Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 04/10/01)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 8/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/95)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 6/12/01)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

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Notices

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

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

Lassen National Forest; California; Treatment Unit-1 Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones and group selection harvests on the Almanor Ranger District on the Lassen National Forest. These land management activities would also be included in an administrative study to evaluate the effects that they may have on the California spotted owl. The construction of defensible fuel profile zones, and group selection harvests, are two management activities that are part of a five-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives described in the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 21, 1998. The Record of Decision (January 12, 2001) for the Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement directed the Pacific Southwest Research Station in collaboration with Region 5 monitoring personnel and the staffs of the National Forests in the Sierra Nevada to establish the Administrative Study. Treatment Unit-1 is one of eleven proposed administrative study areas.

DATES: Comments concerning the scope of the analysis should be received in writing on, or before February 19, 2002.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA 96020.

FOR FURTHER INFORMATION CONTACT: Dominic Cesmat, Interdisciplinary Team Leader, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the administrative study, resource management activities included in the proposed Treatment Unit-1 Project are defensible fuel profile zone (DFPZ) construction, group selection harvests, the construction and maintenance of National Forest system roads, and the construction of temporary roads. The construction and maintenance of roads are needed to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed.

The analysis area is located in the Butte Creek, Jonesville, Philbrook, and Soda Ridge Management Areas (MA 37, 44, 46, and 45 respectively) on the Almanor Ranger District of the Lassen National Forest, and in the North Fork and Rich Management Areas (MA 19 and 20 respectively) on the Plumas National Forest. The analysis area contains approximately 58,300 acres of National Forest System land and approximately 11,300 acres of private land.

The proposed project is located in Butte, Plumas, and Tehama Counties, California. On the Almanor Range District of the Lassen National Forest, the project is located in all or portions of: Sections 1–3, 10–15, T.25N., R.4E.; Sections 2–10, 15–18, 20, 21, T.25N., R.5E.; Sections 1–4, 10–14, 24, 25, 35, 36, T.26N., R.4E.; Sections 1–23, 26–35, T.26N., R.5E.; Sections 1–11, 14–18, 20–27, 36, T.26N., R.6E.; Sections 6, 30, 31, T.26N., R.7E.; Sections 33–36, T.27N., R.4E.; Sections 10–36, T.27N., R.5E.; Sections 7, 14–36, T.27N., R.6E.; and Sections 30, 31, T.27N., R.7E., MDM. On the Mount Hough Ranger District of the Plumas National Forest, the project is located in all or portions of: Section 36, T.26N., R.6E.; and Section 31, T.26N., R.7E., MDM.

The Treatment Unit-1 Project area contains two of the five sub networks established to implement a DFPZ network on the Almanor Ranger District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZs are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods would include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Treatment Unit-1 Project proposes to construct 11,400 acres of DFPZs.

Group selection harvests would be implemented to promote diversity in stand age and structure. Group selection would be implemented on an estimated 2,600 acres within the Treatment Unit-1 Project area.

The proposed action includes constructing and maintaining National Forest system roads and constructing temporary roads to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed. Some existing roads would be used to access treatment areas before decommissioning. Approximately up to eight water sources would be developed. These road treatments would include (road miles are approximate): (a) New road construction (24 miles); (b) road maintenance (13 miles); (c) temporary road construction (4 miles); and (d) road decommissioning (13 miles).

Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) to meet the purpose and need for action through some other combination of activities; or (3) take no action at this time.

The Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement Record of Decision provides for variances from the standards and guidelines in the Land and Resource Management Plan to test hypotheses in a scientifically structured manner as long as they were a part of

a formal adaptive management research project or administrative study, done in conjunction with the Pacific Southwest Research Station. The proposed actions as outlined for this project are in conjunction with the Lassen/Plumas Administrative Study and are therefore permissible without further plan amendment. These variances are needed to present additional contrast necessary for the Study, to increase the chance of invoking a range of response, and to describe a land base suitable for group selection. Variances include adjusting diameter and canopy cover limits as identified in the Study and to adjust HFQLG area available for group selection as identified in the Study.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. Forest Supervisor Ed Cole is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

Comments from the public and other agencies will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

The need for several road easements, both permanent and temporary, has been identified to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in the spring or summer of 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

The Reviewers Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 10, 2002.

Edward C. Cole,

Forest Supervisor.

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DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Mobile, Alabama, February 7–9, 2002. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 7–9, 2002. A tour of local projects will be held on February 7 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Mobile Marriott, 3101 Airport Blvd., Mobile, Alabama. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370. Individuals also may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements wish the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 1 will have the opportunity to address the Council at those sessions.

Dated: January 8, 2002.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 02–1408 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, January 30, at the

Water Resources Education Center, located at 4600 SE Columbia Way, Vancouver, Washington. The meeting will begin at 10 a.m. and continue until 4 p.m. The purpose of the meeting is to: (1) Be briefed about the Memorandum of Agreement with Washington State Department of Ecology and the Roads Analysis, (2) Share information among committee members, and (3) Provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: January 11, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–1418 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 25, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) 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 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. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Type of Request: Revision of a currently approved collection.

Abstract: RUS is proposing to revise record retention requirements for its Electric and Telecommunications borrowers more in line with standard industry practices. Three areas that we consider to be industry practice but will be specifically addressed are:

- Establishment and maintenance of an index of accounts.
- Retention of loan fund records until they are audited by RUS, generally three years or less.
- Retention of plant records for 25 years or the life of the plant plus ten years, this being necessary to support depreciation and amortization schedules.

RUS contends that this is the minimum record retention requirements needed to carry out its due diligence responsibilities in loan underwriting and maintaining loan security.

RUS borrowers should understand that they may be subject to additional record retention requirements imposed by other regulatory authorities such as FERC, FCC, state commissions and IRS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,660.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Recordkeeper: 36 hours.

Estimated Total Annual Burden on Respondents: 3,320 hours.

Estimated Total Annual Burden on Recordkeepers: 29,653 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 14, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1479 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Marin Weaver at (202) 482–2336, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary

month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 02–1518 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Amber Musser at (202) 482–3003 or (202) 482–1777, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1519 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATES: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Background

On June 11, 2001, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan, covering the period June 1, 2000 through May 31, 2001 (66 FR 31203). The preliminary results are currently due no later than March 1, 2002.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to

complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) This review involves certain complex United States indirect selling expenses including, but not limited to, financial statements and interest expenses; (2) this review involves certain complex Constructed Export Price (CEP) adjustments including, but not limited to, CEP profit and CEP offset; (3) this review involves certain complex warehouse expenses in the United States including, but not limited to, inland freight and inventory.

Because it is not practicable to complete this review within the time specified, we are extending the time limit for the preliminary results of the administrative review of stainless steel butt-weld pipe fittings from Taiwan by 120 days, in accordance with section 751(a)(3)(A) of the Act.

The deadline for issuing the preliminary results is extended from March 1, 2002 to June 29, 2002. Because this date falls on a weekend, the Department will issue its preliminary results on July 1, 2002.

Dated: January 14, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–1520 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Federal Highway Administration Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Buildng, 1099 14th Street, NW, Washington, DC.

Docket Number: 01–018. *Applicant:* Federal Highway Administration, McLean, VA 22101–2296. *Instrument:* Automated Ultrasonic Inspection System, Model P-scan 4 Lite. *Manufacturer:* Force Institute, Denmark. *Intended Use: See* notice at 66 FR 55913, November 5, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) An extra degree of freedom allowing rotation of the transducer and three-dimensional representation of the defect in a weld, (2) automated operation and (3) a unique software/hardware configuration to optimize use by the operator and system performance in the field. A domestic manufacturer of similar equipment advised January 10, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Director, Statutory Import Programs Staff.

[FR Doc. 02–1521 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122801A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) was issued on January 15, 2002, to the University of California San Diego, Scripps Institution of Oceanography (Scripps).

DATES: This letter of authorization is effective from January 15, 2002, through January 1, 2003.

ADDRESSES: The application and letter is available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ≥taking≥ means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL, were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the letter of authorization to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and Letter of Authorization (LOA), including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements

and receipt of reports required by the LOA.

Dated: January 15, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1529 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402F]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held February 4–12, 2002, in Anchorage, AK. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone 907–271–2809.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, and Agendas

The Council's Advisory Panel will begin at 8 a.m. Monday, February 4, and continue through Friday, February 8, 2002.

The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 4, and continue through Wednesday, February 6, 2002.

The Joint Protocol Committee for the Council and Alaska Board of Fisheries will meet from Noon until 5 p.m. on Monday, February 4, 2002.

The full Council and Board will meet from 8 a.m. until 5 p.m. on February 5, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, February 6, continuing through Tuesday, February 12, 2002.

All meetings are open to the public except executive sessions. An Executive Session of the Council has been scheduled during the lunch hour on Wednesday, February 6, 2002 to discuss personnel issues.

Joint Board/Council Meeting: The agenda will include the following issues of mutual interest to the Board and Council:

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:

(a) Executive Director's Report.

(b) State Fisheries Report by Alaska Dept. of Fish and Game.

(c) National Marine Fisheries Service Management Report.

(d)Enforcement and Surveillance reports by NMFS and the U.S. Coast Guard.

(e) Annual meeting report from the International Pacific Halibut Commission.

(f) Presentation of results of sea lion research on eastside of Kodiak Island.

(g) Status report on an amendment to the Community Development Quota Program policies.

(h) World Wildlife Fund report on Russian Far East fisheries.

2. Programmatic Groundfish Supplementary Environmental Impact Statement (SEIS): The Council will approve alternatives for analysis and provide direction to the Ecosystem Committee regarding involvement in the process.

3. Essential Fish Habitat: Receive a progress report and discuss alternatives for mitigating fisheries impact; provide direction to staff.

4. Halibut/Sablefish Individual Fishing Quota Program: Review Committee report: review of an amendment of alternatives for community purchase of quota shares. Provide direction to staff.

5. Gulf of Alaska Groundfish Rationalization: Review staff discussion paper and provide direction.

6. Bering Sea/Aleutian Island Crab Rationalization:

(a) Initial review of amendment analysis.

(b) Discuss the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan and potential alternatives. Provide direction to staff.

7. American Fisheries Act (AFA):

(a) Review final pollock co-op reports for 2001.

(b) Review final AFA report to Congress.

(c) Initial review of an amendment to relax single geographic location restrictions for floating processors (if analysis is available).

8. Observer Program:

(a) Review Committee report.

(b) Initial review of regulatory amendment package.

(c)Discuss status of long-term program adjustments.

9. Discuss amendment for additional Steller Sea Lion protection measures and provide direction to staff.

10. Salmon Bycatch:

(a) Review general information on impacts of Steller sea lion protection measures on salmon bycatch.

(b) Review discussion paper on Gulf of Alaska salmon bycatch, if available.

11. Review research priorities.

12. Groundfish Management:

(a) Develop problem statement and provide staff direction for differential gear impact analysis.

(b) Review information and discussion paper on license limitation recency issues.

(c) Discuss independent review of the Council's F_{40} harvest strategy.

(d) Review discussion paper on disclosure of catch and bycatch information (if paper available).

13. Staff Tasking:

(a) Review existing tasking and provide direction as necessary.

(b) Review NMFS initiative for mandatory data collection.

Scientific and Statistical Committee: The SSC agenda will include the following issues:

1. Groundfish SEIS: (Item #2 on the Council agenda)

2. Essential Fish Habitat (Item #3 on the Council agenda)

3. Bering Sea and Aleutian Islands Crab Rationalization (Item #6 on the Council agenda)

4. Observer Program Issues (Item #8 on the Council agenda)

5. Research priorities (#11 on the Council agenda)

6. Independent review of the Council's F_{40} harvest strategy (Item #12(c) on the Council agenda)

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Items 1 and 11 of the Council agenda.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 16, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1532 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090297A]

Endangered and Threatened Species; Amendment to Permit 1056

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Issuance of an amendment to scientific research permit 1056.

SUMMARY: NMFS has issued a permit amendment to the Fish Ecology Division of the Northwest Fisheries Science Center, NMFS, at Seattle, WA (NWFSC).

DATES: Written comments on the amended permit application must be received no later than 5 p.m. Pacific standard time on February 21, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR (503–230–5424; fax: 503–230–5435; e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated, Snake River (SnR) spring/summer.

Permit Amendment Issued

Permit 1056 authorizes NWFSC annual takes of adult and juvenile, threatened, naturally produced and artificially propagated SnR spring/summer chinook salmon. These takes are associated with two scientific research studies conducted in various tributaries of the Salmon River in Idaho, the Grande Ronde River in Oregon, and the Imnaha River in Oregon. The objective of Study 1 is to characterize the run-timing of naturally produced chinook salmon over a period of years to determine whether consistent patterns are apparent and to use this information for real-time management decisions regarding water allocation during the smolt outmigrations. The long-term objectives of Study 2 are to monitor the nature and extent of genetic change over time in supplemented and unsupplemented populations and to correlate the genetic changes with measures of productivity. For the permit amendment, permit 1056 has been extended to expire on April 30, 2002. Permit 1056 was due to expire on December 31, 2001. The extension is necessary to allow NWFSC scientists to continue their research activities in 2002 while NMFS completes a new section 7 consultation on the issuance of ESA section 10(a)(1)(A) permits for takes of threatened SnR spring/summer chinook salmon for scientific research purposes.

Dated: January 15, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1530 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081298B]

Endangered and Threatened Species; Withdrawal of Permit

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

ACTION: Withdrawal of a scientific research permit application (1169).

SUMMARY: NMFS has received notice from the United States Forest Service, Mt. Hood National Forest in Sandy, OR (MHNF), to withdraw its application for a permit for take of an Endangered Species Act (ESA) - listed species associated with scientific research.

ADDRESSES: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: Leslie Schaeffer, Portland, OR (503–230–5424, fax: 503–230–5435, e-mail: leslie.schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION: The following ESA-listed species and evolutionarily significant unit (ESU) is covered in this notice:

Steelhead (Oncorhynchus mykiss): threatened lower Columbia River (LCR).

Permit Application Withdrawn

Notice was published on August 27, 1998 (63 FR 45799) that MHNF applied for a scientific research permit under section 10(a)(1)(A) of the ESA. The permit was requested for take of adult and juvenile, threatened, LCR steelhead associated with four routine fish distribution and monitoring research studies. At the time the permit was requested, protective regulations for threatened LCR steelhead under section 4(d) of the ESA had not been promulgated by NMFS. After the protective regulations for threatened LCR steelhead were established (see 65 FR 42422, July 10, 2000), NMFS determined that MHNF take of LCR steelhead associated with the proposed scientific research in the MHNF would best be handled under Oregon Department of Fish and Wildlife's scientific research take limit under their 4(d) rule for that species. As such, on August 27, 2001, MHNF notified NMFS to withdraw its permit application from consideration.

Dated: January, 15, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1531 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0013, Exemptions From Speculative Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from speculative limits.

DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection information, the CFTC invites comments on:

- 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;
- 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;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize 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.

Exemptions from Speculative Limits, OMB control number 3038–0013—Extension

Section 4a(1) of the Commodity Exchange Act (Act) allows the Commission to set speculative limits in any commodity for futures delivery in order to prevent excessive speculation. Certain sections of the Act and/or the Commission's Regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
17 CFR 147, 1.48, Part 150	12	12	3.0	36

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: January 15, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1422 Filed 1–18–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m, Friday, February 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1625 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 8, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1626 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 15, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1627 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 22, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1628 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Training for Future Conflict will meet in closed session on February 14–15, 2002, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA; and April 8–10, 2002 location to be determined. This Task Force will focus on identifying and characterizing what education and training are demanded by Joint Vision 2010/2020, and will address the development and demonstration time phasing over the next two decades for the combined triad of technology modernization, operational concepts, and training.

This mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will also identify those approaches and techniques that potential enemies might take that could prepare them to revolutionize their warfare capabilities, thereby achieving a training surprise against the U.S. or its allies. This review will include, but not be limited to, unique training/education developments which might be spawned by allies or an adversary, training techniques and methodologies which might be transferred from the U.S. or through third parties, and finally, the possibilities emerging as a result of the globalization of military and information technologies, related commercial services and their application by other nations.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–1330 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense will meet in closed session on February 25–26, 2002, and March 26–27, 2002, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1331 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Tier II Environmental Impact Statement (DEIS) for the Savannah Harbor Expansion Project, Savannah, GA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY OF THE ACTION: The U.S. Army Corps of Engineers is the lead Federal agency for an evaluation of the deepening of the Federal Navigation Project at Savannah Harbor, Georgia, to ease current shipping constraints and to accommodate anticipated growth in commerce and vessel sizes. In the Water Resources Development Act of 1999, the U.S. Congress authorized deepening the navigation channel to a maximum depth of 48 feet Mean Low Water, subject to further studies and approval of those study results by four Federal agencies. Those additional studies are being conducted. The Savannah District intends to prepare a combined General Reevaluation Report and Tier II Environmental Impact Statement (EIS) to evaluate information concerning the economic feasibility and environmental acceptability of various methods of addressing the existing and expected future navigation problems. These documents will serve as the decision documents concerning implementation of the recently authorized harbor improvement. The other three Federal agencies—the Environmental Protection Agency (Region IV), the Department of Commerce (acting through the National Marine Fisheries Service), and the Department of the Interior (acting through the U.S. Fish and Wildlife Service)—have agreed to participate as Cooperating Agencies in the preparation of the Tier II EIS. The Georgia Ports Authority will also serve as a Cooperator in the EIS development process. In response to requirements of the National Environmental Policy Act, the Corps hereby notifies the public that it is beginning preparation of a Draft Tier II EIS.

FOR FURTHER INFORMATION CONTACT: Questions or written comments about the proposed action and DEIS should be provided by March 7, 2002 to: Mr. William Bailey at 912–652–5781, email address: *shep@sas02.usace.army.mil*, or at U.S. Army Corps of Engineers, Savannah District, ATTN: PD–E, Post Office Box 100, Savannah, Georgia 31402.

Background: Following the provisions of section 203 of the Water Resources Development Act of 1986, the Georgia Ports Authority conducted a feasibility study of various methods of improving navigation in Savannah Harbor and the expected environmental effects of those proposals. The U.S. Army Corps of Engineers adopted the documents prepared by the GPA and published a Draft EIS in May 1998 and a Final Tier I EIS in September 1998. After Congressional authorization of the proposed improvement (found in section 101(b)(9) of the Water Resources Development Act of 1999), the Corps completed the EIS process when it signed a Record Of Decision (ROD) in December 1999. The ROD incorporated the requirements for further technical evaluations that were outlined in the authorization.

After the authorization, the Georgia Ports Authority sought the views of local and regional stakeholders to define what additional studies they believe are needed to determine and fully describe the potential environmental effects of deepening the navigation channel. As those studies were identified, GPA began conducting those tasks. Further information on these GPA activities can be found at *www.sysconn.com/harbor.*

1. *Proposed Action.* The proposed action is development of an Environmental Impact Statement to describe the potential impacts of deepening the navigation channel at Savannah, Georgia, in increments from the existing depth of 42 feet Mean Low Water to a potential depth of 48 feet, including the effect of no channel deepening.

2. *Alternatives.* In addition to the ''No Action'' alternative, channel increments between the existing 42-foot depth and a depth of 48 feet will be evaluated. Other alternatives to accommodate trade growth will be considered. Among the potential alternatives are relocation of existing port facilities within the harbor, development of new port facilities elsewhere in the harbor, and transfer of cargo to other ports in the region. Mitigation plans will be prepared for each alternative considered in detail.

3. *Scoping Process.*

3.A. As part of its public outreach efforts, the Georgia Ports Authority conducted an information meeting in July 2000 to help it define studies that it would conduct during this second phase of the project. Comments provided to GPA at that time should be submitted to the Corps in response to this Notice to ensure their consideration as part of the Federal scoping process. GPA also met with representatives of natural resource agencies and local groups to obtain input to the studies to be conducted. The Corps has coordinated with the Environmental Protection Agency (Region IV), the National marine Fisheries Service, and the U.S. Fish and Wildlife Service concerning what issues should be addressed and what studies should be conducted during this Tier II evaluation. The Corps will conduct a separate additional scoping process to ensure that all issues are identified and included in the EIS.

3.B. The National Environmental Policy Act requires Federal agencies to involve the public in determining the scope of an EIS. Savannah District intends to conduct a public scoping meeting to inform the public of the issues it intends to consider in the EIS and to solicit further input from the public regarding any other issues that may need to be addressed. The Cooperating agencies have indicated they intend to participate in that scoping meeting. The meeting will also provide a forum for people to raise questions about the work done to date and plans for further analyses of all issues. The public is cordially invited to participate, provide input on issues being considered and to make recommendations to address issues not currently under consideration. All interests are invited to participate, including Federal, state, and local agencies, Indian tribes, and other interested private organizations and parties.

3.C. The issues currently under consideration are as follows:

A. Issues identified in the Tier I as requiring further study:
   1. Impacts to the wetlands from changes in salinity, particularly wetlands located on the Savannah National Wildlife Refuge
   2. Impacts to the endangered shortnose sturgeon from changes in salinity and dissolved oxygen
   3. Impacts to striped bass spawning and nursery habitat from changes in salinity and other factors
   4. Impacts to the City of Savannah's water intake from changes in chloride levels
   5. Impacts to dissolved oxygen levels
B. Verification of the 3-Dimensional Hydrodynamic Model
C. Salinity Changes
D. Dissolved Oxygen
E. Chloride Levels
F. Striped Bass
G. Shortnose Sturgeon
H. Freshwater Wetlands
I. Saltwater Wetlands
J. TideGate Restoration
K. Cumulative Impacts from Previous Dredging
L. Closing Middle River
M. Fishery Management Plans
N. Anadromous Fish Populations
O. Other Fish Species; red drum, American shad, river herring
P. Essential Fish Habitat (EFH)
Q. Endangered Species Act Compliance
R. Management of Contaminated Sediments
S. Beach Erosion
T. Channel Slope Erosion
U. Fort Pulaski Erosion
V. Dissolved Oxygen/Fecal Coliform on Beaches
W. Agitation Dredging
X. Sand as a Resource
Y. Upstream Water Releases
Z. Project Economics
AA. U.S. Army Corps of Engineers Section 1135 Restoration Study
BB. U.S. Army Corps of Engineers Savannah River Comprehensive Study
CC. Bend Widener Impacts
DD. Fort Pulaski Impacts
EE. Dredged Material Disposal Capacity and Impacts
FF. Impacts on Adjacent South Carolina Properties
GG. Integration with the COE Savannah River Basin Comprehensive Water Resources Management Study
HH. Tidal Amplitude
II. Ballast Water
JJ. Drinking Water Aquifer
KK. Cultural and Historic Resources
LL. CSS Georgia Impacts
MM. Old Fort Jackson Impacts
NN. Impacts on Adjacent Georgia Properties
OO. Environmental Justice
PP. Multiport Analysis
QQ. Landside Infrastructure
RR. Alternate Methods to Improve Transportation Efficiencies
SS. Alternate Sites for Terminal Operations
TT. Consistency with Coastal Zone Management Plans

3.D. Environmental review and consultation requirements for this project include explicit approval by the Secretary of the Army, the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency. Environmental reviews will also be needed from the following agencies or offices:

- US Fish and Wildlife Service (endangered species)
- US Fish and Wildlife Service—Savannah National Wildlife Refuge (use of refuge property)
- National Marine Fisheries Service (endangered species)
- Georgia Department of Natural Resources—Environmental Protection Division (water quality certification)

• Georgia Department of Natural Resources—Coastal Resources Division (coastal zone management consistency certification)
• Georgia State Historic Preservation Office (cultural and historic resources)
• South Carolina Department of Health and Environmental Control (water quality certification)
• South Carolina Department of Health and Environmental Control—Office of Ocean and Coastal Resource Management (coastal zone management consistency certification)
• South Carolina State Historic Preservation Office (cultural and historic resources)

In addition, the Fish and Wildlife Coordination Act requires full coordination of potential project impacts with Federal and state agencies responsible for management of fish and wildlife resources. Savannah District intends to meet several times with technical experts in these Federal and state natural resource agencies as part of this coordination process. Coordination is also required with the National Marine Fisheries Service for potential impacts to Essential Fish Habitat.

4. *Scoping Meeting.* The scoping meeting is scheduled for February 21, 2001, from 3 p.m. until 8:30 p.m. at the Savannah International Trade and Convention Center on Hutchinson Island in Savannah, Georgia.

5. *Availability of the Draft EIS.* The Draft Tier II EIS is presently scheduled for release in late 2004. However, that date may change. Notification of the availability of the document will be published in the **Federal Register** and in the local newspaper. A Public Notice will also be sent to individuals and organizations that have expressed interest in projects proposed in Savannah Harbor.

Dated: January 15, 2002.

Terry D. Stratton,

Acting Chief, Planning Division.

[FR Doc. 02–1448 Filed 1–18–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing, Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 09/766,625 entitled ''Prevention or Reversal of Sensorial Hearing Loss through Biological Mechanisms,'' filed January 12, 2001, Navy Case No. 82,956.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, and must include the patent application number.

FOR FURTHER INFORMATION CONTACT: Mr. A. D. Spevack, Supervisory Associate Counsel, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1447 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; American BioHealth Group, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American BioHealth Group, LLC, a revocable, nonassignable, exclusive license in the United States to practice, with right to sublicense, the Government-owned invention described in U.S. Patent No. 6,177,434, entitled ''Prevention or Reversal of Sensorial Hearing Loss Through Biological Mechanisms,'' issued January 23, 2001, Navy Case No. 78,564.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. A. David Spevack, Supervisory Associate Counsel, Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007, E-Mail *spevacd@onr.navy.mil* or fax (703) 696–6909.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1446 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: Federal Direct PLUS Loan Application and Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 162,915.

Burden Hours: 81,458.

Abstract: This form is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1430 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: Endorser Addendum to Federal Direct PLUS Loan Application and Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 40,729.

Burden Hours: 20,365.

Abstract: If an applicant for a Federal Direct PLUS Loan is determined to have an adverse credit history and obtains and endorser, this form is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1431 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Program of Research on Reading Comprehension

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary proposes a priority for a Program of Research on Reading Comprehension. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later fiscal years. We take this action to build a scientific foundation for educational practice by supporting rigorous research on reading comprehension. We intend this priority to produce research findings that will change instructional practice and promote academic achievement.

DATES: We must receive your comments on or before February 21, 2002.

ADDRESSES: Address all comments about this proposed priority to Anne P. Sweet or Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 513, Washington, DC 20208–5573. You can fax your comments to (202) 219–2135. If you prefer to send your comments through the Internet, use one of the following addresses: *anne.sweet@ed.gov* or *rita.foy@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Anne P. Sweet or Rita Foy Moss. Telephone: (202) 219–2079.

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 alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 510, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Office of Educational Research and Improvement (OERI), authorized under Title IX of Public Law 103–227, (20 U.S.C. 6001 *et seq.*) supports research and development activities designed to provide essential knowledge for the improvement of education. Although significant advances have been made in knowledge about early reading skills, much less is known about reading comprehension. The Secretary believes that reading comprehension is necessary for academic achievement in virtually all school subjects and for economic self-sufficiency in cognitively demanding job environments. Thus, improving reading comprehension in this country, and providing all members of society with equal opportunities to attain a high level of literacy, require a focused program of educational research. Knowledge gained from such educational research can help guide the national investment in education and support local and State reform efforts. Because this targeted program of research focuses on an enduring problem of practice, it will be the primary mechanism for pursuing new knowledge about reading comprehension. Research grant awards can be made to institutions of higher education, regional education laboratories, public and private organizations, institutions, and individuals, or a consortium thereof. The Secretary invites comments on the priority described in this notice.

Prior to this announcement, OERI reviewed the Report of the National Reading Panel (2000) and the RAND Reading Study Group Report (2001) to identify the most needed reading research and development activities. Following this review, OERI prepared this notice of proposed priority, recognizing that critical frontiers for reading research, such as deriving empirically-grounded theories of comprehension development and reading instruction across the full range of ages and grades, have barely been broached in the research literature. OERI's Program of Research on Reading Comprehension (PRRC) is intended to expand scientific knowledge of how students develop proficient levels of reading comprehension, how reading comprehension can be taught most optimally, and how reading comprehension can be assessed in ways that reflect as well as advance our current understanding of reading comprehension and its development. An overarching goal of the program is to obtain converging empirical evidence on the development and assessment of comprehension that coheres with scientifically supported theories of the processes involved in reading comprehension. A further purpose is to provide a scientific foundation for approaches to comprehension instruction that allow students to achieve proficient levels of comprehension across a range of texts and subjects. The Secretary encourages review of the proposed priority by all interested parties.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Program of Research on Reading Comprehension

Applicants must propose research that is focused on one or more of three areas of inquiry:

1. Developmental patterns of students' reading comprehension;

2. Instructional interventions for reading comprehension; or

3. Measures of reading comprehension that reflect empirically justified dimensions, distinguish reader differences, and are sensitive to instructional goals.

Furthermore, research must be motivated by a specific conceptual framework and relevant prior empirical evidence, both of which must be clearly articulated in the proposal. The research must have the potential to advance fundamental scientific knowledge that bears on the solution of important educational problems. The proposal must indicate method and why the approach taken optimally addresses the research question. Any approach must incorporate a valid inference process that allows generalization beyond the study participants. Proposals must indicate which of the following approaches is to be used:

1. Experiment (control group; randomized assignment—both required).

2. Quasi-experiment (comparison group, stratified random assignment, groups comparable at pretest, statistical adjustment for comparability).

3. Correlational study (simple, multiple/logistic regression, structural

equation modeling, hierarchical linear modeling).

4. Other quantitative (e.g., simulation).

5. Descriptive study using qualitative techniques (e.g., ethnographic methods; focus groups; classroom observations; case studies; single subject designs).

The design of studies must be clear: Independent and dependent, or predictor and criterion, variables should be distinguished. Proposed research is expected to employ the most sophisticated level of design and analysis that is appropriate to the research question. For research questions that cannot be answered using a randomized assignment experimental design, the proposal must spell out the reasons why such a design is not applicable and why it would not represent a superior approach. Thus, applicants must propose to conduct rigorous studies that are scientifically sound, relevant, timely, and ultimately useful to practitioners and policy makers. The Secretary intends to expend a total of $5 million during FY 2002 on grant applications. Funding this priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received.

Post-Award Requirements

The Secretary established the following post-award requirements consistent with the OERI's program regulations at 34 CFR part 700 and the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.720. Recipients of a research award must:

1. Provide OERI with information about the research project and products and other appropriate research information so that OERI can monitor progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

2. At the end of the award period, synthesize the findings and advances in knowledge that resulted from research conducted and describe the potential impact on the improvement of reading comprehension instruction.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number (84.305G) Program of Research on Reading Comprehension)

Program Authority: 20 U.S.C. 6031.

Dated: January 15, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–1480 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Program Interest for Processing U–232 To Produce RA–224/BI–212 Generators for Uses in Medicine

AGENCY: Department of Energy (DOE).

ACTION: Notice of Program Interest.

SUMMARY: The U.S. Department of Energy (DOE) announces an unrestricted grant program providing support for the production of Ra–224/Bi–212 generators from DOE provided U–232. The Department's objectives of this effort are to: (1) Develop an assured future supply of Bi–212; (2) Maximize private involvement and minimize the cost of producing Ra–224/Bi–212 generators: and (3) minimize future Government involvement. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production. The Department's contribution will be no more than $50,000 for a period of two years.

DATES: Opening date: January 30, 2002, and closing date: February 28, 2002.

ADDRESSES: Complete details, instructions on how to apply, opening and closing dates and the forms may be obtained from the DOE NE home page on the Internet at: *http://www.ne.doe.gov.* In accordance with 10 CFR 600.9, the formal solicitation document will be disseminated electronically as solicitation number DE–PS01–02NE23296 through the Department's Industry Interactive Procurement System (IIPS) home page located at *https://doe-iips.pr.doe.gov.*

FOR FURTHER INFORMATION CONTACT: John McClure, Program Manager, at 301–903–5460, Phyllis Morgan, Contract Specialist at 202–287–1504, and Paul Gervas, Attorney and Advisor at 202–586–6918.

SUPPLEMENTARY INFORMATION: The Department will conduct marketing and sales activities of the isotope. Alternatively, concomitant proposals for the marketing and sales function will be allowed. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production.

Effective October 1, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. All documents included in your applications should be submitted in the Microsoft Word format. To get more information about IIPS and to register your organization, go to *https://doe-iips.pr.doe.gov.* Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classifications System number: 325412. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services Page.

Kevin Smith,

Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 02–1470 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, February 7, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by representative from the Environmental Protection Agency
2. Presentation on Operable Unit 1 Five Year Review Process
3. End-state discussions
4. Report on EMSSAB Groundwater Workshop
5. Appointment of Co-chairs
6. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on January 15, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1472 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 13, 2002, 6:30 p.m.–9 p.m.

ADDRESSES: Amargosa Community Center, 821 East Farm Road, Amargosa Valley, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. CAB members will discuss their recommendations related to the recent peer review conducted on the Nevada Test Site Underground Test Area project strategy.

2. Representatives from the National Nuclear Security Administration Nevada Operations Office, Nevada Division of Environmental Protection, and Nye County will share their perspectives on the report.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on January 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1473 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Nuclear Security Administration Advisory Committee

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice announces a meeting of the National Nuclear Security Administration Advisory Committee (NNSA AC). The Federal Advisory Committee Act, 5 U.S.C. App. 2 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 12 and Wednesday, February 13, 2002; 0900–1700.

LOCATION: Science Applications International Corporation (SAIC), 1710 SAIC Drive (formerly Goodridge Drive), McLean, VA.

FOR FURTHER INFORMATION CONTACT: Betty (BJ) Morris, (202–586–6312) Executive Officer, NNSA AC.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide the Administrator for Nuclear Security with advice and recommendations on matters of technology, policy, and operations that lie within the mission and responsibilities of the National Nuclear Security Administration. Additional information about the Committee, including its charter,

members, and charge, is available at: *www.nnsa.gov*.

Purpose of the Meeting: To discuss national security research, development, and policy programs.

Tentative Agenda

February 12, 2002

0900–0910 Chairman Opens Meeting (open)
0910–1100 Unclassified Discussion on Committee Issues (open)
1100–1200 Public Discussion (open)
1330–1700 Workshop for Members (closed)
1715 Adjourn

February 13, 2002

0900–1700 Classified Discussions (closed)

Closed Portions of Meeting: In the interest of national security, portions of the meeting will be closed to the public, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App 2 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, ''How are advisory committee meetings closed to the public?'', which incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Open Portions of Meeting: Per the agenda posted above, a portion of the meeting will be open to the public for observation and comment. In order to accommodate the public, including facilitating access to meeting facilities, interested parties must contact Betty (BJ) Morris, NNSA AC Executive Officer, by 17:00, February 4, 2001, in order to make appropriate arrangements. Requests for comment will be accommodated on a first-come, first-serve basis.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, DC January 16, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1474 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Plymouth Generating Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with Benton County, State of Washington, for an electrical interconnection including a new one-mile transmission line and other facilities associated with a proposed powerplant. BPA is the lead Federal agency under NEPA and Benton County is the lead Washington State agency under SEPA. The Plymouth Generating Facility is a 306-megawatt (MW) generating station proposed by Plymouth Energy, L.L.C. (PE) that would be located near the town of Plymouth in Benton County, Washington. PE has requested an interconnection to BPA's transmission system that would allow firm power delivery to the wholesale power market. BPA proposes to execute an agreement with PE to provide the interconnection and firm power transmission.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1–800–622–4520, name this project, and leave your complete name and address. To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov;* or send a letter to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION, CONTACT: Philip W. Smith, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3294; or e-mail [*pwsmith@bpa.gov*]. Additional information can be found at BPA's Web site: *www.efw.bpa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- Interconnection agreement that BPA proposes with PE;
- Construction and operation of the powerplant;
- Construction and operation of an approximately 800-foot, 6-inch diameter gas line to tie into Williams Northwest Pipeline Company's Plymouth Compressor Station pipeline;
- Construction and operation of a rail spur near the powerplant site for use during powerplant construction; and
- Construction and operation of an interconnection consisting of a substation and approximately one mile of 230-kV or 500-kV transmission line from the substation to either the existing BPA McNary-Big Eddy 230-kV transmission line or the proposed, new BPA McNary-John Day 500-kV transmission line.

The powerplant and the gas and power interconnections would all be located within Benton County, Washington.

Responsibility for construction and operation of the new facilities is principally with PE who would build and operate the powerplant. However, the transmission would be constructed under BPA's management, and BPA would be responsible for the operation and maintenance of these transmission facilities. Williams Northwest Pipeline Company would build and operate the proposed approximately 800-foot gas pipeline that would supply fuel to the powerplant.

Proposed Action: The Plymouth Generating Facility would be a natural gas-fired, combined-cycle combustion turbine powerplant with a nominal generating capacity of approximately 306 MW. The plant site would be on approximately 44 acres zoned for agricultural use (with energy projects permitted as conditional uses) and located about 6 miles west of Plymouth, Washington.

Natural gas would be burned in a gas turbine engine, in which the expanding gases from combustion would turn the turbine's rotor, driving a generator to produce electrical energy. Hot exhaust from the gas turbine would be used to boil water using a heat recovery steam generator (HRSG). Steam produced by the HRSG turns a steam turbine, which would connect to another generator, producing additional electrical energy.

The Plymouth Generating Facility would consist of a single gas turbine generator, heat recovery steam generator and steam turbine generator. Steam cycle cooling would utilize an air cooled condenser and a conventional mechanical draft tower in combination to minimize water use.

Water would be required to generate steam, for cooling and for sanitary uses. The proposed powerplant would require 1,241 gallons per minute of water under average conditions and use no more than 1000 acre feet per year. PE proposes to use on-site wells and to return wastewater flows from plant operations for agricultural irrigation.

PE proposes that project storm water be collected in retention and filtration ponds located at the south side of the property.

The proposed Plymouth Generation Facility would deliver electricity to the regional power grid through an interconnection with either the existing

BPA McNary-Big Eddy 230–kV transmission line or the new, proposed BPA McNary-John Day 500–kV transmission line.

Process to Date: BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and Benton County is the lead Washington State agency. Benton County has received a SEPA Checklist and determined that preparation of an EIS is required. Benton County has scheduled a public meeting to be held on January 24, 2002, at Patterson, Washington, to obtain public input concerning the scope of the EIS. An additional EIS scoping meeting will be scheduled and announced by direct mail and through local media.

Alternatives Proposed for Consideration: Alternatives thus far identified for evaluation in the EIS are (1) the proposed action, (2) alternative sites within the property under lease by PE, (3) alternative transmission line interconnections, and (4) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues: Benton County will prepare an EIS consistent with its responsibilities under Chapter 43.21C of the Revised Code of Washington and Chapter 197–11 of the Washington Administrative Code. PE has requested transmission interconnection and firm transmission service. Such an action triggers a need for BPA to prepare NEPA documentation. Therefore, BPA and Benton County intend to prepare a joint NEPA/SEPA EIS addressing both the powerplant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) aesthetic and visual impacts, (3) socio-economic impacts including transportation impacts, (4) wetlands and wildlife habitat impacts, (5) cultural resource impacts, (6) water supply and quality impacts, (7) health and safety impacts, and (8) noise impacts from plant operation. These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS. BPA will also use the EIS and NEPA process to address historic preservation and cultural resource issues under Section 106 of the National Historic Preservation Act.

Public Participation: A public scoping meeting will be held at Patterson, Washington, on January 24, 2002. Representatives of BPA and Benton County will be available to receive oral and written public comment. An additional meeting will be scheduled and announced by direct mail and through local media. We request public and agency comments on the scope of the EIS by March 15, 2002.

Receiving comments from interested parties will assure that BPA and Benton County address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, a draft EIS will be circulated for review and comment, and BPA and Benton County will hold at least one public comment meeting on the draft EIS. BPA and Benton County will consider and respond in a final EIS to comments received on the draft EIS.

Issued in Portland, Oregon, on January 11, 2002.

Stephen J. Wright,

Acting Administrator and, Chief Executive Officer.

[FR Doc. 02–1469 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: PNCA–02]

Proposed Adjustment to the Rate for Interchange Energy Imbalances Under the Pacific Northwest Coordination Agreement, Public Hearing, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of proposed adjustment.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

By this notice, BPA announces its proposed adjustment to the rate for Interchange Energy (IE) imbalances under the Pacific Northwest Coordination Agreement (PNCA). Each party to the PNCA makes excess energy available to the other party to meet its firm loads; this excess energy is known as interchange. The existing rate, which was established in 1995, is 22.55 mills per kilowatt-hour. Since 1995 the energy industry has undergone dramatic change. It has experienced a sharply increased degree of volatility as well as unprecedentedly high prices. Therefore, BPA is proposing to link the interchange energy price to the market price for energy, thus ensuring that BPA recovers its costs when it provides interchange energy to another PNCA party.

DATES: Proposed hearing dates are supplied in Supplementary Information, Section I.B. Close of public comments is March 22, 2002. The prehearing conference will be held on January 29, 2002.

ADDRESSES: Written comments should be submitted to: Dulcy Mahar, Communications Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Documents will be available for public viewing after January 29, 2002, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on January 29, 2002, from 9 a.m. to 12 p.m., Room 223, 911 NE. 11th Avenue, Portland, Oregon. The documents will also be available on BPA's website at www.bpa.gov/power/ratecase. Mr. Byron G. Keep, Power Products, Pricing, and Rates Manager, is the official responsible for the development of BPA's rates.

FOR FURTHER INFORMATION CONTACT: Interested persons may also call (503) 230–4413 or call toll-free 1–800–622–4519. Mr. Keep may be contacted at the address indicated above in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Background

A. Relevant Statutory Provisions Governing This Rate Proceeding

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular,

section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

> [S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. 839e(a)(2). In addition to the Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures. These procedures include issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, or arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's ''Procedures Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986), which implement and, in most instances, expand these statutory requirements. Pursuant to Rule 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings (BPA Procedures), this hearing will be conducted under Rule 1010.10, which governs Expedited Rate Proceedings. The expedited procedures will be used rather than the procedures for General Rate Proceedings conducted under Rule 1010.9. The procedures for General Rate Proceedings are intended for use when the Administrator proposes to revise all, or substantially all, of BPA's wholesale power and transmission rates.

The proposed change in the interchange energy rate will apply only to the parties to the PNCA. In addition, the rate applies only to the imbalances of interchange energy between each pair of PNCA parties. For example, if two PNCA parties deliver equal amounts of interchange energy to each other, they have no imbalance between them and no rate is charged. Finally, the effect of interchange energy on BPA's revenues is negligible. For these reasons, the issues in this rate proceeding will be fewer and of more limited scope than the issues in a proceeding to adjust all BPA rates. BPA believes that the 90-day Expedited Rate Proceeding will be adequate to develop a full and complete record and to receive public comment and argument related to the proposed adjustment. If more time is required, the Hearing Officer may request under Rule 1010.10(b) of the BPA Procedures that the BPA Administrator grant an extension.

B. Proposed Schedule Concerning This Rate Proceeding

BPA will release its proposed rate for interchange energy on January 29, 2002, and expects to publish a final Record of Decision on April 30, 2002. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

Date	Action
Jan 28	Deadline for Petitions to Intervene.
Jan 29	Prehearing Conference.
Feb 12	Data Requests on BPA's Direct Case.
Feb 19	Data Responses Due.
Feb 26	Parties' Direct Cases.
Mar 8	Data Requests on Parties' Direct Cases.
Mar 15	Data Responses Due.
Mar 22	Parties' Rebuttal.
Mar 28	Cross-Examination.
April 4	Initial Briefs.
April 12	Draft Record of Decision.
April 19	Briefs on Exceptions.
April 30	Final Record of Decision.

The procedural schedule established for Docket No. PNCA–02 will provide an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

Part II—Purpose and Scope of Hearing

The purpose and scope of the hearing is to revise the charge for interchange energy under the PNCA. BPA proposes to link the charge to a market index to reflect wholesale power market price volatility. This revision will ensure that the charge accurately reflects the cost of providing interchange energy.

A. The Circumstances Necessitating Adjustment

Since the rate for interchange energy was established in 1995, the energy industry has undergone dramatic change. It has become far more competitive, and prices for energy have become much more volatile. During this past year, prices of energy have reached unprecedentedly high levels. The existing rate for interchange was intended to cover the PNCA parties' cost of providing the interchange. Because it is currently a fixed rate, it will not recover costs if prices remain high and continue to fluctuate. BPA is proposing this revision in the rate to ensure that the rate reflects BPA's costs.

B. Scope

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the rate for interchange energy imbalances described in Section II hereof.

C. NEPA Evaluation

BPA has assessed the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to revise the rate for interchange energy under the PNCA falls within the range of alternatives evaluated in the Final Business Plan EIS. The Business Plan EIS was completed in June 1995.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross examine parties' witnesses, seek discovery, or serve or be served with documents; and

are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before March 22, 2002. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted above. The second category of interest is that of a ''party'' as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

B. Petitions for Intervention

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing of their interest. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by January 28, 2002. The petitions should be directed to: Ms. Judy Cornish Bonneville Power Administration 905 NE. 11th Avenue P.O. Box 12999 Portland, Oregon 97232

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

C. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft Record of Decision (ROD) that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final rate for interchange energy based on the entire record. The basis for the final adjustment will be expressed in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate adjustment, together with the record, with FERC for confirmation and approval. *See generally,* 18 CFR part 300.

Part IV—Summary of the Proposal

BPA proposes to revise the rate for interchange energy imbalances by linking the rate to a market index. The rate will apply to all parties to the PNCA who take interchange energy from BPA. The revision will ensure that the rate accurately reflects the costs of providing interchange energy. Below is the proposed rate for interchange energy imbalances.

All terms contained herein have the meaning accorded them in the PNCA. This rate schedule is to be effective upon approval by the Federal Energy Regulatory Commission (interim or final) and will remain in effect until a revised rate is approved and becomes effective.

A. Interchange Energy (IE) Imbalances For Other Than Loaned IE

1. Initial Deliveries of IE

This charge applies to IE delivered from BPA to another PNCA party. The calculation is as follows:

Formula 1

$C=(ID_{ON} * I_{ON}) + (ID_{OFF} * I_{OFF})$

Where for each day:

C= Daily charge for the Initial Deliveries of IE in dollars.

ID_{ON} = The Initial Delivery of IE made during the day during On Peak hours.

I_{ON} = The Dow Jones Mid-Columbia Firm index price for On Peak hours in dollars per megawatt hour.

ID_{OFF} = The Initial Delivery of IE made during the day during Off Peak hours in megawatt hours.

I_{OFF} = The Dow Jones Mid-Columbia Firm index price for Off Peak hours in dollars per megawatt hour.

Note: Initial Deliveries of IE on Sunday or a NERC [or its successor organization(s)] recognized holiday are priced at the Off Peak rate.

2. Return of IE

This charge applies to the return of IE that was initially delivered to BPA from another PNCA party. The charge is based on a calculated average price, unique to each PNCA party that had previously supplied BPA with IE. The calculation is as follows:

Formula 2

$C_{PARTY} = IER_{PARTY} * R_{PARTY}$

Where for each (PNCA) Party for a given day:

C_{PARTY} = Daily charge for the return of such PNCA party's IE in dollars.

IER_{PARTY} = The quantity of Interchange Energy returned to a PNCA party on a day in megawatt hours.

R_{PARTY} = The applicable IE return rate for the PNCA party for the given day as calculated in Formula 3 below in dollars per megawatt hour.

Formula 3

$R_{PARTY} = \Sigma C_{PARTY} \div \Sigma IER_{PARTY}$

Where for each (PNCA) PARTY for a given day:

R_{PARTY} = the IE return rate calculated for the PNCA party as of the given day in dollars per megawatt hours.

PNCA party and all payments received by BPA from such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in dollars.

ΣIER_{PARTY} = the net of all IE BPA has received from such PNCA party and the IE returned by BPA to such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in megawatt hours.

Issued in Portland, Oregon, on January 14, 2002.

Steven G. Hickok,

Chief Operating Officer.

[FR Doc. 02–1468 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at *Grace.Sutherland@eia.doe.gov.*

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–746R, ''Import and Export of Natural Gas.''
2. Office of Fossil Energy.
3. OMB Number 1901–0294.
4. Three-year extension.
5. Mandatory.
6. Form FE–746R collects data to be used by the Office of Fossil Energy from persons seeking authorization to import or export natural gas, and the information collected quarterly to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA.
7. Business or other for-profit.
8. 4,240 per year (300 respondents × 4.6 responses per year × 3.10 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, December 19, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1471 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–2–000]

ARCO, a Subsidiary of BP America, Inc., Complainant, v. Calnev Pipe Line, L.L.C., Respondent; Notice of Complaint

January 15, 2002.

Take notice that on January 14, 2002, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343, *et seq*.), Tosco Corporation (Tosco) filed a Complaint and Motion for Consolidation in the above captioned proceeding. Tosco alleges that Calnev Pipe Line, L.L.C. (Calnev) has violated the Interstate Commerce Act, 49 U.S.C. App. 1, *et seq*., by charging unjust and unreasonable rates for Calnev's jurisdictional interstate services associated with its lines originating at Colton in San Bernardino County, California, to stations at two interstate destinations in Clark County, Nevada, one at McCarran Field and the other at North Las Vegas as more fully set forth in the Complaint. To the extent that any of Calnev's rates may be deemed just and reasonable under § 1803 of the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992), Tosco alleges that there has been a substantial change in the economic circumstances on which the rates are based.

Tosco requests that the Commission: (1) Examine the challenged rates and charges collected by Calnev for its jurisdictional interstate services; (2) order reparations to Tosco, including appropriate interest thereon, for the applicable reparation periods to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for Calnev's jurisdictional interstate service; (4) award Tosco reasonable attorneys' fees and costs; and (5) order such other relief as may be appropriate.

Tosco states that it has served the Complaint on Calnev pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(c).

Any person desiring to be heard or to protest this 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 must be filed on or before February 4, 2002. 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. Answers to the complaint shall also be due on or before February 4, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1466 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–48–000]

California Power Exchange Corporation; Notice of Petition for Declaratory Order

January 15, 2002.

Take notice that on January 15, 2002, the California Power Exchange Corporation (PX) filed a Petition for Declaratory Order. The Petition requests that the Commission issue a declaratory order stating that it is in the public interest for the successor of the PX to remain an independent entity not controlled by any segment of electric industry participants.

The PX requests that the Commission issue the declaratory order no later than January 31, 2002 for the purpose of providing guidance to the Bankruptcy Court, which is holding a hearing on February 1, 2002 to consider a Disclosure Statement and Reorganization Plan that would permit ''seller-side'' participants of the PX to acquire substantial control of the successor to the PX. Accordingly, the PX requests a shortened response time, sufficient to permit the Commission to issue its declaratory order by January 31, 2002.

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 the comment date. 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: January 23, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1464 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–432–001]

Northern Natural Gas Company; Notice of Compliance Filing

January 15, 2002.

Take notice that on January 3, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, the following tariff sheets proposed to be effective on December 19, 2001:

Fifth Revised Volume No. 1

Seventh Revised Sheet No. 3

Original Volume No. 2

69 Revised Sheet No. 1
First Revised Sheet No. 616

Northern states that the above sheets represent cancellation of Rate Schedule X–45 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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 be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1460 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–000]

Texas Eastern Transmission, LP; Notice of Site Review

January 15, 2002.

On January 24, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Freehold Project. The Freehold Project facilities are proposed for construction by Texas Eastern Transmission, LP (Texas Eastern). The proposed construction sites, located in Somerset and Hunterdon Counties, New Jersey, will be reviewed by automobile on January 24, 2002. Representatives of Texas Eastern will accompany the OEP staff.

Anyone interested in attending the site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1462 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–732–000]

Western Systems Coordinating Council; Western Regional Transmission Association; Southwest Regional Transmission Association; Notice of Filing

January 15, 2002.

Take notice that on December 19, 2001, the Western Systems Coordinating Council, Western Regional Transmission Association, and the Southwest Regional Transmission Association (collectively Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the May 3, 2001 Petition for Declaratory Order and alternative Request To Transfer

Programs to the Western Electricity Coordinating Council (WECC).

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 the comment date. 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 Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 25, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1465 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 372–008 California]

Southern California Edison; Notice of Availability of Draft Environmental Assessment

January 15, 2002.

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 has reviewed the application for license for the Lower Tule Hydroelectric Project, located on the Middle Fork of the Tule River in Tulare County, California, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is partially located within the Sequoia National Forest and the Giant Sequoia National Monument.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed by February 14, 2002, and should be addressed to Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 372–008 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

For further information, contact Nan Allen at (202) 219–2938.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1467 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–9–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line 280 Replacement Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 280 Replacement Project involving construction, operation, and abandonment of facilities by Dominion Transmission, Inc. (DTI) in Pennsylvania.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice DTI provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

DTI proposes to abandon in place approximately 71 miles of its existing LN–280 pipeline and 5 miles of its existing LN–4 pipeline in Cameron, Clinton, Elk, Potter, and Tioga Counties, Pennslyvania. In order to replace the capacity lost by the pipeline abandonment, DTI also proposes to install two additional compressor units, each rated for 1,775 horsepower, at its existing Ardell Compressor Station in Elk County, Pennsylvania.

Abandonment of LN–280 and LN–4 would require no additional land, since the pipelines would be left in place. DTI would retain ownership of the existing right-of-way. Construction of the proposed facilities at the existing Ardell Compressor Station would require about 11.5 acres of land. Of this 11.5 acres, approximately 1.9 acres would be required for the station expansion and for new right-of-way. The remaining 9.6 acres would occur on the existing station or existing right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis

[1] DTI's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- air quality and noise;
- endangered and threatened species;
- cultural resources;
- vegetation and wildlife;
- public safety.

We will not discuss impacts to water resources, fisheries, and wetlands since they are not present in the project area, or would not be affected by the proposed facilities. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket No. CP02–9–000.
- Mail your comments so that they will be received in Washington, DC on or before February 14, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.'' Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services, in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1461 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically. The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–44–000, Docket No. CP02–46–000, and Docket No. CP02–53–000]

Dominion Transmission, Inc., Tennessee Gas Pipeline Company, National Fuel Gas Supply Corporation Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Leidy Extension Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Leidy Extension Project in Potter County, Pennsylvania involving

construction and operation of natural gas pipeline facilities. Dominion Transmission, Inc. (Dominion), proposes to add compression under Docket No. CP02–44–000. Tennessee Gas Pipeline Company (Tennessee) proposes to build the Ellisburg Compressor Station under Docket No. CP02–46–000. National Fuel Gas Supply Corporation (National) and Dominion propose to add compression and uprate their jointly-owned Ellisburg-Leidy Line under Docket No. CP02–53–000.[1] This EA will be used by the Commission in its decision-making process to determine whether the projects[2] are in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet can be viewed on the FERC Internet web site (*www.ferc.fed.us*).

Summary of the Proposed Project

Dominion, under Docket No. CP02–44–000, proposes to build a 4,735-horsepower (hp) relay compressor, along with an associated building and access driveway, inside the fenced-in area of its existing Little Greenlick Relay Station. The Little Greenlick Relay Station is immediately adjacent to the Greenlick Compressor Station containing four existing compressors.

Tennessee, under Docket No. CP02–46–000, proposes to build a new Ellisburg Compressor Station and associated meter station. This compressor station would be built on newly acquired property immediately adjacent to the Dominion's existing Ellisburg Storage Field Compressor Station. The Ellisburg Compressor Station would include two gas-driven 2,365-hp compressors and an associated compressor building, gas cooler, and an auxiliary building. Tennessee would construct the meter station in a previously-disturbed fenced-in area within Dominion's Ellisburg Storage Field Compressor Station.

National, under Docket No. CP02–53–000, proposes to build an 8,070-hp compressor and an associated building in a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. National and Dominion would jointly own this compressor. National would also uprate the maximum allowable operating pressure (MAOP) of their jointly-owned 41-mile-long, 24-inch-diameter Ellisburg-Leidy Line by replacing two block valves and installing one new block valve at milepost (MP) 1.3. The two block valves to be modified are at MP 0.0 inside National's Ellisburg Compressor Station and at MP 34.2 at Kettle Creek. Dominion would make aboveground modifications to the Leidy M&R Station (owned jointly with National) at the southern end of the Ellisburg-Leidy Line separately under sections 2.55(a) and 157.211 of the Commission's regulations.

The locations of the facilities for the Leidy Extension Project are shown in appendix 1.[3]

Land Requirements for Construction

Construction of the 4,735-hp relay compressor in the Little Greenlick Relay Station would require 5.24 acres of previously-disturbed land within the station. Construction of two gas-driven 2,365-hp compressors for the proposed Ellisburg Compressor Station would require 5.16 acres of which 2.27 acres would be restored and allowed to revert to its former use following construction. A small area of previously-disturbed ground within Dominion's adjacent Ellisburg Storage Field Compressor Station would be required for construction of a new meter station. In addition, 0.5 acre would be used for access roads along the Ellisburg Storage Field Compressor Station.

Construction of the 8,070-hp compressor and an associated building would require use of a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. Uprating the MAOP of the 41-mile-long Ellisburg-Leidy Pipeline would require temporary use of 0.11 acre of existing mowed right-of-way at MP 1.33 of the Ellisburg-Leidy Pipeline for installation of a new block valve. No ground disturbance would be required for the modification of the two block valves at MPs 0.0 and 34.2.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air and noise quality
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state,

[1] Tennessee's, National's, and Dominion's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] These three component projects of the overall Leidy Extension Project would together comprise the facility expansions and upgrades in Potter County necessary for the shipment of an additional 150,000 dekatherms per day (Dt/d) of natural gas to the Leidy Meter and Regulating Station in Clinton County, Pennsylvania.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee, National and Dominion. This preliminary list of issues may be changed based on your comments and our analysis.

- Impacts to Rose Lake Run from (1) the clearing of 5.16 acres of vegetation and from disturbance of a hazardous waste remediation site adjacent to Tennessee's proposed Ellisburg Compressor Station, and (2) construction activities at National's Ellisburg Compressor Station within which Rose Lake Run crosses.
- Noise increases for noise sensitive areas near Tennessee's proposed Ellisburg Compressor Station.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas 2.
- Reference Docket Nos. CP02–44–000, CP02–46–000, and CP02–53–000.
- Mail your comments so that they will be received in Washington, DC on or before February 15, 2002.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC web site (*www.ferc.fed.us*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1463 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 11, 2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002 (30 Minutes Following Regular Commission Meeting).

CHANGE IN THE MEETING: The Closed Meeting scheduled for January 16, 2002, has been cancelled.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1564 Filed 1–16–02; 4:20 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 01/11/2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Companies have been added as Item M–1, to the Commission Agenda of January 16, 2002:

Item No.	Docket No. and Company
M–1	RM02–4–000, Rule Regarding Critical Energy Infrastructure Information. PL02–1–000, Policy Statement on the Treatment of Previously Public Documents.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1576 Filed 1–16–02; 4:55 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–2]

Agency Information Collection Activities: Continuing Collection; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): RCRA Expanded Public Participation, EPA ICR Number 1688.04, OMB Control Number 2050–0149 (expiration date May 31, 2002). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–2001–R3IP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G) United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.gov.* Comments in eletronic format should also be identified by the Docket Number F–2001–R3IP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in this section). Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cove to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5305W, Washington, DC, 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the ICR renewal are also available.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Toshia King, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (703) 308–7033, *King.Toshia@epamail.epa.gov.*

The docket index and some supporting documents in the docket for this ICR are available in electronic format on the Internet at *http://www.epa.gov/epaoswer/hazwaste/permit/pub~icr.htm*>.

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards, under Section 3004 of RCRA, that are necessary to protect human health and the environment.

Title: RCRA Expanded Public Participation, EPA ICR Number 1688.04. OMB control Number 2050–0149, expiration date: 05/31/2002.

Abstract: Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process at 40 CFR part 124, 124.31 through 124.33 and 40 CFR part 270, 270.62 and 270.66. The part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the part 270 requirements apply only to hazardous waste combustors planning trial burns.

The public participation regulations at parts 124 and 270 were promulgated by EPA under the authority of subtitle C in RCRA to provide earlier and better public participation in the hazardous waste facility permitting process. In summary the regulations require a permit applicant to provide notice of and hold an informal meeting with the public before submitting a part B application, and to submit a summary of the meeting to the agency (§ 124.31). This meeting is the earliest formal step in the RCRA permitting process. The agency is required to issue a public notice when it receives an application (§ 124.32). The notice informs the recipient that the facility has submitted a permit application for agency review. Certain facilities (as decided by the agency director on a case-by-case basis) are required to set up and maintain an information repository (§ 124.33). Lastly, the agency is required to issue a public notice of an upcoming trial burn at a permitted hazardous waste combustion facility (§§ 270.62(b)((6) and 270.66(d)(3)), or at a hazardous waste combustion facility operating under interim status (§§ 270.62(d) and 270.66(g)).

This information collection targets the reporting frequency and requirements of the permit and assures public involvement regulations are met by owners or operators. The reporting frequency is essential to assure that any changes in the trial burn plans or in the anticipated permit application contents are made known to EPA and to the public. The requirements in this rule are also consistent with EPA's current policies on public participation. In December of 2000, EPA requested public comment on its Draft 2000 Public Involvement Policy (65 FR 82335; December 28, 2000). The draft policy updates an earlier policy issued in 1981.

Among other things, the draft policy calls for a strengthened commitment to meaningful public involvement, greater attention to the specific concerns and interest of affected people and entities, and use of a wider variety of public involvement techniques. In this regard, the RCRA Expanded Public Participation Rule can serve as an example to other EPA programs of how to achieve many of the goals of the policy. 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: EPA estimated respondent burden hours for the information collection requirements associated with the pre-application meeting and the information repository requirements. The estimated number of likely respondents subject to pubic participation activities required under this collection of information is 33. The total annual burden to respondents, as estimated for all public participation reporting and recordkeeping activities under this collection of information is 3,005 hours. The total estimated average annual burden cost to respondents required to perform public participation activities under this information collection request is $162,834 ($159,425 in labor cost, $546 in total capital cost, and $2,863 in O&M cost). The estimates for O&M cost include preparation of multilingual notices and the purchase of a file cabinet to retain copies and other required documentation. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 15, 2002.

Matthew Hale,

Deputy Director, Office of Solid Waste.

[FR Doc. 02–1498 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–8]

Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines for awarding Clean Water Act section 319 nonpoint source grants to Indian tribes in FY 2002. As was the case in FY 2002 and 2001, Congress has authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the Clean Water Act) of ⅓% of the total 319 appropriation. The guidelines are intended to assist all tribes that have approved nonpoint source assessments and management programs and also have ''treatment-as-a-state'' status to receive Section 319 funding to help implement those programs. The guidelines describe the process for awarding base funding in FY 2002, including submissions of proposed work plans. The guidelines also describe the competitive process and schedule to select watershed projects for FY 2002 funding, including submissions of watershed project summaries and the selection criteria for funding watershed projects.

DATES: The guidelines are effective January 22, 2002.

ADDRESSES: Persons requesting additional information or a complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov;* or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information or complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov;* or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage at *http://www.epa.gov/owow/nps.*

SUPPLEMENTARY INFORMATION: The full text of the *Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002* is published below.

Dated: December 27, 2001.

Suzanne E. Schwartz,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

Memorandum

Subject: Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002.

From: Suzanne E. Schwartz (for) Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds.

To: EPA Regional Water Division Directors, Regional Tribal Coordinators/ Program Managers, Tribal Caucus, EPA Tribal Operations Committee.

I am very pleased to report that Congress has, for the third year in a row, authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act (''CWA'') in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓% of the total 319 appropriation. This will enable all of the tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-State'' (''TAS'') status (hereinafter referred to as ''approved tribes'') by January 30, 2002, to be eligible to receive Section 319 funding to help implement those programs.

The repeated allowance of increased funding for tribal nonpoint source (''NPS'') programs in FY 2002 reflects Congress' continuing recognition that Indian tribes need and deserve increased financial support to implement nonpoint source programs that address critical water quality concerns on tribal lands. EPA shares this view and will continue to work closely with the tribes to assist them in developing and implementing effective

tribal nonpoint source pollution programs. To date, EPA has already approved 66 tribal nonpoint source management programs, covering more than 35 million acres of land (representing more than 71% of all Indian country), and we expect to approve additional programs in FY 2002.

As was the case last year, the new authorization to exceed ⅓% applies only to the current year (FY 2002). As in the past, EPA will work with the tribes to continue to demonstrate that increased 319 funds for tribes can be used effectively to achieve water quality improvement. We were pleased by the high quality of the tribes' work plans that formed the basis of the grants awarded to tribes in FY 2001, which included both base grants for all approved tribes as well as grants for specific watershed projects awarded to forty-five of these tribes through a competitive process. We believe that the tribes and EPA succeeded in directing the FY 2001 grants towards high-priority activities that will produce on-the-ground results that provide improved water quality. We believe that this success warrants continued substantial investment of 319 grant dollars in FY 2002 to address the extensive NPS control needs throughout Indian country, as discussed below. In recognition of this fact, we are once again authorizing a total of $6,000,000 to tribes for FY 2002.

Summary of Process for FY 2002 Grants to Tribes

In FY 2002, we will set aside $6,000,000 for tribal nonpoint source grants. This amount is based on three factors:

1. We will continue to support all eligible tribes with base grants.

2. We will award base funding to eligible tribes as follows:

a. $30,000 in base funding will be awarded to eligible tribes whose land area is less than 1,000 square miles (640,000 acres).

b. $50,000 in base funding will be awarded to eligible tribes whose land area is greater than 1,000 square miles (640,000 acres).

3. We will award the remaining funds to eligible tribes through a competitive process to support the implementation of priority watershed projects.

Detailed Discussion of Process for FY 2002 Grants to Tribes

1. Base Funding

Each tribe that has an approved nonpoint source assessment and management program (and TAS status) as of January 30, 2002, will receive base funding based on the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	50,000

EPA considered whether other factors such as population and water resources should be used, in addition to or instead of land area, to distinguish tribes with the greatest needs from other tribes. EPA recognizes that each of these factors is relevant and in some circumstances significant. EPA ultimately chose land area as the deciding factor for a cutoff because nonpoint source pollution is strongly related to land use; thus land area is a reasonable criterion that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).

The base funding as outlined above may be used for a range of activities that implement the tribe's approved NPS management program, including hiring a program coordinator; conducting nonpoint source education programs; providing training; and implementing, alone or in conjunction with other agencies or other funding sources, on-the-ground watershed projects. In general, this base funding should not be used for assessment activities.

Each tribe that requests base funding must submit to the appropriate EPA Regional office a proposed work plan that conforms to applicable legal requirements (see 40 CFR 35.505 and 35.507) and is consistent with the tribe's approved nonpoint source management program. This proposed work plan should clearly describe each significant category of activity to be funded; the roles of any federal, local, or other partners in completing each activity; the schedule and budget for implementing funded activities; and the outputs to be produced by performance of the activity. Outputs of activities should be quantified; results of projects should be measurable and indicators to do so clearly stated. Tribes should submit their proposed work plans to their appropriate Regional office by March 4, 2002. If a tribe does not submit an approvable proposed work plan by that date, its allocated amount will be added to the competitive pool, discussed immediately below, which will be used to fund tribal NPS program and watershed project priorities.

Regions should work with the tribes to expeditiously award the base grants. However, if the tribe will be awarded additional funds to implement a watershed project, as discussed below, the tribe or the Region may prefer combining the formal process for submission of the final application for both the base and competitive funds. Regions should confer with their tribes and endeavor to proceed in a manner and on a schedule that is most compatible with the tribes' and Regions' needs and preferences.

2. Competitive Funding: Process and Schedule to Select Watershed Projects for FY 2002 Funding

The remaining funds will be awarded to tribes that have approved nonpoint source management programs as of January 30, 2002, on a competitive basis to provide funding for on-the-ground nonpoint source watershed projects that are designed to achieve additional water quality improvement. Each selected project will be eligible to receive up to $150,000, depending on the demonstrated need. The funds will be awarded using the process described below.

a. Watershed Project Review Committee

As we did for the FY 2001 grants, EPA will establish a Watershed Project Review Committee comprised of nine EPA staff, including three EPA Regional Nonpoint Source Coordinators, three EPA Regional Tribal Coordinators, two staff members of the Nonpoint Source Control Branch, and one staff member of the American Indian Environmental Office. The committee will then make funding decisions in accordance with the process described below.

b. Watershed Project Summaries

Tribes that have approved nonpoint source assessments and management programs as well as TAS status as of January 30, 2002, are invited to apply for watershed project funding by submitting watershed project summaries for proposed projects up to a maximum budget of $150,000. (This funding is in addition to the base funding that each approved tribe will receive, as described above.) Tribes that apply for funding for watershed projects should submit a brief (*e.g.,* 3–5 pages) summary of a watershed project implementation plan by March 4, 2002, to the appropriate EPA Regional office for initial screening. (Complete grant applications should not be submitted until after projects are selected, pursuant to review by the Watershed Project Review Committee, as described below.) The Regional office will, by March 18, 2002, forward the

proposals that meet the required criteria to EPA Headquarters for distribution to the Watershed Project Review Committee. (E-mail versions would be appreciated where possible because they can be shared among the reviewers most rapidly and easily.)

The watershed project summary should outline the nonpoint source pollution problem and the on-the-ground improvement to be addressed; the project's goals and objectives and the expected water quality benefit to the receiving waterbody; the lead implementing agency (either the tribe or another organization authorized by the tribe to be the project leader) and other agencies that will be authorized to expend project funds; the types of best management practices or measures that will be implemented; the projected implementation schedule; the project's budget items including construction costs; and the environmental performance measures that will be used to evaluate the success of the project. Each watershed plan summary should be clearly written with enough detail to show why the proposed project should be selected for competitive funding. This is critical to help ensure that the best projects are funded.

c. Selection Criteria for Funding Watershed Projects

In ranking the projects, each reviewer on EPA's Watershed Project Review Committee will consider the extent to which the following factors are present in each project.

1. The watershed plan summary includes a clear and specific identification of the on-the-ground improvement project and the water quality problem to be addressed, including the pollutants of concern and their sources (including critical areas to be treated, if known), and clearly describes the project to be constructed or installed.

2. Where relevant, the watershed project consists of implementation actions or load calculations that are intended to help restore an impaired waterbody for which an approved nonpoint source total maximum daily load (NPS TMDL) has been developed or the NPS components of mixed-source TMDL's. [**Note:** EPA recognizes that most tribes have not yet developed NPS TMDLs. However, Section 319 funding may be used to develop and implement approved NPS TMDLs for any 303(d) listed waterbody. Where a tribe has developed a relevant water quality standard and NPS TMDL and seeks Section 319 funding to assist in the implementation of the NPS TMDL, that should be considered by reviewers to be a relevant factor supporting the funding request.]

3. The proposed project is listed as a priority implementation project in the tribal NPS management program.

4. The proposed project is designed to include cooperation and/or combination of resources with other agencies and other parties to provide additional technical and/or financial assistance to the project.

5. The watershed plan summary includes a clear and objective statement of the project's goals and objectives, in terms of controlling nonpoint sources and/or of improving/protecting water quality.

6. The summary identifies the best management practices or measures to be implemented and the location where these measures and practices will be implemented.

7. The summary outlines the construction cost of the project and the amount of Section 319 grant dollars that are requested, not to exceed $150,000. Please note that a 40% non-federal match is also required. However, pursuant to section 35.635(b), EPA's Regional Administrator may increase the maximum Federal share if the tribe or intertribal consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case, will the Federal share be greater than 90 percent.

8. The summary includes an implementation schedule.

9. The summary includes a statement of how the project will be evaluated to determine its success and to derive lessons that will assist the tribe (and other tribes) in future projects.

d. Award of Grants for Tribal Watershed Projects

(i) *Award Decisions.*—The Watershed Project Review Committee will hold a conference call by April 8, 2002, to ensure that all Committee members fully understand and agree on how to objectively apply the criteria discussed above. Rankings will be developed by considering all of the factors as a whole, in accordance with a weighting system to be decided upon by the Committee.

By April 19, 2002, the Committee will compile the ranking of proposed watershed projects based on the selection criteria and then forward their rankings to the Nonpoint Source Control Branch at EPA Headquarters. Headquarters will tally the Committee's rankings and then hold a conference call to provide a final opportunity for members of the Review Committee to discuss the rankings among themselves. By April 29, 2002, EPA will select the highest ranked proposals and announce to the Regions which tribes' watershed projects have been selected for funding. These tribes will be notified immediately by phone or e-mail, with a written letter to follow.

(ii) *Final Work Plans/Full Grant Applications.*—Once a Region and tribe have been notified of the amount that will be awarded to the tribe, they will negotiate a final work plan consistent with 40 CFR 35.507. After making appropriate changes, the tribe must submit a final work plan to the Region by June 10, 2002. If a tribe fails to or is unable to submit an approvable work plan by June 10, 2002, the 319(h) grant will instead be awarded to the next highest ranking unfunded application. Regions should endeavor to finalize the grant awards no later than 60 days after receipt of a complete grant application with an approvable work plan.

(iii) *Match Requirements.*—The match requirement for Section 319 grants is 40 percent of the approved work plan costs, which include both the base funding and competitive funding components discussed above. In general, consistent with 40 CFR 31.24, the match requirement may be satisfied by allowable costs borne by non-federal grants, by cash donations from non-federal third parties, or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10% if the tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. (*See* 40 CFR 35.635.)

In making grant awards to tribes that provide for a reduced match requirement, Regions should include a brief finding that the tribe has demonstrated that it does not have adequate funds to meet the required match.

Intertribal Consortia

Some tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program. (*See* 40 CFR 35.502.) The intertribal consortium is eligible only if the

consortium demonstrates that all its members meet the eligibility requirements for the Section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (*See* 40 CFR 35.504.)

Technical Assistance to Tribes

In addition to providing nonpoint source funding to tribes, EPA remains committed to providing continued technical assistance to tribes in their efforts to control nonpoint source pollution. During the past several years, EPA has presented many workshops to tribes throughout the United States to assist them in developing: (1) Nonpoint source assessments to further their understanding of nonpoint source pollution and its impact on water quality; (2) nonpoint source management programs to apply solutions to address their nonpoint source problems; and (3) specific projects to effect on-the-ground solutions. The workshops also have provided information on related EPA and other programs that can help tribes address nonpoint source pollution, including the provision of technical and funding assistance. EPA intends to continue providing nonpoint source workshops to interested tribes around the United States in FY 2002 and to provide other appropriate technical assistance as needed.

Non-Tribal Lands

The following discussion explains the extent to which Section 319(h) grants may be awarded to tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation, and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian tribe as a State for purposes of section 319 of the CWA if, among other things, ''the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation.'' 33 U.S.C. 1377(e)(2). EPA already awards grants to tribes under section 106 of the CWA for activities performed outside of a reservation that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of state borders. EPA has concluded that grants awarded to an Indian tribe pursuant to section 319(h) may similarly be used to perform eligible section 319(h) activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within the reservation, and (2) just as for on-reservation activities, the tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319(h) grants to tribes to perform eligible section 319(h) activities if the activities pertain to the management and protection of waters within a reservation and the tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319(h) grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including ''usual and accustomed'' hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

Milestones Summary

Date Tribes to be Eligible for 319 Grants: January 30, 2002
Tribes Submit Base Grant Work Plans to Region: March 4, 2002
Tribes Submit Competitive Grant Proposals to Region: March 4, 2002
Region Forwards Proposals to Headquarters: March 18, 2002
Review Committee Discusses Proposals: April 8, 2002
Review Committee Forwards Ranking Scores to HQ: April 19, 2002
Headquarters Notifies Regions/Tribes of Selections: April 29, 2002
Tribes Submit Final Grant Application to Region: June 10, 2002

Statutory and Regulatory Requirements

All section 319(h) grants will be awarded and administered consistent with the statutory requirements in section 319(h) and 518(e) of the Clean Water Act and applicable regulations in 40 CFR parts 31 and 35.

Conclusion

By once again lifting the 1/3% statutory cap in FY 2002, Congress has continued to provide the tribes and EPA with an excellent opportunity to further tribal efforts to reduce nonpoint pollution and enhance water quality on tribal lands. EPA looks forward to working closely with the tribes to assist them in implementing effective nonpoint source programs in FY 2002 and creating a sound basis to assure that adequate funds will continue to be provided in the future.

If you have any questions, please do not hesitate to call me or have your staff contact Ed Drabkowski at (202) 260–7009 (or e-mail at *drabkowski.ed@epa.gov*).

cc: Director, American Indian Environmental Office, EPA; Jeff Besougloff, AIEO; Jerry Pardilla, National Tribal Environmental Council; Billy Frank, Northwest Indian Fisheries Council; Don Sampson, Columbia River Intertribal Fish Commission; James Schlender, Great Lakes Indian Fish and Wildlife Commission; All Tribes that have an approved Nonpoint Source Management Program; Regional Water Quality Branch Chiefs; Regional Nonpoint Source Coordinators

[FR Doc. 02–1499 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 February 5, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Wiley Thornton Gibson and Rebecca D. Gibson, both of Union Springs, Alabama; to retain voting shares of USAL Bancorp, Inc., Union

Springs, Alabama, and thereby indirectly retain voting shares of AmeriFirst Bank, Union Springs, Alabama.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1421 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 February 5, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

Richard S. Nelson, Powell, Wyoming; to acquire voting shares of First Company, Powell, Wyoming, and thereby indirectly acquire voting shares of First National Bank & Trust Company, Powell, Wyoming.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1534 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–02–S

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 February 15, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Folkston Investors, LLC, Folkston, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Corporation, Folkston, Georgia, and thereby indirectly acquire First National Bank of Folkston, Folkston, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 40 percent of the voting shares of Bank of Nevada, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1420 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

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 February 15, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Reliance Bancshares, Inc., Florence, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Reliance Bank, Florence, South Carolina.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Outsource Holdings, Inc., Lubbock, Texas and Outsource Delaware Holdings, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First Citizens Bank, NA, Dallas, Texas.

In connection with this proposal, Outsource Holdings, Inc., Lubbock, Texas has applied to acquire Jefferson Mortgage Services, Inc., Dallas, Texas, and Orr Lease, Inc., Dallas, Texas, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y, and leasing

personal or real property, pursuant to 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1535 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

January 17, 2002.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, January 23, 2002.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulation C (Home Mortgage Disclosure) based on a review of the regulation. (Proposed earlier for public comment; Docket No. R–1001).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR MORE INFORMATION PLEASE CONTACT: Office of Public Affairs at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1629 Filed 1–17–02; 2:24 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/13/2001			
20020040	Groupe Danone	Stonyfield Farm, Inc.	Stonyfield Farm, Inc.
20020085	Applied Materials, Inc	Schlumberger Limited	Schlumberger Technologies, Inc.
20020088	Dan L. Duncan	Ultramar Diamond Shamrock Corporation.	Diamond–Koch III, L.P. Diamond–Koch L.P.
20020089	Dan L. Duncan	Koch Industries, Inc.	Diamong–Koch III, L.P. Diamond–Koch, L.P.
Transactions Granted Early Termination—11/14/2001			
20020038	GlobeSpan, Inc	Virata Corporation	Virata Corporation.
20020047	Kenneth Rainin	Mettler–Toledo International Inc	Mettler–Toledo international Inc.
20020048	Mettler–Toledo International Inc	Kenneth Rainin	Rainin Instrument, LLC.
Transactions Granted Early Termination—11/15/2001			
20020053	ARAMARK Corporation	The ServiceMaster Company	CMI Group, Inc. Halliwell Engineering Services, L.L.C. Quantum Resource Corporation. ServiceMaster Direct Marketing Corporation. ServiceMaster Management Services Limited Partnership. ServiceMaster Management Services, Inc. ServiceMaster Management Services of Canada, Inc.
Transactions Granted Early Termination—11/19/2001			
20020063	Anglo American	Normandy Mining Limited	Normandy Mining Limited.
20020070	AT&T Wireless Services, Inc	Telecorp PCS, Inc	Telecorp PCS, Inc.
20020071	Bally Total Fitness Holding Corporation.	Douglas H. Levine	Crunch Fitness International, Inc.
20020074	Greenwich Street Capital Partners II, L.P.	Regal Cinemas, Inc	Regal Cinemas, Inc.
20020082	Ballard Power Systems Inc	Ford Motor Company	Ford Electric Drive Holdings Company.

Transaction No.	Acquiring person	Acquired person	Acquired entities
20020083	Enbridge Energy Partners, L.P	Koch Industries, Inc	Koch Midstream Gasmark Company, LP. Koch Midstream Processing Company, L.P. Koch Midstream Services Company, LLC.
20020087	Weatherford International, Inc	Vivendi Universal, S.A	Johnson Screens, Inc.
20020092	American Electric Power Company, Inc.	Enron Corp	Indian Mesa Power Partners I LP. Indian Mesa Power Partners II LP.
20020096	Rothmans Inc	Santa Fe Natural Tobacco Company, Inc.	Santa Fe Natural Tobacco Company, Inc.
20020098	Brunswick Corporation	Genmar Holdings, Inc	Hatteras Yachts, Inc.
20020104	General Electric Company	Madison Dearborn Capital Partners IV. L.P.	Telemundo Communications Group, Inc.
20020105	The Williams Companies, Inc	Duke Energy Corporation	Duke Energy Field Services, LP.
20020106	Duke Energy Company	The Williams Companies, Inc	NEWCO LLC.
20020113	Taylor Nelson Sofres, plc	Thomas S. Perakos	RapidChek Reporting Inc. Theatrical Entertainment Services, Inc.
20020118	Inversion Corporativa I.C., S.A	High Plains Corporation	High Plains Corporation.
20020121	Amerada Hess Corporation	The Marital Trust under agreement dated January 17, 1991.	Jomarco, Inc.
20020127	Cinven Luxembourg I S.a.r.l	WCM Beteiligungs-und Grundbesitz-Aktiengesellschaft.	Klockner Capital Corporation, Klockner Pentaplast GmbH.
Transactions Granted Early Termination—11/20/2001			
20020122	Cadence Design Systems, Inc	Silicon Perspective Corp	Silicon Perspective Corp.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1475 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **FEDERAL REGISTER**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/26/2001			
20020109	Mr. Peter R. Kellogg	Navistar International Corporation	Harco National Insurance Company
20020117	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	Salinas Cellular Telephone Company
20020120	Baylor Health Care System	All Saints Health System	All Saints Health System
20020123	BB&T Corporation	Cooney, Rikard & Curtin, Inc	Cooney, Rikard & Curtin, Inc.
20020124	Kerr-McGee Corporation	Devon Holdco	Devon Holdco
20020129	Security Capital Group Incorporated.	Equity Office Properties Trust	ECH–517 Marquette, L.L.C. ECH-Adams/Wabash Parking Garage, L.L.C. ECH-North Loop/Theater District Parking Limited Partnership ECH-St. Louis Parking Garages, L.L.C.
20020140	Observer AB	PRIMEDIA Inc	Bacon's Information, Inc.
20020146	Berkshire Hathaway Inc	Fruit of the Loom, Ltd	Fruit of the Loom, Ltd. FTL Caribe, Ltd. Union Underwear Company, Inc.
Transactions Granted Early Termination—11/27/2001			
20020132	JP Morgan Chase & Co	Emerson Electric Co	Electronic Control Systems, Inc., Ogden Manufacturing Co. Emerson Electric (U.K.) Limited, VUMA A.S. Emerson Electric Canada Limited Emerson Electric Co. Etirex S.A., ELW Industrial, S. de R.L. de C.V.

Transaction No.	Acquiring person	Acquired person	Acquired entities
20020136	ILEX Oncology, Inc	Millennium Pharmaceuticals, Inc ...	Millennium & ILEX Partners, L.P. Millennium & ILEX, L.L.C.
Transactions Granted Early Termination—11/28/2001			
20020153	Fiserv, Inc	William E. Sagan	Trewit, Inc.
Transactions Granted Early Termination—11/29/2001			
20020084	Wellspring Capital Partners II, L.P	American Coin Merchandising, Inc	American Coin Merchandising, Inc.
20020097	Lockheed Martin Corporation	Cecile Barker	OAO Corporation
20020138	QUALCOMM Incorporated	VeloCom Inc	VeloCom Inc.
20020143	School Specialty, Inc	Franklin Covey Co	Premier Agendas, Inc.
20020147	Verizon Communications Inc	Everett R. Dobson Irrevocable Family Trust.	ACC Tennessee License LLC Dobson Cellular Systems, Inc., ACC of Tennessee LLC
20020148	Verizon Communications Inc	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc.
20020149	Weyerhaeuser Company	Willamette Industries, Inc	Willamette Industries, Inc.
20020159	MBNA Corporation	Wachovia Corporation	The First National Bank of Atlanta
20020160	Kmart Corporation	Windsong/Allegiance, LLC	Joe Boxer Company, LLC
Transactions Granted Early Termination—12/03/2001			
20020119	Alliant Techsystems Inc	Blount International, Inc	Estate Cartridge, Inc. Federal Cartridge Company Newco Simmons Outdoor Corporation
20020145	IM International media AG	Graham King	Initial Entertainment Group, Inc.
20020152	Long Beach Holdings Corp	Ameriquest Capital Corporation	Long Beach Acceptance Corp.
20020163	International Business Machines Corporation.	Cross Worlds Software, Inc	Cross Worlds Software, Inc.
20020168	Mr. Vic De Zen	Fineter S.A	Marley Mouldings LLC
20020173	Lap Shun (John) Hui	eMachines, Inc	eMachines, Inc.
Transactions Granted Early Termination—12/04/2001			
20020133	WellPoint Health Networks Inc	Missouri Foundation for Health (The).	RightCHOICE Managed Care, Inc.
20020171	Wind Point Partners IV, L.P	U.S. Industries, Inc	Ames True Temper, Inc. IXL Manufacturing, Inc.
Transactions Granted Early Termination—12/06/2001			
20020257	The 1998 Confederation Trust	Quality Stores, Inc	Quality Stores, Inc.
Transactions Granted Early Termination—12/07/2001			
2001241	Koninklijke Ahold N.V	Bruno's Supermarkets, Inc	Bruno's Supermarkets, Inc.
20020164	CRH, plc	Royal Bank of Canada	Global Clay Products, LLC
20020185	First Reserve Fund VIII, L.P	Key Energy Services, Inc	Key Energy Services, Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1476 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/10/2001			
20020130	Emerson Electric Co	MKS Instruments, Inc	MKS instruments, Inc.
20020131	MKS Instruments, Inc	Emerson Electric Co	ENI Technology, Inc.
20020137	Kerr-McGee Corporation	Kinder Morgan, Inc	Kinder Morgan Power Company.
20020141	Enbridge Inc	Williams Companies, Inc	Goebel Gathering Company, L.L.C. Transcontinental Gas Pipe Line Corporation. WFS Gathering Company, L.L.C., WFS-Liquids Company.
20020144	Kaneb Pipe Line Partners, LP	Statia Terminals Group N.V	Statia Technology, Inc., Statia Marine, Inc. Statia Terminals International N.V.
20020178	Fortress Investment Fund LLC	AMRESCO, INC. (Debtor-in-Possession).	AMRESCO Commercial Finance, Inc. AMRESCO Independence Funding, Inc.
20020181	Motorola, Inc	Vincent R. Borelli	Synchronous, Inc.
20020183	General Motors Corporation	Isuzu Motors Limited	IMAC Funding Corporation I.
20020193	Voest-Alpine AG	Polynorm N.V	Polynorm N.V.
20020198	Nextel Communications, Inc	Chadmoore Wireless Group, Inc	Chadmoore Wireless Group, Inc.
20020203	Health Management Associates, Inc.	Clarent Hospital Corporation	Lancaster Hospital Corporation. Paracelsus Fentress County Medical Center, Inc. Paracelsus Mesquite Hospital, Inc. Paracelsus Santa Rosa Medical Center, Inc.
Transactions Granted Early Termination—12/11/2001			
20020154	GS Capital Partners 2000, L.P	Global Crossing Ltd	IPC Information Systems, Inc.
20020156	GS Capital Partners 2000, L.P	NEWCO (a joint venture)	NEWCO.
20020167	LaQuinta Corporation	LaQuinta Properties, Inc	LaQuinta Properties, Inc.
20020192	CAE Inc	General Electric Company	SimuFlite Training International, Inc.
20020199	ConAgra Foods, Inc	Nestle' S.A	Nestle USA, Inc.
20020205	AutoNation, Inc	Richard B. Cogswell, Jr	Fox Valley Imports, Inc. Laurel Audi, LLC. Laurel Automotive Group of Tinley Park, LLC. Laurel Motors, Inc.
Transactions Granted Early Termination—12/13/2001			
20020170	AMETEK, Inc	PerkinElmer, Inc	PerkinElmer Instruments, Inc.
20020207	Immunex Corporation	American Home Products Corporation.	Greenwich Holdings Inc. ,
Transactions Granted Early Termination—12/14/2001			
20012216	International Game Technology	Anchor Gaming	Anchor Gaming.
20020169	Progress Energy, Inc	Powergen plc	Powergen plc.
20020194	Nortrax, Inc	Nortrax Inc	Nortrax II, Inc.
20020195	Nortrax Inc	Nortrax II, Inc	Nortrax Inc.
20020208	Ford Motor Company	Ford Motor Company	FRN of Greater Salt Lake City, LLC.
20020210	Mohawk Industries, Inc	Dal-Tile International Inc	Dal-Tile International Inc.
20020211	Atlantic Equity Partners III, L.P	Ranpak Corp	Ranpak Corp.
Transactions Granted Early Termination—12/17/2001			
20020177	AOL Time Warner Inc	WGBH Educational Foundation	WGBH Educational Foundation.
20020212	CRH plc	Nuckolls Concrete Services, Inc	Nuckolls Concrete Services, Inc.
20020215	Mellon Financial Corporation	PriceWaterhouseCoopers LLP	Unifi Network LLC.
20020219	Cal Dive International, Inc	Canyon Offshore, Inc	Canyon Offshore, Inc.
20020220	CRH plc	Cemex, S.A. de C.V	Cemex, Inc.
20020222	Tyco International Ltd	Wellspring Capital Partners II, L.P	Paragon Trade Brands, Inc.
20020232	National Equipment Services, Inc	Brambles Industries Limited	Brambles Equipment Services, Inc. Brambles Equipment Services, Inc., (Canada) ,
Transactions Granted Early Termination—12/18/2001			
20020172	B & C Privatstiftung	Bayerische Hypo - und Vereinsbank AB.	Peter Frank GmbH.
20020175	Gencorp Inc	GenCorp Inc	Aerojet Fine Chemicals LLC.
20020201	UNIPAC Service Corporation	EFS, Inc	EFS, Inc.
20020221	Digimarc Corporation	Polaroid Corporation	Polaroid Corporation ID Systems, Inc.
20020223	Limestone Electron Trust	El Paso Corporation	El Paso Golden Power, L.L.C.
20020230	The PMI Group, Inc	Fairbanks Capital Holding Corp	Fairbanks Capital Holding Corp.
20020243	National Dairy Holdings, LP	Suiza Foods Corporation	Suiza Foods Corporation.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/19/2001			
20020165	CHB Capital Partners II, LP	Law Companies Group, Inc	Law Companies Group, Inc.
20020188	OSI Pharmaceuticals, Inc	Gilead Sciences, Inc	Gilead Sciences, Inc.
20020209	President and Fellows of Harvard College.	CCC Information Services Group, Inc.	CCC Information Services Group, Inc. ,
Transactions Granted Early Termination—12/20/2001			
20012438	Smith Investment Company	Ocelot Oil Corp	State Industries, Inc.
20020217	EdperPartners Limited	Lambert Bedard	Great Northern Paper, Inc.
20020218	EdperPartners Limited	Joseph Kass	Great Northern Paper, Inc., a Delaware Corporation.
20020231	Sandvik AB	Walter AG	Walter AG.
20020239	Tyco International Ltd	FCC Equipment Financing, Inc	FCC Equipment Financing, Inc. ,
Transactions Granted Early Termination—12/21/2001			
20012475	Mr. Georg F. W. Schaeffler	FAG Kugelfischer Georg Schafer AG.	FAG Kugelfischer Georg Schafer AG
20020062	Reliant Energy, Incorporated	Orion Power Holdings, Inc	Orion Power Holdings, Inc.
20020107	Neopost S.A.	Ascom Holding AG	Ascom Hasler Mailing Systems Inc.
20020189	Newmont Mining Corporation	Normandy Mining Limited ACN 009 295 765.	Normandy Mining Limited ACN 009 295 765
20020224	The Right Start, Inc	Royal Vendex KBB N.V.	F.A.O. Schwartz. Quality Fulfillment Services, Inc.
20020235	NetBank, Inc	Resource Bancshares Mortgage Group, Inc.	Resource Bancshares Mortgage Group, Inc.
20020237	Tyco International Ltd	Code, Hennessy & Simmons, III, L.P.	CIIT Holdings, Inc.
20020238	El Paso Corporation	El Paso Corporation	Photon Investors, L.L.C.
20020240	J.P. Morgan Chase & Co	III Associates	System & Services Technologies, Inc.
20020241	Plexus Corp	MCMS, Inc	MCMS Customer Services, Inc. MCMS International, Inc.
20020244	Three Cities Fund III, L.P	ABC-NACO Inc	ABC-NACO Inc.
20020246	ABRY Partners IV. L.P	Monitronics International, Inc	Monitronics International, Inc.
20020249	CDV Trust	Marks & Spencer p.l.c	Brooks Brothers, Inc.
20020250	Stella Vermogensverwaltungs GmbH.	Honewell International Inc	Honewell Commercial Vehicle Systems Company.
20020251	JDS Uniphase Corporation	International Business Machines Corporation.	International Business Machines Corporation.
20020253	Cumulus Media Inc	Frank D. Osborn	Aurora Communications, LLC Aurora Management, Inc.
20020254	Consumer Portfolio Services, Inc ..	MFN Financial Corporation	MFN Financial Corporation.
20020255	Terex Corporation	Schaeff Holding GmbH & Co. KG	BHS Baumaschinen Handels. Fuchs-Bagger Gmbh& Co. KG. Fuchs-Bagger Verwaltungs GmbH. Karl Schaeff GmbH & Co. Nippon Schafu Kabuskiki Kaisha. Portatz Baumaschinen GmbH & Co. Potratz GmbH. Schaeff & Co. (UK). Schaeff Biegetechnik Besitz GmbH & Co. Schaeff Biegetechnik GmbH. Schaeff Ersatzteile-Service GmbH & Co. KG. Schaeff Ersatztiele. Schaeff France SARL. Schaeff Gesellschaft. Schaeff GmbH. Schaeff Grundbesitz GbR. Schaeff Holding GmbH & Co. KG. Schaeff Holding Verwaltungs-GmbH. Schaeff Komponenten Beteilligungs. Schaeff Komponenten GmbH & Co. Schaeff Limited. Schaeff Machinery (Shanghai) Co. Schaeff Service Limited.
20020259	Nationwide Mutual Insurance Company.	Provident Mutual Life Insurance Company of Philadelphia.	Provident Mutual Life Insurance Company of Philadelphia.

FOR FURTHER INFORMATION CONTACT: Contact Representatives, Federal Trade Commission, Premerger Notification Officer, Bureau of Competition, Room
Sandra M. Peay or Chandra L. Kennedy,

303, Washington, DC 20580, (202) 326–3100.

By Directions of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1477 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquried entities
Transactions Granted Early Termination—12/27/2001			
20020202	General Electric Company	CMS Energy Corporation	Michigan Electric Transmission Company LLC
20020204	AT&T Wireless Services, Inc.	Gerald T. Vento	THC of Houston, Inc. THC of Melbourne, Inc. THC of Orlando, Inc. THC of San Diego, Inc. THC of Tampa, Inc.
20020216	Furniture Brands International, Inc.	Furnishings International Inc.	Drexel Heritage Furnishings, Inc. Furnishings International Inc. Henredon Furniture Industries, Inc. Maitland-Smith Pacific, LTD Maitland-Smith, Inc.
20020242	Perot Systems Corporation	Dianne H. Patterson	Claim Services Resources Group, Inc.
20020252	Omnicare, Inc.	Mariner Post-Acute Network, Inc.	American Medical Insurance Billing Services, Inc. American Pharmaceutical Serivces, Inc. APS Pharmacy Management, Inc. Compass Pharmacy Services of Maryland, Inc. Compass Pharmacy Services of Maryland, Inc. Ocean Pharmacy, Inc. Pinnacle Pharmaceutical Services, Inc.
Transactions Granted Early Termination—12/28/2001			
20020225	Nestle S.A.	Bristol-Myers Squibb Company	Bristol-Myers Squibb Company
20020226	L. Bettencourt	Bistol-Myers Squibb Company	Bistol-Myers Squibb Company
Transactions Granted Early Termination—01/01/2002			
20020267	American Institute of Certified Public Accountants.	Rivio, Inc.	Rivio, Inc.
20020278	Cable and Wireless Inc.	Exodus Communications, Inc.	Exodus Communications, Inc.
Transactiosn Granted Early Termination—01/03/2002			
20020275	AOL Time Warner Inc.	Oxygen Media Corporation	Oxygen Media Corporation
20020276	Paul G. Allen	Oxygen Media Corporation	Oxygen Media Corporation
20020282	Berkshire Hathaway Inc.	Craig A. Ponzio	Albecca Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1478 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 25, 2002. 8:30 a.m.–4 p.m., February 26, 2002.

Place: Radisson Buckhead/Emory Area Inn, 2061 North Druid Hills Road, Atlanta, Georgia 30329

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals) and the Draft Guideline for Prevention of Healthcare-associated Pneumonia; public comments on the Draft Guideline for Hand Hygiene in Healthcare Settings; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1220 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States

The National Vaccine Advisory Committee (NVAC), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States.

Times and Dates: 8:30 a.m.—5 p.m., February 11, 2002. 8:30 a.m.—4 p.m., February 12, 2002.

Place: Omni Shoreham Hotel, 2500 Calvert Street, Washington, DC, Phone: 1–888–511–5743.

Status: Open to the public, limited only by the space available. The meeting rooms will accommodate approximately 200 people.

Purpose: The objectives of the Workshop are to define and describe the scope of the problem with vaccine supply in the United States; to identify and discuss possible contributing causes of and potential strategies to address the vaccine supply problem; and, to develop a limited number of pragmatic strategy options to address the vaccine supply issues in the United States.

Matters to be Discussed: Agenda items will include presentations and discussion including: an overview of the problems associated with vaccine supply; financial incentives for research, development, and production; review of the regulatory process; government-owned contractor-operated vaccine production facilities; vaccine stockpiles; liability protections; tailoring strategies to specific shortages; and, perspectives of constituencies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Stephen Sepe and Jeanne Santoli, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 770–488–2040 (Sepe) and 404/639–8802 (Santoli). You may also visit the NVPO web site for additional information: *www.cdc.gov/od/nvpo/calendar.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1221 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 9 a.m.—5 p.m., February 13, 2002. 8:30 a.m.—3 p.m., February 14, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (the Board) was established under the *Energy Employees Occupational Illness Compensation Program Act of 2000* to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which are being promulgated by Department of Health and Human Services (HHS), advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this

authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advises the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on progress reports, recap of Board comments on probability of causation rule, status of rule promulgation, status of rule on dose reconstruction, special exposure cohort petitioning process, and Board discussion.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1219 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 6, 2002. 8:30 a.m.–12 p.m., February 7, 2002.

Place: Corporate Square Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to Tuberculosis Laboratory, improving TB efforts in the Southeast, and other TB related topics. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1218 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 15, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the safety and efficacy of biologics license application (BLA) 103780/0 REBIF (Interferon beta-1A, Serono), proposed for the treatment of relapsing-remitting multiple sclerosis. The background material will become available the day before the meeting and it will be posted under the Peripheral and Central Nervous System Drugs Advisory Committee Docket site at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to the Peripheral and Central Nervous System Drugs meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 1, 2002. Oral presentations from the public will be scheduled from approximately 11 a.m. to 12 noon. Time allotted for each presentation may be limited. Those

desiring to make formal oral presentations should notify the contact person before February 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 10, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1409 Filed 1–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; Comment Request; Ethical Issues Associated With Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Ethical Issues Associated with Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis. *Type of Information Collection Request*: NEW. *Need and Use of Information Collection:* The purposes of the study are (1) to examine whether the current practice environment has created ethical concerns/conflict for Nurse Practitioners and Physician Assistants in the provision of patient care; (2) to explore relationships between selected individual, organizational, and state regulatory factors and ethical conflict in practice and the perceived delivery of quality care; and (3) to examine the perceived level of ethics preparedness and confidence in ethics decision-making. The findings will provide valuable information concerning: (1) The importance of ethics and ethical factors from the perspective of different professional groups; and (2) ethics educational needs of Nurse Practitioners and Physician Assistants. *Frequency of Response:* Once. *Affected Public:* Individuals; Academic Institutions; Business or other for-profit; Not-for-profit organizations. *Type of Respondents:* Nurse Practitioners and Physician Assistants. The annual report burden is as follows: *Estimated Number of Respondents:* 1,400; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .33; and *Estimated Total Annual Burden Hours Requested:* 462. The annualized cost to respondents is estimated at $33,600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection is information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Connie Ulrich, RN, PhD, Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to: *culrich@cc.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 14, 2002.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 02–1435 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; California Health Interview Survey—Complementary and Alternative Medicine

SUMMARY: In compliance with the requirement of section 2506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* California Health Interview Survey—Complementary and Alternative Medicine (CHIS–CAM). Type of Information Collection Request: New. Need and Use of Information Collection. The NCI has sponsored a Cancer Control Topical Module (CCTM) to the California Health Interview Survey (CHIS), administered in 2001. The CHIS is a telephone survey designed to provide population-based, standardized health-related data. Initiated by the UCLA Center for Health Policy Research, California Department of Health Services, and the Public Health Institute, the survey was unfunded by a number of public and private sources.

The 2001 CHIS CCTM was similar in content to the 2000 National Health Interview Survey (NHIS) CCTM and was administered to one sample adult in more than 54,000 households. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factor for smaller racial/ethnic minority populations.

The CHIS–CAM is a cross-sectional telephone survey nested in the CHIS study population of all adult respondents who agreed to be re-contacted. Complementary and Alternative Medicine (CAM) is a rapidly growing component of prevention and treatment of chronic illness in the United States. Yet the study of cancer has been largely excluded from the existing population-based surveys on CAM due to sample size restrictions, and little reliable information exists on how CAM utilization varies among different ethnic groups and among those with chronic illnesses.

The CHIS–CAM survey will be administered to approximately 2,000

cancer survivors and 6,000 non-cancer adults. It will enable NCI to collect extensive information on CAM, cancer and other chronic illnesses, and link it with the breadth of basic data already collected from the large, racially and ethnically diverse sample of CHIS respondents.

Comprehensive and detailed collection of information on CAM will enable NCI to increase its understanding of how, why, and to what effect CAM is used. The CHIS–CAM survey data will allow NCI to compare individuals who report various types of cancer and other chronic conditions and to determine: (1) The major categories of CAM procedures being used, as well as the specific therapies targeted toward cancer prevention and treatment, (2) how various subgroups in the population (defined by race/ethnicity, gender, age, health status, etc.) compare with regards to CAM procedures being used; (3) to what extent persons with cancer used specific types of CAM before or after diagnoses with cancer, and whether cancer patients used CAM in place of, or in addition to, conventional medical care; (4) whether systematic CAM treatments for cancer might lead to harm or interact with conventional treatments for cancer; and (5) what expenditures people are paying out-of-pocket for CAM procedures. Frequency of Response: One-time. Affected public: Individuals. Types of respondents: U.S. adults. The annual reporting burden is as follows:

TABLE A—ANNUALIZED BURDEN ESTIMATES FOR CHIS–CAM DATA COLLECTION

Type of respondents	Estimated number of respondents	Estimated no. of responses per respondent	Average burden hours per response	Estimated total annual burden hour requested
U.S. Adults	8,000	1	.35	2,800

There is no annualized cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anita Ambs, Project Coordinator, National Cancer Institute, EPN 4106, 6130 Executive Boulevard, Bethesda Maryland 20892–7344, or call non-toll free number (301) 451–8500 or email your request, including your address to *ambsa@mail.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days from the date of this publication.

Dated: January 10, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–1436 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: *shinnm@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thermostable DNA Polymerases that Bypass Lesions in DNA

Dr. Roger Woodgate (NICHD) and Dr. Francois Boudsocq (NICHD)

DHHS Reference No. E–232–01/0—Research tool

Lesions in DNA often block DNA polymerases, especially in those polymerases used in the Polymerase Chain Reaction (PCR). Old DNA, such as that from forensic samples, is often damaged and cannot be used for PCR analysis.

The NIH announces the identification of two novel Y-family DNA polymerases—called Dbh and Dpo4—from the archea Sulfolobus solfactaricus P1 and Sulfolobus solfactaricus P2, respectively. The Y family of polymerases are characterized by their ability to replicate through DNA lesions that may block the activity of other, more conventional, polymerases such as the thermostable enzymes used in PCR. Both Dbh and Dpo4 enzymes have been shown to be as thermostable as the Taq polymerase (Dpo4, in particular) and can copy stretches of DNA up to 1300 bp in length. Because these polymerases are in general more efficient at coping with DNA lesions, they may be useful in the amplification of damaged DNA and could be useful in forensic PCR applications.

A Novel Human DNA Polymerase, POL IOTA, Involved in DNA Repair and Mutagenesis

Drs. Roger Woodgate and John McDonald (NICHD)

DHHS Reference No. E–229–01/0—Research tool

The NIH announces the identification of a novel DNA polymerase called POL IOTA, that is highly error prone and

may be responsible for causing mutations that ultimately lead to human cancer formation.

The polymerase could be useful as a target for chemotherapeutic agents that block the polymerase's enzyme activity. This in turn could lead to an increase in the cure rate of cancer patients. In addition, a diagnostic assay could be developed to identify enzyme expression patterns and their mutations, so as to recognize humans with an increased risk of cancers. Therefore, the polymerase could be used as a research tool, or with more development, into a kit that could be used in both research and clinical labs.

TMC1 and TMC2 and Applications to Hereditary Deafness

Dr. Andrew Griffith et al. (NIDCD)
DHHS Reference No. E–168–01/0 filed 19 Sep 2001

Hearing loss is a common communication disorder effecting nearly 1 in 1,000 children in the United States alone, and nearly 50% of adults by the age of eighty. Deafness can be caused by both environmental and disease-related factors, however, in at least 50% of the cases, deafness is an inherited trait.

The NIH announces the isolation and purification of two novel genes termed TMC1 and TMC2 that may encode the mammalian hair cell mechanotransduction channel. It is known that the mechanotransduction channel is the critical molecule within the hearing pathway, which detects sound within the inner ear. Our investigators have discovered that dominant and recessive mutations in TMC1 underlie two forms of hereditary deafness known as DFNA36 and DFNB7/11, respectively. This technology would be useful to a company interested in finding new therapies to treat or prevent hearing loss as well as identifying persons at increased risk of developing aminoglycoside-induced hearing loss. This technology is also available for collaboration with a partner under a Cooperative Research and Development Award.

Gene Involved in Dietary Sterol Absorption and Excretion and Uses Therefor

Drs. Michael Dean and Shailendra Patel (NCI)
DHHS Reference No. E–295–99/1 filed 25 Sep 2001 (PCT/US01/29859)

The ATP binding cassette proteins are involved in cholesterol regulation. Cholesterol absorption from the diet is an important mechanism for regulating serum cholesterol levels. It is well known that high serum cholesterol levels are found in several diseases such as diabetes, atherosclerosis, and cardiovascular disease.

The NIH announces the identification and characterization of the ABCG5 gene. The gene maps to human chromosome 2, which has been identified as playing a role in the genetic disorder sitosterolemia. Patients with sitosterolemia display an abnormally high level of blood sterol debri from plants and fish, which can lead to coronary artery disease, atherosclerosis, and arthritis, as well as other diseases. The inventors believe that mutations in the ABCG5 gene interfere with sterol transport thereby causing sitosterolemia. Companies working in this area would find this technology useful in searching for agents that can treat or prevent any disease or condition that has associated with it high cholesterol levels.

Dated: January 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1439 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Efficient Inhibition of HIV–1 Viral Entry Through a Novel Fusion Protein Including CD4

James Arthos, Claudia Cicala, Anthony Fauci (NIAID)
DHHS Reference No. E–337–01/0 filed 25 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: *soukasp@od.nih.gov*

This invention relates to CD4 fusion proteins for use in the treatment of an immunodeficiency virus infection such as human immunodeficiency virus (HIV). These polypeptides have been shown by the inventors to inhibit the entry of primary isolates of HIV–1 into CD4+ T cells by targeting the gp120 subunit of the HIV–1 envelope. The invention claims recombinant polypeptides comprising a CD4 polypeptide ligated at its C-terminus with a portion of a human immunoglobulin comprising a hinge region and two constant domains of an immunoglobulin heavy chain. The portion of the IgG is fused at its C-terminus with a polypeptide comprising a tailpiece from the C terminus of the heavy chain of an IgA antibody. This protein is very large (greater than 800 kilodaltons), which may contribute to its ability to inhibit entry of primary isolates of HIV–1 into T cells. It presents twelve gp120 binding domains (D1D2) and can bind at least ten gp120s simultaneously. The inventors have shown that the construct efficiently neutralizes primary isolates from different HIV subgroups. Also claimed are use of the construct as a component of a vaccine and as a diagnostic.

Methods and Compositions for Production and Purification of Recombinant Staphylococcal Enterotoxin B (rSEB)

Daniel Coffman, Steven Giardina, Jianwei Zhu (NCI)
DHHS Reference No. E–075–01/0 filed 09 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail:*soukasp@od.nih.gov*

This invention claims processes and compositions for fermentation, recovery, and purification of recombinant bacterial superantigens (rSAgs), exemplified by a recombinant staphylococcal enterotoxin B SEB (rSEB) protein mutated for use in administration to a mammalian recipient. This process generates an economically viable quantity of rSEB vaccine protein meeting FDA parenteral drug specifications. The purification methods generally involve multiple steps including hydrophobic interaction

chromatography (HIC), buffer exchange (desalting), and cation exchange. The final product of the purification is a highly purified rSAg composition satisfying clinical safety criteria and is immunogenic and protective against lethal aerosol challenge in a murine model. The methods and compositions claimed in the patent application provide possible therapeutics and prophylactics for diseases caused by bacterial SAgs, such as food poisoning, bacterial arthritis and other autoimmune disorders, toxic shock syndrome, and the potential use of SAg biowarfare agents.

Novel Peptides to a Melanoma Antigen and Their Use in Diagnostic and Therapeutic Methods

P. Hwu, R. LaPointe, S.A. Rosenberg (NCI)

DHHS Reference No. E–086–01/0 filed 22 Aug 2001

Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Various tumor-associated antigens are recognized by T cells, thereby eliciting an immune response. Among these tumor-associated antigens is gp100, which along with several other tumor antigens identified to date is associated with malignant melanoma. Most of the gp100 peptide epitopes identified to date are HLA–A2 (MHC Class I) restricted.

The current invention embodies the identification of a novel HLA–DRB1*0701 (MHC Class II) restricted epitope of gp100. As 16–28% of the population is HLA–DRB1*0701 positive, this peptide could represent a potential immunotherapeutic vaccine for use against melanoma in a significant percentage of the patient population. In addition, the current invention represents only the second gp100 peptide identified to date that is capable of eliciting a CD4+ helper T cell response. It is believed that administration of a peptide capable of eliciting a CD4+ T cell response may be required in order to upregulate a CD8+ T cell response against a Class I-restricted peptide. The identification of an immunogenic Class II-restricted epitope therefore could be of particular importance not only as an immunotherapeutic vaccine in and of itself, but also for use in a vaccination protocol in combination with an immunogenic Class I-restricted peptide.

Tumor Antigen Homologous to Poly(A) Polymerase

S. Topalian (NCI), M. Gonzales (NCI), J. Manley, and S. Kaneko

DHHS Reference No. E–002–01/0 filed 16 May 2001

Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Poly(A) polymerase (PAP) activity has long been linked to cancer, and several forms of PAP have been identified to date by various researchers. PAP is an enzyme that is required for the processing and stability of nascent RNA transcripts. The current invention embodies the identification of a new human tumor associated antigen, neo-poly(A) polymerase (neo-PAP), which shares approximately 70% amino acid and 61% nucleic acid sequence similarity with classic PAP.

Neo-PAP is overexpressed in all tumor cell lines tested, including human prostate cancers, colon cancers, and melanomas. It is expressed at low levels in normal human testis tissue as well, but is expressed only at very low levels or not at all in other normal human tissues. Thus, neo-PAP appears to be a ''cancer-testis'' antigen, which is a category of tumor-associated antigens that are recognized by cytotoxic and helper T lymphocytes as well as serum immunoglobulins. Members of this tumor antigen category, including NY–ESO–1 and MAGE–3, and currently in clinical testing as cancer vaccines. Neo-PAP therefore could represent a potential immunotherapeutic vaccine for use against cancers of various types, and could also be useful in the diagnosis/prognosis of cancer.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1440 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 28, 2002.

Open: 8:30 am to 2:45 pm.

Agenda: The agenda includes the Opening Remarks by Director, NCCAM, Reports on FIC Activities, International Health Research Strategic Plan, New Initiatives, and other business of the Council.

Closed: 2:45 pm to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D. Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, 301/402–7269.

The public comments session is scheduled from 1:15–1:45 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax: 301–480–3519. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on January 18, 2002. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (February 7, 2001) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax 301–480–3519.

Dated: January 14, 2002.

LaVerne Y. Stringfeild,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–1434 Filed 1–18–02; 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 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: Clinical Trials Review Committee.

Date: February 25–26, 2002.

Time: February 25, 2002, 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Joyce A. Hunter, PhD, Review Branch, Room 7129, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1432 Filed 1–18–02; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel Demonstration & Education Research.

Date: February 12, 2002.

Time: 10:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe E. Huang, MD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Bethesda, MD 20892–7924, (301) 435–0287, *huangz@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: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1433 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Diagnostic Tests for *Plasmodium falciparum* Caused Malaria

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license concerning the inventions embodied in:

USSN 5,130,416 (USPA 07/518,299, filed 05/03/90) issued July 14, 1992

USSN 5,296,382 (USPA 07/791,392, filed 11/14/91) issued March 22, 1994

USSN 5,476,785 (USPA 08/161,406, filed 12/06/93) issued December 19, 1995

all entitled ''Recombinant DNA clone containing a genomic fragment of PfHRP–II gene from Plasmodium falciparum'' and invented by Thomas E. Wellems and Russell J. Howard, to Akers Laboratories, Inc., a diagnostic company having a place of business in Thorofare, N.J. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of diagnostic tests for *Plasmodium falciparum*-caused Malaria for sales in the United States. A nonexclusive license of the present inventions to make and use in the United States but to sell in territories outside of the United States is available to other licensees.

DATES: Only written comments and/or applications for a license, which are received by the NIH Office of Technology Transfer on or before March 25, 2002, will be considered.

ADDRESSES: Requests for a copy of the patents, inquiries or comments relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; e-mail: *reichmau@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The inventions included in the prospective license relates to the isolation of clones of DNA from the malaria-causing parasite *Plasmodium falciparum* (*P. falciparum*) that encode a histidine-rich protein (designated name PfHRP–II) from this organism. PfHRP–II is expressed on P. falciparum-infected erythrocytes, and released from the infected host erythrocytes into the body fluids. The inventions describe the cloning procedure and the characterization of the coding sequence as well as that of the encoded protein and the antibodies made against it. The inventions can be utilized in the development of diagnostic tests for malaria as contemplated by the

prospective licensee, or for vaccine development against malaria.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1438 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein

AGENCY: National Institutes of Health, Public Health Service, and DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application, 60/088,860 (refiled): ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein'' (DHHS Ref. E–201–98/0); PCT Patent Application, PCT/US99/12909 (refiled): ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein'' (DHHS Ref. E–201–98/1); Related Foreign Filed National Stage Applications claiming priority to 60/088,860, (pending) in Europe, Canada, Japan, Australia and the National Stage United States Application [S/N 09/673,707 (DHHS Ref. E–201–98/2)]: ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein;'' US Patent 4,892,827, S/N 06/911,227: ''Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin with Low Side Effects,''—excluding any foreign equivalents corresponding to 4,892,827 (DHHS Ref. E–385–86/0); US Patent 5,747,654, S/N 08/077,252: ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity.'' PHS is an owner of corresponding foreign rights in national phase prosecution in Canada, Australia, Japan, and the European Patent Office. (DHHS Ref. E–163–93/0); US Patent 6,147,203, S/N 09/002,753: ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity,'' (DHHS Ref. E–163–93/4); US Patent 6,051,435, S/N 07/865,722: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/1) US Patent 5,863,745, S/N 08/461,825: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/2); and US Patent 5,696,237, S/N 08/463,163: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/3) to IVAX Corporation which is located in Miami, Florida. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of HIV-associated diseases using 3B3(scFv)-PE38 or 3B3(dsFv)-PE38 immunotoxin constructs.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before March 25, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804; Telephone: (301) 496–7056, x287; Facsimile: (301) 402–0220; and E-mail: *rodrigur@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The primary technology is directed to an immunotoxin that specifically binds to and kills cells expressing an HIV gp-120 coat protein. The immunotoxin comprises an anti-gp-120 antibody directed to the conserved CD4 binding site of gp 120 attached to a cytotoxin (e.g., a Pseudomonas exotoxin). In one preferred embodiment, the immunotoxin is a recombinantly expressed fusion protein comprising a disulfide linked Fv region attached to a modified Pseudomonas exotoxin [i.e., 3B3 (Fv)-PE38]. The technology is also directed to: a pharmaceutical composition; a composition of the immunotoxin; methods for killing HIV infected cells; and to a kit for killing cells that display a gp-120 protein.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1437 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in February 2002.

The SAMHSA National Advisory Council meeting will be open and will include a presentation by the New SAMHSA Administrator on his Vision and Priorities for the Agency, discussions on the Agency's restructuring and delayering plans, on the National Summit on Terrorism/BioTerrorism Response Activities, on the President's new Mental Health Commission, on FY 2002 appropriation

issues, on the FY 2003 budget submission, and a presentation on the findings from the 2000 National Household Survey on Drug Abuse. There will also be a presentation by a SAMHSA National Advisory Council member on Workforce Shortage Issues. Finally, there will be reports by the Council's workgroups on co-occurring addictive and mental disorders and HIV/AIDS.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, February 5, 2002, 9 a.m. to 5:45 p.m. (Open); Wednesday, February 6, 2002, 9 a.m. to 3:15 p.m. (Open).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact: Toian Vaughn, Executive Secretary 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov.*

Dated: January 14, 2002.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 02–1410 Filed 1–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–02]

Notice of Proposed Information Collection: Comment Request Subject HUD Survey Instructions and Report for Insured Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614, extension 5426 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Survey Instructions and Report For Insured Multifamily Projects.

OMB Control Number, if applicable: 2502–0010.

Description of the need for the information and proposed use: Form HUD–2457 provides the standards of performance for conducting surveys and preparing the maps of survey. It also identifies data that must be addressed to meet program requirements and provides a vehicle for the surveyor to certify compliance with applicable survey and reporting requirements. Furthermore, a land survey and related information are necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under the FHA Multifamily programs. The Form HUD–2457 describes the property to assure compliance with various regulatory provisions, e.g., flood hazard requirements, and to help determine the suitability and value of the property for the intended purpose. The Form HUD–2457 also provides necessary engineering data for project design for prosed construction projects.

Agency form numbers, if applicable: Form HUD–2457.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 750, the frequency of responses is 2, for a total of 1,500 total annual responses. The estimated time to prepare collection is approximately 0.5 hours, for a total annual burden hours of 750.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 10, 2001.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 02–1412 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–13]

Announcement of Funding Awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Indian Housing Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of two awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Housing Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street,

SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing- or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) earmarked $3,000,000 for a grant to the Housing Assistance Council and $2,600,000 for a grant to the Native American Indian Housing Council. Subsequently, a .22 percent rescission of the Fiscal Year 2001 appropriation was enacted on December 21, 2000 (Pub. L. 106–554) resulting in a revised earmark amount of $2,993,400 for the Housing Assistance Council and $2,594,280 for the Native American Indian Housing Council. HUD's Office of Policy Development and Research administers these grants.

The Catalog of Federal Domestic Assistance for these grants is 14.225.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning these awards, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Grant Number H–21292CA, ''Rural Housing Research and Technical Assistance'' Amount $2,993,400, Date Awarded 10/01/00.

Native American Indian Housing Council, Luke Toyebo, Jr., Acting Executive Director, 900 Second Street, NE, Washington DC 20002, *Grant # H–21351RG*, Technical Assistance and Training to Indian Housing Agencies and Tribal Housing Agencies, Amount $2,594,280, Date Awarded 08/11/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1522 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–12]

Announcement of Funding Awards for Fiscal Year 2001 Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) provided $53,000,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. A rescission of .22 percent was enacted on December 21, 2000 (Pub. L. 106–554) reducing the amount for Research and Technology funds to $52,883,400. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicted proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY 2001 Awardees for Cooperatives Agreements

American Planning Association, William R. Klein, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603–6107, Grant # H–5951CA, ''To Modernization State Laws Affecting Planning and the Management of Change—Growing Smart'' Phase III, Total Amount $230,000, Date Awarded 06/29/01.

Brown University on Behalf of Campus Compact, Norman J. Hebert, P.O. Box 1975, Providence, RI 02912, Grant # H–21318CA, ''Developing Socially And Civicly Engaged Engineers'', Total Amount $33,571, Date Awarded 09/28/01.

Building Works, Inc, Dr. Pieter A. VanderWerf, 675 Massachusetts Avenue, 8th Floor, Cambridge, MA 02139, Grant # H–21311CA, ''Reducing the Cost of Combining ICF's and Steel Framing in Residential Construction'', Total Amount $74,505, Date Awarded 06/04/01.

Georgetown University, Mary E. Schmiedel, 37th & O Streets, NW, Washington, DC 20057, Grant # H–21317CA, ''A Mid-Term Evaluation of the Effects of the Moving to Opportunity (MTO) Demonstration on Adult and Juvenile Criminal Offending'', Total Amount $15,000, Date Awarded 07/30/01.

Johns Hopkins University, Cheryl-Lee Howard, 3400 N. Charles Street, Baltimore, MD 21218–2688, Grant # H–21302CA, ''The Effects of Housing Assistance on Adult Self-Sufficiency'', Total Amount $18,746, Date Awarded 04/09/01.

Manpower Demonstration Research Corporation, Jesus M. Amadeo, 16 East 34th Street, New York, NY 10016–4326, Grant # H–21042CA, ''Jobs-Plus Community Revitalization Initiative for Public Housing Families'', Total Amount $1,420,000, Date Awarded 09/28/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York NY 10025, Grant # H–21315CA, ''Improving Foundation Performance in Sites Exposed to Multihazard Conditions'', Total Amount $200,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, Grant # H–21316CA, ''Manufactured Homes in Hot, Humid Climates: Alternatives for Eliminating Moisture

Problems'', Total Amount $110,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York, NY 10025, Grant # H–21353CA, ''Accelerating Technology Advances in Manufactured Housing'', Total Amount $501,400, Date Awarded 09/28/01.

Metropolitan Area Research Corporation, Myron W. Orfield, Jr., 1313 Fifth Street, SE, Suite 108, Minneapolis, MN 55414, Grant # H–21171CA, ''A Comparative Study of Socioeconomic Disparity In U.S. Metropolitan Regions'', Total Amount $95,500, Date Awarded 11/17/00.

Mortgage Banking Association, Steven Hornburg, 2107 Wilson Boulevard, Suite 450, Arlington, VA 22201–3042, Grant #H–21300CA, ''Assessment of Consumer Mortgage Process and Home Search Process'', Total Amount $200,000, Date Awarded 01/12/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21313CA, ''Tool Base Services: The Source of Technical Information For The Building Industry'', Total Amount $500,000, Date Awarded 06/04/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21314CA, ''Updated Model Land Development Standards Featuring Green Building and Smart Growth Technologies'', Total Amount $300,000, Date Awarded 09/21/01.

National Bureau of Economic Research, Susan Colligan, 1050 Massachusetts Avenue, Cambridge, MA 02138–5308, Grant # H–21301CA, ''Expanding Moving To Opportunity Research'', Total Amount $75,000, Date Awarded 03/07/01.

The Urban Institute, Suzanne Forehand, 2100 M Street, NW, Washington, DC 20037, Grant # H–21352CA, ''Neighborhood Effects of the LIHTC Program'', Total Amount $21,086, Date Awarded 09/27/01.

University Consortium for Geographic Information Science, Susan M. Jampoler, 43351 Spinks Ferry Road, Leesburg, VA 20176–5631, Grant # H–21260CA, ''Global Urban Quality: An Indicator of Urban Indicators Using Geographic Information Science (GIS)'', Total Amount $100,000, Date Awarded 1/16/01.

W.H. Porter, Inc., William H. Porter, 4240 N. 136th Avenue, Holland, MI 49424, Grant # H–21312CA. ''Supersip Panel for Residential Construction'', Total Amount $254,990, Date Awarded 07/19/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1523 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: International Center for Gibbon Studies, Santa Clarita, CA, PRT–050284.

The applicant requests a permit to export one live Siamang gibbon (*Hylobates syndactylus*) and four live dark-handed gibbons (*Hylobates agilis*) to Parque Las Aguilas, Spain for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of San Diego @ San Diego Wild Animal Park, Escondido, CA, PRT–049052.

The applicant requests a permit to export four Andean condors (Vultur gryphus) to the Calidad Ambiental de la CAR Cundinamarca, Santefe de Bogota, Colombia, for reintroduction into the wild to enhance the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ken Morrill, Escalon, CA, PRT–051613.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 4, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1501 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Documents To Amend a Habitat Conservation Plan for Federally Protected Native Fish Species on Plum Creek Timber Company Lands in Washington, Idaho, and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act this notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Supplemental Environmental Impact Statement for a Proposed Amendment to the Plum Creek Native Fish Habitat Conservation Plan and request for issuance of an incidental take permit to take endangered and threatened species in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Permit applicant is Plum Creek Timber Company. The proposed amendment would add the grizzly bear to the existing permit and extend coverage of the Native Fish Habitat Conservation Plan (NFHCP) to

additional Plum Creek lands. This document would supplement the September 2000 Final Environmental Impact Statement (FEIS) and NFHCP for federally protected native fish species on Plum Creek Timber Company lands.

A public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana 59901. Comments and participation in the process are solicited.

DATES: The public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana. Written comments from all interested parties must be received on or before February 21, 2002 to be considered.

ADDRESSES: Comments, materials, and requests for information should be sent to Tim Bodurtha, Plum Creek Scoping Comments, U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901, telephone (406) 758–6882, facsimile (406) 758–6877.

FOR FURTHER INFORMATION CONTACT: Tim Bodurtha, Kalispell Sub-office, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits the ''taking'' of any threatened or endangered species. However, the Fish and Wildlife Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are outlined in 50 CFR 17.22.

Background

On October 24, 2000, the Fish and Wildlife Service issued an incidental take permit under section 10(a)(1)(B) of the Act to Plum Creek Timber Company. The permit authorizes the incidental take of 17 native fish species, as identified in the FEIS (U.S. Fish and Wildlife Service 2000), from certain Plum Creek activities on Plum Creek timberlands covering approximately 1.6 million acres in Washington, Idaho, and Montana. Plum Creek is proposing to amend this current NFHCP by adding the grizzly bear to the permit and by extending coverage of the NFHCP to additional Plum Creek lands in Montana. The NFHCP Project Area lands addressed in the proposed amendment encompass 70,826 acres of timberlands owned and managed by Plum Creek within the range of the grizzly bear. Approximately 38,148 acres are in the Cabinet-Yaak Ecosystem and 32,678 acres in the Northern Continental Divide Ecosystem. In addition, the amendment would extend coverage of the NFHCP to an additional 14,892 acres which was evaluated in the original FEIS (U.S. Fish and Wildlife Service 2000). However, coverage was postponed until an amendment to the NFHCP for the addition of grizzly bear was completed.

Of the total acres of Plum Creek lands covered under the NFHCP in Montana (1.4 million acres), the proposed amendment applies to 70,826 acres, or 5.0 percent and portions of the following counties in western Montana—Lincoln, Sanders, Flathead, Lake, Missoula, Powell, and Lewis and Clark. The proposed amendment requests incidental take authorization for take that occurs as a result of the following activities as described in the FEIS (U.S. Fish and Wildlife Service 2000)—(1) Commercial forestry and associated activities—Silvicultural activities such as tree planting, site preparation, timber harvest in riparian and upland areas, stand maintenance, prescribed burning, and forest nurseries and seed orchards; Logging road construction and maintenance; Gravel quarrying primarily for logging road construction; (2) Forest fire suppression; (3) Open range cattle grazing; (4) Miscellaneous forest and land product sales; Gravel and landscaping stones; (5) Conservation activities—Habitat enhancement and restoration; Scientific surveys and studies; (6) Special forest use permits—Commercial outfitting; Special recreation permits, such as club activities; Electronic facility sites; (7) Manufacturing of forest products, such as milling activities, lumber mills, plywood mills, and remanufacturing plants.

The proposed amendment to the Plum Creek NFHCP provides for conservation of the threatened grizzly on Plum Creek lands in Montana. It further would extend conservation commitments for the threatened bull trout and four unlisted native salmonids; the redband and westslope cutthroat trout, mountain whitefish, and pygmy whitefish. The proposal to amend the NFHCP would not affect the 30-year term of the permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: January 4, 2002.

Elliott Sutta,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 02–1449 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–01–1020–JA–VEIS]

Changes to the Schedule and Scope of Public Scoping Meetings for the Environmental Impact Statement for Vegetation Treatments, Watersheds and Wildlife Habitats on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental Notice to Change to Dates for Public Scoping Meetings and change the scope of the EIS.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on BLM's use of prescribed burning, biological control, cultural practices, mechanical, and chemical treatment of vegetation, including noxious weeds and other invasive species in public lands management. These methods will continue to be integrated into BLM's efforts to conserve and restore native vegetation, watersheds and wildlife habitats to protect people, sustain natural resources and provide for long-term multiple uses. The EIS addresses public lands administered by BLM in 16 western states, including Alaska. The public may submit comments during the initial scoping period through March 29, 2002.

DATES: You may submit written comments through March 29, 2002. The BLM will hold public scoping meetings to focus on human and environmental concerns, identify possible alternatives, and identify significant issues related to the proposed action.

New dates for the postponed Salt Lake City, Utah; Rock Springs, Wyoming; Socorro, New Mexico; and Phoenix, Arizona meetings are as listed in the following schedule:

Date and time	Locations	BLM contact
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT	Kim Leany (435) 688–3208.
January 23, 5–8 p.m	Utah Dept. of Natural Resources Bldg., 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 24, 2–5 p.m. and 6–9 p.m.	Grand Vista Hotel, 2790 Crossroads Blvd., Grand Junction, CO	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 106, 2715 Dickinson, Miles City, MT	Jody Weil (406) 896–5258.
January 30, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 31, 4–7 p.m	Elks Lodge, 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 4, 3–5 p.m. and 6–9 p.m.	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ	Deborah Stevens (602) 417–9215.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m.	Vista Inn, 2645 Airport Way, Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m and 6–9 p.m.	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 25, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM	Margie Onstad (505) 838–1256.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave, Bakersfield, CA	Stephen Larson (661) 391–6099.
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6th, Portland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel—Franklin Room, 10 Thomas Circle, (Massachusetts and 14th Street), Washington, DC.	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list for this EIS, contact Brian Amme, Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will support implementation of the Department of the Interior's cohesive strategy plan for restoring fire-adapted ecosystems. The EIS will also provide a comprehensive cumulative analysis of the variety of vegetation treatments BLM employs for the conservation and restoration of vegetation communities, watersheds and wildlife habitats that are designed to protect people, sustain natural resources and provide for long-term multiple uses (as specified in locally developed land use plans). Conservation and restoration activities analyzed in this document include prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems. The EIS will:

- Consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- Address human health risk assessments for proposed use of new chemicals on public lands.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive document to allow effective tiering to the EIS and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- An updated EIS is necessary for BLM to analyze proposed treatments on more than 6 million acres annually. Treatments will include prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Rehabilitation, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODs) equate to about 500,000 acres for the combined western states.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Colorado, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Kansas), Nevada, Oregon (Washington), Utah and Wyoming (Nebraska).
- This EIS will consolidate four existing BLM vegetation treatment EISs developed between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatments, including mechanical treatments, treatments benefitting wildlife habitat, restoration of ecological processes (predominately fire), watershed and vegetation community health treatments. It will consider the effects of these treatments on new listings of threatened and endangered species and on other sensitive and special status species, cultural properties and Native American/Alaskan Native subsistence practices. The EIS will also analyze new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and rehabilitation treatments following wildfire, and the effects of treatments on

vegetation, soils, watershed and water quality.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 02–1659 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP2–0026; OR 55981 and OR 55502]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using direct sale procedures.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, rehabilitation plan, planning and environmental documents, is available at the Eugene District Office, PO Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Madsen, Realty Specialist, Eugene District Office, at (541) 683–6948.

SUPPLEMENTARY INFORMATION: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel OR 55981, appraised fair market value: $1,100.00
T. 21 S., R. 1 W.
Sec. 31: Lot 38
Containing 0.16 acre.

Parcel OR 55502, appraised fair market value: $8,000.00
T. 21 S., R. 2 W.
Sec. 1:Lot 9
Containing 0.45 acre.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

These lands are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Parcel OR 55981 is being offered to Tony and Sonya Bratton and Parcel OR 55502 is being offered to James L. Bean using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land, in both cases, has been inadvertently occupied and utilized for many years as portions of residential yards, including buildings. Direct sale will resolve the unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale of both parcels are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a non-refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. Parcel OR 55502 will not be offered for sale until the purchaser has completed and the Authorized Officer has accepted and approved the restoration of riparian vegetation on public land adjacent to the sale parcel. Restoration of the lands damaged without authorization will be at the expense of the purchaser and in accordance with the rehabilitation plan developed by the Bureau of Land Management.

Dated: December 26, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1379 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP02–0002; OR 55429]

Realty Action; Modified Competitive Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using modified competitive sale procedures.

SUPPLEMENTARY INFORMATION: The following land is suitable for modified competitive sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value (FMV). The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel A

T. 21 S., R. 3 W.
Sec. 2: Lot 6
Containing 1.77 acres.
Appraised fair market value: $6,100.00.

Parcel B:

T. 21 S., R. 3 W.
Sec. 2: Lot 9
Containing 1.97 acres.
Appraised fair market value: $16,600.00.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this

disposal. Coordination with State, tribal and local governments concerning the sale has been conducted. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The two parcels will be offered for sale at public auction using modified bidding procedures authorized under 43 CFR 2711.3–2. Bidding for each parcel is open to all qualified bidders; however, the following adjacent land owners (designated bidders) will be given the opportunity to meet the highest bid received at the sale for either parcel: Spencer K. Adair and Jeanne L. Adair; Donna R. Dennis and Wanda Dennis; Marjorie A. Nord and Roylin A. Melton; Donald J. Overholser and Rodney G. Matthews; LaVerna Pitcher and Randy Pitcher; and Paul M. Tollefson and Elizabeth Tollefson. Modified competitive sale is appropriate since the land is part of a survey hiatus identified by cadastral survey in 1999 and has been inadvertently occupied and utilized for many years by a roadway providing access to adjoining lands. A Bonneville Power Administration electric transmission line corridor occupies portions of both parcels and a portion of a residential carport encroaches upon Parcel B.

The two parcels will be offered for sale at public auction beginning at 10 am, PST on March 25, 2002, at 2890 Chad Drive, Eugene, Oregon 97401–9336. Sale will be by sealed bid only. All sealed bids must be received by the BLM's Eugene District Office at 2890 Chad Drive, Eugene, Oregon 97401–9336, prior to 10 a.m. on the date of the sale, March 25, 2002. Bid envelopes must be marked on the lower left front corner, ''Sale OR 55429 Parcel A'' or ''Sale OR 55429 Parcel B''. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of Interior, BLM for not less than 10 percent of the amount bid. Any parcel not sold as a result of the March 25, 2002, sale will be re-offered to the general public through continuing modified competitive sales. Offers for the unsold parcel will be accepted in a manner consistent with the process described herein; bids will be opened on the 15th day of each month thereafter until the apparent high bid is declared.

Under modified competitive sale procedures the written sealed bids will be opened and an apparent high bid for each parcel will be declared at the sale. The apparent high bidder and the designated bidders will be notified. The designated bidders will be given 30 days from the date of the sale to exercise the preference consideration given to meet the high bid, individually or in combination. Should the designated bidders fail to submit a written bid that matches the apparent high bid within the specified time period, the apparent high bidder will be declared high bidder. In case more than one written bid matching the apparent high bid is received from designated bidders, the interested bidders will be given an opportunity and instructions for submission of an additional sealed bid, meeting the above stated requirements, which additional sealed bids will be opened at a specified time, date and place, followed by oral bidding. At the conclusion of the oral bidding, the high bidder will be awarded the property. The total purchase price for the land shall be paid within 180 days of the date of this sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. A successful bid for a parcel will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. A nonrefundable $50.00 filing fee for the conveyance of the mineral estate will be required from the prospective purchaser. The mineral interests to be conveyed simultaneously with the sale of the land have been determined to have no known mineral value.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Parcel A:

(1) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(2) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(3) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their adjoining property.

b. Parcel B:

(1) Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to right-of-way OR 55407. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

(2) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(3) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(4) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their property adjoining Parcel A.

(5) A requirement that the purchaser, at closing, grant an easement to Donna R. Dennis and Wanda Dennis, for ingress and egress to their adjoining property.

(6) A requirement that the purchaser, at closing, grant an encroachment easement to Donna R. Dennis and Wanda Dennis, for an existing carport structure that encroaches upon Parcel B.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations; sale procedures and conditions; form of the easements to be granted to the Bonneville Power Administration, LaVerna Pitcher, Donald J. Overholser and Rodney G. Matthews, and Donna R. Dennis and Wanda Dennis; and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Realty Specialist, Eugene District Office, at (541) 683–6403.

Dated: September 27, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1487 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–01–1060–JJ]

Notice of Intent To Remove Wild Horses From Public Lands and Notice of Public Hearing on the Use of Helicopters and Motor Vehicles in Wild Horse Removal Operations

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Wild, Free Roaming Horse and Burro Act, as amended (PL 92–195), provides, among other things, that excess wild horses shall be removed from public lands.

The Bureau of Land Management (BLM) plans to remove 225 horses from the Stewart Creek Herd Management Area (HMA) and the area outside HMA boundaries known as I–80 North Beginning February 15, 2002, and continuing through March 30, 2002. This will reduce the population in the Stewart Creek HMA to the Appropriate Management Level (AML).

The Wild, Free Roaming Horse and Burro Act also provides for the use of aircraft and motor vehicles in all phases of the administration of the Act. The Code of Federal Regulations, at 43 CFR 4740.1 provides (a) that the authorized officer conducts a public hearing in the area where such use is to be made.

The BLM has and plans to continue use of helicopters in the removal of wild, free roaming horses from the public lands within the Rawlins, Lander, Rock Springs, Cody, and Big Horn Basin Field Office jurisdictions in calender year 2002.

Pursuant to the requirements noted above, the BLM will conduct a public hearing on the use of helicopters and motor vehicles in gathering operations during the calendar year of 2002. The hearing will occur on Tuesday, February 12, 2002, at 3 p.m., in the large conference room of the Rock Springs Field Office of the Bureau of Land Management located at 280 Highway 191 North, Rock Springs, Wyoming.

DATES: *Hearing Date:* February 12, 2002. *Roundup dates:* March 1 through March 30, 2002.

ADDRESSES: The Helicopter Hearing will be held at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003–1828. Phone: (307) 775–6256.

Dated: January 14, 2002.

Alan R. Pierson,

State Director.

[FR Doc. 02–1486 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska Region, Norton Basin

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations (Call).

SUMMARY: The Secretary's preliminary decision to consider offering the Norton Basin planning area in the Proposed OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month ''special-interest'' process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale. The MMS is issuing a Call at this time recognizing that the final decision on the 2002–2007 5-year program has not been made. Final delineation of the program areas and number of sales may change from that included in the proposed program.

DATES: Nominations and comments on the Call must be received no later than April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the Call.

SUPPLEMENTARY INFORMATION: The objective of this ''special-interest'' leasing option is to foster exploration in a frontier OCS area that is estimated to have over 1 trillion cubic feet of natural gas without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in Norton Basin that would offer only very small, very focused areas of specific interest for exploration. Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. We request comments from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer an area for leasing will be conditioned on a commitment from industry to explore the area leased within a specific time period.

This Call does not indicate a preliminary decision to lease in the area described below. If there is no interest expressed, the MMS will defer the sale for one year and reissue the Call the following year. If the MMS decides to proceed with the sale process, the MMS will make the final delineation of the specific areas for possible leasing at a later date in the presale process and in compliance with the final 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256); and in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007, issued October 26, 2001.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate the scoping process to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, ''to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time.'' The objective of the ''special-interest'' leasing process is to encourage exploration in a frontier OCS area that might contain natural gas for potential use in local communities. Any sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Norton Basin are sought from all interested parties. Comments are also being sought on the terms and conditions of a sale in Norton Basin. Industry and other interested parties are strongly encouraged to contact the MMS, Alaska OCS Region, Mr. Tom Warren at (907) 271–6691, with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest lands process. The MMS will base its decision on whether to proceed with the presale

process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256. Commenters are encouraged to submit comments and suggestions on the ''special-interest'' leasing process in general and on the potential for offering other frontier areas of the Alaska OCS, such as the Chukchi Sea and Hope Basin Planning Areas, using this process.

This Call is being issued in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007 announced on October 26, 2001. The proposed program offers one sale in the Norton Basin during the 5-year program. If no interest is expressed in response to this first Call, the MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to hold a sale and the area nominated is deemed appropriate for leasing. Only one round of lease issuance in Norton Basin would occur during this 5-year program.

3. Description of Area

The area subject to this Call is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302

4. Instructions on Call

The Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under Item 3, Description of Area.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in Norton Basin. If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Areas of Interest to the Oil and Gas Industry

Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and offer only small-focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Terms and Conditions of Lease Issuance

Respondents are requested to comment on the terms and condition of lease issuance for any leases that may be issued as a result of a sale in Norton Basin. The following terms and conditions have been used in past sales and are being considered for this use in this sale:

—Lease term of 10 years
—Annual rental rate of $13 per hectare or fraction thereof
—Minimum cash bonus bid of $62 per hectare
—Royalty rate of 12.5 percent

In addition, the following are suggested additional terms and incentives:

—Submission of an exploration plan within 4 years of lease issuance
—Cancellation of lease for failure to submit exploration plan within 4 years
—Suspension of royalties on initial production
—Delayed payment of cash bonus bid
—Other incentives
—Mitigating measures

C. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the scoping process for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions/ mitigating measures

—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Item 3, Description of Area.

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to a Norton Basin sale in 2003:

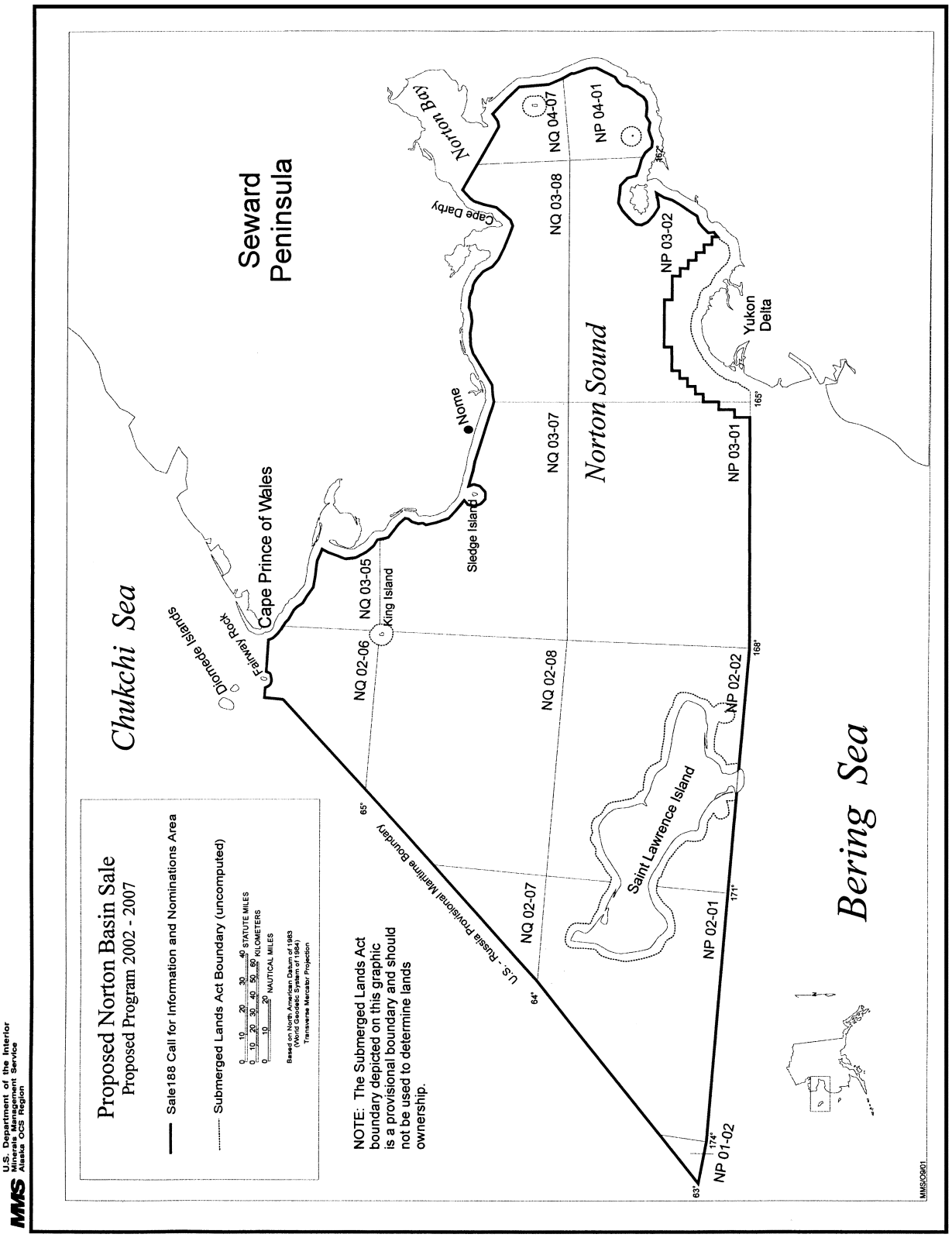
	Tentative process milestones for proposed 2003 Norton Basin sale
Call published/scoping initiated	January 2002.
Comments due on Call/scoping	April 2002.
Decision whether to proceed/Area Identification	May 2002.
NEPA analysis	February 2003.
Consistency Determination/Proposed Notice of Sale	April 2003.
Governor's Comments due	June 2003.
Final Notice of Sale published	August 2003.
Sale	September 2003.

Dated: January 3, 2002.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 02–1414 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: February 14, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters To Be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–1516 Filed 1–22–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: March 12, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters to be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–1517 Filed 1–18–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on September, 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.*, (''the Act''), Animas Corporation and Sarnoff Corporation, as a joint research venture, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identifies of the parties are Animas Corporation, Frazer, PA; and Sarnoff Corporation, Princeton, NJ.

The nature and objectives of the venture are to develop and demonstrate a long term implantable glucose monitor.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1542 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on September 28, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cash Edge, New York, NY; DirectAdvice, Inc., Hartford, CT; and Innovius, Pleasontown, CA have joined the Consortium as associate members. Also, Chicago Clearing House, Chicago, IL has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39335).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1539 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PKI Forum, Inc.

Notice is hereby given that, on September 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Btexact Technologies, Ipswich, Suffolk, United Kingdom; ValiCert, Mountain View, CA; Canadian Payments Association, Ottawa, Ontario, Canada; Merck & Co., Inc., Whitehouse Station, NJ; Johnson & Johnson, New Brunswich, NJ; Seiko Instruments, Inc., Chiba, Japan; PKI Forum Singapore, Singapore, Singapore; TRW, Inc., Cleveland, OH; Chunghwa Telecom Laboratories, Taoyuan, Taiwan; Government of Canada PKI Secretariat, Ottawa, Ontario, Canada; and DOD/Federal PKIPMO, Ft. Mead, MD have been added as parties to this venture. Also, Spyrus, Inc., San Jose, CA; and Sybase, Inc., Emeryville, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PKI Forum, Inc. intends to file additional written notification disclosing all changes in membership.

On April 2, 2001, PKI Forum, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2001 (66 FR 22260).

The last notification was filed with the Department on June 27, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1540 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on October 3, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Agusta s.p.a., Cascina Costa di Samarate, Italy; EADS Airbus GmbH, Hamburg, Germany; EADS Airbus S.A., Paris, France; Embraer-Empresa Brasileira De Aeronautica S/A, São José dos Campos, Brazil; Israel Aircraft Industries Ltd., Ben-Gurion Airport, Israel; Korea Aerospace Industries Ltd., Kyungnam, Republic of Korea; Northrup Grumman Corporation, Melbourne, FL; Siemens Westinghouse Power Corporation, Orlando, FL; and Volvo Aero Corporation, Trollhättan, Sweden. The nature and objectives of the venture are to identify and prioritize, develop and implement new NASGRO capabilities for structural integrity analysis needed by the user community to address its current and anticipated problems, to provide a wider range of user support services, including but not limited to training and technical support, the facilitate the ongoing use of the NASGRO code by industry, to expand the user community of the NASGRO code, and to promote direct technical interactions among fracture mechanics experts and practitioners regarding the development and implementation of new state-of-the-art methods for structural integrity assessment. The NASGRO (previously NASA/FLAGRO) computer code was originally developed in the 1980's for fracture control analysis on NASA (National Aeronautics and Space Administration) space hardware.

Membership in this research project group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1541 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prices Power International Denial of Application

On or about May 8, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Price's Power International (PPI), located in Newport New, Virginia, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated August 25, 1998, for a DEA Certificate of Registration as a distributor of the List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified PPI that, should not request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received May 15, 2000, as indicated by the signed postal receipt. Since that time, no response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that PPI is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on August 25, 1998, an application was received by the DEA Chemical Operations Registration section on behalf of PPI for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenylpropanolamine, and ephedrine. PPI did not file this application in time to qualify for temporary exemption from registration pursuant to 21 CFR 1310.09. Accordingly, PPI was not authorized to distribute these chemicals before approval of the application for registration.

On February 25, 1998, an undercover DEA Special Agent (S/A) contacted PPI to discuss the purchase of nine bottles

of ''Revive Ephedrine.'' In response, on March 9, 1998, PPI sent nine bottles of 100 Guaifedrine ephedrine HCL 25 mg. tablets. On March 26, 1998, PPI sent the undercover S/A an additional twelve bottles of 100 Guaifedrine ephedrine HCL 25 mg. tables in response to an order placed by an undercover DEA S/A March 11, 1998.

On June 9, 1998, a clandestine methamphetamine laboratory was seized in Kansas. The seizures at the clandestine laboratory site included an ounce and a half of finished methamphetamine, 738 grams of pseudophedrine, twenty five bottles of 250 60 mg. pseudoephedrine tablets and nineteen bottles of 380 60 mg. pseudoephedrine tablets, all bearing the PPI label. Also seized were a number of order forms, invoices, and a catalogue from PPI. One order form detailed a shipment from PPI for 40 bottles of 380 60 mg. pseudoephedrine tablets (totaling 912 grams of pseudoephedrine) and 16 bottles of 375 37.5 mg. phenylpropanolamine tablets (totaling 225 grams of phenylpropanolamine). The recipient, Gardner's Littlehouse Minimart, and the shipping address of this business entity, were both determined to be nonexistent. In addition, documents seized at the site of the clandestine methamphetamine laboratory documented that a Federal Express package shipped on or about May 27, 1998, from PPI to Gardner's Littlehouse Minimart contained 30 bottles of 380 60 mg. pseudoephendrine tablets and 30 bottles of 250 60 mg. pseudoephedrine tablets, for a total amount of 1134 grams of pseudoephedrine. Documents obtained from Federal Express revealed that previously, on or about May 8, 1998, PPI had shipped a fourteen pound package of Gardner's Littlehouse Minimart, for which there is evidence to believe contained approximately 666 grams of pseudoephedrine.

On June 10, 1998, a Diversion Investigator (D/I) of the DEA Richmond Resident Office (R/O) visited PPI and spoke with the owner, Niles S. Price. During the visit, the D/I attempted to explain the DEA guidelines concerning the handling of List I chemicals. Mr. Price stated that he was aware of the chemical laws, and that he had contacted DEA's Richmond R/O and had just received an application for DEA registration. At this point the visit was terminated.

On June 15, 1998, a D/I in the DEA Kansas City District Office interviewed several Federal Express employees regarding the above-referenced shipments from PPI. These interviews revealed that there were at least two shipments, on May 8 and May 27, 1998, from PPI to Gardner's Littlehouse Minimart, a nonexistent business entity at a nonexistent shipping address. On both occasions, following confusion in the attempted delivery of the shipments, Federal Express employees in Kansas received calls from PPI attempting to locate the shipments. On May 11, 1998, during the first telephone call, a Federal Express employee spoke with an individual whom he believed to be the owner of PPI, telling him that the package could not be delivered because it was incorrectly addressed. The second package was mailed by PPI to the same address about two weeks later, on May 27, 1998. After several failed delivery attempts, Niles S. Price telephonically contacted the Federal Express office in Kansas in an attempt to locate the package. On both occasions, an individual identifying himself as ''Randy Jones'' picked up the packages from Federal Express immediately following each of the calls from PPI.

Also on June 15, 1998, a DEA S/A acting in an undercover capacity placed an order *via* mail with PPI for six bottles of 100 Guaifedrine 25 mg. ephedrine tablets and three bottles of 380 Maxi Thin 60 mg. pseudoephedrine tablets, which were shipped and received by DEA on or about June 25, 1998.

On or about July 16, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudophedrine 60 mg. tablets.

On August 6, 1998, three DEA Special Agents visited PPI and spoke with Niles S. Price. At that time, they delivered DEA's written Pseudoephedrine and Phenylpropanolamine Notices, together with a letter advising Mr. Price that he could not conduct any List I or List II chemical transactions until he was registered with DEA. The agents further orally advised Mr. Price that he could not distribute pseudoephedrine or phenylpropanolamine until he registered with DEA.

On or about September 1, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudoephedrine 60 mg. tablets.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As a preliminary matter, DEA consistently has held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of and applicant or registrant for registration. See, e.g. Rick's Pharmacy, 62 FR 42595 (1997); Big T Pharmacy, Inc., 47 FR 51830 (1982). Since Niles S. Price is the owner of the applicant, and directed its operations, his conduct is relevant in determining whether or not to grant the applicant's application for registration. Moreover, PPI may be considered a retail store in that it distributes to both businesses and individuals, and also accepts walk-in customers.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the preregistration inspection of the applicant conducted December 9, 1998, did not document any inadequacies in the applicant's security and recordkeeping arrangements.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows that PPI and Niles S. Price significantly violated applicable law by distributing List I chemicals on at least seven separate occasions from March, 1998 through September, 1998, when not registered to do so, in violation of 21 U.S.C. 822 and 843(a)(9) and 21 CFR 1309.21(a).

PPI further violated applicable law by failing to obtain proof of identity for at least one of its business customers, in

violation of 21 U.S.C. 830(a)(3) and 842(a)(9) and 21 CFR 1310.07. The types of evidence constituting proof of identity are set forth at § 1310.07. That regulation states that the existence and apparent validity of a business entity should be checked by telephone directory, the local credit bureau, the local Chamber of Commerce or Better Business Bureau, or if the business entity is a registrant by verifying its DEA registration. Regarding sales to individuals or cash purchasers, the regulation states that the purchaser's signature, driver's license, and at least one other form of identification are required.

Section 830(a)(3) requires that each regulated person who engages in a regulated transaction to identify each other party to the transaction. PPI is a ''regulated person'' because it is a distributor of listed chemicals. 21 U.S.C. 802(38). PPI engaged in at least one ''regulated transaction'' when it shipped its May 27, 1998, Federal Express package containing an aggregate amount of 1134 grams of pseudoephedrine, exceeding the cumulative monthly threshold of one kilogram for that chemical established by 21 CFR 1310.04(f)(1). See 21 U.S.C. 802(39)(A)(II). There is evidence to show that the prior May 8, 1998, PPI shipment to Gardner's Littlehouse Minimart contained approximately 666 grams of pseudoephedrine, increasing PPI's distribution in excess of the cumulative monthly threshold for this List I chemical.

It is clear from the facts of this case that PPI consistently violated the proof of identity requirement. PPI sent at least two Federal Express packages containing List I chemicals about two weeks apart to Gardner's Littlehouse Minimart. The DEA investigation showed that both this business entity and address were nonexistent. A proper attempt to prove the identity of Gardner's Littlehouse Minimart in accordance with PPI's legal duty should have raised issues regarding the validity of this business entity, preventing the May 8, 1998, Federal Express shipment of List I chemicals. PPI's contacting the Federal Express office in Kansas in an effort to locate this package indicated that PPI knew something was amiss. What renders PPI's conduct especially egregious in this case is that about two weeks later, on or about May 27, 1998, it sent another package containing List I chemicals to the same bogus business entity at the same bogus address, and again had to call Federal Express in Kansas in an effort to locate the package. There is substantial documentary evidence to indicate that much of the pseudoephedrine seized at the clandestine methamphetamine laboratory on June 9, 1998, was shipped from PPI. If PPI had attempted to verify the legitimacy of Gardner's Littlehouse Minimart in accordance with its legal duty, it is likely that neither the May 8 nor the May 27, 1998 shipments of List I chemicals would have been shipped and later seized at the clandestine methamphetamine laboratory.

Regarding factor three, there is no evidence that the applicant or Niles S. Price has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant significantly violated applicable law, as set forth above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that PPI, through its owner Niles S. Price, significantly violated applicable law by distributing List I chemicals without being registered to do so, and by failing to identify the other parties to regulated List I chemical transactions. Mr. Price stated during the June 10, 1998, interview with the DEA Richmond R/O D/I that he was award of the chemical laws regarding the distribution of listed chemicals, and was in the process of obtaining a DEA Registration. Yet, on at least three occasions following this statement, Mr. Price through PPI continued to distribute List I chemicals in response to orders submitted by undercover DEA Special Agents. PPI even continued to distribute List I chemicals following the August 6, 1998, visit by the three DEA Special Agents, who informed Mr. Price by both written and oral notice that he could not distribute listed chemicals until he was registered with DEA. Subsequently, on or about September 1, 1998, PPI shipped additional List I chemicals in response to an order from an undercover DEA Special Agent. In addition, at PPI's December 9, 1998, preregistration inspection, Mr. Price stated to investigators that he requires customers to fax a copy of their driver's license prior to purchases, and that he only ships to the address listed on the license. Yet Mr. Price did not request any form of identification whatsoever for any of the five undercover purchases made by DEA Special Agents previously set forth above. The Administrator finds this lack of candor, taken together with PPI's and Mr. Price's demonstrated cavalier disregard of the statutory law and regulations concerning the registration and distribution of List I chemicals, makes questionable PPI's and Mr. Price's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35,459 (2001); Terrence E. Murphy, 61 FR 2841 (1996). Indeed, this case is a prime example of the dangers created by the failure to follow applicable law regarding the distribution of listed chemicals. PPI's List I chemical products, distributed in violation of statutory law and regulation, were discovered in significant quantities at a clandestine methamphetamine laboratory site, together with a quantity of finished methamphetamine. If PPI had complied with applicable law, it is doubtful that these List I chemicals would have reached the hands of drug traffickers.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Price's Power International. The evidence indicates that the applicant has violated applicable law by distributing List I chemicals while not registered with DEA, and by failing to identify other parties to regulated transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certification of Registration submitted by Aseel be denied. This order is effective February 21, 2001.

December 21, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 02–1415 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 119 statutory license in 2000 to

submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these fees, and a Notice of Intention to Participate in a royalty distribution proceeding. Parties who submit a Notice of Intention to Participate may also submit comments on the Public Broadcasting Service's motion for a partial distribution and the scheduling of a CARP proceeding.

DATES: Comments and Notices of Intention to Participate are due no later than February 1, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and for whom a claim for royalties was timely filed with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty fees, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the distribution of the royalty fees that remain in controversy. See 17 U.S.C. chapter 8.

On October 30, 2001, the Library of Congress published a Notice in the **Federal Register** requesting comments from interested parties as to the existence of controversies over the distribution of 2000 satellite royalty fees collected under 17 U.S.C. 119; 66 FR 54789 (October 30, 2001). The Library requested that interested parties submit their comments, along with Notices of Intention to Participate in the 2000 distribution proceeding, by November 29, 2001. In addition, the Library sought comment on a petition for royalty distribution filed by the Public Broadcasting Service (''PBS''), seeking collection of 2000 and 2001 royalties submitted under 17 U.S.C. 119(b) for the satellite feed.

On November 6, 2001, the Motion Picture Association of America, Inc. (''MPAA'') filed a motion seeking an extension of the November 29, 2001, deadline to January 15, 2002. MPAA asserted that it could not submit its Notice of Intention to Participate until it had an opportunity to examine the list of claimants who had filed for the 2000 satellite funds. This list was not made available to the public until early December. Consequently, in response to the MPAA motion, the Office suspended the November 29, 2001, date for filing comments and Notices of Intention to Participate and requested comments on MPAA's motion. See 66 FR 58761 (November 23, 2001).

Three parties filed comments in response to this notice: the Public Broadcasting Service, the MPAA, and the Joint Sports Claimants (''JSC''). In its comment, JSC stated that it was prepared to file its Notices of Intention to Participate at any time and provided additional comment on the scheduling of the proceeding. Similarly, PBS had no apparent objection to the MPAA request but it did ask that the date for filing the requisite notices not be extended beyond the January 15, 2002 date identified by MPAA in its motion and that the PBS motion for a distribution of the disputed funds be expedited upon the filing of the notices.

MPAA, for its part, acknowledged that with the release of the 2000 satellite claimant list it was now able to prepare its Notice of Intention to Participate. However, it argued that the Office should give the parties a minimum of 30–45 days after the release of the list to prepare and file the notices and suggested January 25, 2002, as an appropriate date for filing the Notices of Intention. MPAA also offered comments on scheduling.[1]

Notices of Intention to Participate. Since the Notices of Intention to Participate must list the name of each copyright owner on whose behalf the notice is being filed, the Office agrees that interested parties should have adequate time to review the official list of satellite claimants for 2000 before being required to file a Notice of Intention to Participate in a proceeding concerning the distribution of the 2000 satellite royalty fees. Moreover, interested parties must have adequate notice of the date for filing such notices. Consequently, the Office is setting a later date for filing a Notice of Intention to Participate in a proceeding to decide the distribution of the 2000 satellite royalty fees than that requested in the MPAA comment. Notices of Intention to Participate in such a proceeding shall be due no later than February 1, 2002.

Section 251.45(a) of title 37 of the Code of Federal Regulations requires that parties file a Notice of Intention to Participate in a CARP proceeding, but it does not prescribe the contents of the notice. The Office, however, has addressed the issue of what constitutes a sufficient Notice and to whom it is applicable. See Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); see also 65 FR 54077 (Sept. 6, 2000). In light of these rulings, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 satellite royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001. On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated

[1] MPAA's and JSC's comments on scheduling were unsolicited and beyond the scope of the November 23, 2001 notice and, thus, will not be considered at this time.

in past satellite distribution proceedings. In an earlier notice, the Office determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees was premature. See 66 FR 54789 (October 30, 2001). Consequently, the Office stated that it would consider the PBS motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion. *Id.*

Parties who file Notices of Intention to Participate in this proceeding in accordance with this notice may, at this time, file comments on the PBS motion. The Copyright Office has posted the PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 on the Copyright Office website at: (*http://www.loc.gov/copyright/carp/pbsmotion.pdf*). The motion is also available for copying in the Office of the General Counsel along with any additional responsive filings that have been filed in the Office of the General Counsel.

Comments on the Existence of Controversies. Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, any comments filed in response to the PBS motion as to the distribution of the 2000 satellite fees must address the existence and extent of any controversies at Phase I and Phase II.

In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by satellite carriers. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, and music programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a satellite royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Schedule of CARP proceeding. Outstanding controversies concerning the distribution of 1996, 1997, 1998, and 1999 satellite royalty fees still remain. Before setting a schedule for a CARP proceeding to resolve any controversies over the distribution of the 2000 satellite royalty fees at issue in the PBS motion, the Office must first decide whether to resolve the remaining controversies in the preceding years or set these aside and focus on the distribution of the 2000 satellite royalty fees as requested by PBS. Therefore, the Office invites comments from all interested parties on whether to continue to conduct distribution proceedings in a sequential manner as has been the practice historically or to set aside the unresolved controversies in the earlier years and proceed immediately to the controversies surrounding the 2000 satellite royalty fees.

Dated: January 16, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–1543 Filed 1–18–02; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with this requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques of other forms of information collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by March 25, 2002 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the national Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC).

OMB Control No.: 3145–0161.

Expiration Date of Approval: May 31, 2002.

Abstract: The National Science Foundation (NSF) requests an extension of approval of instruments to be used in the evaluation of the Local Systemic Change (LSC) through Teach Enhancement Program that were previously approved through May 2002 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teach in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at

up to $6 million each. The database projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

Expected Respondents: A total of 150 teachers and 55 principals from schools in each of the 72 LSC projects, for a total of 10,800 t4eachers and 3,960 principals participating in the LSC program.

Burden On The Public: 3,960 hours for teachers and 990 hours for principals per year.

Dated: January 15, 2002.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 02–1416 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

DATES/TIMES: February 7, 2002, 8:30 am–5 pm and February 8, 2002, 9 am–2 pm.

PLACE: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

TYPE OF MEETING: Open.

CONTACT PERSON: John Wilkinson, Executive Liaison to CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone (703) 292–8741.

MINUTES: May be obtained from the Executive Liaison at the above address.

PURPOSE OF MEETING: To provide advice and recommendations concerning broadening participation in science and engineering.

AGENDA

Thursday, February 7, 2002

8:30 a.m. Welcome; Approval of June 2001 Minutes
9:15 a.m. Discussion of NSF Data Collection and Reporting
12:30 p.m. Lunch
1:30 p.m. Discussion of Use of Supplements to Broaden Participation
5:00 p.m. Adjourn for the day

Friday, February 8

9:00 a.m. Committee Discussion
10:15 a.m. Discussion with Director, NSF
11:00 a.m. Discussion of article ''Hopwood and the Top 10 Percent ''—Next Steps
12:00 p.m. Lunch
1:00 p.m. Committee Discussion: Wrap-up and Future Directions
2:00 p.m. Adjourn

Dated: January 15, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–1417 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 132nd meeting on February 7–8, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, February 7, 2002

A. *8:30–9:40 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *10–12 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES* (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACRS will participate in this discussion.

C. *1–2 P.M.: Update on Igneous Activity including PA Analyses* (Open)—The staff will provide an update on the igneous activity KTI, including the related PA analyses.

D. *2–6 P.M.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held in the Commissioners' Conference Room, One White Flint North on March 20, 2002. The Committee will review its proposed presentations.

Friday, February 8, 2002

E. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–10:15 A.M.: Annual Research Report to the Commission* (Open)—The Committee will discuss its annual report to the Commission on waste-related research.

G. *10:30–12 Noon: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Proposed Amendment to 10 CFR Part 63
- Update on Igneous Activity including PA Analyses
- Annual Research Report to the Commission
- Key Technical Issue Status (tentative)

H. *1:30–3:30 P.M.: Preparation for Meeting with the Commissioners* (Open)—The Committee will continue its discussion of preparations noted in item D above.

I. *3:30–5 P.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

J. *5–6 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend

should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1488 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 7–9, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, February 7, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:45 A.M.: Risk-Informed Regulation Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding update to risk-informed regulation implementation plan.

10:00 A.M.–12:00 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACNW will participate in this discussion.

1:00 P.M.–2:30 P.M.: Proposed Final Revision to Regulatory Guide 1.174 and SRP Chapter 19 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision to Regulatory Guide 1.174 and associated Standard Review Plan (SRP) Chapter 19 to address the use of probabilistic risk assessment (PRA) in license amendment reviews and plans to develop guidance related to PRA quality, including possible endorsement of industrial standards proposed by the American Society of Mechanical Engineers and American Nuclear Society.

2:50 P.M.–4:50 P.M.: PTS Technical Bases Reevaluation Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the Pressurized Thermal Shock (PTS) Technical Bases Reevaluation Project, including initial results of the Oconee Unit 1 reactor pressure vessel failure frequency calculated by using the Fatigue Assessment of Vessels—Oak Ridge (FAVOR) code, and the associated models, inputs, and assumptions used in this code.

5:10 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on the NRC Safety Research Program.

Friday, February 8, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:00 A.M.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee on matters discussed at the January 16–18, 2002 meeting.

9:00 A.M.–10:00 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

10:00 A.M.–10:15 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:35 A.M.–12:00 Noon: Follow-up Items Resulting from the January 24–26, 2002, ACRS Retreat (Open)—The Committee will discuss the follow-up items resulting from the ACRS retreat on January 24–26, 2002, assignments, and schedule for closure of these items.

3:00 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 9, 2002

8:30 A.M.–12:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1489 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 6, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, February 6, 2002—1:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 14, 2002.

Sher Bahadur,

Associate Director for Technical, Support, ACRS/ACNW.

[FR Doc. 02–1490 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 28, 2001 through January 10, 2002. The last biweekly notice was published on January 8, 2002 (67 FR 924).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 21, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 9, 2001.

Description of amendments request: The amendments would revise Technical Specification (TS) 5.6.5b to add topical report CENPD–404–P–A, ''Implementation of ZIRLO™ Cladding Material in CE Nuclear Power Fuel Assembly Designs,'' to the list of analytical methods used to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows the use of methods required for the implementation of ZIRLO™ clad fuel rods in PVNGS [Palo Verde Nuclear Generating Station], Units 1, 2, and 3. The use of this methodology will not increase the probability of an accident because the plant systems will not be operated outside of design limits, no different equipment will be operated, and system interfaces will not change.

As ZIRLO™ material is introduced to the reactor, transition cores will exist in which ZIRLO'' and Zircaloy-4 clad fuel assemblies are co-resident. Fuel assemblies clad with each material will be evaluated based on the approved topical reports.

The use of this additional methodology will not increase the consequences of an accident because Limiting Conditions of Operation (LCOs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will restrict plant transients so that the consequences of accidents will be acceptable. In addition, the consequences of the accidents will be calculated using NRC accepted methodologies.

The transition cores that will exist as ZIRLO'' clad fuel is introduced to the reactor will not increase the consequences of an accident. Operation within the LCOs and RPS setpoints will continue to restrict plant transients so that the consequences of accidents will be acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The ZIRLO™ clad fuel rod design does not introduce features that could initiate an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Safety Limits ensure that Specified Acceptable Fuel Design Limits (SAFDLs) are not exceeded during steady state operation, normal operational transients and anticipated operational occurrences. All fuel limits and design criteria shall be met based on the approved methodologies defined in the topical reports. The RPS in combination with the LCOs will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure, and thermal power level that would result in a violation of the Safety Limits. Therefore, the proposed changes will have no impact on the margins as defined in the Technical Specification bases.

The safety analyses determine the LCO settings and RPS setpoints that establish the initial conditions and trip setpoints, which ensure that the Design Basis Events (Postulated Accidents and Anticipated Operational Occurrences) analyzed in the Updated Final Safety Analysis Report (UFSAR) produce acceptable results. In addition, all fuel limits and design criteria shall be satisfied. The Design Basis Events that are impacted by the implementation of ZIRLO'' cladding will be analyzed using the NRC accepted methodology described in CENPD–404–P–A.

The change in the fuel rod cladding material and the use of the ECCS [emergency core cooling system] performance evaluation models, CENPD–132, Supplement 4–P, ''Calculative Methods for the CE Nuclear Power Large Break LOCA Evaluation Model'' and CENPD–137, Supplement 2–P, ''Calculative Methods for the CE Small Break LOCA Evaluation Model'' will not involve a reduction in the margin of safety because LCOs and Limiting Safety System Settings (LSSS) will be adjusted, if necessary, to maintain acceptable results for the impacted Design Basis Events.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 13, 2001.

Description of amendments request: The amendments would add (1) the phrase ''or if open, capable of being closed'' to Limiting Condition for Operation 3.9.3, ''Containment Penetration,'' and (2) Surveillance Requirement (SR) 3.9.3.3 on verifying the capability to close the equipment hatch, if open. For refueling operations, the amendments would allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] to Technical Specification (TS) 3.9.3 ''Containment Penetrations,'' would allow the equipment hatch to remain open, but capable of being closed, during CORE ALTERATIONS or movement of irradiated fuel assemblies within containment. The position of the equipment hatch (open or closed) is not an initiator of any accident.

The fuel handing accident (FHA) contained in the *Updated Final Safety Analysis Report,* Revision 11, currently assumes that the entire

airborne radioactivity reaching the containment is released to the outside environment. This results in a maximum offsite dose of 74.7 rem to the thyroid and 0.39 rem to the whole body. The calculated control room dose of 11.5 rem thyroid and 0.13 whole body are within the acceptance criteria specified in General Design Criteria 19 ''Control Room.''

Therefore, the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to TS 3.9.3 ''Containment Penetrations,'' allowing the equipment hatch to be open and capable of being closed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment to TS 3.9.3 ''Containment Penetrations,'' allowing the equipment hatch to be open and capable of being closed remains bounded by previously determined radiological dose consequences for a FHA inside containment. The previously analyzed dose consequences were determined to be within the limits of 10 CFR [part] 100, ''Reactor Site Criteria,'' and they meet the acceptance criteria of NUREG–0800 Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants Section 15.7.4 ''Radiological Consequences of Fuel Handling Accidents.'' Therefore, the proposed amendment request does not involve a significant reduction in a margin of safety. Additionally, a new surveillance will be added to verify the capability to close the equipment hatch, if open and CORE ALTERATIONS or movement of irradiated fuel assemblies are in progress within containment, at a frequency of seven days.

Based on the above, APS [the licensee] concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No 3, New London County, Connecticut

Date of amendment request: October 1, 2001.

Description of amendment request: The proposed amendment would modify the Millstone Nuclear Power Station, Unit No. 3 (MP3) Technical Specifications (TSs) to increase the emergency diesel generator (EDG) allowed outage time (AOT), to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements. The Bases of the affected TSs will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representation made by the licensee in the October 1, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes to increase the EDG AOT, to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements are not accident initiators nor will they impact the consequences of any previously evaluated accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TSs do not impact any system or component that could cause an accident nor do the proposed changes alter the plant configuration or require any unusual operator actions or alter the way any structure, system, or component functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The TS changes to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, the TS change to allow verification of offsite circuits within 1 hour prior to or after entering the condition of an inoperable offsite source or inoperable EDG, and the changes to improve the format of the electrical power sources action requirements do not change the TS-required safety limits or safety system settings; therefore, these additional changes will not result in a significant reduction in a margin of safety. The proposed TS changes to increase the EDG AOT do not affect any assumptions or inputs to the safety analyses. Unavailability of a single EDG due to maintenance or repair activities does not reduce the number of EDGs below the minimum required to mitigate all DBAs. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina and Docket Nos. 50–413 and 50–414 Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 6, 2001.

Description of amendment request: The proposed amendments would decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 & 2 Overpower Delta Temperature (OPΔT) Allowable Values. OTΔT and OPΔT are trip functions provided in the reactor trip system to protect against departure from nucleate boiling and to ensure fuel integrity under all overpower conditions. The licensee states that due to changes in reload reactor core designs since the 1.0°F hot leg streaming uncertainty value was determined, it is now necessary to increase the uncertainty value to 1.21°F. Associated changes in the TS Table 3.3.1–1 OTΔT and OPΔT allowable values have been proposed. The licensee states that the decreases are in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Reports. In addition, the licensee has proposed

two minor editorial changes for Catawba Units 1 & 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

First Standard

Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This license amendment request [LAR] proposes to decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 Overpower Delta Temperature (OPΔT) Allowable Values. This decrease is in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Report. These changes have no impact on accident probabilities or consequences.

The proposed changes to the Catawba Table of Contents and Bases are solely administrative in nature and have no impact on any accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Second Standard

Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes contained in this LAR only correct administrative errors and add conservative operability requirements which are consistent with the plants' existing licensing bases. No new or different kinds of accidents are being created.

3. Involve a significant reduction in margin of safety.

Third Standard

Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. Consequently, no margin of safety will be significantly impacted by this LAR.

Conclusion

Based upon the preceding evaluation, performed pursuant to 10CFR50.92, Duke Energy Corporation has concluded that implementation of this LAR at McGuire and Catawba Nuclear Station will not involve a significant hazards consideration. The changes proposed in this LAR make a conservative decrease in the McGuire Units 1 & 2 and Catawba Unit 1OTΔT Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 OPΔT Allowable Values and correct unrelated administrative errors. Following implementation of these proposed changes, McGuire and Catawba will continue to be operated in a conservative manner.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would change the McGuire Technical Specifications (TS) to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with the NRC approved Industry Technical Specifications Task Force (TSTF) Standard Technical Specifications Traveler TSTF–363, ''Revise Topical Report References in ITS 5.6.5 COLR''. Implementation of the changes proposed in this license amendment request will have no adverse impact on Duke's practices for controlling the methodologies used to develop the core operating limits for McGuire. The complete citations (i.e., report number, title, revision number, report date or NRC safety evaluation date, and any supplements) for each of the topical reports listed in TS 5.6.5 will be displayed as applicable in each station's Core Operating Limits Report (COLR). NRC review and approval of new or revised topical reports will continue to be obtained in the same manner. Changes to the COLRs will be controlled by 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation has made the determination that this license amendment request (LAR) for McGuire Technical Specifications (TS) involves No Significant Hazards. This determination was made through the application of the standards established by 10CFR50.92. The three standards are discussed below.

1. Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the McGuire licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) Bases Control Program to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with

an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the McGuire licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 16, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate changes resulting from the use of an alternate source term and the implementation of several plant modifications. The proposed TS changes include the following:

- The Penetration Room Ventilation System (PRVS) will be removed from TS because the PRVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- The Spent Fuel Pool Ventilation System (SFPVS) will be removed from TS because the SFPVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- During certain refueling operations, the containment air locks and/or the equipment hatch and penetrations providing direct access from the containment atmosphere to the outside atmosphere will be permitted to be unisolated under administrative controls. Additionally, the requirement to maintain an operable automatic isolation capability for the Reactor Building Purge system during refueling will be removed from TS.
- The allowable value for the Reactor Building leakage rate will be lowered from 0.25 w%/day to 0.20 w%/day.
- The requirement to measure Reactor Building leakage in excess of 50% of L_a to the penetration room will be removed from TS.
- The Ventilation Filter Testing Program (VFTP) will be revised to remove all references to the PRVS and SFPVS and their testing requirements.
- The VFTP acceptance criterion for the Control Room Ventilation System Booster Fan trains will be revised to require ≥ 97.5% radioactive methyl iodide removal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The AST [Alternative Source Term] and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accidents for Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and the implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the licensing basis associated with the failure of non-Category I (non-seismic) piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The License Amendment Request (LAR) proposes to change the licensing basis for non-Category I (non-seismic) piping to assume a through-wall crack as the postulated piping failure. The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not affect any Chapter 15 accident analyses. Duke evaluated the effects of flooding caused by a leak from a crack size calculated using the SRP [Standard Review Plan] guidelines in the 16-inch HPSW [High Pressure Service Water] header. This evaluation concluded that for the bounding case, the effects of flooding can be mitigated without adversely affecting safety-related equipment. At least an hour is available from detection for operator action to isolate the leak. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The impact of flooding from a seismically induced crack in non-seismic moderate energy piping has been evaluated. Adequate time exists for operator action to isolate flooding sources prior to adversely affecting safety-related equipment required for safe shutdown. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) to eliminate the use of the term ''unreviewed safety question.'' The change is proposed by the licensee to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Oconee licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10 CFR 50.59 regulation. Implementation of the revised 10 CFR 50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick (JAF) Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 2, 2001.

Description of amendment request: The proposed change to the JAF Nuclear Power Plant Technical Specifications establishes a combined leakage rate limit for the sum of the four main steam line leakage rates that is equal to four times the current main steam line valve (MSIV) leakage rate limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the JAF plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR [Code of Federal Regulations] 50.92 since it would not: Involve an increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the FitzPatrick Updated Final Safety Analysis Report (UFSAR).

The proposed amendment results in no change in radiological consequences of the design basis LOCA [loss-of-coolant accident] as currently analyzed for the FitzPatrick Plant. These analyses were calculated assuming a combined total MSIV leakage at accident pressure for determining acceptance to the regulatory limits for the offsite, control room, and Technical Support Center (TSC) radiation doses as contained in 10 CFR 100 and 10 CFR 50, Appendix A, GDC 19 [General Design Criteria]. The proposed change does not compromise existing radiological equipment qualification, since the combined total MSIV leakage rate has been factored into existing equipment qualification analyses for 10 CFR 50.49.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the MSIVs or any other plant system or structure associated with this amendment and therefore, will not affect their capability to perform their design function. The combined total main steam line leakage rate is included in the current radiological analyses for the assessment of radiation exposure following an accident.

This proposal changes the allowable leakage rate from a per valve limit to a total combined leakage rate limit for all four main steam lines but does not change the cumulative limit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Involve a significant reduction in a margin of safety.

The leakage rate limit specified for the MSIVs is used to quantify the maximum amount of bypass leakage assumed in the LOCA radiological analysis. Results of the analysis are evaluated against the dose guidelines contained in GDC 19 and 10 CFR 100. The margin of safety in this context is considered to be the difference between the calculated dose exposures and the guidelines provided by the GDC 19 and 10 CFR 100. Therefore, since the proposed combined total main steam line leakage rate limit is unchanged from the assumed maximum leakage rate for MSIVs, for the purpose of calculating potential radiation dose, the margin of safety is not affected because the postulated radiation doses remain the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: L. Raghavan, Acting.

Exelon Generation Company, LLC (Exelon), Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 21, 2001.

Description of amendment request: Exelon proposed changes that would revise Technical Specification (TS) 2.1 to incorporate revised Safety Limit Minimum Critical Power Ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for LGS Unit 1, Cycle 10, which will include the use of the GE–14 fuel product line.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (CFR), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards or 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TSs, and its use to determine cycle-specific thermal limits, has been performed using the methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which incorporates Amendment No. 25. Amendment No. 25 provides the methodology for determining the cycle-specific MCPR safety limits that replaces the former generic fuel type dependent values. Amendment No. 25 was approved by the NRC (Nuclear Regulatory Commission) in a March 11, 1999, safety evaluation.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The probability of fuel damage will not increase as a result of this change. Likewise, the consequences of accidents previously evaluated are not affected by the revised SLMCPRs values. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. SLMCPRs are based on a calculation using an NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. This methodology uses the same standards and margins that were used in the former generic fuel type methodology. Therefore, the proposed TS change will not involve a significant reduction in a margin of safety previously approved by the NRC.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

National Aeronautics and Space Administration (NASA), Docket No. 50–30, Plum Brook Reactor Facility (PBRF), Sandusky, Ohio

Date of amendment request: December 20, 1999, as supplemented on March 26, November 19, and December 20, 2001.

Description of amendment request: The proposed amendment would allow decommissioning of the Plum Brook Test Reactor Facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed approval of the PBRF Decommissioning Plan involve a significant increase in the probability or consequences of an accident previously evaluated?

All nuclear fuel has been removed from the PBRF site. Radioactive inventories at the PBRF are very small compared to those in operating reactors (both power and non-power) and in various kinds of fuel cycle facilities subject to NRC regulation. Analyses indicate that decommissioning activities would not involve a significant increase in the probability or consequences of an accident previously evaluated in the current Final Hazards Summary for the NASA Plum Brook Reactor Facility.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed approval of the PBRF Decommissioning Plan create the possibility of a new or different kind of accident from any accident previously evaluated?

The current Final Hazards Summary for the NASA Plum Brook Reactor Facility evaluated those cause-and-effect accidents related to external events and loss/failure of reactor support systems that would result in the dispersal of fission products and radioactive materials to the environment. Due to the combined absence of fuel at the PBRF site and the non-operational condition of reactor support systems, NASA has determined that decommissioning activities, as described in the Decommissioning Plan, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Summary: NASA considers that the approval of the Decommissioning Plan does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Current Technical Specifications adequately restrain the scope and nature of decommissioning activities to loose equipment removal and preparations for dismantlement. Approval of the proposed Decommissioning Plan provides for additional controls prior to commencement of dismantlement activities, thereby achieving a greater margin of safety.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant reduction in a margin of safety.

Based on the above evaluations, NASA concludes that the activities associated with

the above described changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding by the NRC of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: J. William Sikora, Esquire, 21000 Brookpark Road, Mail Stop 500–118, Cleveland, OH 44135.

NRC Section Chief: Patrick M. Madden.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: October 5, 2001; as revised on January 4, 2002. This notice supersedes a previous notice (66 FR 55020) published on October 31, 2001, which was based upon the licensee's application dated October 5, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to change the licensing basis requirement for establishing containment hydrogen monitoring ''within 30 minutes'' to ''within 3 hours'' of initiating emergency core cooling following a loss-of-coolant accident (LOCA). The January 4, 2002, revision reduces the proposed delay from 3 hours to 90 minutes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Updated Safety Analysis Report (USAR) Chapter 15 accident analyses do not require or take credit for hydrogen monitoring to be established shortly after a loss of coolant accident (LOCA). Post-LOCA hydrogen production occurs over a long period of time, and an extension from ''30 minutes'' to ''90 minutes'' for establishing hydrogen monitoring will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on containment integrity or the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would allow it to be delayed until those actions required to mitigate the accident and verify proper operation of essential safety equipment have been completed. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any accident previously evaluated.

(3) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 90 minutes following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to mitigate the accident before directing their attention to hydrogen control measures and other long-term actions. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 21, 2001.

Description of amendment request: The proposed changes would revise Technical Specification (TS) Surveillance Requirements (SR) 4.3.1.2 and 4.3.2.2 to allow verification in place of demonstration of response time associated with certain pressure sensors, differential pressure sensors, process protection racks, nuclear instrumentation, and logic systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not result in a condition where the design, material, and construction standards that were applicable prior to the proposed changes are altered. The same Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) instrumentation is being used; the response time allocations/modeling assumptions in the Seabrook Station UFSAR [updated final safety analysis report] analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and will not increase the probability or consequences of an accident previously evaluated since these events are independent of this change.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not alter the performance of the pressure and differential pressure sensors used in the plant protection systems, nor do the proposed changes alter the performance of the Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. The sensors will still have their response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time; and the plant protection systems will still have response time verified by test before being placed in operational service.

For the pressure and differential pressure sensors; and for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems; changing the method of periodically verifying instrument response from time

response testing to calibration and channel checks (assuring equipment operability) will not create any new accident initiators or scenarios.

The periodic calibration of the pressure and differential pressure sensors will detect significant degradation in the sensor response characteristic.

The periodic calibration of the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems will continue to be used to detect significant degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not affect the total system response time assumed in the Seabrook Station UFSAR analyses. The periodic system response time verification method for the pressure and differential pressure transmitters; and the periodic system response time verification method for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems, is modified to allow use of actual test data or engineering data. The method of verification will continue to provide assurance that the total system response is within that defined in Seabrook Station UFSAR analyses.

For the pressure and differential pressure sensors, calibration tests will detect degradation, which might significantly affect sensor response time.

For the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems calibration tests will continue to be performed which would detect significant degradation which might cause the response time to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The proposed amendment will remove requirements for having the equipment hatch closed with four (4) bolts and one door of the personnel access lock (PAL) closed during core alterations and refueling operations for the Fort Calhoun Station (FCS). The technical specification (TS) for other containment penetrations will be modified to delete the requirement to be closed by an operable ventilation isolation actuation signal during core alterations and refueling operations. The proposed amendment will modify requirements for radiation monitors during core alterations and refueling operations. The TS Bases that are affected by the changes described above will be modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to FCS TS modify requirements to have containment closure in place during core alterations and refueling operations in containment. These TS changes do not impact operation of other equipment or systems important to safety. The proposed TS changes reflect the parameters used in the radiological consequence calculations described in Section 5.0 of this license amendment request.

The proposed change to TS 2.8.2(1) will be to delete the requirement for having equipment hatch closed and held in place by at least four (4) bolts and the requirement to have at least one door in the PAL closed. The requirements for containment penetration isolation via an operable VIAS [ventilation isolation actuation signal] have been deleted with these proposed changes. Administrative controls will be put in place instead for ''defense in depth'' action in regards to containment penetrations. These administrative controls include:

a. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall be capable of being closed in less than one hour of a FHA [fuel handling accident].

b. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall not be obstructed unless capability for rapid removal of obstructions is provided (such as quick disconnects for hoses).

c. Penetrations providing direct access from the containment atmosphere to the outside atmosphere shall be capable of being closed on one side in less than one hour of a FHA.

d. An individual or individuals shall be designated and available during core alterations and refueling operations, capable of closing the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one door in the PAL, and penetrations that provide direct access from the containment atmosphere to the outside atmosphere.

In addition, allowance will be granted to have penetration flow paths with direct access from the containment atmosphere to the outside atmosphere to be unisolated during core alterations and refueling operations. These proposed changes are based on a re-analysis that was performed with respect to radiological consequences. The FHA re-analysis (Reference 10.1 [in the December 14, 2001, submittal]) was performed in accordance with current accepted methodology, and consequences were expressed in TEDE [total effective dose equivalent] dose.

The proposed change to TS 2.8.2(3) will delete the requirement for two gaseous radiation monitors being operable and supplied by independent power supplies. Instead, only one gaseous radiation monitor is required to be operable. VIAS actuation upon radiation monitor alert is not credited in the FHA re-analysis. VIAS actuation for containment purge or other penetration isolation is not credited.

The current methodology as described in 10 CFR 50.67 specifies dose acceptance criteria in terms of TEDE dose. The revised FHA analysis results as discussed in Section 5.0 meet the applicable TEDE dose acceptance criteria (specified also in RG [regulatory guide] 1.183) for AST [alternative source term]. The most current FHA analysis does not credit containment integrity and, hence, is conservative in that aspect. These administrative controls proposed as stated above ensure that in the event of a FHA in containment (even though the containment fission product control function is not required to meet dose consequence criteria) that the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one PAL door, and other pathways can be promptly closed.

Currently the equipment hatch is closed with four (4) bolts, at least one PAL door closed, and other penetrations either are closed or capable of being closed on VIAS during core alterations and refueling operations to prevent the escape of radioactive material in the event of a FHA in containment. Whether the equipment hatch or other penetrations are open or closed during core alterations and refueling operations has no effect on the probability of any accident previously evaluated.

Based on the TS changes approved in Reference 10.1, the changes being proposed in this amendment request will not affect assumptions contained in other plant safety analyses (Updated Safety Analysis Report) or the physical design of the plant, nor do they affect other TS that preserve safety assumptions.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The current FHA analysis (Reference 10.1) assumes that all the iodine and noble gases become airborne, escape, and reach the site boundary and low population zone with no credit for filtration, containment closure, or deposition. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident (DBA) events were postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). The FHA analysis documented in Reference 10.1 was performed consistent with 10 CFR 50.67 and RG 1.183. Not crediting filtration systems for EAB/LPZ dose consequences and only crediting natural forces is conservative from the aspect of dose consequences.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The implementation of the proposed changes does not reduce the margin of safety as defined in the alternate source term design basis site boundary and control room dose analyses (Reference 10.1). The radiological analyses results, with the proposed changes, remain within the regulatory acceptance criteria (10 CFR 50.67) utilizing the TEDE dose acceptance criteria directed in RG 1.183. These criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The licensee proposes to (1) revise Technical Specifications 3.7(2)d and 3.7(4) to allow the tests to be performed on a refueling frequency outside of a refueling outage, and (2) correct the docket concerning inconsistencies in the 1973 Fort Calhoun Station (FCS) Safety Evaluation Report (SER) associated with the 13.8 kV transmission line capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Sections 3.7(2)d and 3.7(4) only provide greater flexibility in the time of testing. The periodicity remains the same, i.e., refueling frequency. There are no physical alterations proposed or being made to the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed changes continue to address and comply with the regulatory requirements as described in Fort Calhoun Station Responses to 70 Criteria, Reference 9.2. The proposed changes will continue to assure that the D.C. emergency transfer switches and the 13.8 kV–480 V service will perform their design function. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the D.C. emergency transfer switches or 13.8 kV–480 V service, or any plant configuration, systems, equipment, or operational characteristics. There will be no change in operating modes or safety limits. With the proposed changes, the technical specifications retain requirements for operability and functionality on a refueling frequency. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide flexibility in the time of performance of the required surveillance tests. The proposed changes will not alter any physical or operational characteristics of the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The licensee has proposed to change Technical Specification (TS) 2.10.4, to decrease the minimum required reactor coolant system (RCS) flow rate from 206,000 gallons per minute (gpm) to 202,500 gpm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the RCS flow rate is the same as the indicated RCS flow rate prior to the TS Amendment 193 (Reference 10.1 [in the December 14, 2001, submittal]). The plant was operated with the same RCS flow rate as the proposed value prior to Amendment 193. Chapter 14 events and design basis accidents were analyzed with the RCS flow rate of 202,500 gpm using NRC approved methodology.

In 1999 Fort Calhoun Station was granted TS Amendment 193 to increase the minimum indicated RCS flow rate to 206,000 gpm as a result of the removal of the steam generator orifice plates. Transient and thermal hydraulic analyses were performed using the amended RCS flow rate to verify that the minimum departure from nucleate boiling ratio (MDNBR) does not fall below the limiting value that supports the DNB specified acceptable fuel design limits.

The FRA–ANP analysis confirms that the proposed reduction in RCS flow rate does not degrade the margin to the mechanical fuel design limits and that the fuel design criteria continue to be met.

In view of the above confirmation, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the RCS flow rate is not new since the plant was operating with

the same value prior to TS Amendment 193. The proposed revision does not change any equipment required to mitigate the consequences of an accident. OPPD will continue to analyze all applicable USAR Chapter 14 events and design basis accidents as part of the reload analyses to establish the safety margin to the mechanical fuel design limits and confirm that all the fuel design criteria continue to be met. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The decreased RCS flow rate has been analyzed for thermal hydraulic effects on the reactor core. The analysis has confirmed that the proposed amendment does not degrade the margin to the mechanical fuel design limits and meets the fuel design criteria. The RCS flow rate surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The proposed amendment deletes technical specification (TS) Figures 2–1A (Reactor Coolant System (RCS) Pressure—Temperature Limits for Heatup) and 2–1B (RCS Pressure—Temperature Limits for Cooldown) and replaces them with the single TS Figure 2–1. Additionally, the licensee proposes to change the lowest service temperature from 182°F to 164°F to be in compliance with Reference 4, American Society of Mechanical Engineers (ASME) Section III, NB–2332 and the basis for the minimum boltup temperature to be in compliance with Reference 5, ASME Section XI, Appendix G. The Basis section for Technical Specification 2.1.2 is being updated to reflect the use of ASME Code Case N–640 and Westinghouse Electric Company/Combustion Engineering's (W/CE) pressure temperature (P–T) limit curve methodology as applicable. Finally, based on the replacement of Figures 2–1A and 2–1B with the single Figure 2–1, the following TS are required to be changed: 2.1.1(8), 2.1.2, 2.1.2(1), 2.1.2(2), 2.1.2(6), 2.1.2(6)(a), 2.1.2(6)(c), 2.1.2(6)(d), and 2.1.6(4) as they reference the deleted curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequence of any accident for the following reasons:

(1) TS Figure 2–1 is proposed to incorporate the use of ASME Code Case N–640, which has been approved by the NRC as being acceptable for the development of P–T curves. Additionally, it is being updated for operation to higher neutron fluence values for use in the ART [adjacent reference temperature] calculations.

(2) Reducing the lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(3) The shift in the basis for minimum boltup temperature is in compliance with 10 CFR 50 Appendix G.

(4) Updating the fluence and EFPY [effective full power years] applicability is in compliance with Regulatory Guide 1.99, Revision 2.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision does not change any equipment required to mitigate the consequences of an accident. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident events are postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS Figure 2–1 does not constitute a significant reduction in the margin of safety due to the following:

(1) The current LTOP [low temperature overpressure protection] analysis setpoints are bounding and applicable to this TS Figure.

(2) The use of ASME Code Case N–640 has been approved by the NRC as acceptable for the development of P–T limit curves. W/CE's P–T limit curve methodology has been approved for the development of P–T curves.

(3) The reduction in lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(4) The shift in the basis of the minimum boltup temperature from NDTT to RT_{NDT} is in compliance with Reference 10.4, Section XI, Appendix G.

(5) Updating the fluence and EFPY applicability of the TS Figure 2–1 to maintain validity is in compliance with Regulatory Guide 1.99, Revision 2.

The P–T curve results, with the proposed changes, remain within the regulatory acceptance criteria utilizing W/CE methodology and ASME Code Case N–640. These criteria, 10 CFR 50.36(c)(2), have been developed for application to analyses performed for long term operation of reactor vessels. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3 ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model

safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Description of amendment request: Proposed amendments would revise Technical Specification 3/4.6.1.6, ''Containment Structural Integrity,'' and replace it with reference to containment Post-Tensioning System Surveillance Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed changes to the Technical Specifications do not involve any significant hazards consideration as defined in 10 CFR 50.92.

Criterion 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the surveillance requirements for the containment post-tensioning inservice inspection program as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(viii). The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. The function of the containment post-tensioning system components are not altered by this change. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

Criterion 3: Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not impact the margin of safety included in the design pressure compared to the peak calculated pressure because the proposed activity does not alter, in any way, the available force provided by the tendons. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Based on the evaluation provided above, the proposed changes do not involve a significant hazards consideration under 10 CFR 50.92(c), and will not have a significant effect on the safe operation of the plant. Therefore, there is reasonable assurance that operation of the South Texas Project in accordance with the proposed revised Technical Specifications will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 22, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specification Limiting Condition for Operation for Containment Penetrations to allow the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether the proposed amendment involves a significant hazards consideration by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

(1) Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch are bounded by the current analysis described in the UFSAR [Updated Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with the proposed amendment create the possibility of a new different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident previously evaluated.

(3) Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the personnel airlock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP section 15.7.4 and GDC 19. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 3, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) for the Auxiliary Feedwater (AFW) System to provide consistent allowed outage times (AOT) and required actions for any inoperable motor driven AFW pump(s). The AOT for one inoperable motor drive AFW pump is also proposed to be extended from 72 hours to 28 days based on a risk-informed approach.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, the proposed AOT change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The administrative change involves no increase in the probability or consequences of an accident.

If all four AFW trains are inoperable in Mode 1, 2, or 3, the unit is in a seriously degraded condition with only limited means for conducting a cooldown. In such a condition, the unit should not be perturbed by any action, including a power change that might result in a trip. The seriousness of this condition requires that action be started immediately to restore one AFW train to operable status. Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO [limiting condition for operation] 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) involves no increase in the probability or consequences of an accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed AOT change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The change does not create the possibility of any accident.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety systems settings, and will not relax the bases for any limiting conditions of operation. Therefore, the proposed AOT change does not involve a significant reduction in a margin of safety.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The change does not involve any reduction in a margin of safety.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92, and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2001.

Brief description of amendments: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 18, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 6, 2001.

Description of amendment request: The amendment would revise the following Technical Specifications (TSs): (1) TS 3.3.6, ''Containment Purge Isolation Instrumentation;'' (2) TS 3.3.7, ''Control Room Emergency Ventilation

System (CREVS) Instrumentation;'' and (3) TS 3.9.4, ''Containment Penetrations.'' The revisions to TS 3.3.6 would alter Condition C of the Actions for the Limiting Condition for Operation (LCO), and delete footnotes (a) and (b) from applicable Modes for the automatic actuation logic and actuation relays function and the containment purge exhaust radiation gaseous function in Table 3.3.6–1. The revisions to TS 3.3.7 would add (1) Surveillance Requirement (SR) 3.3.7.6, (2) footnote (c) to Table 3.3.7–1, (3) the fuel building exhaust radiation gaseous function to the table, and (4) footnote (c), 2 trains, and SR 3.3.7.6 to the applicable Modes, required channels, and surveillance requirements columns for the automatic actuation logic and actuation relays and control room radiation control room air intakes functions in Table 3.3.7–1. The revisions to TS 3.9.4 are to add the phrase ''or if open, capable of being closed'' to item a on the equipment hatch in LCO 3.9.4, delete the word ''closed'' from item b on the emergency air lock in LCO 3.9.4, add SR 3.9.4.2 on verifying the capability to install the equipment hatch when it is open, and renumber the existing SR 3.9.4.2 to SR 3.9.4.3. The revisions to the TSs are to allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment. The revisions to TSs 3.3.6 and 3.3.7 are to eliminate the requirement for automatic actuation of containment purge isolation during core alterations and/or during movement of irradiated fuel to allow the containment purge system to remain in operation during refueling when the equipment hatch is open, and to add a new surveillance to response time test the channels for the control room radiation monitor detectors, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch [or the emergency air lock] to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch or the emergency air lock during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch [or open emergency air lock] are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch [or the emergency air lock], the proposed change[s do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the [equipment hatch or emergency] air lock doors open remain bounding for the proposed changes. Those previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP [Standard Review Plan] section 15.7.4 and GDC 19 [for exposure of control room operators].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 21, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Sequoyah to insert tritium-producing burnable absorber rods into the reactor core.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 65000).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: April 20, 2001.

Brief description of amendments: Will revise the Final Safety Analysis Report to reflect a change in the spent fuel pool cooling analysis methodology.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 64998).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: August 20, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Watts Bar to insert tritium-producing burnable absorber rods into the reactor core.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 65005).

Expiration date of individual notice: January 16, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 31, 2001, as supplemented August 1, 2001, and September 26, 2001.

Brief description of amendment: The amendment approves a change to the Technical Specifications and Bases associated with the operability of A.C. electrical power sources to increase the allowed outage time (AOT) for one inoperable emergency diesel generator (EDG) from 72 hours to 14 days. This change to the AOT allows the performance of various EDG maintenance and repair activities during plant operation.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 261.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in *Federal Register:* August 8, 2001 (66 FR 41614).

The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

*Date of initial notice in **Federal Register**:* August 8, 2001 (66 FR 41614). The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.18, ''PASS [Post Accident Sampling System]/Sampling and Analysis of Plant Effluents,'' for Millstone Nuclear Power Station, Unit No. 2 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 262.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.8.4.d, ''Post Accident Sampling,'' for Millstone Nuclear Power Station, Unit No. 3 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 201.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 23, 2001, as supplemented by letters dated June 29, July 19, and November 13, 2001.

Brief Description of amendment: The amendment changes Technical Specification (TS) 3.4.1.6, ''Reactor Coolant System—Isolated Loop Startup'' which includes revisions to the limiting condition for operation. Some of the changes to TS 3.4.1.6 affect restrictions that were included as part of the original Millstone Unit 3 licensing basis allowing power operation with one isolated reactor coolant system loop.

Date of issuance: January 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. NF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 11, 2001 (66 FR 36338). The letters dated June 29, July 19, and November 13, 2001, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or

expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2001.

Brief description of amendment: The change relaxes the allowable cooldown rate in the Reactor Coolant System (RCS) Technical Specifications (TS) 3.4.8.1, ''Pressure/Temperature Limits.'' Specifically, the change eliminates the limitation of a 10 °F per hour cooldown rate when the RCS temperature is below 135 °F. The proposed limitations permit a 100 oF per hour cooldown rate to continue down to an RCS temperature of 110 °F, at which point the rate is reduced to 30 °F per hour.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 177.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 2, 2001 (66 FR 22029).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 9, 2001.

Brief description of amendments: The proposed amendments would incorporate TS changes that are being made to provide consistency with the changes to 10 CFR 50.59, ''Changes, tests, and experiments,'' as published in the **Federal Register** (64 FR 53582), dated October 4, 1999. Specifically, the changes replace the terms ''safety evaluation'' with ''10 CFR 50.59 evaluation'' and ''unreviewed safety question'' with ''requires NRC approval pursuant to 10 CFR 50.59.''

Date of issuance: December 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 125 and 120.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 22, 2001 (66 FR 44170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 21, 2001.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, ''Post Accident Sampling,'' and thereby eliminate the requirement to have and maintain the Post Accident Sampling System at the Braidwood Station, Unit Nos. 1 and 2, and Byron Station, Units Nos. 1 and 2.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 365 days.

Amendment Nos.: 126 and 121.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 31, 2001 (66 FR 55018).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 15, 2001, as supplemented by letter dated November 12, 2001.

Brief description of amendments: The proposed amendments would allow use of ATRIUM 10 fuel from Framatome Advanced Nuclear Fuel, Inc.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 152 and 138.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 8, 2001 (66 FR 41618).

The November 12, 2001, submittal was clarifying in nature and did not change the scope of the original notice or proposed no significant hazards finding dated August 8, 2001 (66 FR 41618). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 14, 2000, as supplemented December 19, 2001.

Brief description of amendment: The amendment changes the operating license to reflect a change in the name of IES Utilities, Inc., a co-owner of the Duane Arnold Energy Center and licensee, to Interstate Power and Light Company.

Date of issuance: January 2, 2002.

Effective date: As of January 1, 2002, and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–49: The amendment revised the operating license.

Date of initial notice in ***Federal Register***: July 26, 2000 (65 FR 46009).

The December 19, 2001, supplemental letter provided notification that (1) the required regulatory approvals for the merger had been received and (2) the projected schedule for the merger was January 1, 2002. The supplemental letter did not change the staff's initial proposed no significant hazards consideration determination or expand the application beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 8, 2001, as supplemented on February 6, December 7, and December 27, 2001.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.5.1.b.1 to change the minimum acceptable Core Spray subsystem flow from 6,350 gallons per minute (gpm) to 6,150 gpm.

Date of issuance: January 7, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 136.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register****:* January 22, 2001 (66 FR 6701).

The letters dated February 6, December 7, and December 27, 2001, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 16, 2001, as supplemented on July 5, 2001.

Brief description of amendments: The amendments revise Technical Specifications (TSs) requirements associated with the operation and surveillance testing of the 28 Volt D.C. (VDC) Batteries. The revised Limiting Condition for Operation (LCO) and Surveillance Requirements (SRs) are now more consistent with the 125 VDC Battery System LCO and SRs as well as similar to standard TSs provided by NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 249 and 229.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 14, 2001 (66 FR 57124).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001.

Brief description of amendments: The amendments modified Facility Operating License Nos. NPF–87 and NPF–89 to reflect the direct transfer of control of TXU Electric Company's operating authority and 100-percent ownership interest in the Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, to a newly formed generating company: TXU Generation Company LP.

Date of issuance: January 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 7 days from the date of issuance.

Amendment Nos.: 90 and 90.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register***: August 20, 2001 (66 FR 43594).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 2001.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission,

John A. Zwolinski,

Director, Division of Licensing, Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1210 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Meeting

Time and Date: Thursday, January 31, 2002, 1:00 PM (Open Portion) 1:30 PM (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

Status: Meeting Open to the Public from 1 p.m. to 1:30 p.m. closed portion will commence at 1:30 p.m. (approx.).

Matters to be Considered:

1. President's Report
2. Appointment: Daniel A. Nichols
3. Meeting Schedule Through September 2002

Further Matters to be Considered: (Closed to the Public 1:30 PM)

1. Finance Project in Indonesia
2. Finance Project in Pakistan
3. Pending Major Projects
4. Reports

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 17, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–1677 Filed 1–17–02; 4:02 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form CB, OMB Control No. 3235–0518, SEC File No. 270–457

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form CB is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c). It also is used by a subject company pursuant to Exchange Act Rule 14e–2(d). This information is made available to the public. Information provided on Form CB is mandatory. Approximately 200 issuers file Form CB annually and it takes approximately .5 hours per response for a total of 100 annual burden hours. Finally, persons who respond to collection contained in Form CB are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1424 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45276; File No. SR–NASD–202–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to extend through July 15, 2002, two pilot programs contained in NASD Rule 6541, which prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board (''OTCBB'') securities. NASD Rule 6541 was established on a pilot basis through February 8, 2002. Portions of NASD Rule 6541 were separately amended for a pilot period that originally ran for a three-month period from August 1, 2001, to November 1, 2001, and was later extended through January 14, 2002. Nasdaq is proposing no changes to the language of NASD Rule 6541.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and has provided the Commission with the 5-day notice required by Rule 19b–4(f)(6)(iii). Nasdaq requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii). If such waiver is granted by the Commission, the two pilots programs would continue to operate without interruption, remaining in effect until July 15, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Section, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, extended the basis customer limit order protection principles—that presently apply to Nasdaq securities—to designated securities traded on the OTCBB.[4] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from ''trading ahead'' of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the ''Manning Rule''). In *Manning*, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has fiduciary duty not to trade for its own account at prices more favorable than the customer order.[5] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[6] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to file a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[7] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current insider spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541 (b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

At the expiration of that period, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[8] Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. At the same time, Nasdaq eliminated the provision of the pilot

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

[5] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988 (''Manning'').

[6] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[7] *See* also Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

[8] *See* Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order, without filling the limit order, applies to all limit orders in OTCBB securities covered by NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread.

Nasdaq has represented that it is actively studying the impact of NASD Rule 6541 on quoting and trading of OTCBB securities. Nasdaq believes that a six-month extension of both pilots is necessary to allow Nasdaq to collect and analyze sufficient data upon which to base its analysis. Nasdaq further believes, preliminarily, that NASD Rule 6541 has had a positive effect on investors. Accordingly, it is Nasdaq's intent to implement limit order protection on a permanent basis at or before the end of this pilot extension.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) maintain the current rule language without a lapse, in keeping with the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative immediately. The Commission finds that granting this request is consistent with the protection of investors and the public interest, as the price improvement standards under NASD Rule 6541 will remain in effect on an uninterrupted basis, thereby furthering the aim of protecting investors and the public interest.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–06 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[9] The Commission notes that permanent approval of limit order protection for OTCBB securities would require the NASD to submit a proposed rule change to this effect under Section 19(b) of the Act, 15 U.S.C. 78s(b).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45277; File No. SR–NASD–99–04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the rules of the Association to add a new rule, Rule 2315. Below is the text of the proposed new rule, as filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41075 (February 9, 1999), 64 FR 10037.

with the Commission on January 13, 1999 and as modified by Amendment No. 1. Proposed additions under Amendment No. 1 are in italics; proposed deletions are in brackets.

* * * * *

2315. Recommendations to Customers in OTC Equity Securities

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

(a) Review Requirement

[(1)] No member or person associated with a member shall recommend [to a customer the purchase, sale, or exchange of] *that a customer purchase or sell short* any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member has reviewed *the* current financial statements of [,] *the issuer,* [and] current *material* business information about [j] the issuer, and [makes] made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(b) Definitions

(1) For purposes of this Rule, *the term* ''current financial statements'' shall include:

(A) For issuers who are not foreign private issuers,

(i) a balance sheet as of a date less than [16] *15* months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 6 months before the date of recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, foreign regulatory authorities, bank and insurance regulators, and

(v) all *publicly available* financial information [contained in regulation statements, including any amendments, with respect to securities transactions registered under the Securities Act of 1933 (Securities Act), or in the case of securities offered pursuant to the exemptions from registration provided by Regulation A, Rule 505, or Rule 506 under the Securities Act, all financial information provided in connection with offerings conducted pursuant to those rules] *filed with the Commission during the 12 months preceding the date of the recommendation contained in registration statements or Regulation A filings.*

(B) For foreign private issuers.

(i) a balance sheet as of a date less than 18 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 9 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer; and

(iv) publicly available financial statements and other financial reports filed during 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, bank and insurance regulators.

(2) For purposes of this Rule, *the term* ''quotation medium'' shall mean any [quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions in equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell]:

(A) System of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or

(B) Publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others.

(c) Compliance Requirements

(1) A member [firm] shall designate a registered [individual] *person* to conduct the review required by this *R*[r]ule. In making such designation, the member [firm] must ensure that:

(A) *E*[e]ither the [individual] *person* is registered as a Series 24 principal, or [his] the person's conduct in complying with the provisions of this Rule is appropriately supervised by a Series 24 [individual] principal; and

(B) *S*[s]uch designated [individual] *person* has the requisite skills, background and knowledge to conduct the review required under this *R*[r]ule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information.

(d) Additional Review Requirement for Delinquent Filers

If an issuer has not made current filings required by [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, [a] foreign regulatory [authority] *authorities,* or bank and insurance regulators, such review must include *an* inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(e) Exemptions

(1) The requirements of this Rule shall not apply to:

(*A*)[1] *T*[t]ransactions that meet the requirements of Rule 504 of Regulation D under the Securities Act *of 1933 (''Securities Act'')* and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act.

(*B*)[2] *T*[t]ransactions with or for an account that qualifies as an ''institutional account'' under Rule 3110(c)(4) or with a customer that is a *''qualified institutional buyer'' under Rule 144A promulgated under the Securities Act or* ''qualified purchaser'' under Section [3(c)(7) *2(a)(51)* of the Investment Company Act of 1940;

(*C*)[3] *T*[t]ransactions in an issuer's securities if the issuer has [$100] *at least $50* million in *total* assets and $10 million in shareholder's equity as [of date of the issuer's most recent audited

balance sheet, which balance sheet should be of a date within 6 months prior to the recommendation] *stated in the issuer's most recent audited current financial statements, as defined in this Rule*;

(*D*)[4] *T*[t]ransactions in securities of a bank [under] *as defined in* Section 3(a)[(4)] (*(6)* of the Securities Exchange Act of 1934 and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority [.];

(E) A security with a worldwide average daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation;

(F) A convertible security, if the underlying security meets the requirement of Section (e)(1)(E) of this Rule;

(G) A security that has a bid price, as published in a quotation medium, of at least $50 per share. If the security is a unit composed of one or more securities, the bid price of the unit divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be at least $50; or

(2) *Pursuant to the Rule 9600 Series, the Association, for good cause shown after taking into consideration all relevant factors, may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of this Rule if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.*

* * * * *

9600. Procedures for Exemptions

9610. Application

(a) Where To File

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, *2315*, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

a. Background

NASD Regulation has been concerned with abuses in the trading and sales of thinly traded, thinly capitalized (''microcap'') securities quoted in the OTC market, and in particular, with the connection between potential fraud and manipulation and the lack of reliable and current financial information about issues of microcap securities. NASD Regulation proposed to amend NASD rules to include new NASD Rule 2315, entitled ''Recommendations to Customers in OTC Equity Securities'' (''Recommendation Rule''). As described in the rule filing and in this amendment, the Recommendation Rule requires a member, before it recommends a transaction in an OTC equity security, to review certain financial and business information and determine that there is a reasonable basis for making the recommendation. The proposed rule also provides certain exemptions from the rule's requirements.

The requirements of the Recommendation Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions for customers and to have a reasonable basis for any recommendation made to a customer. The rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

The Recommendation Rule is one of the NASD's microcap initiatives that was originally published for comment in *NASD Notice to Members 98–15* in January 1998. In May 1998, the NASD Board of Governors and NASD Regulation Board of Directors approved certain modifications, and at its meeting in December 1998, the NASD Board approved additional changes.

On March 1, 1999, the Commission published the Recommendation Rule for public comment in the **Federal Register** and specifically sought comment on the potential need for exemption from proposed Rule 2315.[4] The Commission received six comment letters in response to the **Federal Register** publication. The comment letters were from Goldman, Sachs & Co. (''Goldman''); A.G. Edwards & Sons, Inc. (''Edwards''); National Quotation Bureau (''NQB''); Securities Industry Association (''SIA'') Enstar Group, Inc. (''Enstar''); and Sullivan & Cromwell (''S&C'').

After considering the comments, NASD Regulation has made changes to the proposed Recommendation Rule. The text of the proposed rule provided in Amendment No. 1 reflects these changes, which include revised definitions, modified review requirements, and additional and revised exemption provisions.

b. *Issues Raised in Comment Letters*

The commenters generally supported the concept behind the microcap initiative, that is, as a regulator, NASD Regulation should continue to combat fraud, manipulation and other abuses in the sale of microcap securities. The comments were directed primarily at modifying and clarifying the language in the proposed rule. Absent changes, a number of the commenters believed that the rule would impose an inappropriate burden on competition.

1. *Application of the Rule*

Proposed Rule 2315, as published in the **Federal Register**, would apply when a member or associated person recommends to a customer the purchase, sale or exchange of any OTC equity security. Two commenters, Edwards and S&C, asked that the rule define the term ''recommendation.'' Edwards believed the definition should distinguish a ''recommendation'' from a ''solicitation,'' while S&C was concerned whether a research report with a ''buy'' recommendation would

[4] *See supra* note 3. NASD Regulation is filing the amendment notwithstanding that the Commission has not acted on reproposed Exchange Act Rule 15c2–11. To ensure more consistency, NASD Regulation originally had intended to await action on reproposed Rule 15c2–11 before filing the amendment. NASD Regulation will consider whether further revisions are required to this proposal following Commission action on reproposed Rule 15c2–11.

constitute a ''recommendation'' under the proposed rule. NASD Regulation believes that it is not necessary to define the term ''recommendation'' in this rule. For guidance, members are directed to NASD Rule 2310 ''Recommendations to Customers (Suitability)'' and the accompanying interpretive material. Further, NASD *Notices to Members* provide supplemental advice regarding questions relating to suitable recommendations.[5]

Edwards, the SIA and NQB proposed that ''sales'' be eliminated from the requirement of the rule, arguing that there should not be any potential regulatory barrier to allowing a broker to recommend, for example, that a client sell a security from what the broker may suspect is a ''pump-and-dump'' scheme. NASD Regulation agrees that the regulatory benefits of this rule apply to recommendations to purchase or sell short, but not to recommendations to sell. Therefore, it has revised the requirement by deleting the requirement that the rule apply to recommendations to sell or exchange a security and adding the requirement that the rule apply to recommendations to sell short.

The rule applies to any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium. The SIA and Goldman stated that the rule should apply only when the member has actual knowledge that the security is published or quoted in a quotation medium. NASD Regulation, concerned about possible circumvention of the rule, does not agree that the rule should apply only when the member has actual knowledge that the security is being published or quoted.

2. *Definitions*

Several commenters, Edwards, Goldman, SIA and S&C, offered changes to the definition of ''current financial statements'' in the proposed Recommendation Rule. They argued that the definition did not take into account the customary accounting periods of foreign issuers. For example, Goldman noted that many nations, such as the United Kingdom and Germany, permit their domestic issuers to report financial information on a semi-annual basis rather than on a quarterly basis. Several commenters recommended that the definition be harmonized with that in reproposed Rule 15c2–11,[6] which distinguishes between the foreign private issuers and non-foreign private issuers. NASD Regulation agrees with these suggestions and has revised the definition to be consistent with the language in reproposed Rule 15c2–11 for non-reporting companies,[7] including foreign private issuers. The term ''foreign private issuer'' is defined in Rule 3b–4 promulgated under the Act.

Edwards, Goldman, the SIA and S&C criticized the requirement in the Recommendation Rule that firms review financial statements and other financial reports filed with ''any regulatory authority'' as being overly broad. The SIA, for example, pointed out that these financial reports could include an endless array of filings, such as tax filings, filings with trade authorities and even filings with environmental or labor authorities. As to foreign issuers, commenters recommended that the rule be limited to filings made by the issuer with the principal securities regulator in its home jurisdiction, rather than ''any regulatory authority.'' NASD Regulation has revised the requirement in response to the comments.

Further, the definition of ''current financial statements'' included, among other things, all financial information provided in offerings made pursuant to Rule 505 or rule 506 of Regulation D. The same four commenters requested that this requirement be eliminated, pointing out that the offering materials are not publicly available. NASD Regulation has removed from the definition of ''current financial statements'' financial information provided in offerings made pursuant to Rules 505 and 506. However, the requirement that a broker review certain financial information prior to making a recommendation would clearly apply to the secondary trading of covered securities that were originally offered pursuant to any small or private offering exemption, including Rule 505 or Rule 506.

Finally, NASD Regulation notes that current financial statements must be prepared in accordance with generally accepted accounting principles (''GAAP'') or foreign GAAP. If the financial statements are not audited, the issuer must provide a representation that the financial statements are prepared in accordance with GAAP or foreign GAAP.

The Recommendation Rule also defined the term ''quotation medium.'' Edward argued that the rule should apply only to priced quotation, while the NQB suggested that the rule apply to all non-Nasdaq securities, as that term is defined in the Rule 6700 Series. The SIA suggested that the definition of ''quotation medium'' be limited to those that give period quotations, and it recommended that the definition mirror the language in reproposed Rule 15c2–11, NASD Regulations does not believe it should narrow the rule to include only priced quotations, nor does it believe it should expand the rule so broadly as to encompass all non-Nasdaq securities, including those not published or quoted in quotation medium. However, it has determined to revise the definition of ''quotation medium'' to be consistent with that in reproposed Rule 15c2–11.[8]

3. *Requirements*

NASD Regulation received comments on several areas relating to the Recommendation Rule's requirements. First, S&C expressed concern that the proposed rule would, in effect, add a new suitability requirement that would apply in addition to the suitability requirement in NASD Rule 2310. S&C suggested that NASD Regulation modify the rule to focus on a members's need to be ''familiar'' with the security and the issuer. As stated in the ''Preliminary Note'' to the proposed rule, the requirements of the Recommendation Rule are clearly in addition to existing obligations, including obligations to determine suitability. NASD Regulation believes that the Recommendation Rule is necessary to address abuses in the trading and sales of microcap securities, and in light of the exemptions, applies appropriately.

Second, as originally proposed, Rule 2315 required members to review current business information about an issuer. Edwards and the SIA expressed concern that the requirement was too broad and could conceivably include almost any fact or rumor published by anyone in periodicals or in sites on the Internet. In response, NASD Regulation has changed the requirements so that members need review only current *material* business information about the issuer. Generally, current material

[5] *See NASD Notice to Members 01–23*, ''Suitability and Online Communications'' (April 2001); NASD *Notice to Members—For Your Information*, ''Clarification of *Notice to Members 96–60*'' (March 1997); *NASD Notice to Members 96–60*, ''Clarification of Members' Suitability Responsibilities under NASD Rules with Special Emphasis on Member Activities in Speculative and Low-Priced Securities'' (September 1996); and *NASD Notice to Members 96–32*, ''Members Reminded to Use Best Practices When Dealing in Speculative Securities'' (May 1996).

[6] *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

[7] *Id.* at 11144.

[8] NASD Regulation has slightly modified the definition found in reproposed Rule 15c2–11 to expressly included dissemination of indications of interest. However, the NASD Regulation believes that this change remains consistent with reproposed Rule 15c2–11 because that rule incorporates indications of interest through its definition of ''quotation.'' NASD Regulation's proposed Recommendation Rule does not contain a separate definition of ''quotation''.

business information would include that material information that is available or relates to events that have occurred within the last twelve months prior to the recommendation.

Third, the proposed Recommendation Rule required that a registered person conduct the review of the financial and business information. Goldman and the SIA expressed concern that it was to restrictive to limit this function to registered persons. However, NASD Regulation maintains that the review should be conducted by a registered person over whom it has jurisdiction; it has not made changes to this requirement. NASD Regulation also requires that the member document the information reviewed, the date of the review and the name of the person who conducted the review.

Finally, NASD Regulation received comments on the requirements that members conduct an inquiry when an issuer has into made current filings. Goldman suggested that the provision be strengthened to say that no recommendation can be made if the filings are delinquent. The SIA and S&C stated that the reference to ''any regulatory authority'' was too broad, and that it should be changed to the ''issuer's principal financial or securities regulatory authority in its home jurisdiction.'' NASD Regulation does not agree that the rule should unilaterally prohibit a recommendation if the issuer is delinquent in its filing. However, it has narrowed the reference from ''any regulatory authority'' to ''issuer's principal financial or securities regulatory authority in its home jurisdiction'' which is consistent with the change to the definition of ''current financial statements.''

4. Exemptions

NASD Regulation amended the exemption provisions of the Recommendation Rule in several ways. First, the response to comments by the S&C, NASD Regulation added ''qualified institutional buyers'' as defined under Rule 144A to the list of customers for whom the rule would not apply.

Second, commenters recommended changes to the exemption large issuers, that is issuers with $100 million in assets and $10 million in shareholder's equity. Goldman and the SIA recommended reducing the asset threshold to $25 million in assets, while Enstar recommended changing the test to a net tangible asset test found in reproposed Rule 15c2–11. NASD Regulation recognizes that the asset amount could be reduced without significantly diminishing the effectiveness of the rule, although it believes that a reduction to $50 million in assets is sufficient. Also, the exemption was revised to refer to the revised definition of ''current financial statements'' so as to address comments regarding the age of the balance sheets in the original proposed Recommendation Rule.

Third, in response to comments by Edwards, Goldman, the SIA and S&C, to new exemption were added to ensure the rule focused on small issuers, where the microcap abuses have been found. NASD Regulation determined that it was appropriate to include exemptions which were consistent with those provided in reproposed Rule 15c2–11. Thus, NASD Regulation added provisions to exempt a security based on the security's average daily trading volume (''ADTV'') and the security's bid price. Specifically, an exemption applies to a security with a worldwide ADTV value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation; the exemption also covers a convertible security, if the underlying security meets the ADTV requirement. An exemption also applies when a security has a bid price of at least $50 per share, as published in a quotation medium.

Finally, in response to comments by the NQB, NASD Regulations has provided that members may seek an exemption for good cause shown, pursuant to the Rule 9600 series. The exemption may be for any person, security of transaction, or for certain classes of persons, securities or transactions, such as securities listed on certain foreign exchanges.

However, NASD Regulation did not adopt two further proposals for exemptions. Goldman and the SIA suggested that the rule not apply to members who are also investment advisers, and to members who are subject to Rule 472 ''Communications with the Public'' of the New York Stock Exchange (''NYSE''). NASD Regulation believes that the provisions of Rule 472 do not have the specificity of the Recommendation Rule and thus, the Recommendation Rule is appropriately applied to NASD members who are also NYSE members. NASD Regulation does not agree that the rule should have an exemption for members who are also investment advisers.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will address actual and potential frauds in the quotation and trading of unlisted securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 1, 1999, the Commission published the Association's proposal and solicited comments in the **Federal Register.**[10] The comment period ended on March 22, 1999. As discussed above, the Commission received six comment letters. After considering the comments, the Association is proposing Amendment No. 1 to the rule filing, as outlined above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceeding to determine whether the proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See supra* note 3.

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–04 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1426 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45264; File No. SR–NASD–2001–87]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2002,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases the fee assessed on NASD members that continue to use the x.25 Computer-to-Computer Interface (''CTCI'') to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol (''TCP/IP'') CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

Rule 7010. System Services

(a)–(l) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber.

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy.	1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), includes base bandwidth of 128kb.	8000/month.
Disaster Recovery Option: Single 56kb line with single hub and router (for remote disaster recovery sites only).	975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	4000/month per 64kb increase above 128kb T1 base.
Installation Fee	2000 per site for dual hubs and routers. 1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP Lines within a single location)	1700 per relocation.

(g)–(q) No change.

**As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87, the fee for x.25 CTCI circuits, which has remained $200 per month per circuit—is increased to $1,275 per month per circuit; until the date of the termination of such circuits.*

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[5] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is incerasing the monthly charge to $1,275 per circuit.[6] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[7] Nasdaq has provided and will continue to provide notice to market participants of these dates through Nasdaq Trader.com alerts, direct mail, and telephone calls to NASD members that

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 10, 2002, the Commission received a letter from the NASD containing the rule text of the proposed rule filing. The proposed rule change is treated as filed on the date that the letter was received. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 8, 2002.

[4] 15 U.S.C. 78s(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[6] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[7] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not forsee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is any change in these dates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Items IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull Connecticut processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq's Small Order Execution (''SOES'') and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of ''sunsetting'' its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second (''kb''). The new CTCI network operates over the Enterprise Wide Network II (''EWIN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25 CTCI circuits held by 60 firms remained active. Nasdaq is urging NASD members that still rely upon these outmoded connections to complete their conversions as soon as possible. Nasdaq believes that charging a higher price to NASD members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, Nasdaq believes that as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. Nasdaq believes that the fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to ''sunset'' the x.25 CTCI network on March 31, 2002 (or sooner if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule is one establishing or changing a due, fee or other charge change and thus has become effective pursuant to Section 19(b)(3)of the Act [9] and subparagraph (f) of Securities Exchange Act Rule 19b–4.[10] At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD 2001–87 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1428 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 768s(b)(3).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3383]

State of Mississippi; Amendment #2

In accordance with information received from the Federal Emergency Management Agency, dated January 10, 2002, the above-numbered Declaration is hereby amended to include Coahoma and Tallahatchie Counties in the State of Mississippi as a disaster area due to damages caused by severe storms, tornadoes, and flooding and to establish the incident period for this disaster as beginning on November 24, 2001 and continuing through December 17, 2001.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury is September 9, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–1458 Filed 1–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3880]

Culturally Significant Objects Imported for Exhibition Determinations: ''European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia''

AGENCY: United States Department of State.

ACTION: Notice; Correction.

SUMMARY: On October 3, 2000, Notice was published in the **Federal Register** (Volume 65, Number 192) by the Department of State concerning the exhibition ''European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia.'' The referenced Notice is corrected as follows. I hereby determine that an additional work scheduled to be imported from abroad on or about January 21, 2002 is of cultural significance and that its temporary exhibit in the U.S. is in the national interest. In the summary after ''January 6, 2002,'' add the following additional venue: ''and at the Birmingham Museum of Art, Birmingham, AL from on or about February 10, 2002, to on or about April 14, 2002, is in the national interest.'' In addition, an object from the National Gallery of Victoria, previously on display in the Metropolitan Museum of Art in New York and included in a Notice by the Department of State published July 30, 2001 (Volume 66, Number 146), will be added to the exhibit in Birmingham.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 14, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1492 Filed 1–18–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11275]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms should reach us on or before February 29, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700; or by e-mail Jshort@comdt.uscg.mil. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for seven positions that expire or become vacant in June 2002. To be eligible, you should have experience in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: January 7, 2002.

Jeffrey P. High,

Acting, Assistant Commandant for Marine Safety and, Environmental Protection.

[FR Doc. 02–1513 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11242]

National Preparedness for Response Exercise Program

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on Preparedness for Response Exercise Program (PREP) triennial exercise schedule for 2002, 2003, and 2004.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the Minerals Management Service (MMS), in concert with the states, the oil industry, and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the PREP triennial cycle, 2002–2004, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before March 25, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–11242), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/g-m/gmhome.htm* (see index, then oil response). To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 1994 PREP Guidelines booklet is available at no cost by writing or faxing the TASC Dept Warehouse, 3341 Q 75th Avenue, Landover, MD 20785, fax: 301–386–5394. The stock number of the manual is USCG–X0191. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2001–11242], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, EPA, MMS, and Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

The following table is the PREP schedule for calendar years 2002, 2003, and 2004.

PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES

Area	Agency	Date/qtr[1]	Participant
Calendar Year 2002:			
South FL (MSO Miami)	CG	1	
SW LA/SE TX (MSO Morgan City, MSO Port Arthur, Exxon/Mobil & Stolt)	CG SONS[2]	2	
Hawaii (MSO Honolulu)	CG	3	
Central CA Coast (MSO San Francisco)	CG	3	
EPA Region VII	EPA	3	
Boston (MSO Boston)	CG	4	
Calendar Year 2003:			
Saipan (MSO Guam)	CG	1	
SE Alaska (MSO Juneau)	CG	2	
Philadelphia (MSO Philadelphia)	CG	3	
Savannah (MSO Savannah)	CG	3	
EPA Region II	EPA	3	
Florida Panhandle (MSO Mobile)	CG	4	
Calendar Year 2004:			
Charleston, SC (MSO Charleston)	CG	1	
Duluth Superior (MSO Duluth)	CG	2	

PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES—Continued

Area	Agency	Date/qtr[1]	Participant
SF/LA/LB/San Diego (MSO San Francisco, MSO Los Angeles/Long Beach & MSO San Diego).	CG SONS[2]	2	
Prince William Sound (MSO Anchorage)	CG	3	
EPA Region I	EPA	3	
South Texas (MSO Corpus Christi)	CG	4	

PREP SCHEDULE—INDUSTRY—LED AREA EXERCISES

Area	Planholder type[3]	Date/qtr[1]	Participant
Calendar Year 2002:			
Tampa (MSO Tampa)	v	1	
Northwest (MSO Puget Sound)	v	1	
South LA/LB (MSO LA/LB)	f(mtr)	1	
EPA Oceania	f(nonmtr)	1	
EPA Region II	p	2	
Eastern Wisconsin (MSO Milwaukee)	v	3	
Detroit (MSO Detroit)	v	3	
Maine/New Hampshire (MSO Portland)	v	3	
Providence (MSO Providence)	v	3	
Virginia Coastal (MSO Hampton Roads)	f(mtr)	4	
Houston/Galveston (MSO Houston/Galveston	p	4	
Alabama/Mississippi (MSO Mobile)	f	4	
EPA Region VI	f(nonmtr)	4	
Calendar Year 2003:			
New Orleans (MSO New Orleans)	p	2	
W. Lake Erie (MSO Toledo)	f(nonmtr)	2	
North Coast Area (MSO San Francisco	f(mtr)	2	
EPA Region IV	f(nonmtr)	2	
EPA Region IX	p	2	
Northwest Area (MSO Portland)	v	3	
Eastern Great Lakes (MSO Buffalo)	f(mtr)	3	
Cleveland, OH (MSO Cleveland)	f(mtr)	3	
Caribbean Area (MSO San Juan)	v	4	
Jacksonville (MSO Jacksonville)	v	4	
EPA Region III	f(nonmtr)	4	
Calendar Year 2004:			
New York City (Activities NY)	f(mtr)	1	
Southern Coastal NC (MSO Wilmington)	v	1	
Guam (MSO Guam)	v	1	
Long Island Sound (MSO Long Island Sound)	f	2	
EPA Region V	f	2	
EPA Region VII	f(nonmtr)	2	
San Francisco Bay (MSO San Francisco with MSO LA/LB)	tbd SONS[2]	3	
Saulte Ste Marie (MSO Saulte Ste Marie)	f	3	
South TX Coastal Zone (MSO Corpus Christi)	v	3	
SW LA / SE Texas (MSO Morgan City)	p	3	
Maryland Coastal CG (Activities Baltimore)	v	4	
Chicago (MSO Chicago)	v	4	
Northwest (MSO Seattle)	v	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: Spill of National Significance.
[3] Planholder Type: v-vessel; f(mtr)-marine transportation-related facility; f(nonmtr)-nonmarine transportation-related facility; p-pipeline; tbd-to be determined.

Dated: January 10, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1514 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of two meetings of the Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss two tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and

presentations no later than 3 business days before a meeting.

ADDRESSES: The meetings will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is here by given of two meetings of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

On January 31, the committee will discuss ratings for aeronautical repair stations. On February 20, and 21, the committee will discuss quality assurance systems for aeronautical repair stations.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals to participate by teleconference if we receive notification no later than 3 business days before each meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at a meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 10 business days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 11, 2002.

David E. Cann,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–1483 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lancaster County, Pennsylvania

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 will be prepared for the SR 30 Section S01 (US 30) corridor in East Lampeter Township, Salisbury Township, Leacock Township, and Paradise Township, Lancaster County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Deborah Suciu Smith, Environmental Specialist, Federal Highway Administration, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: 717–221–3785, or Larry Graeff, Project Manager, Pennsylvania Department of Transportation 2140 Herr Street, Harrisburg, Pennsylvania 17103, Telephone 717–783–5119.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT) and the Lancaster County Planning Commission, will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives to address transportation problems within the SR 30 Section S01 corridor. The proposed project study area runs approximately from the PA 896/U.S. 30 intersection on the west and the PA 897/U.S. 30 intersection on the east, including the intersection with PA 41.

Notices of Intent concerning this proposal were previously published in the **Federal Register**. The Notice published on February 27, 1987 described a two-phase approach to identify and evaluate alternatives that would provide a variable means of relieving traffic congestion on Traffic Route (T.R.) 23 and US 30 in Eastern Lancaster County, Pennsylvania. The Notice published on June 16, 1988 announced that separate Environmental Impact Statements to evaluate alternatives for the two projects would be prepared.

Improvements to the corridor are considered necessary to provide for the existing and project traffic demand. A needs study has been undertaken and a range of transportation alternatives, including but not limited to No-Build, Transportation Systems Management (TSM), widening the existing three-lane highways to five lanes, bypasses around communities, and constructing a four-lane limited access highway on new location will be considered. These alternatives will be developed consistent with land use strategies to address the identified transportation needs. The development of alternatives will be based on traffic demands, engineering requirements, environmental and socioeconomic constraints, the county's growth management plan, and public input. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To issue that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistant Program Number 20, 205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 15, 2002.

James A. Cheatham,

Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 02–1454 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lehigh and Northhampton Counties, Pennsylvania; Cancellation of the Notice

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued May 8, 2000) to prepare an Environmental Impact Statement for a proposed highway project along U.S. Route 22 between its interchanges with Interstate 78 to the west and State Route 248 to

the east, a distance of approximately 31 km (19 miles).

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, PA 18103, Telephone (610) 798–4131.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that the proposed project consists of distinct sections based on traffic patterns, origins and destinations, safety and capacity needs. Environmental Assessments of Categorical Exclusion Evaluations will be prepared for each section, as appropriate, based on project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administator, Harrisburg, PA.

[FR Doc. 02–1544 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

[Docket No. RSPA–00–7021 (PD–23(RF))]

Research and Special Programs Administration Federal Motor Carrier Safety Administration; Morrisville, PA Requirements for Transportation of ''Dangerous Waste''

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONER: Borough of Morrisville, Pennsylvania.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: The Borough's petition for reconsideration is denied, and RSPA and FMCSA reaffirm their determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively ''Med/Waste''), applied for a determination that Federal hazardous material transportation law preempts provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania (''Borough''): (1) defining ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' and using the term ''dangerous waste''; (2) limiting trucks transporting dangerous waste within the Borough to Route 1; and (3) requiring trucks carrying dangerous waste to carry and have available for inspection the uniform manifest required for hazardous wastes. RSPA and FMCSA published the text of Med/Waste's application and a responding letter from the Borough in the **Federal Register** and invited interested parties to submit comments. 65 FR 20258 (April 14, 2000). Comments were received from Med/Waste, Sanitec, the Medical Waste Institute (''Institute''), Biosystems, and American Waste Industries, Inc. The Borough did not submit further comments.

On July 17, 2001, RSPA and FMCSA published in the **Federal Register** their determination on Med/Waste's application in PD–23(RF), 66 FR 37260. RSPA and FMCSA found that Federal hazardous material transportation law preempts:

(1) the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 of Ordinance No. 902 because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR; and the term ''dangerous waste'' because it is used and defined throughout the ordinance in a manner that is substantively different from the use of the word ''dangerous'' in the HMR;

(2) the limitation that trucks transporting dangerous waste may only travel on Route 1 within the Borough, in Section 02 of Ordinance No. 902, because the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted a routing limitation; and

(3) the requirement in Section 05(a) of Ordinance No. 902 that a uniform hazardous waste manifest must be carried on any truck transporting dangerous waste within the Borough because that requirement is not substantively the same as requirements in the HMR for the ''preparation, execution, and use of shipping documents,'' which do not require the use of any specific form for shipments of regulated medical waste (or other materials that are not hazardous wastes).

In Part I.B. of their July 17, 2001 determination, RSPA and FMCSA discussed Federal regulation of the transportation of medical waste as a hazardous material since 1972 and the fact that ''regulated medical wastes must be distinguished from (and are not within the category of) 'hazardous wastes.' '' 66 FR at 37261. These agencies noted that the HMR specifically state that ''A hazardous waste is not subject to regulation as a regulated medical waste,'' 49 CFR 173.134(b)(2); and that the Pennsylvania Department of Transportation has adopted as State law the HMR in 49 CFR parts 171–173 and 178–180 and FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

In Part II of their determination, RSPA and FMCSA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 66 FR at 37261–62. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a local (or other

non-Federal) requirement is preempted if:

—It is not possible to comply with both the local requirement and a requirement in the Federal hazardous material transportation law or regulations;
—The local requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous material transportation law or regulations;
—The local requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations, including ''the designation, description, and classification of hazardous materials,'' and the ''preparation, execution, and use of shipping documents''; or
—The locality establishes on or after November 14, 1994, a designation, limitation, or requirement related to highway routing of hazardous materials that fails to comply with FMCSA's standards in 49 CFR part 397.

These preemption provisions stem from congressional findings that State, local, or Indian tribe requirements that vary from Federal hazardous material transportation law and regulations can create ''the potential for unreasonable hazards in other jurisdictions and confound[] shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 Sections 2(3) & 2(4), 104 Stat. 3244 (Nov. 16, 1990).

RSPA and FMCSA also explained that their ''[p]reemption determinations do not address issues arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law.'' 66 FR at 37262. RSPA and FMCSA specifically rejected the Borough's argument that the Resource Conservation and Recovery Act authorizes a State or locality to establish ''more stringent'' requirements applicable to the transportation of hazardous materials (including medical waste) than the HMR. 66 FR at 37262–63.

Within the 20-day time period provided in 49 CFR 107.211(a) and 397.223(a), the Borough filed a petition for reconsideration of PD–23(RF) and certified that it had mailed a copy of its petition to Med/Waste and all others who had submitted comments in this proceeding. Responses to the Borough's petition for reconsideration were submitted by Med/Waste, the Institute, and Sanitec.

B. Petition for Reconsideration

In its petition, the Borough never takes direct issue with the findings in PD–23(RF) that definitions in Ordinance No. 902 and the manifest requirement are substantively different than provisions in the HMR. Nor does the Borough dispute the finding that its routing limitation does not comply with FMCSA's standards in 49 CFR part 397. Rather, the Borough asserted that RSPA and FMCSA:

1. failed to determine ''whether compliance with both federal law and the Borough Ordinance is impossible as required by the two-part preemption test set forth in *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 158 (1978)'' with respect to both the definitions in Section 01 of Ordinance No. 902 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

2. failed to find ''why the terms of Ordinance 902, though different from the HMR, are more stringent than the federal regulations,'' with respect to both the definitions in Section 01 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

3. improperly equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR and improperly concluded that ''dangerous'' in Ordinance No. 902 is a ''synonym for ''hazardous.'''

4. ''failed to consider that there are alternate routes, outside of the Borough of Morrisville,'' that would allow Med/Waste to reach its facility on Pennsylvania Avenue, and also failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to highways and roads other than interstate highways.''

II. Discussion

A. The Statutory Criteria for Preemption

The Borough appears to misread and misunderstand the criteria for preemption in 49 U.S.C. 5125(a) and (b)(1) of the Federal hazardous material transportation law. It misstates the law when it asserts, as a ground for reconsideration, that RSPA failed to determine ''whether compliance with both federal law and the Borough ordinance is impossible.'' Similarly, its claim that RSPA failed to find ''why the terms of Ordinance No. 902 * * * are more stringent than Federal regulations'' seems to be based on an incorrect assumption that only ''more stringent'' requirements are preempted by 49 U.S.C. 5125.

1. ''Conflict'' Preemption and the ''Obstacle'' Test

In the *Ray* case, the Supreme Court used the word ''or'' to make it perfectly clear that the ''dual compliance'' and ''obstacle'' criteria are alternate tests of ''conflict'' preemption.[1] A non-Federal standard may be preempted under either of these alternate criteria:

> A state statute is void to the extent that it conflicts with a valid federal statute. A conflict will be found ''where compliance with both federal and state regulations is a physical impossibility'' * * * or where the state ''law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

435 U.S. at 158, 98 S. Ct. at 994 (citations omitted). The five specific subject areas where non-Federal requirements must be ''substantively the same as'' the Federal requirements are simply areas where any substantive difference creates an ''obstacle.'' As Congress found when it amended the Hazardous Materials Transportation Act (HMTA) in 1990 (*see* Pub. L. 101–615, 104 Stat. 3244), these subject areas

> are critical both to the safe transportation of hazardous materials and to the free flow of commerce. Thus, requiring near-uniformity by both Federal and non-Federal entities is crucial.

H. Report 101–444, Part 1, Committee on Energy and Commerce, 101st Cong., 2d Sess., p. 33 (Apr. 3, 1990).

In this respect, the 1990 amendments to the HMTA reflected prior inconsistency rulings by RSPA that consistency is necessary in these subject areas. For example, in IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991, 51994 (Nov. 18, 1982), RSPA discussed its statutory responsibility to ''designate'' materials as hazardous and found that

> differing hazard class definitions present an obstacle to the accomplishment of the general Congressional purpose of promoting uniformity in hazardous materials transportation [and] * * * to the more

[1] The preemption provisions in 49 U.S.C. 5125 are a form of ''conflict'' preemption, which differs from ''field'' preemption. Field preemption exists when Federal regulation is ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' *Ray,* 435 U.S. at 157, 94 S. Ct. at 994, quoting from *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947). Thus, when there is field preemption, Congress has ''completely foreclosed state legislation in a particular area.'' *Ray,* 435 U.S. at 158, 94 S. Ct. at 994.

specific purpose of achieving the maximum level of compliance with the HMR. * * * [I]f it were to be determined that differing hazard class definitions are an appropriate field for local regulation, * * * the potential for regulatory chaos is obvious.

Consistent with RSPA's decision in IR–5, Congress stated that conflicting designations, descriptions, or classifications of hazardous materials ''by non-Federal entities would undermine the consistency needed to promote uniform requirements for all hazardous materials [and] * * * serve no useful purpose.'' H. Report 101–444, Part 1, p. 34.

Congress also stated that ''consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials.'' *Id.* This conclusion followed RSPA's finding in IR–5 that ''the shipping paper requirements of the HMR are exclusive and that any additional shipping paper requirements are inconsistent under the HMTA'' because the need to obtain or provide additional information ''would obviously result in widespread confusion which could lead to noncompliance with applicable Federal regulations.'' 47 FR at 51994.

In this case, there was no need for RSPA to address whether it is impossible to comply with both the HMR and provisions in Ordinance No. 902 defining various terms and requiring a uniform hazardous waste manifest.[2] The classification of hazardous materials in Ordinance No. 902 and its requirement to carry the uniform hazardous waste manifest are not substantively the same as the HMR. Therefore, these provisions are preempted under 49 U.S.C. 5125(b)(1)(A) and (C), respectively.

2. The Nature of the Ordinance as More ''Stringent''

In their July 17, 2001 determination, RSPA and FMCSA discussed and rejected the Borough's argument ''that RCRA allows state, regional, and local authorities 'to control the collection and disposal of solid waste as one of their primary functions.' '' 66 FR at 37262. RSPA and FMCSA explained that medical wastes are not within the category of hazardous wastes regulated under RCRA and that the provision in 42 U.S.C. 6929 allowing ''more stringent'' provisions in a State-authorized program does not authorize transportation requirements otherwise preempted by 49 U.S.C. 5125. *Id.* at 37262–63.

In its petition for reconsideration, the Borough advances an argument that a non-Federal transportation requirement must be ''more stringent'' in order to be preempted. However, that is not one of the criteria in 49 U.S.C. 5125. Under that section, a requirement of a State, political, subdivision of a State, or Indian tribe is preempted when:

—It does not meet the dual compliance or obstacle criterion in subsection (a);
—It concerns any of five subject matter areas listed in subsection (b)(1) and is not substantively the same as a provision in the Federal hazardous material transportation law or the HMR; or
—It is a highway routing designation, limitation, or requirement established after November 1994 and does not comply with FMCSA's standards issued under 49 U.S.C. 5112(b), as provided in 49 U.S.C. 5125(c)(1).

It is not necessary to find that the Ordinance's provisions are ''more stringent'' than the HMR. However, the plain language of the Ordinance would support such a finding. As discussed in the July 17, 2001 determination, Ordinance No. 902 applies to substances that ''are not regulated under the HMR,'' 66 FR at 37263. The manifest requirement in Section 05(a) is also an additional requirement, above and beyond the requirements for shipping papers in the HMR. In this manner, Ordinance No. 902 clearly contains more stringent requirements than the HMR's provisions on regulated medical waste. The Borough's argument on this issue is both irrelevant and incorrect.

B. The Use of the Word ''Dangerous'' in the Ordinance

The Borough is wrong when it asserts, in its petition for reconsideration, that RSPA equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR or concluded that ''dangerous'' in the Ordinance is a synonym for ''hazardous'' in the HMR. Rather, it is precisely the opposite. RSPA specifically found that ''the term 'dangerous waste' in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR.'' 66 FR at 37263.

As explained in the July 17, 2001 determination, ''in the overall context of the HMR, 'dangerous' is a synonym for the word 'hazardous,' '' and the ''HMR use the term 'hazardous materials' in the same manner as the term 'dangerous goods' is used in international regulations.'' *Id.* However, the word ''dangerous'' is used differently in Ordinance No. 902, and ''the term 'dangerous waste' does not correspond to the category of 'hazardous waste' in the HMR.'' *Id.* Thus, the Borough's petition has it backward. It was not RSPA who equated ''dangerous'' in the Ordinance to ''hazardous'' in the HMR; it is the Borough that *failed* to make that equation in its Ordinance and, therefore, created a definition and classification of hazardous materials that are preempted because they are not substantively the same as the HMR's use of the word dangerous to define and classify hazardous materials.

C. The Applicable Federal Highway Routing Standards

Although the Borough now claims in its petition for reconsideration that Med/Waste had ''reasonable access'' to its facility over ''alternate routes, outside of the Borough of Morrisville,'' it provides no evidence to support this claim. In addition, the Borough does not show that it actually considered either (a) the existence of these alternate routes and the effect of requiring carriers to use those alternate routes or (b) any of the other conditions in 49 CFR for the establishment of a highway routing limitation after November 1994, including:

—A finding that this limitation ''enhances public safety'' within the Borough and in neighboring jurisdictions through which vehicles carrying ''dangerous waste'' must travel if those vehicles are limited to Route 1 within the Borough (49 CFR 397.71(b)(1));
—The required notice to the public, consideration of a public hearing, and the opportunity of the public to submit comments on the original proposal to limit vehicles carrying ''dangerous waste'' within the Borough to Route 1 (49 CFR 397.71(b)(2));
—Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes,'' and any other parties that are affected by the routing limitation, and completion of the routing designation process within 18 months of the notice to the public or notice to the other affected jurisdictions (49 CFR 397.71(b)(3), (6));
—Assurance of ''through highway routing * * * between adjacent areas'' (49 CFR 397.71(b)(4));

[2] Similarly, in IR–5, RSPA made no finding whether the local provisions failed the ''dual compliance'' test but found that differing hazard class definitions and additional shipping paper requirements are preempted because they ''are an obstacle to the accomplishment of the HMTA and its regulations.'' 47 FR at 51994.

—A finding that there will not be an unreasonable burden on commerce and consideration whether there was agreement by any other affected State (49 CFR 397.71(b)(5)); and
—Consideration of other specific factors besides the existence of alternate routes and the burden on commerce, including population density, emergency response capabilities, continuity of routes, potential delays in transportation, and congestion and accident history (49 CFR 397.71(b)(9)).

Because it is clear that the Borough failed to meet these conditions and did not comply with FMCSA's standards in 49 CFR part 397, its limitation of vehicles carrying dangerous waste to Route 1 is preempted. Moreover, reconsideration of this determination is not warranted on the Borough's claim that DOT somehow failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to provisions and roads other than interstate highways.''

The authority of Congress to regulate interstate and intrastate commerce is not limited to traffic on interstate highways, nor is the authority of DOT in 49 U.S.C. 5112(b) to ''prescribe by regulation standards for States and Indian tribes to use'' in establishing a highway routing limitation limited to the transportation of hazardous materials on interstate highways. Similarly, 49 U.S.C. 31114 limits the restrictions that a State may place on a carrier's ''access'' between interstate highways and terminals or other facilities, all of which are presumably not located on an interstate highway itself. Accordingly, this ground for reconsideration of the July 17, 2001 determination has no more basis than any of the other positions taken by the Borough in its petition.

D. Expansion of the Preemption Determination

In its comment on the Borough's petition for reconsideration, Med/Waste asked RSPA and FMCSA ''to consider complete preemption of the entire Ordinance 902.'' RSPA and FMCSA decline to expand or extend the scope of their July 17, 2001 determination for the same reason that they previously declined to determine whether specific provisions not originally challenged in Med/Waste's application are preempted—because the notice inviting public comment on that application ''did not clearly indicate that RSPA and FMCSA would consider these other requirements.'' 66 FR at 37265. Nonetheless, it would seem that the Borough would be precluded from enforcing any provision in Ordinance No. 902 that applies to ''infectious waste,'' ''hospital waste,'' or ''dangerous waste,'' because the definitions of these terms are preempted and the use of the term ''dangerous waste'' throughout the Ordinance is also preempted.

III. Ruling

For the reasons set forth above, the Borough's petition for reconsideration is denied. RSPA and FMCSA incorporate and reaffirm the determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance;

2. the designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02; and

3. the requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

IV. Final Agency

In accordance with 49 CFR 107.211(d) and 397.223(d), this decision constitutes the final agency action by RSPA and FMCSA on Med/Waste's application for a determination of preemption as to provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania. Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, D.C. on January 15, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Joseph M. Clapp,

Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–1443 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11211]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for 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 February 21, 2002.

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**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (AMMI@) (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2002 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Harley Davidson VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2002 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: installation of a tire information label. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 Motorcycle Controls and Displays: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1511 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11210]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Cadillac Seville Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Cadillac Seville 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 1991 Cadillac Seville 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 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 February 21, 2002.

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 a.m. to 5 p.m.].

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**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'')(Registered Importer 90–005) has petitioned NHTSA to decide whether 1991 Cadillac Seville passenger cars originally manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1991 Cadillac Seville passenger cars that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991 Cadillac Seville 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.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1991 Cadillac Seville 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 1991 Cadillac Seville 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,* 110 *Tire Selection and Rims,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 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,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1991 Cadillac Seville passenger cars comply with the Bumper Standard found in 49 CFR part 581 and with the Vehicle Identification Number plate requirement of 49 CFR part 565.

Petitioner also contends that the non-U.S. certified 1991 Cadillac Seville passenger cars are not identical to their U.S. certified counterparts, as specified below, but still comply with the following Standard in the manner indicated:

Standard No. 101 Controls and Displays: the speedometer indicates both kilometers per hour and mile per hour. The odometer indicates kilometers and is labeled as such. The brake warning indicator meets the requirements.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: removal and replacement of the headlamps and tail lamps with U.S.-model components.

Standard No. 111 Rearview Mirror: inscription of the required warning statement on the passenger side rearview mirror by applying to the mirror's face a photomask template bearing the required wording and sandblasting, with a mini-sandblaster, the photomasked area with 150 grit aluminum oxide.

Standard No. 114 theft Protection: installation of an audible warning device that will be activated whenever the key is left in the ignition and the driver's door is opened.

The petitioner also states that a certification label must be affixed to the driver's side door jamb to meet the requirements of 49 CFR part 567.

Standard No. 208 Occupant Crash Protection: installation of a seat belt warning buzzer module, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with U.S.-model driver's and passenger's side air bags and knee bolsters, and with Type II seat belts at all front and rear outboard seating positions.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicle that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

The petitioner states that the vehicles will also require the installation of a certification label in the driver's side door jamb that meets the requirements of 49 CFR part 567.

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 a.m. to 5 p.m.]. 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: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1512 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34160 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No.

34160[1] to permit the trackage rights to expire, as they relate to the operations extending from Fort Worth, TX, to Temple, TX, on February 23, 2002.

DATES: This exemption is effective on February 21, 2002. Petitions to stay must be filed by February 1, 2002. Petitions to reopen must be filed by February 11, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34160 (Sub-No. 1) 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 all pleadings must be served on petitioner's representative Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339].

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 11, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1389 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 27, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe (BNSF) to grant temporary overhead trackage rights to UP over approximately 129 miles of BNSF's Ft. Worth Subdivision between BNSF milepost 6.1, near Ft. Worth, TX, and BNSF milepost 218.1, near Temple, TX. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34160 (STB served Jan. 11, 2002). The agreement is scheduled to expire on February 23, 2002. The trackage rights operations under the exemption were scheduled to be consummated on or after January 3, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33928]

Norfolk Southern Corporation and Norfolk Southern Railway Company—Construction and Operation—in Indiana County, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of application and request for public comments.

SUMMARY: Norfolk Southern Corporation and Norfolk Southern Railway Company have filed an application under 49 U.S.C. 10901(a) for authority to construct and operate a 5.26-mile line of railroad in Indiana County, PA.[1] The Board will entertain comments and replies on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: Comments are due on January 31, 2002. Replies are due on February 5, 2002.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33928 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Constance A. Sadler, Sidley Austin Brown & Wood, 1501 K Street, NW., Washington, DC 20005 and John V. Edwards, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On December 27, 2001, Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS) filed an application under 49 U.S.C. 10901(a)[2] for authority to construct and operate a 5.26-mile line of railroad between Saltzburg and Clarksburg, in Indiana County, PA (the Saltzburg Connection).[3] The new line is part of a larger project creating a new route from the south for NSR to serve the Reliant Energy Keystone Generating Plant (Keystone Plant) at Shelocta, PA (the Keystone Project).[4]

NSR currently serves the Keystone Plant over the Northern Route, a circuitous and mountainous route utilizing trackage rights over a substantial portion of the route. Northern Route coal originates with Pittsburgh Steam coal producers located in southwest Pennsylvania and northern West Virginia on the NS-operated Monongahela Line.

NS contends that the new Southern Route will have a greater capacity than the existing Northern Route, and that it will save time, crews and locomotives required to provide rail deliveries to the Keystone Plant. NS further asserts that it will be a shorter, more efficient, effective, and environmentally superior alternative to the Northern Route. Although no shippers other than the Keystone Plant will be served by the new Southern Route, NS claims that the new route will provide an efficient service outlet to the rest of the NS system should new businesses locate in the area served by that route in the future.

Environmental review of the application is currently ongoing by the Board's Section of Environmental Analysis (SEA). On November 17, 2000, SEA granted NS's request for a waiver of the 6-month prefiling notice generally required for construction projects under 49 CFR 1105.10(a). NS filed a request for waiver of the Environmental Impact Statement under 49 CFR 1105.6 on January 16, 2001, which was granted by SEA in a letter dated January 24, 2001. Because a third-party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. *See* 49 CFR 1105.10(d).

Written comments (an original and 10 copies) on the application to construct

[1] In anticipation of the filing of the application, applicants requested that the Board grant a protective order to maintain the confidentiality of sensitive materials. The request was granted in a decision served February 8, 2001.

[2] On the same day, NS filed a Petition for Procedural Schedule proposing a timetable for the submission of public comments and replies regarding this project, not including environmental review. The Board's regulations governing construction applications at 49 CFR 1150.10 establish the procedures for public participation. NS cited a need for expedition in support of its schedule. But the only effect of the schedule proposed by NS is to give itself additional time to reply to any comments. A need for expedition does not justify such a request. If the comments filed require more time for reply than that provided by the regulations, NS may seek additional time at that time. This proceeding shall be conducted according to 49 CFR 1150.10(g) and (h), as set forth in this notice.

[3] According to applicants, NSC, NSR or one of their respective subsidiaries will construct, and NSR will operate, the new line of railroad.

[4] The other parts of the project involve the rehabilitation of an out-of-service line between Clarksburg and Shelocta and the modification of the existing Keystone Connection near Shelocta that will connect the rehabilitated Clarksburg Segment with the existing Shelocta Industrial Running Track. The three parts of the project will be collectively referred to as the Shelocta Secondary.

and operate the above-described rail line must be filed with the Board not later than January 31, 2002. Comments must contain the basis for the party's position either in support or opposition, and must contain the name and address of the commenting party. Applicants must be concurrently served with a copy of each comment. Any replies (an original and 10 copies) by applicants to written comments must be filed with the Board not later than February 5, 2002.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

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

Decided: January 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1515 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of 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 February 21, 2002 to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0120.

Form Number: None.

Type of Review: Extension.

Title: Commercial Invoice.

Description: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties,. The invoice(s) is attached to the CF 7501. The information which is supplied by the foreign shipper is used to ensure compliance with statutes and regulations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 46,500,000.

Estimated Burden Hours Per Respondent : 10 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 130,200 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1484 Filed 1–18–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of 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 February 21, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1478.

Regulation Project Number: INTL–3–95 Final.

Type of Review: Extension.

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 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.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1485 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

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

Lassen National Forest; California; Treatment Unit-1 Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to analyze and disclose the environmental effects of implementing resource management activities that include fuelbreak construction consisting of a strategic system of defensible fuel profile zones and group selection harvests on the Almanor Ranger District on the Lassen National Forest. These land management activities would also be included in an administrative study to evaluate the effects that they may have on the California spotted owl. The construction of defensible fuel profile zones, and group selection harvests, are two management activities that are part of a five-year pilot project to test and demonstrate the effectiveness of certain resource management activities designed to meet ecologic, economic, and fuel reduction objectives described in the Herger-Feinstein Quincy Library Group Forest Recovery Act of October 21, 1998. The Record of Decision (January 12, 2001) for the Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement directed the Pacific Southwest Research Station in collaboration with Region 5 monitoring personnel and the staffs of the National Forests in the Sierra Nevada to establish the Administrative Study. Treatment Unit-1 is one of eleven proposed administrative study areas.

DATES: Comments concerning the scope of the analysis should be received in writing on, or before February 19, 2002.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Almanor District Ranger, P.O. Box 767, Chester, CA 96020.

FOR FURTHER INFORMATION CONTACT: Dominic Cesmat, Interdisciplinary Team Leader, telephone: (530) 258–2141.

SUPPLEMENTARY INFORMATION:

Proposed Action

To accomplish the purpose of the administrative study, resource management activities included in the proposed Treatment Unit-1 Project are defensible fuel profile zone (DFPZ) construction, group selection harvests, the construction and maintenance of National Forest system roads, and the construction of temporary roads. The construction and maintenance of roads are needed to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed.

The analysis area is located in the Butte Creek, Jonesville, Philbrook, and Soda Ridge Management Areas (MA 37, 44, 46, and 45 respectively) on the Almanor Ranger District of the Lassen National Forest, and in the North Fork and Rich Management Areas (MA 19 and 20 respectively) on the Plumas National Forest. The analysis area contains approximately 58,300 acres of National Forest System land and approximately 11,300 acres of private land.

The proposed project is located in Butte, Plumas, and Tehama Counties, California. On the Almanor Range District of the Lassen National Forest, the project is located in all or portions of: Sections 1–3, 10–15, T.25N., R.4E.; Sections 2–10, 15–18, 20, 21, T.25N., R.5E.; Sections 1–4, 10–14, 24, 25, 35, 36, T.26N., R.4E.; Sections 1–23, 26–35, T.26N., R.5E.; Sections 1–11, 14–18, 20–27, 36, T.26N., R.6E.; Sections 6, 30, 31, T.26N., R.7E.; Sections 33–36, T.27N., R.4E.; Sections 10–36, T.27N., R.5E.; Sections 7, 14–36, T.27N., R.6E.; and Sections 30, 31, T.27N., R.7E., MDM. On the Mount Hough Ranger District of the Plumas National Forest, the project is located in all or portions of: Section 36, T.26N., R.6E.; and Section 31, T.26N., R.7E., MDM.

The Treatment Unit-1 Project area contains two of the five sub networks established to implement a DFPZ network on the Almanor Ranger District. The purpose of DFPZs in this area is to reduce the number of acres that would be burned by high-intensity stand-replacing fires. DFPZs are needed in this area in order to improve suppression efficiency by creating an environment where wildfires would burn at lower intensities and where fire fighting production rates would be increased. DFPZs are strategically located strips of land on which forest fuels, both living and dead, have been modified in order to reduce the potential for a sustained crown fire and to allow fire suppression personnel a safer location from which to take action against a wildfire. Fuels treatment strategies would focus on the alteration or reduction of surface fuels, ladder fuels, and canopy closure in order to effectively alter fire behavior and severity. Treatment methods would include thinning timbered stands, hand or machine piling of excessive forest fuels, and prescribed fire. The Treatment Unit-1 Project proposes to construct 11,400 acres of DFPZs.

Group selection harvests would be implemented to promote diversity in stand age and structure. Group selection would be implemented on an estimated 2,600 acres within the Treatment Unit-1 Project area.

The proposed action includes constructing and maintaining National Forest system roads and constructing temporary roads to provide access to treatment areas. Road decommissioning of some system roads and all temporary roads would also be employed. Some existing roads would be used to access treatment areas before decommissioning. Approximately up to eight water sources would be developed. These road treatments would include (road miles are approximate): (a) New road construction (24 miles); (b) road maintenance (13 miles); (c) temporary road construction (4 miles); and (d) road decommissioning (13 miles).

Decision To Be Made

The decision to be made is whether to: (1) Implement the proposed action; (2) to meet the purpose and need for action through some other combination of activities; or (3) take no action at this time.

The Sierra Nevada Forest Plan Amendment Final Environmental Impact Statement Record of Decision provides for variances from the standards and guidelines in the Land and Resource Management Plan to test hypotheses in a scientifically structured manner as long as they were a part of

a formal adaptive management research project or administrative study, done in conjunction with the Pacific Southwest Research Station. The proposed actions as outlined for this project are in conjunction with the Lassen/Plumas Administrative Study and are therefore permissible without further plan amendment. These variances are needed to present additional contrast necessary for the Study, to increase the chance of invoking a range of response, and to describe a land base suitable for group selection. Variances include adjusting diameter and canopy cover limits as identified in the Study and to adjust HFQLG area available for group selection as identified in the Study.

Responsible Official and Lead Agency

The USDA Forest Service is the lead agency for this proposal. Forest Supervisor Ed Cole is the responsible official.

Tentative or Preliminary Issues and Possible Alternatives

Comments from the public and other agencies will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

Identification of Permits or Licenses Required

The need for several road easements, both permanent and temporary, has been identified to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in the spring or summer of 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

The Reviewers Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 10, 2002.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–1444 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Mobile, Alabama, February 7–9, 2002. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held February 7–9, 2002. A tour of local projects will be held on February 7 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Mobile Marriott, 3101 Airport Blvd., Mobile, Alabama. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370. Individuals also may fax their names and proposed agenda items to (209) 536–9089.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements wish the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by February 1 will have the opportunity to address the Council at those sessions.

Dated: January 8, 2002.

Robin L. Thompson,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 02–1408 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, January 30, at the

Water Resources Education Center, located at 4600 SE Columbia Way, Vancouver, Washington. The meeting will begin at 10 a.m. and continue until 4 p.m. The purpose of the meeting is to: (1) Be briefed about the Memorandum of Agreement with Washington State Department of Ecology and the Roads Analysis, (2) Share information among committee members, and (3) Provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: January 11, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–1418 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 25, 2002.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036 South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. Fax: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) 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 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. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: Accounting Requirements for Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Type of Request: Revision of a currently approved collection.

Abstract: RUS is proposing to revise record retention requirements for its Electric and Telecommunications borrowers more in line with standard industry practices. Three areas that we consider to be industry practice but will be specifically addressed are:

- Establishment and maintenance of an index of accounts.
- Retention of loan fund records until they are audited by RUS, generally three years or less.
- Retention of plant records for 25 years or the life of the plant plus ten years, this being necessary to support depreciation and amortization schedules.

RUS contends that this is the minimum record retention requirements needed to carry out its due diligence responsibilities in loan underwriting and maintaining loan security.

RUS borrowers should understand that they may be subject to additional record retention requirements imposed by other regulatory authorities such as FERC, FCC, state commissions and IRS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents and Recordkeepers: 1,660.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Hours per Recordkeeper: 36 hours.

Estimated Total Annual Burden on Respondents: 3,320 hours.

Estimated Total Annual Burden on Recordkeepers: 29,653 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078. Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 14, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1479 Filed 1–18–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: David Layton at (202) 482–0371 or Marin Weaver at (202) 482–2336, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary

month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 02–1518 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Amber Musser at (202) 482–3003 or (202) 482–1777, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2000, through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1519 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATES: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2001).

Background

On June 11, 2001, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan, covering the period June 1, 2000 through May 31, 2001 (66 FR 31203). The preliminary results are currently due no later than March 1, 2002.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that the administering authority shall make a preliminary determination within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested. If it is not practicable to

complete the review within the foregoing time, the administering authority may extend that 245 day period to 365 days. Completion of the preliminary results within the 245 day period is impracticable for the following reasons: (1) This review involves certain complex United States indirect selling expenses including, but not limited to, financial statements and interest expenses; (2) this review involves certain complex Constructed Export Price (CEP) adjustments including, but not limited to, CEP profit and CEP offset; (3) this review involves certain complex warehouse expenses in the United States including, but not limited to, inland freight and inventory.

Because it is not practicable to complete this review within the time specified, we are extending the time limit for the preliminary results of the administrative review of stainless steel butt-weld pipe fittings from Taiwan by 120 days, in accordance with section 751(a)(3)(A) of the Act.

The deadline for issuing the preliminary results is extended from March 1, 2002 to June 29, 2002. Because this date falls on a weekend, the Department will issue its preliminary results on July 1, 2002.

Dated: January 14, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–1520 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Federal Highway Administration Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Buildng, 1099 14th Street, NW, Washington, DC.

Docket Number: 01–018. *Applicant:* Federal Highway Administration, McLean, VA 22101–2296. *Instrument:* Automated Ultrasonic Inspection System, Model P-scan 4 Lite. *Manufacturer:* Force Institute, Denmark. *Intended Use: See* notice at 66 FR 55913, November 5, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) An extra degree of freedom allowing rotation of the transducer and three-dimensional representation of the defect in a weld, (2) automated operation and (3) a unique software/hardware configuration to optimize use by the operator and system performance in the field. A domestic manufacturer of similar equipment advised January 10, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Director, Statutory Import Programs Staff.

[FR Doc. 02–1521 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122801A]

Incidental Take of Marine Mammals; Taking of Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that a letter of authorization to take several species of marine mammals incidental to operation of a low frequency sound source by the North Pacific Acoustic Laboratory (NPAL) was issued on January 15, 2002, to the University of California San Diego, Scripps Institution of Oceanography (Scripps).

DATES: This letter of authorization is effective from January 15, 2002, through January 1, 2003.

ADDRESSES: The application and letter is available for review in the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ≥taking≥ means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to operation of a low frequency sound source by NPAL, were published on August 17, 2001 (66 FR 43442), and remain in effect until September 17, 2006.

Issuance of the letter of authorization to Scripps is based on findings made in the preamble to the final rule that the total takings by this project would result in only small numbers (as the term is defined in 50 CFR 216.103) of marine mammals being taken. In addition, the resultant incidental harassment would have no more than a negligible impact on the affected marine mammal stocks or habitats and would not have an unmitigable adverse impact on Arctic subsistence uses of marine mammals. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and Letter of Authorization (LOA), including monitoring and reporting requirements. This LOA will be renewed annually based on a review of the activity, completion of monitoring requirements

and receipt of reports required by the LOA.

Dated: January 15, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1529 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402F]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The meetings will be held February 4–12, 2002, in Anchorage, AK. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone 907–271–2809.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, and Agendas

The Council's Advisory Panel will begin at 8 a.m. Monday, February 4, and continue through Friday, February 8, 2002.

The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, February 4, and continue through Wednesday, February 6, 2002.

The Joint Protocol Committee for the Council and Alaska Board of Fisheries will meet from Noon until 5 p.m. on Monday, February 4, 2002.

The full Council and Board will meet from 8 a.m. until 5 p.m. on February 5, 2002.

The Council will begin its plenary session at 8 a.m. on Wednesday, February 6, continuing through Tuesday, February 12, 2002.

All meetings are open to the public except executive sessions. An Executive Session of the Council has been scheduled during the lunch hour on Wednesday, February 6, 2002 to discuss personnel issues.

Joint Board/Council Meeting: The agenda will include the following issues of mutual interest to the Board and Council:

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports:

(a) Executive Director's Report.

(b) State Fisheries Report by Alaska Dept. of Fish and Game.

(c) National Marine Fisheries Service Management Report.

(d)Enforcement and Surveillance reports by NMFS and the U.S. Coast Guard.

(e) Annual meeting report from the International Pacific Halibut Commission.

(f) Presentation of results of sea lion research on eastside of Kodiak Island.

(g) Status report on an amendment to the Community Development Quota Program policies.

(h) World Wildlife Fund report on Russian Far East fisheries.

2. Programmatic Groundfish Supplementary Environmental Impact Statement (SEIS): The Council will approve alternatives for analysis and provide direction to the Ecosystem Committee regarding involvement in the process.

3. Essential Fish Habitat: Receive a progress report and discuss alternatives for mitigating fisheries impact; provide direction to staff.

4. Halibut/Sablefish Individual Fishing Quota Program: Review Committee report: review of an amendment of alternatives for community purchase of quota shares. Provide direction to staff.

5. Gulf of Alaska Groundfish Rationalization: Review staff discussion paper and provide direction.

6. Bering Sea/Aleutian Island Crab Rationalization:

(a) Initial review of amendment analysis.

(b) Discuss the environmental impact statement for the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan and potential alternatives. Provide direction to staff.

7. American Fisheries Act (AFA):

(a) Review final pollock co-op reports for 2001.

(b) Review final AFA report to Congress.

(c) Initial review of an amendment to relax single geographic location restrictions for floating processors (if analysis is available).

8. Observer Program:

(a) Review Committee report.

(b) Initial review of regulatory amendment package.

(c)Discuss status of long-term program adjustments.

9. Discuss amendment for additional Steller Sea Lion protection measures and provide direction to staff.

10. Salmon Bycatch:

(a) Review general information on impacts of Steller sea lion protection measures on salmon bycatch.

(b) Review discussion paper on Gulf of Alaska salmon bycatch, if available.

11. Review research priorities.

12. Groundfish Management:

(a) Develop problem statement and provide staff direction for differential gear impact analysis.

(b) Review information and discussion paper on license limitation recency issues.

(c) Discuss independent review of the Council's F_{40} harvest strategy.

(d) Review discussion paper on disclosure of catch and bycatch information (if paper available).

13. Staff Tasking:

(a) Review existing tasking and provide direction as necessary.

(b) Review NMFS initiative for mandatory data collection.

Scientific and Statistical Committee: The SSC agenda will include the following issues:

1. Groundfish SEIS: (Item #2 on the Council agenda)

2. Essential Fish Habitat (Item #3 on the Council agenda)

3. Bering Sea and Aleutian Islands Crab Rationalization (Item #6 on the Council agenda)

4. Observer Program Issues (Item #8 on the Council agenda)

5. Research priorities (#11 on the Council agenda)

6. Independent review of the Council's F_{40} harvest strategy (Item #12(c) on the Council agenda)

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Items 1 and 11 of the Council agenda.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 16, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1532 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090297A]

Endangered and Threatened Species; Amendment to Permit 1056

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Issuance of an amendment to scientific research permit 1056.

SUMMARY: NMFS has issued a permit amendment to the Fish Ecology Division of the Northwest Fisheries Science Center, NMFS, at Seattle, WA (NWFSC).

DATES: Written comments on the amended permit application must be received no later than 5 p.m. Pacific standard time on February 21, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR (503–230–5424; fax: 503–230–5435; e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated, Snake River (SnR) spring/summer.

Permit Amendment Issued

Permit 1056 authorizes NWFSC annual takes of adult and juvenile, threatened, naturally produced and artificially propagated SnR spring/summer chinook salmon. These takes are associated with two scientific research studies conducted in various tributaries of the Salmon River in Idaho, the Grande Ronde River in Oregon, and the Imnaha River in Oregon. The objective of Study 1 is to characterize the run-timing of naturally produced chinook salmon over a period of years to determine whether consistent patterns are apparent and to use this information for real-time management decisions regarding water allocation during the smolt outmigrations. The long-term objectives of Study 2 are to monitor the nature and extent of genetic change over time in supplemented and unsupplemented populations and to correlate the genetic changes with measures of productivity. For the permit amendment, permit 1056 has been extended to expire on April 30, 2002. Permit 1056 was due to expire on December 31, 2001. The extension is necessary to allow NWFSC scientists to continue their research activities in 2002 while NMFS completes a new section 7 consultation on the issuance of ESA section 10(a)(1)(A) permits for takes of threatened SnR spring/summer chinook salmon for scientific research purposes.

Dated: January 15, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1530 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081298B]

Endangered and Threatened Species; Withdrawal of Permit

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

ACTION: Withdrawal of a scientific research permit application (1169).

SUMMARY: NMFS has received notice from the United States Forest Service, Mt. Hood National Forest in Sandy, OR (MHNF), to withdraw its application for a permit for take of an Endangered Species Act (ESA) - listed species associated with scientific research.

ADDRESSES: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: Leslie Schaeffer, Portland, OR (503–230–5424, fax: 503–230–5435, e-mail: leslie.schaeffer@noaa.gov).

SUPPLEMENTARY INFORMATION: The following ESA-listed species and evolutionarily significant unit (ESU) is covered in this notice:

Steelhead (Oncorhynchus mykiss): threatened lower Columbia River (LCR).

Permit Application Withdrawn

Notice was published on August 27, 1998 (63 FR 45799) that MHNF applied for a scientific research permit under section 10(a)(1)(A) of the ESA. The permit was requested for take of adult and juvenile, threatened, LCR steelhead associated with four routine fish distribution and monitoring research studies. At the time the permit was requested, protective regulations for threatened LCR steelhead under section 4(d) of the ESA had not been promulgated by NMFS. After the protective regulations for threatened LCR steelhead were established (see 65 FR 42422, July 10, 2000), NMFS determined that MHNF take of LCR steelhead associated with the proposed scientific research in the MHNF would best be handled under Oregon Department of Fish and Wildlife's scientific research take limit under their 4(d) rule for that species. As such, on August 27, 2001, MHNF notified NMFS to withdraw its permit application from consideration.

Dated: January, 15, 2002.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–1531 Filed 1–18–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Renew Collection 3038–0013, Exemptions From Speculative Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on exemptions from speculative limits.

DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Comments may be mailed to Judith E. Payne, Division of Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Judith E. Payne, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection information, the CFTC invites comments on:

- 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;
- 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;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize 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.

Exemptions from Speculative Limits, OMB control number 3038–0013—Extension

Section 4a(1) of the Commodity Exchange Act (Act) allows the Commission to set speculative limits in any commodity for futures delivery in order to prevent excessive speculation. Certain sections of the Act and/or the Commission's Regulations allow exemptions from the speculative limits for persons using the market for hedging and, under certain circumstances, for commodity pool operators and similar traders. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
17 CFR 147, 1.48, Part 150	12	12	3.0	36

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: January 15, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1422 Filed 1–18–02; 8:45 am]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m, Friday, February 1, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1625 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 8, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1626 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 15, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1627 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

COMMODITIES FUTURES TRADING COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, February 22, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–1628 Filed 1–17–02; 2:24 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Training for Future Conflict will meet in closed session on February 14–15, 2002, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA; and April 8–10, 2002 location to be determined. This Task Force will focus on identifying and characterizing what education and training are demanded by Joint Vision 2010/2020, and will address the development and demonstration time phasing over the next two decades for the combined triad of technology modernization, operational concepts, and training.

This mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will also identify those approaches and techniques that potential enemies might take that could prepare them to revolutionize their warfare capabilities, thereby achieving a training surprise against the U.S. or its allies. This review will include, but not be limited to, unique training/education developments which might be spawned by allies or an adversary, training techniques and methodologies which might be transferred from the U.S. or through third parties, and finally, the possibilities emerging as a result of the globalization of military and information technologies, related commercial services and their application by other nations.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–1330 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense will meet in closed session on February 25–26, 2002, and March 26–27, 2002, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 11, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–1331 Filed 1–18–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Tier II Environmental Impact Statement (DEIS) for the Savannah Harbor Expansion Project, Savannah, GA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY OF THE ACTION: The U.S. Army Corps of Engineers is the lead Federal agency for an evaluation of the deepening of the Federal Navigation Project at Savannah Harbor, Georgia, to ease current shipping constraints and to accommodate anticipated growth in commerce and vessel sizes. In the Water Resources Development Act of 1999, the U.S. Congress authorized deepening the navigation channel to a maximum depth of 48 feet Mean Low Water, subject to further studies and approval of those study results by four Federal agencies. Those additional studies are being conducted. The Savannah District intends to prepare a combined General Reevaluation Report and Tier II Environmental Impact Statement (EIS) to evaluate information concerning the economic feasibility and environmental acceptability of various methods of addressing the existing and expected future navigation problems. These documents will serve as the decision documents concerning implementation of the recently authorized harbor improvement. The other three Federal agencies—the Environmental Protection Agency (Region IV), the Department of Commerce (acting through the National Marine Fisheries Service), and the Department of the Interior (acting through the U.S. Fish and Wildlife Service)—have agreed to participate as Cooperating Agencies in the preparation of the Tier II EIS. The Georgia Ports Authority will also serve as a Cooperator in the EIS development process. In response to requirements of the National Environmental Policy Act, the Corps hereby notifies the public that it is beginning preparation of a Draft Tier II EIS.

FOR FURTHER INFORMATION CONTACT: Questions or written comments about the proposed action and DEIS should be provided by March 7, 2002 to: Mr. William Bailey at 912–652–5781, email address: *shep@sas02.usace.army.mil*, or at U.S. Army Corps of Engineers, Savannah District, ATTN: PD–E, Post Office Box 100, Savannah, Georgia 31402.

Background: Following the provisions of section 203 of the Water Resources Development Act of 1986, the Georgia Ports Authority conducted a feasibility study of various methods of improving navigation in Savannah Harbor and the expected environmental effects of those proposals. The U.S. Army Corps of Engineers adopted the documents prepared by the GPA and published a Draft EIS in May 1998 and a Final Tier I EIS in September 1998. After Congressional authorization of the proposed improvement (found in section 101(b)(9) of the Water Resources Development Act of 1999), the Corps completed the EIS process when it signed a Record Of Decision (ROD) in December 1999. The ROD incorporated the requirements for further technical evaluations that were outlined in the authorization.

After the authorization, the Georgia Ports Authority sought the views of local and regional stakeholders to define what additional studies they believe are needed to determine and fully describe the potential environmental effects of deepening the navigation channel. As those studies were identified, GPA began conducting those tasks. Further information on these GPA activities can be found at *www.sysconn.com/harbor.*

1. *Proposed Action.* The proposed action is development of an Environmental Impact Statement to describe the potential impacts of deepening the navigation channel at Savannah, Georgia, in increments from the existing depth of 42 feet Mean Low Water to a potential depth of 48 feet, including the effect of no channel deepening.

2. *Alternatives.* In addition to the ''No Action'' alternative, channel increments between the existing 42-foot depth and a depth of 48 feet will be evaluated. Other alternatives to accommodate trade growth will be considered. Among the potential alternatives are relocation of existing port facilities within the harbor, development of new port facilities elsewhere in the harbor, and transfer of cargo to other ports in the region. Mitigation plans will be prepared for each alternative considered in detail.

3. *Scoping Process.*

3.A. As part of its public outreach efforts, the Georgia Ports Authority conducted an information meeting in July 2000 to help it define studies that it would conduct during this second phase of the project. Comments provided to GPA at that time should be submitted to the Corps in response to this Notice to ensure their consideration as part of the Federal scoping process. GPA also met with representatives of natural resource agencies and local groups to obtain input to the studies to be conducted. The Corps has coordinated with the Environmental Protection Agency (Region IV), the National marine Fisheries Service, and the U.S. Fish and Wildlife Service concerning what issues should be addressed and what studies should be conducted during this Tier II evaluation. The Corps will conduct a separate additional scoping process to ensure that all issues are identified and included in the EIS.

3.B. The National Environmental Policy Act requires Federal agencies to involve the public in determining the scope of an EIS. Savannah District intends to conduct a public scoping meeting to inform the public of the issues it intends to consider in the EIS and to solicit further input from the public regarding any other issues that may need to be addressed. The Cooperating agencies have indicated they intend to participate in that scoping meeting. The meeting will also provide a forum for people to raise questions about the work done to date and plans for further analyses of all issues. The public is cordially invited to participate, provide input on issues being considered and to make recommendations to address issues not currently under consideration. All interests are invited to participate, including Federal, state, and local agencies, Indian tribes, and other interested private organizations and parties.

3.C. The issues currently under consideration are as follows:

A. Issues identified in the Tier I as requiring further study:
   1. Impacts to the wetlands from changes in salinity, particularly wetlands located on the Savannah National Wildlife Refuge
   2. Impacts to the endangered shortnose sturgeon from changes in salinity and dissolved oxygen
   3. Impacts to striped bass spawning and nursery habitat from changes in salinity and other factors
   4. Impacts to the City of Savannah's water intake from changes in chloride levels
   5. Impacts to dissolved oxygen levels
B. Verification of the 3-Dimensional Hydrodynamic Model
C. Salinity Changes
D. Dissolved Oxygen
E. Chloride Levels
F. Striped Bass
G. Shortnose Sturgeon
H. Freshwater Wetlands
I. Saltwater Wetlands
J. TideGate Restoration
K. Cumulative Impacts from Previous Dredging
L. Closing Middle River
M. Fishery Management Plans
N. Anadromous Fish Populations
O. Other Fish Species; red drum, American shad, river herring
P. Essential Fish Habitat (EFH)
Q. Endangered Species Act Compliance
R. Management of Contaminated Sediments
S. Beach Erosion
T. Channel Slope Erosion
U. Fort Pulaski Erosion
V. Dissolved Oxygen/Fecal Coliform on Beaches
W. Agitation Dredging
X. Sand as a Resource
Y. Upstream Water Releases
Z. Project Economics
AA. U.S. Army Corps of Engineers Section 1135 Restoration Study
BB. U.S. Army Corps of Engineers Savannah River Comprehensive Study
CC. Bend Widener Impacts
DD. Fort Pulaski Impacts
EE. Dredged Material Disposal Capacity and Impacts
FF. Impacts on Adjacent South Carolina Properties
GG. Integration with the COE Savannah River Basin Comprehensive Water Resources Management Study
HH. Tidal Amplitude
II. Ballast Water
JJ. Drinking Water Aquifer
KK. Cultural and Historic Resources
LL. CSS Georgia Impacts
MM. Old Fort Jackson Impacts
NN. Impacts on Adjacent Georgia Properties
OO. Environmental Justice
PP. Multiport Analysis
QQ. Landside Infrastructure
RR. Alternate Methods to Improve Transportation Efficiencies
SS. Alternate Sites for Terminal Operations
TT. Consistency with Coastal Zone Management Plans

3.D. Environmental review and consultation requirements for this project include explicit approval by the Secretary of the Army, the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency. Environmental reviews will also be needed from the following agencies or offices:

- US Fish and Wildlife Service (endangered species)
- US Fish and Wildlife Service—Savannah National Wildlife Refuge (use of refuge property)
- National Marine Fisheries Service (endangered species)
- Georgia Department of Natural Resources—Environmental Protection Division (water quality certification)

• Georgia Department of Natural Resources—Coastal Resources Division (coastal zone management consistency certification)
• Georgia State Historic Preservation Office (cultural and historic resources)
• South Carolina Department of Health and Environmental Control (water quality certification)
• South Carolina Department of Health and Environmental Control—Office of Ocean and Coastal Resource Management (coastal zone management consistency certification)
• South Carolina State Historic Preservation Office (cultural and historic resources)

In addition, the Fish and Wildlife Coordination Act requires full coordination of potential project impacts with Federal and state agencies responsible for management of fish and wildlife resources. Savannah District intends to meet several times with technical experts in these Federal and state natural resource agencies as part of this coordination process. Coordination is also required with the National Marine Fisheries Service for potential impacts to Essential Fish Habitat.

4. *Scoping Meeting.* The scoping meeting is scheduled for February 21, 2001, from 3 p.m. until 8:30 p.m. at the Savannah International Trade and Convention Center on Hutchinson Island in Savannah, Georgia.

5. *Availability of the Draft EIS.* The Draft Tier II EIS is presently scheduled for release in late 2004. However, that date may change. Notification of the availability of the document will be published in the **Federal Register** and in the local newspaper. A Public Notice will also be sent to individuals and organizations that have expressed interest in projects proposed in Savannah Harbor.

Dated: January 15, 2002.

Terry D. Stratton,

Acting Chief, Planning Division.

[FR Doc. 02–1448 Filed 1–18–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing, Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 09/766,625 entitled ''Prevention or Reversal of Sensorial Hearing Loss through Biological Mechanisms,'' filed January 12, 2001, Navy Case No. 82,956.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, and must include the patent application number.

FOR FURTHER INFORMATION CONTACT: Mr. A. D. Spevack, Supervisory Associate Counsel, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1447 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; American BioHealth Group, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to American BioHealth Group, LLC, a revocable, nonassignable, exclusive license in the United States to practice, with right to sublicense, the Government-owned invention described in U.S. Patent No. 6,177,434, entitled ''Prevention or Reversal of Sensorial Hearing Loss Through Biological Mechanisms,'' issued January 23, 2001, Navy Case No. 78,564.

DATES: Anyone wishing to object to the granting of this license has (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. A. David Spevack, Supervisory Associate Counsel, Intellectual Property, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy St., Arlington, VA 22217–5660, telephone (703) 696–4007, E-Mail *spevacd@onr.navy.mil* or fax (703) 696–6909.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2002.

T.J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–1446 Filed 1–18–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: Federal Direct PLUS Loan Application and Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 162,915.

Burden Hours: 81,458.

Abstract: This form is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1430 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 15, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Reinstatement.

Title: Endorser Addendum to Federal Direct PLUS Loan Application and Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 40,729.

Burden Hours: 20,365.

Abstract: If an applicant for a Federal Direct PLUS Loan is determined to have an adverse credit history and obtains and endorser, this form is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1431 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Program of Research on Reading Comprehension

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary proposes a priority for a Program of Research on Reading Comprehension. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2002 and in later fiscal years. We take this action to build a scientific foundation for educational practice by supporting rigorous research on reading comprehension. We intend this priority to produce research findings that will change instructional practice and promote academic achievement.

DATES: We must receive your comments on or before February 21, 2002.

ADDRESSES: Address all comments about this proposed priority to Anne P. Sweet or Rita Foy Moss, U.S. Department of Education, 555 New Jersey Avenue, NW., room 513, Washington, DC 20208–5573. You can fax your comments to (202) 219–2135. If you prefer to send your comments through the Internet, use one of the following addresses: *anne.sweet@ed.gov* or *rita.foy@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Anne P. Sweet or Rita Foy Moss. Telephone: (202) 219–2079.

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 alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 510, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Office of Educational Research and Improvement (OERI), authorized under Title IX of Public Law 103–227, (20 U.S.C. 6001 *et seq.*) supports research and development activities designed to provide essential knowledge for the improvement of education. Although significant advances have been made in knowledge about early reading skills, much less is known about reading comprehension. The Secretary believes that reading comprehension is necessary for academic achievement in virtually all school subjects and for economic self-sufficiency in cognitively demanding job environments. Thus, improving reading comprehension in this country, and providing all members of society with equal opportunities to attain a high level of literacy, require a focused program of educational research. Knowledge gained from such educational research can help guide the national investment in education and support local and State reform efforts. Because this targeted program of research focuses on an enduring problem of practice, it will be the primary mechanism for pursuing new knowledge about reading comprehension. Research grant awards can be made to institutions of higher education, regional education laboratories, public and private organizations, institutions, and individuals, or a consortium thereof. The Secretary invites comments on the priority described in this notice.

Prior to this announcement, OERI reviewed the Report of the National Reading Panel (2000) and the RAND Reading Study Group Report (2001) to identify the most needed reading research and development activities. Following this review, OERI prepared this notice of proposed priority, recognizing that critical frontiers for reading research, such as deriving empirically-grounded theories of comprehension development and reading instruction across the full range of ages and grades, have barely been broached in the research literature. OERI's Program of Research on Reading Comprehension (PRRC) is intended to expand scientific knowledge of how students develop proficient levels of reading comprehension, how reading comprehension can be taught most optimally, and how reading comprehension can be assessed in ways that reflect as well as advance our current understanding of reading comprehension and its development. An overarching goal of the program is to obtain converging empirical evidence on the development and assessment of comprehension that coheres with scientifically supported theories of the processes involved in reading comprehension. A further purpose is to provide a scientific foundation for approaches to comprehension instruction that allow students to achieve proficient levels of comprehension across a range of texts and subjects. The Secretary encourages review of the proposed priority by all interested parties.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Program of Research on Reading Comprehension

Applicants must propose research that is focused on one or more of three areas of inquiry:

1. Developmental patterns of students' reading comprehension;

2. Instructional interventions for reading comprehension; or

3. Measures of reading comprehension that reflect empirically justified dimensions, distinguish reader differences, and are sensitive to instructional goals.

Furthermore, research must be motivated by a specific conceptual framework and relevant prior empirical evidence, both of which must be clearly articulated in the proposal. The research must have the potential to advance fundamental scientific knowledge that bears on the solution of important educational problems. The proposal must indicate method and why the approach taken optimally addresses the research question. Any approach must incorporate a valid inference process that allows generalization beyond the study participants. Proposals must indicate which of the following approaches is to be used:

1. Experiment (control group; randomized assignment—both required).

2. Quasi-experiment (comparison group, stratified random assignment, groups comparable at pretest, statistical adjustment for comparability).

3. Correlational study (simple, multiple/logistic regression, structural

equation modeling, hierarchical linear modeling).

4. Other quantitative (e.g., simulation).

5. Descriptive study using qualitative techniques (e.g., ethnographic methods; focus groups; classroom observations; case studies; single subject designs).

The design of studies must be clear: Independent and dependent, or predictor and criterion, variables should be distinguished. Proposed research is expected to employ the most sophisticated level of design and analysis that is appropriate to the research question. For research questions that cannot be answered using a randomized assignment experimental design, the proposal must spell out the reasons why such a design is not applicable and why it would not represent a superior approach. Thus, applicants must propose to conduct rigorous studies that are scientifically sound, relevant, timely, and ultimately useful to practitioners and policy makers. The Secretary intends to expend a total of $5 million during FY 2002 on grant applications. Funding this priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received.

Post-Award Requirements

The Secretary established the following post-award requirements consistent with the OERI's program regulations at 34 CFR part 700 and the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.720. Recipients of a research award must:

1. Provide OERI with information about the research project and products and other appropriate research information so that OERI can monitor progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

2. At the end of the award period, synthesize the findings and advances in knowledge that resulted from research conducted and describe the potential impact on the improvement of reading comprehension instruction.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number (84.305G) Program of Research on Reading Comprehension)

Program Authority: 20 U.S.C. 6031.

Dated: January 15, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–1480 Filed 1–18–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Program Interest for Processing U–232 To Produce RA–224/BI–212 Generators for Uses in Medicine

AGENCY: Department of Energy (DOE).

ACTION: Notice of Program Interest.

SUMMARY: The U.S. Department of Energy (DOE) announces an unrestricted grant program providing support for the production of Ra–224/Bi–212 generators from DOE provided U–232. The Department's objectives of this effort are to: (1) Develop an assured future supply of Bi–212; (2) Maximize private involvement and minimize the cost of producing Ra–224/Bi–212 generators: and (3) minimize future Government involvement. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production. The Department's contribution will be no more than $50,000 for a period of two years.

DATES: Opening date: January 30, 2002, and closing date: February 28, 2002.

ADDRESSES: Complete details, instructions on how to apply, opening and closing dates and the forms may be obtained from the DOE NE home page on the Internet at: *http://www.ne.doe.gov.* In accordance with 10 CFR 600.9, the formal solicitation document will be disseminated electronically as solicitation number DE–PS01–02NE23296 through the Department's Industry Interactive Procurement System (IIPS) home page located at *https://doe-iips.pr.doe.gov.*

FOR FURTHER INFORMATION CONTACT: John McClure, Program Manager, at 301–903–5460, Phyllis Morgan, Contract Specialist at 202–287–1504, and Paul Gervas, Attorney and Advisor at 202–586–6918.

SUPPLEMENTARY INFORMATION: The Department will conduct marketing and sales activities of the isotope. Alternatively, concomitant proposals for the marketing and sales function will be allowed. The Department wishes to encourage the private sector to be involved in the production of these generators by providing resources in a cooperative partnering arrangement for the required production.

Effective October 1, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. All documents included in your applications should be submitted in the Microsoft Word format. To get more information about IIPS and to register your organization, go to *https://doe-iips.pr.doe.gov.* Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classifications System number: 325412. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services Page.

Kevin Smith,

Program Services Division, Office of Headquarters Procurement Services.

[FR Doc. 02–1470 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, February 7, 2002, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by representative from the Environmental Protection Agency
2. Presentation on Operable Unit 1 Five Year Review Process
3. End-state discussions
4. Report on EMSSAB Groundwater Workshop
5. Appointment of Co-chairs
6. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on January 15, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1472 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 13, 2002, 6:30 p.m.–9 p.m.

ADDRESSES: Amargosa Community Center, 821 East Farm Road, Amargosa Valley, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. CAB members will discuss their recommendations related to the recent peer review conducted on the Nevada Test Site Underground Test Area project strategy.

2. Representatives from the National Nuclear Security Administration Nevada Operations Office, Nevada Division of Environmental Protection, and Nye County will share their perspectives on the report.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on January 14, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1473 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; National Nuclear Security Administration Advisory Committee

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice announces a meeting of the National Nuclear Security Administration Advisory Committee (NNSA AC). The Federal Advisory Committee Act, 5 U.S.C. App. 2 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 12 and Wednesday, February 13, 2002; 0900–1700.

LOCATION: Science Applications International Corporation (SAIC), 1710 SAIC Drive (formerly Goodridge Drive), McLean, VA.

FOR FURTHER INFORMATION CONTACT: Betty (BJ) Morris, (202–586–6312) Executive Officer, NNSA AC.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide the Administrator for Nuclear Security with advice and recommendations on matters of technology, policy, and operations that lie within the mission and responsibilities of the National Nuclear Security Administration. Additional information about the Committee, including its charter,

members, and charge, is available at: *www.nnsa.gov*.

Purpose of the Meeting: To discuss national security research, development, and policy programs.

Tentative Agenda

February 12, 2002

0900–0910 Chairman Opens Meeting (open)
0910–1100 Unclassified Discussion on Committee Issues (open)
1100–1200 Public Discussion (open)
1330–1700 Workshop for Members (closed)
1715 Adjourn

February 13, 2002

0900–1700 Classified Discussions (closed)

Closed Portions of Meeting: In the interest of national security, portions of the meeting will be closed to the public, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App 2 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, ''How are advisory committee meetings closed to the public?'', which incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Open Portions of Meeting: Per the agenda posted above, a portion of the meeting will be open to the public for observation and comment. In order to accommodate the public, including facilitating access to meeting facilities, interested parties must contact Betty (BJ) Morris, NNSA AC Executive Officer, by 17:00, February 4, 2001, in order to make appropriate arrangements. Requests for comment will be accommodated on a first-come, first-serve basis.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, DC January 16, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–1474 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Plymouth Generating Facility

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: This notice announces BPA's intention to prepare a joint National Environmental Policy Act (NEPA)/State Environmental Policy Act (SEPA) EIS in cooperation with Benton County, State of Washington, for an electrical interconnection including a new one-mile transmission line and other facilities associated with a proposed powerplant. BPA is the lead Federal agency under NEPA and Benton County is the lead Washington State agency under SEPA. The Plymouth Generating Facility is a 306-megawatt (MW) generating station proposed by Plymouth Energy, L.L.C. (PE) that would be located near the town of Plymouth in Benton County, Washington. PE has requested an interconnection to BPA's transmission system that would allow firm power delivery to the wholesale power market. BPA proposes to execute an agreement with PE to provide the interconnection and firm power transmission.

ADDRESSES: To be placed on the project mailing list, including notification of proposed meetings, call toll-free 1–800–622–4520, name this project, and leave your complete name and address. To comment, call toll-free 1–800–622–4519; send an e-mail to the BPA Internet address *comment@bpa.gov;* or send a letter to Communications, Bonneville Power Administration—KC–7, PO Box 12999, Portland, Oregon, 97212.

FOR FURTHER INFORMATION, CONTACT: Philip W. Smith, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3294; or e-mail [*pwsmith@bpa.gov*]. Additional information can be found at BPA's Web site: *www.efw.bpa.gov.*

SUPPLEMENTARY INFORMATION: The EIS will assess the environmental consequences of the proposed project, including:

- Interconnection agreement that BPA proposes with PE;
- Construction and operation of the powerplant;
- Construction and operation of an approximately 800-foot, 6-inch diameter gas line to tie into Williams Northwest Pipeline Company's Plymouth Compressor Station pipeline;
- Construction and operation of a rail spur near the powerplant site for use during powerplant construction; and
- Construction and operation of an interconnection consisting of a substation and approximately one mile of 230-kV or 500-kV transmission line from the substation to either the existing BPA McNary-Big Eddy 230-kV transmission line or the proposed, new BPA McNary-John Day 500-kV transmission line.

The powerplant and the gas and power interconnections would all be located within Benton County, Washington.

Responsibility for construction and operation of the new facilities is principally with PE who would build and operate the powerplant. However, the transmission would be constructed under BPA's management, and BPA would be responsible for the operation and maintenance of these transmission facilities. Williams Northwest Pipeline Company would build and operate the proposed approximately 800-foot gas pipeline that would supply fuel to the powerplant.

Proposed Action: The Plymouth Generating Facility would be a natural gas-fired, combined-cycle combustion turbine powerplant with a nominal generating capacity of approximately 306 MW. The plant site would be on approximately 44 acres zoned for agricultural use (with energy projects permitted as conditional uses) and located about 6 miles west of Plymouth, Washington.

Natural gas would be burned in a gas turbine engine, in which the expanding gases from combustion would turn the turbine's rotor, driving a generator to produce electrical energy. Hot exhaust from the gas turbine would be used to boil water using a heat recovery steam generator (HRSG). Steam produced by the HRSG turns a steam turbine, which would connect to another generator, producing additional electrical energy.

The Plymouth Generating Facility would consist of a single gas turbine generator, heat recovery steam generator and steam turbine generator. Steam cycle cooling would utilize an air cooled condenser and a conventional mechanical draft tower in combination to minimize water use.

Water would be required to generate steam, for cooling and for sanitary uses. The proposed powerplant would require 1,241 gallons per minute of water under average conditions and use no more than 1000 acre feet per year. PE proposes to use on-site wells and to return wastewater flows from plant operations for agricultural irrigation.

PE proposes that project storm water be collected in retention and filtration ponds located at the south side of the property.

The proposed Plymouth Generation Facility would deliver electricity to the regional power grid through an interconnection with either the existing

BPA McNary-Big Eddy 230–kV transmission line or the new, proposed BPA McNary-John Day 500–kV transmission line.

Process to Date: BPA is the lead Federal agency for the joint NEPA/SEPA EIS, and Benton County is the lead Washington State agency. Benton County has received a SEPA Checklist and determined that preparation of an EIS is required. Benton County has scheduled a public meeting to be held on January 24, 2002, at Patterson, Washington, to obtain public input concerning the scope of the EIS. An additional EIS scoping meeting will be scheduled and announced by direct mail and through local media.

Alternatives Proposed for Consideration: Alternatives thus far identified for evaluation in the EIS are (1) the proposed action, (2) alternative sites within the property under lease by PE, (3) alternative transmission line interconnections, and (4) no action. Other alternatives may be identified through the scoping process.

Identification of Environmental Issues: Benton County will prepare an EIS consistent with its responsibilities under Chapter 43.21C of the Revised Code of Washington and Chapter 197–11 of the Washington Administrative Code. PE has requested transmission interconnection and firm transmission service. Such an action triggers a need for BPA to prepare NEPA documentation. Therefore, BPA and Benton County intend to prepare a joint NEPA/SEPA EIS addressing both the powerplant and the associated electric power interconnection and transmission facilities. The principal issues identified thus far for consideration in the Draft EIS are (1) air quality impacts, (2) aesthetic and visual impacts, (3) socio-economic impacts including transportation impacts, (4) wetlands and wildlife habitat impacts, (5) cultural resource impacts, (6) water supply and quality impacts, (7) health and safety impacts, and (8) noise impacts from plant operation. These issues, together with any additional significant issues identified through the scoping process, will be addressed in the EIS. BPA will also use the EIS and NEPA process to address historic preservation and cultural resource issues under Section 106 of the National Historic Preservation Act.

Public Participation: A public scoping meeting will be held at Patterson, Washington, on January 24, 2002. Representatives of BPA and Benton County will be available to receive oral and written public comment. An additional meeting will be scheduled and announced by direct mail and through local media. We request public and agency comments on the scope of the EIS by March 15, 2002.

Receiving comments from interested parties will assure that BPA and Benton County address in the EIS the full range of issues and potentially significant impacts related to the proposed project. When completed, a draft EIS will be circulated for review and comment, and BPA and Benton County will hold at least one public comment meeting on the draft EIS. BPA and Benton County will consider and respond in a final EIS to comments received on the draft EIS.

Issued in Portland, Oregon, on January 11, 2002.

Stephen J. Wright,

Acting Administrator and, Chief Executive Officer.

[FR Doc. 02–1469 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: PNCA–02]

Proposed Adjustment to the Rate for Interchange Energy Imbalances Under the Pacific Northwest Coordination Agreement, Public Hearing, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of proposed adjustment.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that BPA must establish and periodically review its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

By this notice, BPA announces its proposed adjustment to the rate for Interchange Energy (IE) imbalances under the Pacific Northwest Coordination Agreement (PNCA). Each party to the PNCA makes excess energy available to the other party to meet its firm loads; this excess energy is known as interchange. The existing rate, which was established in 1995, is 22.55 mills per kilowatt-hour. Since 1995 the energy industry has undergone dramatic change. It has experienced a sharply increased degree of volatility as well as unprecedentedly high prices. Therefore, BPA is proposing to link the interchange energy price to the market price for energy, thus ensuring that BPA recovers its costs when it provides interchange energy to another PNCA party.

DATES: Proposed hearing dates are supplied in Supplementary Information, Section I.B. Close of public comments is March 22, 2002. The prehearing conference will be held on January 29, 2002.

ADDRESSES: Written comments should be submitted to: Dulcy Mahar, Communications Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Documents will be available for public viewing after January 29, 2002, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE. 11th Avenue, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on January 29, 2002, from 9 a.m. to 12 p.m., Room 223, 911 NE. 11th Avenue, Portland, Oregon. The documents will also be available on BPA's website at www.bpa.gov/power/ratecase. Mr. Byron G. Keep, Power Products, Pricing, and Rates Manager, is the official responsible for the development of BPA's rates.

FOR FURTHER INFORMATION CONTACT: Interested persons may also call (503) 230–4413 or call toll-free 1–800–622–4519. Mr. Keep may be contacted at the address indicated above in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

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Part I—Introduction and Procedural Background

A. Relevant Statutory Provisions Governing This Rate Proceeding

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular,

section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

> [S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. 839e(a)(2). In addition to the Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures. These procedures include issuance of a **Federal Register** Notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, or arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's ''Procedures Governing Bonneville Power Administration Rate Hearings,'' 51 FR 7611 (March 5, 1986), which implement and, in most instances, expand these statutory requirements. Pursuant to Rule 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings (BPA Procedures), this hearing will be conducted under Rule 1010.10, which governs Expedited Rate Proceedings. The expedited procedures will be used rather than the procedures for General Rate Proceedings conducted under Rule 1010.9. The procedures for General Rate Proceedings are intended for use when the Administrator proposes to revise all, or substantially all, of BPA's wholesale power and transmission rates.

The proposed change in the interchange energy rate will apply only to the parties to the PNCA. In addition, the rate applies only to the imbalances of interchange energy between each pair of PNCA parties. For example, if two PNCA parties deliver equal amounts of interchange energy to each other, they have no imbalance between them and no rate is charged. Finally, the effect of interchange energy on BPA's revenues is negligible. For these reasons, the issues in this rate proceeding will be fewer and of more limited scope than the issues in a proceeding to adjust all BPA rates. BPA believes that the 90-day Expedited Rate Proceeding will be adequate to develop a full and complete record and to receive public comment and argument related to the proposed adjustment. If more time is required, the Hearing Officer may request under Rule 1010.10(b) of the BPA Procedures that the BPA Administrator grant an extension.

B. Proposed Schedule Concerning This Rate Proceeding

BPA will release its proposed rate for interchange energy on January 29, 2002, and expects to publish a final Record of Decision on April 30, 2002. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

Date	Action
Jan 28	Deadline for Petitions to Intervene.
Jan 29	Prehearing Conference.
Feb 12	Data Requests on BPA's Direct Case.
Feb 19	Data Responses Due.
Feb 26	Parties' Direct Cases.
Mar 8	Data Requests on Parties' Direct Cases.
Mar 15	Data Responses Due.
Mar 22	Parties' Rebuttal.
Mar 28	Cross-Examination.
April 4	Initial Briefs.
April 12	Draft Record of Decision.
April 19	Briefs on Exceptions.
April 30	Final Record of Decision.

The procedural schedule established for Docket No. PNCA–02 will provide an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

Part II—Purpose and Scope of Hearing

The purpose and scope of the hearing is to revise the charge for interchange energy under the PNCA. BPA proposes to link the charge to a market index to reflect wholesale power market price volatility. This revision will ensure that the charge accurately reflects the cost of providing interchange energy.

A. The Circumstances Necessitating Adjustment

Since the rate for interchange energy was established in 1995, the energy industry has undergone dramatic change. It has become far more competitive, and prices for energy have become much more volatile. During this past year, prices of energy have reached unprecedentedly high levels. The existing rate for interchange was intended to cover the PNCA parties' cost of providing the interchange. Because it is currently a fixed rate, it will not recover costs if prices remain high and continue to fluctuate. BPA is proposing this revision in the rate to ensure that the rate reflects BPA's costs.

B. Scope

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the rate for interchange energy imbalances described in Section II hereof.

C. NEPA Evaluation

BPA has assessed the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to revise the rate for interchange energy under the PNCA falls within the range of alternatives evaluated in the Final Business Plan EIS. The Business Plan EIS was completed in June 1995.

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from ''participants,'' who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross examine parties' witnesses, seek discovery, or serve or be served with documents; and

are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before March 22, 2002. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted above. The second category of interest is that of a ''party'' as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

B. Petitions for Intervention

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing of their interest. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by January 28, 2002. The petitions should be directed to: Ms. Judy Cornish Bonneville Power Administration 905 NE. 11th Avenue P.O. Box 12999 Portland, Oregon 97232

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

C. Developing the Record

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft Record of Decision (ROD) that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final rate for interchange energy based on the entire record. The basis for the final adjustment will be expressed in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate adjustment, together with the record, with FERC for confirmation and approval. *See generally,* 18 CFR part 300.

Part IV—Summary of the Proposal

BPA proposes to revise the rate for interchange energy imbalances by linking the rate to a market index. The rate will apply to all parties to the PNCA who take interchange energy from BPA. The revision will ensure that the rate accurately reflects the costs of providing interchange energy. Below is the proposed rate for interchange energy imbalances.

All terms contained herein have the meaning accorded them in the PNCA. This rate schedule is to be effective upon approval by the Federal Energy Regulatory Commission (interim or final) and will remain in effect until a revised rate is approved and becomes effective.

A. Interchange Energy (IE) Imbalances For Other Than Loaned IE

1. Initial Deliveries of IE

This charge applies to IE delivered from BPA to another PNCA party. The calculation is as follows:

Formula 1

$C=(ID_{ON} * I_{ON}) + (ID_{OFF} * I_{OFF})$

Where for each day:

C= Daily charge for the Initial Deliveries of IE in dollars.

ID_{ON} = The Initial Delivery of IE made during the day during On Peak hours.

I_{ON} = The Dow Jones Mid-Columbia Firm index price for On Peak hours in dollars per megawatt hour.

ID_{OFF} = The Initial Delivery of IE made during the day during Off Peak hours in megawatt hours.

I_{OFF} = The Dow Jones Mid-Columbia Firm index price for Off Peak hours in dollars per megawatt hour.

Note: Initial Deliveries of IE on Sunday or a NERC [or its successor organization(s)] recognized holiday are priced at the Off Peak rate.

2. Return of IE

This charge applies to the return of IE that was initially delivered to BPA from another PNCA party. The charge is based on a calculated average price, unique to each PNCA party that had previously supplied BPA with IE. The calculation is as follows:

Formula 2

$C_{PARTY} = IER_{PARTY} * R_{PARTY}$

Where for each (PNCA) Party for a given day:

C_{PARTY} = Daily charge for the return of such PNCA party's IE in dollars.

IER_{PARTY} = The quantity of Interchange Energy returned to a PNCA party on a day in megawatt hours.

R_{PARTY} = The applicable IE return rate for the PNCA party for the given day as calculated in Formula 3 below in dollars per megawatt hour.

Formula 3

$R_{PARTY} = \Sigma C_{PARTY} \div \Sigma IER_{PARTY}$

Where for each (PNCA) PARTY for a given day:

R_{PARTY} = the IE return rate calculated for the PNCA party as of the given day in dollars per megawatt hours.

PNCA party and all payments received by BPA from such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in dollars.

ΣIER_{PARTY} = the net of all IE BPA has received from such PNCA party and the IE returned by BPA to such PNCA party from the date of the last cash out of IE Imbalances to the date BPA returns the IE, in megawatt hours.

Issued in Portland, Oregon, on January 14, 2002.

Steven G. Hickok,

Chief Operating Officer.

[FR Doc. 02–1468 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at *Grace.Sutherland@eia.doe.gov.*

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–746R, ''Import and Export of Natural Gas.''
2. Office of Fossil Energy.
3. OMB Number 1901–0294.
4. Three-year extension.
5. Mandatory.
6. Form FE–746R collects data to be used by the Office of Fossil Energy from persons seeking authorization to import or export natural gas, and the information collected quarterly to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA.
7. Business or other for-profit.
8. 4,240 per year (300 respondents × 4.6 responses per year × 3.10 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, December 19, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–1471 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–2–000]

ARCO, a Subsidiary of BP America, Inc., Complainant, v. Calnev Pipe Line, L.L.C., Respondent; Notice of Complaint

January 15, 2002.

Take notice that on January 14, 2002, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343, *et seq*.), Tosco Corporation (Tosco) filed a Complaint and Motion for Consolidation in the above captioned proceeding. Tosco alleges that Calnev Pipe Line, L.L.C. (Calnev) has violated the Interstate Commerce Act, 49 U.S.C. App. 1, *et seq*., by charging unjust and unreasonable rates for Calnev's jurisdictional interstate services associated with its lines originating at Colton in San Bernardino County, California, to stations at two interstate destinations in Clark County, Nevada, one at McCarran Field and the other at North Las Vegas as more fully set forth in the Complaint. To the extent that any of Calnev's rates may be deemed just and reasonable under § 1803 of the Energy Policy Act of 1992, Pub. L. No. 102–486, 106 Stat. 2776 (1992), Tosco alleges that there has been a substantial change in the economic circumstances on which the rates are based.

Tosco requests that the Commission: (1) Examine the challenged rates and charges collected by Calnev for its jurisdictional interstate services; (2) order reparations to Tosco, including appropriate interest thereon, for the applicable reparation periods to the extent the Commission finds that such rates or charges were unlawful; (3) determine just, reasonable, and nondiscriminatory rates for Calnev's jurisdictional interstate service; (4) award Tosco reasonable attorneys' fees and costs; and (5) order such other relief as may be appropriate.

Tosco states that it has served the Complaint on Calnev pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206(c).

Any person desiring to be heard or to protest this 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 must be filed on or before February 4, 2002. 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. Answers to the complaint shall also be due on or before February 4, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1466 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–48–000]

California Power Exchange Corporation; Notice of Petition for Declaratory Order

January 15, 2002.

Take notice that on January 15, 2002, the California Power Exchange Corporation (PX) filed a Petition for Declaratory Order. The Petition requests that the Commission issue a declaratory order stating that it is in the public interest for the successor of the PX to remain an independent entity not controlled by any segment of electric industry participants.

The PX requests that the Commission issue the declaratory order no later than January 31, 2002 for the purpose of providing guidance to the Bankruptcy Court, which is holding a hearing on February 1, 2002 to consider a Disclosure Statement and Reorganization Plan that would permit ''seller-side'' participants of the PX to acquire substantial control of the successor to the PX. Accordingly, the PX requests a shortened response time, sufficient to permit the Commission to issue its declaratory order by January 31, 2002.

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 the comment date. 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 web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: January 23, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1464 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–432–001]

Northern Natural Gas Company; Notice of Compliance Filing

January 15, 2002.

Take notice that on January 3, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariffs, the following tariff sheets proposed to be effective on December 19, 2001:

Fifth Revised Volume No. 1

Seventh Revised Sheet No. 3

Original Volume No. 2

69 Revised Sheet No. 1
First Revised Sheet No. 616

Northern states that the above sheets represent cancellation of Rate Schedule X–45 from Northern's Original Volume No. 2 FERC Gas Tariff, and its associated deletion from the Table of Contents in Northern's Volume Nos. 1 and 2 tariffs.

Northern states that copies of the filing were served upon the company's customers and interested state Commissions.

Any person desiring to be heard or to protest said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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 be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202)208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1460 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–17–000]

Texas Eastern Transmission, LP; Notice of Site Review

January 15, 2002.

On January 24, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the proposed Freehold Project. The Freehold Project facilities are proposed for construction by Texas Eastern Transmission, LP (Texas Eastern). The proposed construction sites, located in Somerset and Hunterdon Counties, New Jersey, will be reviewed by automobile on January 24, 2002. Representatives of Texas Eastern will accompany the OEP staff.

Anyone interested in attending the site review or obtaining further information may contact the Commission's Office of External Affairs at (202) 208–1088. Attendees must provide their own transportation.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1462 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–732–000]

Western Systems Coordinating Council; Western Regional Transmission Association; Southwest Regional Transmission Association; Notice of Filing

January 15, 2002.

Take notice that on December 19, 2001, the Western Systems Coordinating Council, Western Regional Transmission Association, and the Southwest Regional Transmission Association (collectively Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to the May 3, 2001 Petition for Declaratory Order and alternative Request To Transfer

Programs to the Western Electricity Coordinating Council (WECC).

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 the comment date. 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 Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 25, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1465 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 372–008 California]

Southern California Edison; Notice of Availability of Draft Environmental Assessment

January 15, 2002.

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 has reviewed the application for license for the Lower Tule Hydroelectric Project, located on the Middle Fork of the Tule River in Tulare County, California, and has prepared a Draft Environmental Assessment (DEA) for the project. The project is partially located within the Sequoia National Forest and the Giant Sequoia National Monument.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed by February 14, 2002, and should be addressed to Linwood A. Watson, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 372–008 to all comments. Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

For further information, contact Nan Allen at (202) 219–2938.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1467 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–9–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line 280 Replacement Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 280 Replacement Project involving construction, operation, and abandonment of facilities by Dominion Transmission, Inc. (DTI) in Pennsylvania.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice DTI provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

DTI proposes to abandon in place approximately 71 miles of its existing LN–280 pipeline and 5 miles of its existing LN–4 pipeline in Cameron, Clinton, Elk, Potter, and Tioga Counties, Pennslyvania. In order to replace the capacity lost by the pipeline abandonment, DTI also proposes to install two additional compressor units, each rated for 1,775 horsepower, at its existing Ardell Compressor Station in Elk County, Pennsylvania.

Abandonment of LN–280 and LN–4 would require no additional land, since the pipelines would be left in place. DTI would retain ownership of the existing right-of-way. Construction of the proposed facilities at the existing Ardell Compressor Station would require about 11.5 acres of land. Of this 11.5 acres, approximately 1.9 acres would be required for the station expansion and for new right-of-way. The remaining 9.6 acres would occur on the existing station or existing right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis

[1] DTI's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils;
- land use;
- air quality and noise;
- endangered and threatened species;
- cultural resources;
- vegetation and wildlife;
- public safety.

We will not discuss impacts to water resources, fisheries, and wetlands since they are not present in the project area, or would not be affected by the proposed facilities. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1.
- Reference Docket No. CP02–9–000.
- Mail your comments so that they will be received in Washington, DC on or before February 14, 2002.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.'' Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services, in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1461 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically. The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–44–000, Docket No. CP02–46–000, and Docket No. CP02–53–000]

Dominion Transmission, Inc., Tennessee Gas Pipeline Company, National Fuel Gas Supply Corporation Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Leidy Extension Project and Request for Comments on Environmental Issues

January 15, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Leidy Extension Project in Potter County, Pennsylvania involving

construction and operation of natural gas pipeline facilities. Dominion Transmission, Inc. (Dominion), proposes to add compression under Docket No. CP02–44–000. Tennessee Gas Pipeline Company (Tennessee) proposes to build the Ellisburg Compressor Station under Docket No. CP02–46–000. National Fuel Gas Supply Corporation (National) and Dominion propose to add compression and uprate their jointly-owned Ellisburg-Leidy Line under Docket No. CP02–53–000.[1] This EA will be used by the Commission in its decision-making process to determine whether the projects[2] are in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet can be viewed on the FERC Internet web site (*www.ferc.fed.us*).

Summary of the Proposed Project

Dominion, under Docket No. CP02–44–000, proposes to build a 4,735-horsepower (hp) relay compressor, along with an associated building and access driveway, inside the fenced-in area of its existing Little Greenlick Relay Station. The Little Greenlick Relay Station is immediately adjacent to the Greenlick Compressor Station containing four existing compressors.

Tennessee, under Docket No. CP02–46–000, proposes to build a new Ellisburg Compressor Station and associated meter station. This compressor station would be built on newly acquired property immediately adjacent to the Dominion's existing Ellisburg Storage Field Compressor Station. The Ellisburg Compressor Station would include two gas-driven 2,365-hp compressors and an associated compressor building, gas cooler, and an auxiliary building. Tennessee would construct the meter station in a previously-disturbed fenced-in area within Dominion's Ellisburg Storage Field Compressor Station.

National, under Docket No. CP02–53–000, proposes to build an 8,070-hp compressor and an associated building in a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. National and Dominion would jointly own this compressor. National would also uprate the maximum allowable operating pressure (MAOP) of their jointly-owned 41-mile-long, 24-inch-diameter Ellisburg-Leidy Line by replacing two block valves and installing one new block valve at milepost (MP) 1.3. The two block valves to be modified are at MP 0.0 inside National's Ellisburg Compressor Station and at MP 34.2 at Kettle Creek. Dominion would make aboveground modifications to the Leidy M&R Station (owned jointly with National) at the southern end of the Ellisburg-Leidy Line separately under sections 2.55(a) and 157.211 of the Commission's regulations.

The locations of the facilities for the Leidy Extension Project are shown in appendix 1.[3]

Land Requirements for Construction

Construction of the 4,735-hp relay compressor in the Little Greenlick Relay Station would require 5.24 acres of previously-disturbed land within the station. Construction of two gas-driven 2,365-hp compressors for the proposed Ellisburg Compressor Station would require 5.16 acres of which 2.27 acres would be restored and allowed to revert to its former use following construction. A small area of previously-disturbed ground within Dominion's adjacent Ellisburg Storage Field Compressor Station would be required for construction of a new meter station. In addition, 0.5 acre would be used for access roads along the Ellisburg Storage Field Compressor Station.

Construction of the 8,070-hp compressor and an associated building would require use of a previously-disturbed fenced-in area within National's Ellisburg Compressor Station. Uprating the MAOP of the 41-mile-long Ellisburg-Leidy Pipeline would require temporary use of 0.11 acre of existing mowed right-of-way at MP 1.33 of the Ellisburg-Leidy Pipeline for installation of a new block valve. No ground disturbance would be required for the modification of the two block valves at MPs 0.0 and 34.2.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultural resources
- Air and noise quality
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state,

[1] Tennessee's, National's, and Dominion's applications were filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] These three component projects of the overall Leidy Extension Project would together comprise the facility expansions and upgrades in Potter County necessary for the shipment of an additional 150,000 dekatherms per day (Dt/d) of natural gas to the Leidy Meter and Regulating Station in Clinton County, Pennsylvania.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee, National and Dominion. This preliminary list of issues may be changed based on your comments and our analysis.

- Impacts to Rose Lake Run from (1) the clearing of 5.16 acres of vegetation and from disturbance of a hazardous waste remediation site adjacent to Tennessee's proposed Ellisburg Compressor Station, and (2) construction activities at National's Ellisburg Compressor Station within which Rose Lake Run crosses.
- Noise increases for noise sensitive areas near Tennessee's proposed Ellisburg Compressor Station.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas 2.
- Reference Docket Nos. CP02–44–000, CP02–46–000, and CP02–53–000.
- Mail your comments so that they will be received in Washington, DC on or before February 15, 2002.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Due to current events, we cannot guarantee that we will receive mail on a timely basis from the U.S. Postal Service, and we do not know how long this situation will continue. However, we continue to receive filings from private mail delivery services, including messenger services in a reliable manner. The Commission encourages electronic filing of any comments or interventions or protests to this proceeding. We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC web site (*www.ferc.fed.us*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS help line can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet web site, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS help line can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1463 Filed 1–18–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: January 11, 2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002 (30 Minutes Following Regular Commission Meeting).

CHANGE IN THE MEETING: The Closed Meeting scheduled for January 16, 2002, has been cancelled.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1564 Filed 1–16–02; 4:20 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 01/11/2002, 67 FR 1460.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 16, 2002, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Companies have been added as Item M–1, to the Commission Agenda of January 16, 2002:

Item No.	Docket No. and Company
M–1	RM02–4–000, Rule Regarding Critical Energy Infrastructure Information. PL02–1–000, Policy Statement on the Treatment of Previously Public Documents.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1576 Filed 1–16–02; 4:55 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–2]

Agency Information Collection Activities: Continuing Collection; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): RCRA Expanded Public Participation, EPA ICR Number 1688.04, OMB Control Number 2050–0149 (expiration date May 31, 2002). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 25, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–2001–R3IP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G) United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Hand deliveries of comments should be made to the Arlington, VA address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.gov.* Comments in eletronic format should also be identified by the Docket Number F–2001–R3IP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in this section). Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cove to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mailcode 5305W, Washington, DC, 20460. Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page. This notice and the supporting documents that detail the ICR renewal are also available.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Toshia King, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (703) 308–7033, *King.Toshia@epamail.epa.gov.*

The docket index and some supporting documents in the docket for this ICR are available in electronic format on the Internet at *http://www.epa.gov/epaoswer/hazwaste/permit/pub~icr.htm*>.

We will keep the official record for this action in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards, under Section 3004 of RCRA, that are necessary to protect human health and the environment.

Title: RCRA Expanded Public Participation, EPA ICR Number 1688.04. OMB control Number 2050–0149, expiration date: 05/31/2002.

Abstract: Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process at 40 CFR part 124, 124.31 through 124.33 and 40 CFR part 270, 270.62 and 270.66. The part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the part 270 requirements apply only to hazardous waste combustors planning trial burns.

The public participation regulations at parts 124 and 270 were promulgated by EPA under the authority of subtitle C in RCRA to provide earlier and better public participation in the hazardous waste facility permitting process. In summary the regulations require a permit applicant to provide notice of and hold an informal meeting with the public before submitting a part B application, and to submit a summary of the meeting to the agency (§ 124.31). This meeting is the earliest formal step in the RCRA permitting process. The agency is required to issue a public notice when it receives an application (§ 124.32). The notice informs the recipient that the facility has submitted a permit application for agency review. Certain facilities (as decided by the agency director on a case-by-case basis) are required to set up and maintain an information repository (§ 124.33). Lastly, the agency is required to issue a public notice of an upcoming trial burn at a permitted hazardous waste combustion facility (§§ 270.62(b)((6) and 270.66(d)(3)), or at a hazardous waste combustion facility operating under interim status (§§ 270.62(d) and 270.66(g)).

This information collection targets the reporting frequency and requirements of the permit and assures public involvement regulations are met by owners or operators. The reporting frequency is essential to assure that any changes in the trial burn plans or in the anticipated permit application contents are made known to EPA and to the public. The requirements in this rule are also consistent with EPA's current policies on public participation. In December of 2000, EPA requested public comment on its Draft 2000 Public Involvement Policy (65 FR 82335; December 28, 2000). The draft policy updates an earlier policy issued in 1981.

Among other things, the draft policy calls for a strengthened commitment to meaningful public involvement, greater attention to the specific concerns and interest of affected people and entities, and use of a wider variety of public involvement techniques. In this regard, the RCRA Expanded Public Participation Rule can serve as an example to other EPA programs of how to achieve many of the goals of the policy. 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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: EPA estimated respondent burden hours for the information collection requirements associated with the pre-application meeting and the information repository requirements. The estimated number of likely respondents subject to pubic participation activities required under this collection of information is 33. The total annual burden to respondents, as estimated for all public participation reporting and recordkeeping activities under this collection of information is 3,005 hours. The total estimated average annual burden cost to respondents required to perform public participation activities under this information collection request is $162,834 ($159,425 in labor cost, $546 in total capital cost, and $2,863 in O&M cost). The estimates for O&M cost include preparation of multilingual notices and the purchase of a file cabinet to retain copies and other required documentation. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 15, 2002.

Matthew Hale,

Deputy Director, Office of Solid Waste.

[FR Doc. 02–1498 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–8]

Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has developed guidelines for awarding Clean Water Act section 319 nonpoint source grants to Indian tribes in FY 2002. As was the case in FY 2002 and 2001, Congress has authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the Clean Water Act) of ⅓% of the total 319 appropriation. The guidelines are intended to assist all tribes that have approved nonpoint source assessments and management programs and also have ''treatment-as-a-state'' status to receive Section 319 funding to help implement those programs. The guidelines describe the process for awarding base funding in FY 2002, including submissions of proposed work plans. The guidelines also describe the competitive process and schedule to select watershed projects for FY 2002 funding, including submissions of watershed project summaries and the selection criteria for funding watershed projects.

DATES: The guidelines are effective January 22, 2002.

ADDRESSES: Persons requesting additional information or a complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov;* or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information or complete copy of the document should contact Ed Drabkowski at (202) 260–7009; *drabkowski.ed@epa.gov;* or U.S. Environmental Protection Agency (4503F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage at *http://www.epa.gov/owow/nps.*

SUPPLEMENTARY INFORMATION: The full text of the *Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002* is published below.

Dated: December 27, 2001.

Suzanne E. Schwartz,

Acting Director, Office of Wetlands, Oceans, and Watersheds.

Memorandum

Subject: Guidelines on Awarding Section 319 Grants to Indian Tribes in FY 2002.

From: Suzanne E. Schwartz (for) Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds.

To: EPA Regional Water Division Directors, Regional Tribal Coordinators/ Program Managers, Tribal Caucus, EPA Tribal Operations Committee.

I am very pleased to report that Congress has, for the third year in a row, authorized EPA to award nonpoint source pollution control grants to Indian tribes under section 319 of the Clean Water Act (''CWA'') in FY 2002 in an amount that exceeds the statutory cap (in section 518(f) of the CWA) of ⅓% of the total 319 appropriation. This will enable all of the tribes that have approved nonpoint source assessments and management programs and ''treatment-as-a-State'' (''TAS'') status (hereinafter referred to as ''approved tribes'') by January 30, 2002, to be eligible to receive Section 319 funding to help implement those programs.

The repeated allowance of increased funding for tribal nonpoint source (''NPS'') programs in FY 2002 reflects Congress' continuing recognition that Indian tribes need and deserve increased financial support to implement nonpoint source programs that address critical water quality concerns on tribal lands. EPA shares this view and will continue to work closely with the tribes to assist them in developing and implementing effective

tribal nonpoint source pollution programs. To date, EPA has already approved 66 tribal nonpoint source management programs, covering more than 35 million acres of land (representing more than 71% of all Indian country), and we expect to approve additional programs in FY 2002.

As was the case last year, the new authorization to exceed ⅓% applies only to the current year (FY 2002). As in the past, EPA will work with the tribes to continue to demonstrate that increased 319 funds for tribes can be used effectively to achieve water quality improvement. We were pleased by the high quality of the tribes' work plans that formed the basis of the grants awarded to tribes in FY 2001, which included both base grants for all approved tribes as well as grants for specific watershed projects awarded to forty-five of these tribes through a competitive process. We believe that the tribes and EPA succeeded in directing the FY 2001 grants towards high-priority activities that will produce on-the-ground results that provide improved water quality. We believe that this success warrants continued substantial investment of 319 grant dollars in FY 2002 to address the extensive NPS control needs throughout Indian country, as discussed below. In recognition of this fact, we are once again authorizing a total of $6,000,000 to tribes for FY 2002.

Summary of Process for FY 2002 Grants to Tribes

In FY 2002, we will set aside $6,000,000 for tribal nonpoint source grants. This amount is based on three factors:

1. We will continue to support all eligible tribes with base grants.

2. We will award base funding to eligible tribes as follows:

a. $30,000 in base funding will be awarded to eligible tribes whose land area is less than 1,000 square miles (640,000 acres).

b. $50,000 in base funding will be awarded to eligible tribes whose land area is greater than 1,000 square miles (640,000 acres).

3. We will award the remaining funds to eligible tribes through a competitive process to support the implementation of priority watershed projects.

Detailed Discussion of Process for FY 2002 Grants to Tribes

1. Base Funding

Each tribe that has an approved nonpoint source assessment and management program (and TAS status) as of January 30, 2002, will receive base funding based on the following land area scale:

Square miles (acres)	Base amount
Less than 1,000 sq. mi. (less than 640,000 acres)	$30,000
Over 1,000 sq. mi. (over 640,000 acres)	50,000

EPA considered whether other factors such as population and water resources should be used, in addition to or instead of land area, to distinguish tribes with the greatest needs from other tribes. EPA recognizes that each of these factors is relevant and in some circumstances significant. EPA ultimately chose land area as the deciding factor for a cutoff because nonpoint source pollution is strongly related to land use; thus land area is a reasonable criterion that generally is highly relevant to identifying tribes with the greatest needs (recognizing that many tribes have needs that significantly exceed available resources).

The base funding as outlined above may be used for a range of activities that implement the tribe's approved NPS management program, including hiring a program coordinator; conducting nonpoint source education programs; providing training; and implementing, alone or in conjunction with other agencies or other funding sources, on-the-ground watershed projects. In general, this base funding should not be used for assessment activities.

Each tribe that requests base funding must submit to the appropriate EPA Regional office a proposed work plan that conforms to applicable legal requirements (see 40 CFR 35.505 and 35.507) and is consistent with the tribe's approved nonpoint source management program. This proposed work plan should clearly describe each significant category of activity to be funded; the roles of any federal, local, or other partners in completing each activity; the schedule and budget for implementing funded activities; and the outputs to be produced by performance of the activity. Outputs of activities should be quantified; results of projects should be measurable and indicators to do so clearly stated. Tribes should submit their proposed work plans to their appropriate Regional office by March 4, 2002. If a tribe does not submit an approvable proposed work plan by that date, its allocated amount will be added to the competitive pool, discussed immediately below, which will be used to fund tribal NPS program and watershed project priorities.

Regions should work with the tribes to expeditiously award the base grants. However, if the tribe will be awarded additional funds to implement a watershed project, as discussed below, the tribe or the Region may prefer combining the formal process for submission of the final application for both the base and competitive funds. Regions should confer with their tribes and endeavor to proceed in a manner and on a schedule that is most compatible with the tribes' and Regions' needs and preferences.

2. Competitive Funding: Process and Schedule to Select Watershed Projects for FY 2002 Funding

The remaining funds will be awarded to tribes that have approved nonpoint source management programs as of January 30, 2002, on a competitive basis to provide funding for on-the-ground nonpoint source watershed projects that are designed to achieve additional water quality improvement. Each selected project will be eligible to receive up to $150,000, depending on the demonstrated need. The funds will be awarded using the process described below.

a. Watershed Project Review Committee

As we did for the FY 2001 grants, EPA will establish a Watershed Project Review Committee comprised of nine EPA staff, including three EPA Regional Nonpoint Source Coordinators, three EPA Regional Tribal Coordinators, two staff members of the Nonpoint Source Control Branch, and one staff member of the American Indian Environmental Office. The committee will then make funding decisions in accordance with the process described below.

b. Watershed Project Summaries

Tribes that have approved nonpoint source assessments and management programs as well as TAS status as of January 30, 2002, are invited to apply for watershed project funding by submitting watershed project summaries for proposed projects up to a maximum budget of $150,000. (This funding is in addition to the base funding that each approved tribe will receive, as described above.) Tribes that apply for funding for watershed projects should submit a brief (*e.g.,* 3–5 pages) summary of a watershed project implementation plan by March 4, 2002, to the appropriate EPA Regional office for initial screening. (Complete grant applications should not be submitted until after projects are selected, pursuant to review by the Watershed Project Review Committee, as described below.) The Regional office will, by March 18, 2002, forward the

proposals that meet the required criteria to EPA Headquarters for distribution to the Watershed Project Review Committee. (E-mail versions would be appreciated where possible because they can be shared among the reviewers most rapidly and easily.)

The watershed project summary should outline the nonpoint source pollution problem and the on-the-ground improvement to be addressed; the project's goals and objectives and the expected water quality benefit to the receiving waterbody; the lead implementing agency (either the tribe or another organization authorized by the tribe to be the project leader) and other agencies that will be authorized to expend project funds; the types of best management practices or measures that will be implemented; the projected implementation schedule; the project's budget items including construction costs; and the environmental performance measures that will be used to evaluate the success of the project. Each watershed plan summary should be clearly written with enough detail to show why the proposed project should be selected for competitive funding. This is critical to help ensure that the best projects are funded.

c. Selection Criteria for Funding Watershed Projects

In ranking the projects, each reviewer on EPA's Watershed Project Review Committee will consider the extent to which the following factors are present in each project.

1. The watershed plan summary includes a clear and specific identification of the on-the-ground improvement project and the water quality problem to be addressed, including the pollutants of concern and their sources (including critical areas to be treated, if known), and clearly describes the project to be constructed or installed.

2. Where relevant, the watershed project consists of implementation actions or load calculations that are intended to help restore an impaired waterbody for which an approved nonpoint source total maximum daily load (NPS TMDL) has been developed or the NPS components of mixed-source TMDL's. [**Note:** EPA recognizes that most tribes have not yet developed NPS TMDLs. However, Section 319 funding may be used to develop and implement approved NPS TMDLs for any 303(d) listed waterbody. Where a tribe has developed a relevant water quality standard and NPS TMDL and seeks Section 319 funding to assist in the implementation of the NPS TMDL, that should be considered by reviewers to be a relevant factor supporting the funding request.]

3. The proposed project is listed as a priority implementation project in the tribal NPS management program.

4. The proposed project is designed to include cooperation and/or combination of resources with other agencies and other parties to provide additional technical and/or financial assistance to the project.

5. The watershed plan summary includes a clear and objective statement of the project's goals and objectives, in terms of controlling nonpoint sources and/or of improving/protecting water quality.

6. The summary identifies the best management practices or measures to be implemented and the location where these measures and practices will be implemented.

7. The summary outlines the construction cost of the project and the amount of Section 319 grant dollars that are requested, not to exceed $150,000. Please note that a 40% non-federal match is also required. However, pursuant to section 35.635(b), EPA's Regional Administrator may increase the maximum Federal share if the tribe or intertribal consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case, will the Federal share be greater than 90 percent.

8. The summary includes an implementation schedule.

9. The summary includes a statement of how the project will be evaluated to determine its success and to derive lessons that will assist the tribe (and other tribes) in future projects.

d. Award of Grants for Tribal Watershed Projects

(i) *Award Decisions.*—The Watershed Project Review Committee will hold a conference call by April 8, 2002, to ensure that all Committee members fully understand and agree on how to objectively apply the criteria discussed above. Rankings will be developed by considering all of the factors as a whole, in accordance with a weighting system to be decided upon by the Committee.

By April 19, 2002, the Committee will compile the ranking of proposed watershed projects based on the selection criteria and then forward their rankings to the Nonpoint Source Control Branch at EPA Headquarters. Headquarters will tally the Committee's rankings and then hold a conference call to provide a final opportunity for members of the Review Committee to discuss the rankings among themselves. By April 29, 2002, EPA will select the highest ranked proposals and announce to the Regions which tribes' watershed projects have been selected for funding. These tribes will be notified immediately by phone or e-mail, with a written letter to follow.

(ii) *Final Work Plans/Full Grant Applications.*—Once a Region and tribe have been notified of the amount that will be awarded to the tribe, they will negotiate a final work plan consistent with 40 CFR 35.507. After making appropriate changes, the tribe must submit a final work plan to the Region by June 10, 2002. If a tribe fails to or is unable to submit an approvable work plan by June 10, 2002, the 319(h) grant will instead be awarded to the next highest ranking unfunded application. Regions should endeavor to finalize the grant awards no later than 60 days after receipt of a complete grant application with an approvable work plan.

(iii) *Match Requirements.*—The match requirement for Section 319 grants is 40 percent of the approved work plan costs, which include both the base funding and competitive funding components discussed above. In general, consistent with 40 CFR 31.24, the match requirement may be satisfied by allowable costs borne by non-federal grants, by cash donations from non-federal third parties, or by the value of third party in-kind contributions.

EPA's regulations also provide that EPA may decrease the match requirement to as low as 10% if the tribe can demonstrate in writing to the Regional Administrator that fiscal circumstances within the tribe or within each tribe that is a member of the intertribal consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. (*See* 40 CFR 35.635.)

In making grant awards to tribes that provide for a reduced match requirement, Regions should include a brief finding that the tribe has demonstrated that it does not have adequate funds to meet the required match.

Intertribal Consortia

Some tribes have formed intertribal consortia to promote cooperative work. An intertribal consortium is a partnership between two or more tribes that is authorized by the governing bodies of those tribes to apply for and receive assistance under this program. (*See* 40 CFR 35.502.) The intertribal consortium is eligible only if the

consortium demonstrates that all its members meet the eligibility requirements for the Section 319 program and authorize the consortium to apply for and receive assistance in accordance with 40 CFR 35.504. An intertribal consortium must submit to EPA adequate documentation of the existence of the partnership and the authorization of the consortium by its members to apply for and receive the grant. (*See* 40 CFR 35.504.)

Technical Assistance to Tribes

In addition to providing nonpoint source funding to tribes, EPA remains committed to providing continued technical assistance to tribes in their efforts to control nonpoint source pollution. During the past several years, EPA has presented many workshops to tribes throughout the United States to assist them in developing: (1) Nonpoint source assessments to further their understanding of nonpoint source pollution and its impact on water quality; (2) nonpoint source management programs to apply solutions to address their nonpoint source problems; and (3) specific projects to effect on-the-ground solutions. The workshops also have provided information on related EPA and other programs that can help tribes address nonpoint source pollution, including the provision of technical and funding assistance. EPA intends to continue providing nonpoint source workshops to interested tribes around the United States in FY 2002 and to provide other appropriate technical assistance as needed.

Non-Tribal Lands

The following discussion explains the extent to which Section 319(h) grants may be awarded to tribes for use outside the reservation. We discuss two types of off-reservation activities: (1) Activities that are related to waters within a reservation, such as those relating to sources upstream of a waterway entering the reservation, and (2) activities that are unrelated to waters of a reservation. As discussed below, the first type of these activities may be eligible; the second is not.

1. Activities That Are Related to Waters Within a Reservation

Section 518(e) of the CWA provides that EPA may treat an Indian tribe as a State for purposes of section 319 of the CWA if, among other things, ''the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are * * * within the borders of an Indian reservation.'' 33 U.S.C. 1377(e)(2). EPA already awards grants to tribes under section 106 of the CWA for activities performed outside of a reservation that pertain to reservation waters, such as evaluating impacts of upstream waters on water resources within a reservation. Similarly, EPA has awarded section 106 grants to States to conduct monitoring outside of state borders. EPA has concluded that grants awarded to an Indian tribe pursuant to section 319(h) may similarly be used to perform eligible section 319(h) activities outside of a reservation if: (1) The activity pertains to the management and protection of waters within the reservation, and (2) just as for on-reservation activities, the tribe meets all other applicable requirements.

2. Activities That Are Unrelated to Waters of a Reservation

As discussed above, EPA is authorized to award section 319(h) grants to tribes to perform eligible section 319(h) activities if the activities pertain to the management and protection of waters within a reservation and the tribe meets all other applicable requirements. In contrast, EPA is not authorized to award section 319(h) grants for activities that do not pertain to waters of a reservation. For off-reservation areas, including ''usual and accustomed'' hunting, fishing, and gathering places, EPA must determine whether the activities pertain to waters of a reservation prior to awarding a grant.

Milestones Summary

Date Tribes to be Eligible for 319 Grants: January 30, 2002
Tribes Submit Base Grant Work Plans to Region: March 4, 2002
Tribes Submit Competitive Grant Proposals to Region: March 4, 2002
Region Forwards Proposals to Headquarters: March 18, 2002
Review Committee Discusses Proposals: April 8, 2002
Review Committee Forwards Ranking Scores to HQ: April 19, 2002
Headquarters Notifies Regions/Tribes of Selections: April 29, 2002
Tribes Submit Final Grant Application to Region: June 10, 2002

Statutory and Regulatory Requirements

All section 319(h) grants will be awarded and administered consistent with the statutory requirements in section 319(h) and 518(e) of the Clean Water Act and applicable regulations in 40 CFR parts 31 and 35.

Conclusion

By once again lifting the 1/3% statutory cap in FY 2002, Congress has continued to provide the tribes and EPA with an excellent opportunity to further tribal efforts to reduce nonpoint pollution and enhance water quality on tribal lands. EPA looks forward to working closely with the tribes to assist them in implementing effective nonpoint source programs in FY 2002 and creating a sound basis to assure that adequate funds will continue to be provided in the future.

If you have any questions, please do not hesitate to call me or have your staff contact Ed Drabkowski at (202) 260–7009 (or e-mail at *drabkowski.ed@epa.gov*).

cc: Director, American Indian Environmental Office, EPA; Jeff Besougloff, AIEO; Jerry Pardilla, National Tribal Environmental Council; Billy Frank, Northwest Indian Fisheries Council; Don Sampson, Columbia River Intertribal Fish Commission; James Schlender, Great Lakes Indian Fish and Wildlife Commission; All Tribes that have an approved Nonpoint Source Management Program; Regional Water Quality Branch Chiefs; Regional Nonpoint Source Coordinators

[FR Doc. 02–1499 Filed 1–18–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 February 5, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Wiley Thornton Gibson and Rebecca D. Gibson, both of Union Springs, Alabama; to retain voting shares of USAL Bancorp, Inc., Union

Springs, Alabama, and thereby indirectly retain voting shares of AmeriFirst Bank, Union Springs, Alabama.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1421 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 February 5, 2002.

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

Richard S. Nelson, Powell, Wyoming; to acquire voting shares of First Company, Powell, Wyoming, and thereby indirectly acquire voting shares of First National Bank & Trust Company, Powell, Wyoming.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1534 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–02–S

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 February 15, 2002.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Folkston Investors, LLC, Folkston, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Corporation, Folkston, Georgia, and thereby indirectly acquire First National Bank of Folkston, Folkston, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 40 percent of the voting shares of Bank of Nevada, Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 15, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1420 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

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 February 15, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Reliance Bancshares, Inc., Florence, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Reliance Bank, Florence, South Carolina.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Outsource Holdings, Inc., Lubbock, Texas and Outsource Delaware Holdings, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First Citizens Bank, NA, Dallas, Texas.

In connection with this proposal, Outsource Holdings, Inc., Lubbock, Texas has applied to acquire Jefferson Mortgage Services, Inc., Dallas, Texas, and Orr Lease, Inc., Dallas, Texas, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y, and leasing

personal or real property, pursuant to 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, January 16, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1535 Filed 1–18–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

January 17, 2002.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, January 23, 2002.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendments to Regulation C (Home Mortgage Disclosure) based on a review of the regulation. (Proposed earlier for public comment; Docket No. R–1001).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR MORE INFORMATION PLEASE CONTACT: Office of Public Affairs at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: January 17, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1629 Filed 1–17–02; 2:24 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/13/2001			
20020040	Groupe Danone	Stonyfield Farm, Inc.	Stonyfield Farm, Inc.
20020085	Applied Materials, Inc	Schlumberger Limited	Schlumberger Technologies, Inc.
20020088	Dan L. Duncan	Ultramar Diamond Shamrock Corporation.	Diamond–Koch III, L.P. Diamond–Koch L.P.
20020089	Dan L. Duncan	Koch Industries, Inc.	Diamong–Koch III, L.P. Diamond–Koch, L.P.
Transactions Granted Early Termination—11/14/2001			
20020038	GlobeSpan, Inc	Virata Corporation	Virata Corporation.
20020047	Kenneth Rainin	Mettler–Toledo International Inc	Mettler–Toledo international Inc.
20020048	Mettler–Toledo International Inc	Kenneth Rainin	Rainin Instrument, LLC.
Transactions Granted Early Termination—11/15/2001			
20020053	ARAMARK Corporation	The ServiceMaster Company	CMI Group, Inc. Halliwell Engineering Services, L.L.C. Quantum Resource Corporation. ServiceMaster Direct Marketing Corporation. ServiceMaster Management Services Limited Partnership. ServiceMaster Management Services, Inc. ServiceMaster Management Services of Canada, Inc.
Transactions Granted Early Termination—11/19/2001			
20020063	Anglo American	Normandy Mining Limited	Normandy Mining Limited.
20020070	AT&T Wireless Services, Inc	Telecorp PCS, Inc	Telecorp PCS, Inc.
20020071	Bally Total Fitness Holding Corporation.	Douglas H. Levine	Crunch Fitness International, Inc.
20020074	Greenwich Street Capital Partners II, L.P.	Regal Cinemas, Inc	Regal Cinemas, Inc.
20020082	Ballard Power Systems Inc	Ford Motor Company	Ford Electric Drive Holdings Company.

Transaction No.	Acquiring person	Acquired person	Acquired entities
20020083	Enbridge Energy Partners, L.P	Koch Industries, Inc	Koch Midstream Gasmark Company, LP. Koch Midstream Processing Company, L.P. Koch Midstream Services Company, LLC.
20020087	Weatherford International, Inc	Vivendi Universal, S.A	Johnson Screens, Inc.
20020092	American Electric Power Company, Inc.	Enron Corp	Indian Mesa Power Partners I LP. Indian Mesa Power Partners II LP.
20020096	Rothmans Inc	Santa Fe Natural Tobacco Company, Inc.	Santa Fe Natural Tobacco Company, Inc.
20020098	Brunswick Corporation	Genmar Holdings, Inc	Hatteras Yachts, Inc.
20020104	General Electric Company	Madison Dearborn Capital Partners IV. L.P.	Telemundo Communications Group, Inc.
20020105	The Williams Companies, Inc	Duke Energy Corporation	Duke Energy Field Services, LP.
20020106	Duke Energy Company	The Williams Companies, Inc	NEWCO LLC.
20020113	Taylor Nelson Sofres, plc	Thomas S. Perakos	RapidChek Reporting Inc. Theatrical Entertainment Services, Inc.
20020118	Inversion Corporativa I.C., S.A	High Plains Corporation	High Plains Corporation.
20020121	Amerada Hess Corporation	The Marital Trust under agreement dated January 17, 1991.	Jomarco, Inc.
20020127	Cinven Luxembourg I S.a.r.l	WCM Beteiligungs-und Grundbesitz-Aktiengesellschaft.	Klockner Capital Corporation, Klockner Pentaplast GmbH.
Transactions Granted Early Termination—11/20/2001			
20020122	Cadence Design Systems, Inc	Silicon Perspective Corp	Silicon Perspective Corp.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1475 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **FEDERAL REGISTER**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—11/26/2001			
20020109	Mr. Peter R. Kellogg	Navistar International Corporation	Harco National Insurance Company
20020117	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc	Salinas Cellular Telephone Company
20020120	Baylor Health Care System	All Saints Health System	All Saints Health System
20020123	BB&T Corporation	Cooney, Rikard & Curtin, Inc	Cooney, Rikard & Curtin, Inc.
20020124	Kerr-McGee Corporation	Devon Holdco	Devon Holdco
20020129	Security Capital Group Incorporated.	Equity Office Properties Trust	ECH–517 Marquette, L.L.C. ECH-Adams/Wabash Parking Garage, L.L.C. ECH-North Loop/Theater District Parking Limited Partnership ECH-St. Louis Parking Garages, L.L.C.
20020140	Observer AB	PRIMEDIA Inc	Bacon's Information, Inc.
20020146	Berkshire Hathaway Inc	Fruit of the Loom, Ltd	Fruit of the Loom, Ltd. FTL Caribe, Ltd. Union Underwear Company, Inc.
Transactions Granted Early Termination—11/27/2001			
20020132	JP Morgan Chase & Co	Emerson Electric Co	Electronic Control Systems, Inc., Ogden Manufacturing Co. Emerson Electric (U.K.) Limited, VUMA A.S. Emerson Electric Canada Limited Emerson Electric Co. Etirex S.A., ELW Industrial, S. de R.L. de C.V.

Transaction No.	Acquiring person	Acquired person	Acquired entities
20020136	ILEX Oncology, Inc	Millennium Pharmaceuticals, Inc ...	Millennium & ILEX Partners, L.P. Millennium & ILEX, L.L.C.
Transactions Granted Early Termination—11/28/2001			
20020153	Fiserv, Inc	William E. Sagan	Trewit, Inc.
Transactions Granted Early Termination—11/29/2001			
20020084	Wellspring Capital Partners II, L.P	American Coin Merchandising, Inc	American Coin Merchandising, Inc.
20020097	Lockheed Martin Corporation	Cecile Barker	OAO Corporation
20020138	QUALCOMM Incorporated	VeloCom Inc	VeloCom Inc.
20020143	School Specialty, Inc	Franklin Covey Co	Premier Agendas, Inc.
20020147	Verizon Communications Inc	Everett R. Dobson Irrevocable Family Trust.	ACC Tennessee License LLC Dobson Cellular Systems, Inc., ACC of Tennessee LLC
20020148	Verizon Communications Inc	AT&T Wireless Services, Inc	AT&T Wireless Services, Inc.
20020149	Weyerhaeuser Company	Willamette Industries, Inc	Willamette Industries, Inc.
20020159	MBNA Corporation	Wachovia Corporation	The First National Bank of Atlanta
20020160	Kmart Corporation	Windsong/Allegiance, LLC	Joe Boxer Company, LLC
Transactions Granted Early Termination—12/03/2001			
20020119	Alliant Techsystems Inc	Blount International, Inc	Estate Cartridge, Inc. Federal Cartridge Company Newco Simmons Outdoor Corporation
20020145	IM International media AG	Graham King	Initial Entertainment Group, Inc.
20020152	Long Beach Holdings Corp	Ameriquest Capital Corporation	Long Beach Acceptance Corp.
20020163	International Business Machines Corporation.	Cross Worlds Software, Inc	Cross Worlds Software, Inc.
20020168	Mr. Vic De Zen	Fineter S.A	Marley Mouldings LLC
20020173	Lap Shun (John) Hui	eMachines, Inc	eMachines, Inc.
Transactions Granted Early Termination—12/04/2001			
20020133	WellPoint Health Networks Inc	Missouri Foundation for Health (The).	RightCHOICE Managed Care, Inc.
20020171	Wind Point Partners IV, L.P	U.S. Industries, Inc	Ames True Temper, Inc. IXL Manufacturing, Inc.
Transactions Granted Early Termination—12/06/2001			
20020257	The 1998 Confederation Trust	Quality Stores, Inc	Quality Stores, Inc.
Transactions Granted Early Termination—12/07/2001			
2001241	Koninklijke Ahold N.V	Bruno's Supermarkets, Inc	Bruno's Supermarkets, Inc.
20020164	CRH, plc	Royal Bank of Canada	Global Clay Products, LLC
20020185	First Reserve Fund VIII, L.P	Key Energy Services, Inc	Key Energy Services, Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1476 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/10/2001			
20020130	Emerson Electric Co	MKS Instruments, Inc	MKS instruments, Inc.
20020131	MKS Instruments, Inc	Emerson Electric Co	ENI Technology, Inc.
20020137	Kerr-McGee Corporation	Kinder Morgan, Inc	Kinder Morgan Power Company.
20020141	Enbridge Inc	Williams Companies, Inc	Goebel Gathering Company, L.L.C. Transcontinental Gas Pipe Line Corporation. WFS Gathering Company, L.L.C., WFS-Liquids Company.
20020144	Kaneb Pipe Line Partners, LP	Statia Terminals Group N.V	Statia Technology, Inc., Statia Marine, Inc. Statia Terminals International N.V.
20020178	Fortress Investment Fund LLC	AMRESCO, INC. (Debtor-in-Possession).	AMRESCO Commercial Finance, Inc. AMRESCO Independence Funding, Inc.
20020181	Motorola, Inc	Vincent R. Borelli	Synchronous, Inc.
20020183	General Motors Corporation	Isuzu Motors Limited	IMAC Funding Corporation I.
20020193	Voest-Alpine AG	Polynorm N.V	Polynorm N.V.
20020198	Nextel Communications, Inc	Chadmoore Wireless Group, Inc	Chadmoore Wireless Group, Inc.
20020203	Health Management Associates, Inc.	Clarent Hospital Corporation	Lancaster Hospital Corporation. Paracelsus Fentress County Medical Center, Inc. Paracelsus Mesquite Hospital, Inc. Paracelsus Santa Rosa Medical Center, Inc.
Transactions Granted Early Termination—12/11/2001			
20020154	GS Capital Partners 2000, L.P	Global Crossing Ltd	IPC Information Systems, Inc.
20020156	GS Capital Partners 2000, L.P	NEWCO (a joint venture)	NEWCO.
20020167	LaQuinta Corporation	LaQuinta Properties, Inc	LaQuinta Properties, Inc.
20020192	CAE Inc	General Electric Company	SimuFlite Training International, Inc.
20020199	ConAgra Foods, Inc	Nestle' S.A	Nestle USA, Inc.
20020205	AutoNation, Inc	Richard B. Cogswell, Jr	Fox Valley Imports, Inc. Laurel Audi, LLC. Laurel Automotive Group of Tinley Park, LLC. Laurel Motors, Inc.
Transactions Granted Early Termination—12/13/2001			
20020170	AMETEK, Inc	PerkinElmer, Inc	PerkinElmer Instruments, Inc.
20020207	Immunex Corporation	American Home Products Corporation.	Greenwich Holdings Inc. ,
Transactions Granted Early Termination—12/14/2001			
20012216	International Game Technology	Anchor Gaming	Anchor Gaming.
20020169	Progress Energy, Inc	Powergen plc	Powergen plc.
20020194	Nortrax, Inc	Nortrax Inc	Nortrax II, Inc.
20020195	Nortrax Inc	Nortrax II, Inc	Nortrax Inc.
20020208	Ford Motor Company	Ford Motor Company	FRN of Greater Salt Lake City, LLC.
20020210	Mohawk Industries, Inc	Dal-Tile International Inc	Dal-Tile International Inc.
20020211	Atlantic Equity Partners III, L.P	Ranpak Corp	Ranpak Corp.
Transactions Granted Early Termination—12/17/2001			
20020177	AOL Time Warner Inc	WGBH Educational Foundation	WGBH Educational Foundation.
20020212	CRH plc	Nuckolls Concrete Services, Inc	Nuckolls Concrete Services, Inc.
20020215	Mellon Financial Corporation	PriceWaterhouseCoopers LLP	Unifi Network LLC.
20020219	Cal Dive International, Inc	Canyon Offshore, Inc	Canyon Offshore, Inc.
20020220	CRH plc	Cemex, S.A. de C.V	Cemex, Inc.
20020222	Tyco International Ltd	Wellspring Capital Partners II, L.P	Paragon Trade Brands, Inc.
20020232	National Equipment Services, Inc	Brambles Industries Limited	Brambles Equipment Services, Inc. Brambles Equipment Services, Inc., (Canada) ,
Transactions Granted Early Termination—12/18/2001			
20020172	B & C Privatstiftung	Bayerische Hypo - und Vereinsbank AB.	Peter Frank GmbH.
20020175	Gencorp Inc	GenCorp Inc	Aerojet Fine Chemicals LLC.
20020201	UNIPAC Service Corporation	EFS, Inc	EFS, Inc.
20020221	Digimarc Corporation	Polaroid Corporation	Polaroid Corporation ID Systems, Inc.
20020223	Limestone Electron Trust	El Paso Corporation	El Paso Golden Power, L.L.C.
20020230	The PMI Group, Inc	Fairbanks Capital Holding Corp	Fairbanks Capital Holding Corp.
20020243	National Dairy Holdings, LP	Suiza Foods Corporation	Suiza Foods Corporation.

Transaction No.	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—12/19/2001			
20020165	CHB Capital Partners II, LP	Law Companies Group, Inc	Law Companies Group, Inc.
20020188	OSI Pharmaceuticals, Inc	Gilead Sciences, Inc	Gilead Sciences, Inc.
20020209	President and Fellows of Harvard College.	CCC Information Services Group, Inc.	CCC Information Services Group, Inc. ,
Transactions Granted Early Termination—12/20/2001			
20012438	Smith Investment Company	Ocelot Oil Corp	State Industries, Inc.
20020217	EdperPartners Limited	Lambert Bedard	Great Northern Paper, Inc.
20020218	EdperPartners Limited	Joseph Kass	Great Northern Paper, Inc., a Delaware Corporation.
20020231	Sandvik AB	Walter AG	Walter AG.
20020239	Tyco International Ltd	FCC Equipment Financing, Inc	FCC Equipment Financing, Inc. ,
Transactions Granted Early Termination—12/21/2001			
20012475	Mr. Georg F. W. Schaeffler	FAG Kugelfischer Georg Schafer AG.	FAG Kugelfischer Georg Schafer AG
20020062	Reliant Energy, Incorporated	Orion Power Holdings, Inc	Orion Power Holdings, Inc.
20020107	Neopost S.A.	Ascom Holding AG	Ascom Hasler Mailing Systems Inc.
20020189	Newmont Mining Corporation	Normandy Mining Limited ACN 009 295 765.	Normandy Mining Limited ACN 009 295 765
20020224	The Right Start, Inc	Royal Vendex KBB N.V.	F.A.O. Schwartz. Quality Fulfillment Services, Inc.
20020235	NetBank, Inc	Resource Bancshares Mortgage Group, Inc.	Resource Bancshares Mortgage Group, Inc.
20020237	Tyco International Ltd	Code, Hennessy & Simmons, III, L.P.	CIIT Holdings, Inc.
20020238	El Paso Corporation	El Paso Corporation	Photon Investors, L.L.C.
20020240	J.P. Morgan Chase & Co	III Associates	System & Services Technologies, Inc.
20020241	Plexus Corp	MCMS, Inc	MCMS Customer Services, Inc. MCMS International, Inc.
20020244	Three Cities Fund III, L.P	ABC-NACO Inc	ABC-NACO Inc.
20020246	ABRY Partners IV. L.P	Monitronics International, Inc	Monitronics International, Inc.
20020249	CDV Trust	Marks & Spencer p.l.c	Brooks Brothers, Inc.
20020250	Stella Vermogensverwaltungs GmbH.	Honewell International Inc	Honewell Commercial Vehicle Systems Company.
20020251	JDS Uniphase Corporation	International Business Machines Corporation.	International Business Machines Corporation.
20020253	Cumulus Media Inc	Frank D. Osborn	Aurora Communications, LLC Aurora Management, Inc.
20020254	Consumer Portfolio Services, Inc ..	MFN Financial Corporation	MFN Financial Corporation.
20020255	Terex Corporation	Schaeff Holding GmbH & Co. KG	BHS Baumaschinen Handels. Fuchs-Bagger Gmbh& Co. KG. Fuchs-Bagger Verwaltungs GmbH. Karl Schaeff GmbH & Co. Nippon Schafu Kabuskiki Kaisha. Portatz Baumaschinen GmbH & Co. Potratz GmbH. Schaeff & Co. (UK). Schaeff Biegetechnik Besitz GmbH & Co. Schaeff Biegetechnik GmbH. Schaeff Ersatzteile-Service GmbH & Co. KG. Schaeff Ersatztiele. Schaeff France SARL. Schaeff Gesellschaft. Schaeff GmbH. Schaeff Grundbesitz GbR. Schaeff Holding GmbH & Co. KG. Schaeff Holding Verwaltungs-GmbH. Schaeff Komponenten Beteilligungs. Schaeff Komponenten GmbH & Co. Schaeff Limited. Schaeff Machinery (Shanghai) Co. Schaeff Service Limited.
20020259	Nationwide Mutual Insurance Company.	Provident Mutual Life Insurance Company of Philadelphia.	Provident Mutual Life Insurance Company of Philadelphia.

FOR FURTHER INFORMATION CONTACT: Contact Representatives, Federal Trade Commission, Premerger Notification Officer, Bureau of Competition, Room
Sandra M. Peay or Chandra L. Kennedy,

303, Washington, DC 20580, (202) 326–3100.

By Directions of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1477 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction No.	Acquiring person	Acquired person	Acquried entities
Transactions Granted Early Termination—12/27/2001			
20020202	General Electric Company	CMS Energy Corporation	Michigan Electric Transmission Company LLC
20020204	AT&T Wireless Services, Inc.	Gerald T. Vento	THC of Houston, Inc. THC of Melbourne, Inc. THC of Orlando, Inc. THC of San Diego, Inc. THC of Tampa, Inc.
20020216	Furniture Brands International, Inc.	Furnishings International Inc.	Drexel Heritage Furnishings, Inc. Furnishings International Inc. Henredon Furniture Industries, Inc. Maitland-Smith Pacific, LTD Maitland-Smith, Inc.
20020242	Perot Systems Corporation	Dianne H. Patterson	Claim Services Resources Group, Inc.
20020252	Omnicare, Inc.	Mariner Post-Acute Network, Inc.	American Medical Insurance Billing Services, Inc. American Pharmaceutical Serivces, Inc. APS Pharmacy Management, Inc. Compass Pharmacy Services of Maryland, Inc. Compass Pharmacy Services of Maryland, Inc. Ocean Pharmacy, Inc. Pinnacle Pharmaceutical Services, Inc.
Transactions Granted Early Termination—12/28/2001			
20020225	Nestle S.A.	Bristol-Myers Squibb Company	Bristol-Myers Squibb Company
20020226	L. Bettencourt	Bistol-Myers Squibb Company	Bistol-Myers Squibb Company
Transactions Granted Early Termination—01/01/2002			
20020267	American Institute of Certified Public Accountants.	Rivio, Inc.	Rivio, Inc.
20020278	Cable and Wireless Inc.	Exodus Communications, Inc.	Exodus Communications, Inc.
Transactiosn Granted Early Termination—01/03/2002			
20020275	AOL Time Warner Inc.	Oxygen Media Corporation	Oxygen Media Corporation
20020276	Paul G. Allen	Oxygen Media Corporation	Oxygen Media Corporation
20020282	Berkshire Hathaway Inc.	Craig A. Ponzio	Albecca Inc.

For Further Information Contact: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–1478 Filed 1–18–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–5 p.m., February 25, 2002. 8:30 a.m.–4 p.m., February 26, 2002.

Place: Radisson Buckhead/Emory Area Inn, 2061 North Druid Hills Road, Atlanta, Georgia 30329

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

Matters to be Discussed: Agenda items will include a review of the Draft Guideline for Preventing Transmission of Infectious Agents in Healthcare Settings (formerly Guideline Isolation Precautions in Hospitals) and the Draft Guideline for Prevention of Healthcare-associated Pneumonia; public comments on the Draft Guideline for Hand Hygiene in Healthcare Settings; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1220 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States

The National Vaccine Advisory Committee (NVAC), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Strengthening the Supply of Routinely Recommended Vaccines in the United States.

Times and Dates: 8:30 a.m.—5 p.m., February 11, 2002. 8:30 a.m.—4 p.m., February 12, 2002.

Place: Omni Shoreham Hotel, 2500 Calvert Street, Washington, DC, Phone: 1–888–511–5743.

Status: Open to the public, limited only by the space available. The meeting rooms will accommodate approximately 200 people.

Purpose: The objectives of the Workshop are to define and describe the scope of the problem with vaccine supply in the United States; to identify and discuss possible contributing causes of and potential strategies to address the vaccine supply problem; and, to develop a limited number of pragmatic strategy options to address the vaccine supply issues in the United States.

Matters to be Discussed: Agenda items will include presentations and discussion including: an overview of the problems associated with vaccine supply; financial incentives for research, development, and production; review of the regulatory process; government-owned contractor-operated vaccine production facilities; vaccine stockpiles; liability protections; tailoring strategies to specific shortages; and, perspectives of constituencies.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Stephen Sepe and Jeanne Santoli, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 770–488–2040 (Sepe) and 404/639–8802 (Santoli). You may also visit the NVPO web site for additional information: *www.cdc.gov/od/nvpo/calendar.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1221 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 9 a.m.—5 p.m., February 13, 2002. 8:30 a.m.—3 p.m., February 14, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (the Board) was established under the *Energy Employees Occupational Illness Compensation Program Act of 2000* to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which are being promulgated by Department of Health and Human Services (HHS), advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this

authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of an initial roster of 10 Board members. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advises the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on progress reports, recap of Board comments on probability of causation rule, status of rule promulgation, status of rule on dose reconstruction, special exposure cohort petitioning process, and Board discussion.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1219 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., February 6, 2002. 8:30 a.m.–12 p.m., February 7, 2002.

Place: Corporate Square Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to Tuberculosis Laboratory, improving TB efforts in the Southeast, and other TB related topics. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–1218 Filed 1–18–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 15, 2002, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will consider the safety and efficacy of biologics license application (BLA) 103780/0 REBIF (Interferon beta-1A, Serono), proposed for the treatment of relapsing-remitting multiple sclerosis. The background material will become available the day before the meeting and it will be posted under the Peripheral and Central Nervous System Drugs Advisory Committee Docket site at: http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to the Peripheral and Central Nervous System Drugs meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 1, 2002. Oral presentations from the public will be scheduled from approximately 11 a.m. to 12 noon. Time allotted for each presentation may be limited. Those

desiring to make formal oral presentations should notify the contact person before February 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 10, 2002.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 02–1409 Filed 1–18–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; Comment Request; Ethical Issues Associated With Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* Ethical Issues Associated with Nurse Practitioner and Physician Assistant Practice: A Comparative Analysis. *Type of Information Collection Request*: NEW. *Need and Use of Information Collection:* The purposes of the study are (1) to examine whether the current practice environment has created ethical concerns/conflict for Nurse Practitioners and Physician Assistants in the provision of patient care; (2) to explore relationships between selected individual, organizational, and state regulatory factors and ethical conflict in practice and the perceived delivery of quality care; and (3) to examine the perceived level of ethics preparedness and confidence in ethics decision-making. The findings will provide valuable information concerning: (1) The importance of ethics and ethical factors from the perspective of different professional groups; and (2) ethics educational needs of Nurse Practitioners and Physician Assistants. *Frequency of Response:* Once. *Affected Public:* Individuals; Academic Institutions; Business or other for-profit; Not-for-profit organizations. *Type of Respondents:* Nurse Practitioners and Physician Assistants. The annual report burden is as follows: *Estimated Number of Respondents:* 1,400; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .33; and *Estimated Total Annual Burden Hours Requested:* 462. The annualized cost to respondents is estimated at $33,600. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection is information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Connie Ulrich, RN, PhD, Principal Investigator, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to: *culrich@cc.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 14, 2002.

David K. Henderson,

Deputy Director, Warren G. Magnuson Clinical Center, National Institutes of Health.

Ezekiel Emanuel,

Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 02–1435 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; California Health Interview Survey—Complementary and Alternative Medicine

SUMMARY: In compliance with the requirement of section 2506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* California Health Interview Survey—Complementary and Alternative Medicine (CHIS–CAM). Type of Information Collection Request: New. Need and Use of Information Collection. The NCI has sponsored a Cancer Control Topical Module (CCTM) to the California Health Interview Survey (CHIS), administered in 2001. The CHIS is a telephone survey designed to provide population-based, standardized health-related data. Initiated by the UCLA Center for Health Policy Research, California Department of Health Services, and the Public Health Institute, the survey was unfunded by a number of public and private sources.

The 2001 CHIS CCTM was similar in content to the 2000 National Health Interview Survey (NHIS) CCTM and was administered to one sample adult in more than 54,000 households. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factor for smaller racial/ethnic minority populations.

The CHIS–CAM is a cross-sectional telephone survey nested in the CHIS study population of all adult respondents who agreed to be re-contacted. Complementary and Alternative Medicine (CAM) is a rapidly growing component of prevention and treatment of chronic illness in the United States. Yet the study of cancer has been largely excluded from the existing population-based surveys on CAM due to sample size restrictions, and little reliable information exists on how CAM utilization varies among different ethnic groups and among those with chronic illnesses.

The CHIS–CAM survey will be administered to approximately 2,000

cancer survivors and 6,000 non-cancer adults. It will enable NCI to collect extensive information on CAM, cancer and other chronic illnesses, and link it with the breadth of basic data already collected from the large, racially and ethnically diverse sample of CHIS respondents.

Comprehensive and detailed collection of information on CAM will enable NCI to increase its understanding of how, why, and to what effect CAM is used. The CHIS–CAM survey data will allow NCI to compare individuals who report various types of cancer and other chronic conditions and to determine: (1) The major categories of CAM procedures being used, as well as the specific therapies targeted toward cancer prevention and treatment, (2) how various subgroups in the population (defined by race/ethnicity, gender, age, health status, etc.) compare with regards to CAM procedures being used; (3) to what extent persons with cancer used specific types of CAM before or after diagnoses with cancer, and whether cancer patients used CAM in place of, or in addition to, conventional medical care; (4) whether systematic CAM treatments for cancer might lead to harm or interact with conventional treatments for cancer; and (5) what expenditures people are paying out-of-pocket for CAM procedures. Frequency of Response: One-time. Affected public: Individuals. Types of respondents: U.S. adults. The annual reporting burden is as follows:

TABLE A—ANNUALIZED BURDEN ESTIMATES FOR CHIS–CAM DATA COLLECTION

Type of respondents	Estimated number of respondents	Estimated no. of responses per respondent	Average burden hours per response	Estimated total annual burden hour requested
U.S. Adults	8,000	1	.35	2,800

There is no annualized cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anita Ambs, Project Coordinator, National Cancer Institute, EPN 4106, 6130 Executive Boulevard, Bethesda Maryland 20892–7344, or call non-toll free number (301) 451–8500 or email your request, including your address to *ambsa@mail.nih.gov.*

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days from the date of this publication.

Dated: January 10, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–1436 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: *shinnm@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Thermostable DNA Polymerases that Bypass Lesions in DNA

Dr. Roger Woodgate (NICHD) and Dr. Francois Boudsocq (NICHD)

DHHS Reference No. E–232–01/0—Research tool

Lesions in DNA often block DNA polymerases, especially in those polymerases used in the Polymerase Chain Reaction (PCR). Old DNA, such as that from forensic samples, is often damaged and cannot be used for PCR analysis.

The NIH announces the identification of two novel Y-family DNA polymerases—called Dbh and Dpo4—from the archea Sulfolobus solfactaricus P1 and Sulfolobus solfactaricus P2, respectively. The Y family of polymerases are characterized by their ability to replicate through DNA lesions that may block the activity of other, more conventional, polymerases such as the thermostable enzymes used in PCR. Both Dbh and Dpo4 enzymes have been shown to be as thermostable as the Taq polymerase (Dpo4, in particular) and can copy stretches of DNA up to 1300 bp in length. Because these polymerases are in general more efficient at coping with DNA lesions, they may be useful in the amplification of damaged DNA and could be useful in forensic PCR applications.

A Novel Human DNA Polymerase, POL IOTA, Involved in DNA Repair and Mutagenesis

Drs. Roger Woodgate and John McDonald (NICHD)

DHHS Reference No. E–229–01/0—Research tool

The NIH announces the identification of a novel DNA polymerase called POL IOTA, that is highly error prone and

may be responsible for causing mutations that ultimately lead to human cancer formation.

The polymerase could be useful as a target for chemotherapeutic agents that block the polymerase's enzyme activity. This in turn could lead to an increase in the cure rate of cancer patients. In addition, a diagnostic assay could be developed to identify enzyme expression patterns and their mutations, so as to recognize humans with an increased risk of cancers. Therefore, the polymerase could be used as a research tool, or with more development, into a kit that could be used in both research and clinical labs.

TMC1 and TMC2 and Applications to Hereditary Deafness

Dr. Andrew Griffith et al. (NIDCD)
DHHS Reference No. E–168–01/0 filed 19 Sep 2001

Hearing loss is a common communication disorder effecting nearly 1 in 1,000 children in the United States alone, and nearly 50% of adults by the age of eighty. Deafness can be caused by both environmental and disease-related factors, however, in at least 50% of the cases, deafness is an inherited trait.

The NIH announces the isolation and purification of two novel genes termed TMC1 and TMC2 that may encode the mammalian hair cell mechanotransduction channel. It is known that the mechanotransduction channel is the critical molecule within the hearing pathway, which detects sound within the inner ear. Our investigators have discovered that dominant and recessive mutations in TMC1 underlie two forms of hereditary deafness known as DFNA36 and DFNB7/11, respectively. This technology would be useful to a company interested in finding new therapies to treat or prevent hearing loss as well as identifying persons at increased risk of developing aminoglycoside-induced hearing loss. This technology is also available for collaboration with a partner under a Cooperative Research and Development Award.

Gene Involved in Dietary Sterol Absorption and Excretion and Uses Therefor

Drs. Michael Dean and Shailendra Patel (NCI)
DHHS Reference No. E–295–99/1 filed 25 Sep 2001 (PCT/US01/29859)

The ATP binding cassette proteins are involved in cholesterol regulation. Cholesterol absorption from the diet is an important mechanism for regulating serum cholesterol levels. It is well known that high serum cholesterol levels are found in several diseases such as diabetes, atherosclerosis, and cardiovascular disease.

The NIH announces the identification and characterization of the ABCG5 gene. The gene maps to human chromosome 2, which has been identified as playing a role in the genetic disorder sitosterolemia. Patients with sitosterolemia display an abnormally high level of blood sterol debri from plants and fish, which can lead to coronary artery disease, atherosclerosis, and arthritis, as well as other diseases. The inventors believe that mutations in the ABCG5 gene interfere with sterol transport thereby causing sitosterolemia. Companies working in this area would find this technology useful in searching for agents that can treat or prevent any disease or condition that has associated with it high cholesterol levels.

Dated: January 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1439 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Efficient Inhibition of HIV–1 Viral Entry Through a Novel Fusion Protein Including CD4

James Arthos, Claudia Cicala, Anthony Fauci (NIAID)
DHHS Reference No. E–337–01/0 filed 25 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: *soukasp@od.nih.gov*

This invention relates to CD4 fusion proteins for use in the treatment of an immunodeficiency virus infection such as human immunodeficiency virus (HIV). These polypeptides have been shown by the inventors to inhibit the entry of primary isolates of HIV–1 into CD4+ T cells by targeting the gp120 subunit of the HIV–1 envelope. The invention claims recombinant polypeptides comprising a CD4 polypeptide ligated at its C-terminus with a portion of a human immunoglobulin comprising a hinge region and two constant domains of an immunoglobulin heavy chain. The portion of the IgG is fused at its C-terminus with a polypeptide comprising a tailpiece from the C terminus of the heavy chain of an IgA antibody. This protein is very large (greater than 800 kilodaltons), which may contribute to its ability to inhibit entry of primary isolates of HIV–1 into T cells. It presents twelve gp120 binding domains (D1D2) and can bind at least ten gp120s simultaneously. The inventors have shown that the construct efficiently neutralizes primary isolates from different HIV subgroups. Also claimed are use of the construct as a component of a vaccine and as a diagnostic.

Methods and Compositions for Production and Purification of Recombinant Staphylococcal Enterotoxin B (rSEB)

Daniel Coffman, Steven Giardina, Jianwei Zhu (NCI)
DHHS Reference No. E–075–01/0 filed 09 Oct 2001
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail:*soukasp@od.nih.gov*

This invention claims processes and compositions for fermentation, recovery, and purification of recombinant bacterial superantigens (rSAgs), exemplified by a recombinant staphylococcal enterotoxin B SEB (rSEB) protein mutated for use in administration to a mammalian recipient. This process generates an economically viable quantity of rSEB vaccine protein meeting FDA parenteral drug specifications. The purification methods generally involve multiple steps including hydrophobic interaction

chromatography (HIC), buffer exchange (desalting), and cation exchange. The final product of the purification is a highly purified rSAg composition satisfying clinical safety criteria and is immunogenic and protective against lethal aerosol challenge in a murine model. The methods and compositions claimed in the patent application provide possible therapeutics and prophylactics for diseases caused by bacterial SAgs, such as food poisoning, bacterial arthritis and other autoimmune disorders, toxic shock syndrome, and the potential use of SAg biowarfare agents.

Novel Peptides to a Melanoma Antigen and Their Use in Diagnostic and Therapeutic Methods

P. Hwu, R. LaPointe, S.A. Rosenberg (NCI)

DHHS Reference No. E–086–01/0 filed 22 Aug 2001

Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Various tumor-associated antigens are recognized by T cells, thereby eliciting an immune response. Among these tumor-associated antigens is gp100, which along with several other tumor antigens identified to date is associated with malignant melanoma. Most of the gp100 peptide epitopes identified to date are HLA–A2 (MHC Class I) restricted.

The current invention embodies the identification of a novel HLA–DRB1*0701 (MHC Class II) restricted epitope of gp100. As 16–28% of the population is HLA–DRB1*0701 positive, this peptide could represent a potential immunotherapeutic vaccine for use against melanoma in a significant percentage of the patient population. In addition, the current invention represents only the second gp100 peptide identified to date that is capable of eliciting a CD4+ helper T cell response. It is believed that administration of a peptide capable of eliciting a CD4+ T cell response may be required in order to upregulate a CD8+ T cell response against a Class I-restricted peptide. The identification of an immunogenic Class II-restricted epitope therefore could be of particular importance not only as an immunotherapeutic vaccine in and of itself, but also for use in a vaccination protocol in combination with an immunogenic Class I-restricted peptide.

Tumor Antigen Homologous to Poly(A) Polymerase

S. Topalian (NCI), M. Gonzales (NCI), J. Manley, and S. Kaneko

DHHS Reference No. E–002–01/0 filed 16 May 2001

Licensing Contact: Kai Chen; 301/496–7736 ext. 247; e-mail: *chenk@od.nih.gov*

Poly(A) polymerase (PAP) activity has long been linked to cancer, and several forms of PAP have been identified to date by various researchers. PAP is an enzyme that is required for the processing and stability of nascent RNA transcripts. The current invention embodies the identification of a new human tumor associated antigen, neo-poly(A) polymerase (neo-PAP), which shares approximately 70% amino acid and 61% nucleic acid sequence similarity with classic PAP.

Neo-PAP is overexpressed in all tumor cell lines tested, including human prostate cancers, colon cancers, and melanomas. It is expressed at low levels in normal human testis tissue as well, but is expressed only at very low levels or not at all in other normal human tissues. Thus, neo-PAP appears to be a ''cancer-testis'' antigen, which is a category of tumor-associated antigens that are recognized by cytotoxic and helper T lymphocytes as well as serum immunoglobulins. Members of this tumor antigen category, including NY–ESO–1 and MAGE–3, and currently in clinical testing as cancer vaccines. Neo-PAP therefore could represent a potential immunotherapeutic vaccine for use against cancers of various types, and could also be useful in the diagnosis/prognosis of cancer.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–1440 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 28, 2002.

Open: 8:30 am to 2:45 pm.

Agenda: The agenda includes the Opening Remarks by Director, NCCAM, Reports on FIC Activities, International Health Research Strategic Plan, New Initiatives, and other business of the Council.

Closed: 2:45 pm to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D. Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, 301/402–7269.

The public comments session is scheduled from 1:15–1:45 pm. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax: 301–480–3519. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 pm on January 18, 2002. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (February 7, 2001) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 200, Bethesda, Maryland 20892, 301–402–7269, Fax 301–480–3519.

Dated: January 14, 2002.

LaVerne Y. Stringfeild,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 02–1434 Filed 1–18–02; 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 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: Clinical Trials Review Committee.

Date: February 25–26, 2002.

Time: February 25, 2002, 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Joyce A. Hunter, PhD, Review Branch, Room 7129, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1432 Filed 1–18–02; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel Demonstration & Education Research.

Date: February 12, 2002.

Time: 10:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe E. Huang, MD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Bethesda, MD 20892–7924, (301) 435–0287, *huangz@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: January 14, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–1433 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Diagnostic Tests for *Plasmodium falciparum* Caused Malaria

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license concerning the inventions embodied in:

USSN 5,130,416 (USPA 07/518,299, filed 05/03/90) issued July 14, 1992

USSN 5,296,382 (USPA 07/791,392, filed 11/14/91) issued March 22, 1994

USSN 5,476,785 (USPA 08/161,406, filed 12/06/93) issued December 19, 1995

all entitled ''Recombinant DNA clone containing a genomic fragment of PfHRP–II gene from Plasmodium falciparum'' and invented by Thomas E. Wellems and Russell J. Howard, to Akers Laboratories, Inc., a diagnostic company having a place of business in Thorofare, N.J. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of diagnostic tests for *Plasmodium falciparum*-caused Malaria for sales in the United States. A nonexclusive license of the present inventions to make and use in the United States but to sell in territories outside of the United States is available to other licensees.

DATES: Only written comments and/or applications for a license, which are received by the NIH Office of Technology Transfer on or before March 25, 2002, will be considered.

ADDRESSES: Requests for a copy of the patents, inquiries or comments relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; e-mail: *reichmau@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The inventions included in the prospective license relates to the isolation of clones of DNA from the malaria-causing parasite *Plasmodium falciparum* (*P. falciparum*) that encode a histidine-rich protein (designated name PfHRP–II) from this organism. PfHRP–II is expressed on P. falciparum-infected erythrocytes, and released from the infected host erythrocytes into the body fluids. The inventions describe the cloning procedure and the characterization of the coding sequence as well as that of the encoded protein and the antibodies made against it. The inventions can be utilized in the development of diagnostic tests for malaria as contemplated by the

prospective licensee, or for vaccine development against malaria.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1438 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein

AGENCY: National Institutes of Health, Public Health Service, and DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1) (i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application, 60/088,860 (refiled): ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein'' (DHHS Ref. E–201–98/0); PCT Patent Application, PCT/US99/12909 (refiled): ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein'' (DHHS Ref. E–201–98/1); Related Foreign Filed National Stage Applications claiming priority to 60/088,860, (pending) in Europe, Canada, Japan, Australia and the National Stage United States Application [S/N 09/673,707 (DHHS Ref. E–201–98/2)]: ''Specific Killing of HIV Infected Lymphocytes by a Recombinant Immunotoxin Directed Against the HIV–1 GP 120 Envelope Glycoprotein;'' US Patent 4,892,827, S/N 06/911,227: ''Recombinant Pseudomonas Exotoxin: Construction of an Active Immunotoxin with Low Side Effects,''—excluding any foreign equivalents corresponding to 4,892,827 (DHHS Ref. E–385–86/0); US Patent 5,747,654, S/N 08/077,252: ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity.'' PHS is an owner of corresponding foreign rights in national phase prosecution in Canada, Australia, Japan, and the European Patent Office. (DHHS Ref. E–163–93/0); US Patent 6,147,203, S/N 09/002,753: ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity,'' (DHHS Ref. E–163–93/4); US Patent 6,051,435, S/N 07/865,722: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/1) US Patent 5,863,745, S/N 08/461,825: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/2); and US Patent 5,696,237, S/N 08/463,163: ''Recombinant Antibody-Toxin Fusion Protein,'' (DHHS Ref. E–135–89/3) to IVAX Corporation which is located in Miami, Florida. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of HIV-associated diseases using 3B3(scFv)-PE38 or 3B3(dsFv)-PE38 immunotoxin constructs.

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before March 25, 2002 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804; Telephone: (301) 496–7056, x287; Facsimile: (301) 402–0220; and E-mail: *rodrigur@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The primary technology is directed to an immunotoxin that specifically binds to and kills cells expressing an HIV gp-120 coat protein. The immunotoxin comprises an anti-gp-120 antibody directed to the conserved CD4 binding site of gp 120 attached to a cytotoxin (e.g., a Pseudomonas exotoxin). In one preferred embodiment, the immunotoxin is a recombinantly expressed fusion protein comprising a disulfide linked Fv region attached to a modified Pseudomonas exotoxin [i.e., 3B3 (Fv)-PE38]. The technology is also directed to: a pharmaceutical composition; a composition of the immunotoxin; methods for killing HIV infected cells; and to a kit for killing cells that display a gp-120 protein.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 14, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 02–1437 Filed 1–18–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in February 2002.

The SAMHSA National Advisory Council meeting will be open and will include a presentation by the New SAMHSA Administrator on his Vision and Priorities for the Agency, discussions on the Agency's restructuring and delayering plans, on the National Summit on Terrorism/BioTerrorism Response Activities, on the President's new Mental Health Commission, on FY 2002 appropriation

issues, on the FY 2003 budget submission, and a presentation on the findings from the 2000 National Household Survey on Drug Abuse. There will also be a presentation by a SAMHSA National Advisory Council member on Workforce Shortage Issues. Finally, there will be reports by the Council's workgroups on co-occurring addictive and mental disorders and HIV/AIDS.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, February 5, 2002, 9 a.m. to 5:45 p.m. (Open); Wednesday, February 6, 2002, 9 a.m. to 3:15 p.m. (Open).

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

Contact: Toian Vaughn, Executive Secretary 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov.*

Dated: January 14, 2002.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 02–1410 Filed 1–18–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–02]

Notice of Proposed Information Collection: Comment Request Subject HUD Survey Instructions and Report for Insured Multifamily Projects

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0614, extension 5426 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: HUD Survey Instructions and Report For Insured Multifamily Projects.

OMB Control Number, if applicable: 2502–0010.

Description of the need for the information and proposed use: Form HUD–2457 provides the standards of performance for conducting surveys and preparing the maps of survey. It also identifies data that must be addressed to meet program requirements and provides a vehicle for the surveyor to certify compliance with applicable survey and reporting requirements. Furthermore, a land survey and related information are necessary to secure a marketable title and title insurance for the property that provides security for project mortgage insurance furnished under the FHA Multifamily programs. The Form HUD–2457 describes the property to assure compliance with various regulatory provisions, e.g., flood hazard requirements, and to help determine the suitability and value of the property for the intended purpose. The Form HUD–2457 also provides necessary engineering data for project design for prosed construction projects.

Agency form numbers, if applicable: Form HUD–2457.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 750, the frequency of responses is 2, for a total of 1,500 total annual responses. The estimated time to prepare collection is approximately 0.5 hours, for a total annual burden hours of 750.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 10, 2001.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 02–1412 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–13]

Announcement of Funding Awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Indian Housing Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of two awards for Fiscal Year 2001 to the Housing Assistance Council and the Native American Housing Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street,

SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing- or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) earmarked $3,000,000 for a grant to the Housing Assistance Council and $2,600,000 for a grant to the Native American Indian Housing Council. Subsequently, a .22 percent rescission of the Fiscal Year 2001 appropriation was enacted on December 21, 2000 (Pub. L. 106–554) resulting in a revised earmark amount of $2,993,400 for the Housing Assistance Council and $2,594,280 for the Native American Indian Housing Council. HUD's Office of Policy Development and Research administers these grants.

The Catalog of Federal Domestic Assistance for these grants is 14.225.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning these awards, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW, Suite 606, Washington, DC 20005, Grant Number H–21292CA, ''Rural Housing Research and Technical Assistance'' Amount $2,993,400, Date Awarded 10/01/00.

Native American Indian Housing Council, Luke Toyebo, Jr., Acting Executive Director, 900 Second Street, NE, Washington DC 20002, *Grant # H–21351RG*, Technical Assistance and Training to Indian Housing Agencies and Tribal Housing Agencies, Amount $2,594,280, Date Awarded 08/11/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1522 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–12]

Announcement of Funding Awards for Fiscal Year 2001 Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2001 Research and Technology unsolicited proposals. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The VA/HUD and Independent Agencies Appropriation Act of 2001 (Pub. L. 106–377) provided $53,000,000 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. A rescission of .22 percent was enacted on December 21, 2000 (Pub. L. 106–554) reducing the amount for Research and Technology funds to $52,883,400. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the proposer's initiative. Funding of unsolicted proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY 2001 Awardees for Cooperatives Agreements

American Planning Association, William R. Klein, 122 South Michigan Avenue, Suite 1600, Chicago, IL 60603–6107, Grant # H–5951CA, ''To Modernization State Laws Affecting Planning and the Management of Change—Growing Smart'' Phase III, Total Amount $230,000, Date Awarded 06/29/01.

Brown University on Behalf of Campus Compact, Norman J. Hebert, P.O. Box 1975, Providence, RI 02912, Grant # H–21318CA, ''Developing Socially And Civicly Engaged Engineers'', Total Amount $33,571, Date Awarded 09/28/01.

Building Works, Inc, Dr. Pieter A. VanderWerf, 675 Massachusetts Avenue, 8th Floor, Cambridge, MA 02139, Grant # H–21311CA, ''Reducing the Cost of Combining ICF's and Steel Framing in Residential Construction'', Total Amount $74,505, Date Awarded 06/04/01.

Georgetown University, Mary E. Schmiedel, 37th & O Streets, NW, Washington, DC 20057, Grant # H–21317CA, ''A Mid-Term Evaluation of the Effects of the Moving to Opportunity (MTO) Demonstration on Adult and Juvenile Criminal Offending'', Total Amount $15,000, Date Awarded 07/30/01.

Johns Hopkins University, Cheryl-Lee Howard, 3400 N. Charles Street, Baltimore, MD 21218–2688, Grant # H–21302CA, ''The Effects of Housing Assistance on Adult Self-Sufficiency'', Total Amount $18,746, Date Awarded 04/09/01.

Manpower Demonstration Research Corporation, Jesus M. Amadeo, 16 East 34th Street, New York, NY 10016–4326, Grant # H–21042CA, ''Jobs-Plus Community Revitalization Initiative for Public Housing Families'', Total Amount $1,420,000, Date Awarded 09/28/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York NY 10025, Grant # H–21315CA, ''Improving Foundation Performance in Sites Exposed to Multihazard Conditions'', Total Amount $200,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, Grant # H–21316CA, ''Manufactured Homes in Hot, Humid Climates: Alternatives for Eliminating Moisture

Problems'', Total Amount $110,000, Date Awarded 09/27/01.

Manufactured Housing Research Alliance, Richard Boyd, 220 West 93rd Street, 11th Floor, New York, NY 10025, Grant # H–21353CA, ''Accelerating Technology Advances in Manufactured Housing'', Total Amount $501,400, Date Awarded 09/28/01.

Metropolitan Area Research Corporation, Myron W. Orfield, Jr., 1313 Fifth Street, SE, Suite 108, Minneapolis, MN 55414, Grant # H–21171CA, ''A Comparative Study of Socioeconomic Disparity In U.S. Metropolitan Regions'', Total Amount $95,500, Date Awarded 11/17/00.

Mortgage Banking Association, Steven Hornburg, 2107 Wilson Boulevard, Suite 450, Arlington, VA 22201–3042, Grant #H–21300CA, ''Assessment of Consumer Mortgage Process and Home Search Process'', Total Amount $200,000, Date Awarded 01/12/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21313CA, ''Tool Base Services: The Source of Technical Information For The Building Industry'', Total Amount $500,000, Date Awarded 06/04/01.

NAHB Research Center, Liza K. Bowles, 400 Prince George's Boulevard, Upper Marlboro, MD 20772–8731, Grant # H–21314CA, ''Updated Model Land Development Standards Featuring Green Building and Smart Growth Technologies'', Total Amount $300,000, Date Awarded 09/21/01.

National Bureau of Economic Research, Susan Colligan, 1050 Massachusetts Avenue, Cambridge, MA 02138–5308, Grant # H–21301CA, ''Expanding Moving To Opportunity Research'', Total Amount $75,000, Date Awarded 03/07/01.

The Urban Institute, Suzanne Forehand, 2100 M Street, NW, Washington, DC 20037, Grant # H–21352CA, ''Neighborhood Effects of the LIHTC Program'', Total Amount $21,086, Date Awarded 09/27/01.

University Consortium for Geographic Information Science, Susan M. Jampoler, 43351 Spinks Ferry Road, Leesburg, VA 20176–5631, Grant # H–21260CA, ''Global Urban Quality: An Indicator of Urban Indicators Using Geographic Information Science (GIS)'', Total Amount $100,000, Date Awarded 1/16/01.

W.H. Porter, Inc., William H. Porter, 4240 N. 136th Avenue, Holland, MI 49424, Grant # H–21312CA. ''Supersip Panel for Residential Construction'', Total Amount $254,990, Date Awarded 07/19/01.

Dated: January 2, 2002.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 02–1523 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: International Center for Gibbon Studies, Santa Clarita, CA, PRT–050284.

The applicant requests a permit to export one live Siamang gibbon (*Hylobates syndactylus*) and four live dark-handed gibbons (*Hylobates agilis*) to Parque Las Aguilas, Spain for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of San Diego @ San Diego Wild Animal Park, Escondido, CA, PRT–049052.

The applicant requests a permit to export four Andean condors (Vultur gryphus) to the Calidad Ambiental de la CAR Cundinamarca, Santefe de Bogota, Colombia, for reintroduction into the wild to enhance the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Ken Morrill, Escalon, CA, PRT–051613.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: January 4, 2002.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–1501 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Documents To Amend a Habitat Conservation Plan for Federally Protected Native Fish Species on Plum Creek Timber Company Lands in Washington, Idaho, and Montana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act this notice advises the public that the Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Supplemental Environmental Impact Statement for a Proposed Amendment to the Plum Creek Native Fish Habitat Conservation Plan and request for issuance of an incidental take permit to take endangered and threatened species in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Permit applicant is Plum Creek Timber Company. The proposed amendment would add the grizzly bear to the existing permit and extend coverage of the Native Fish Habitat Conservation Plan (NFHCP) to

additional Plum Creek lands. This document would supplement the September 2000 Final Environmental Impact Statement (FEIS) and NFHCP for federally protected native fish species on Plum Creek Timber Company lands.

A public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana 59901. Comments and participation in the process are solicited.

DATES: The public meeting will be held from 3–7 p.m. MST on February 6, 2002, at the Montana Department of Fish, Wildlife, and Parks Headquarters, 490 N. Meridian Road, Kalispell, Montana. Written comments from all interested parties must be received on or before February 21, 2002 to be considered.

ADDRESSES: Comments, materials, and requests for information should be sent to Tim Bodurtha, Plum Creek Scoping Comments, U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901, telephone (406) 758–6882, facsimile (406) 758–6877.

FOR FURTHER INFORMATION CONTACT: Tim Bodurtha, Kalispell Sub-office, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits the ''taking'' of any threatened or endangered species. However, the Fish and Wildlife Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are outlined in 50 CFR 17.22.

Background

On October 24, 2000, the Fish and Wildlife Service issued an incidental take permit under section 10(a)(1)(B) of the Act to Plum Creek Timber Company. The permit authorizes the incidental take of 17 native fish species, as identified in the FEIS (U.S. Fish and Wildlife Service 2000), from certain Plum Creek activities on Plum Creek timberlands covering approximately 1.6 million acres in Washington, Idaho, and Montana. Plum Creek is proposing to amend this current NFHCP by adding the grizzly bear to the permit and by extending coverage of the NFHCP to additional Plum Creek lands in Montana. The NFHCP Project Area lands addressed in the proposed amendment encompass 70,826 acres of timberlands owned and managed by Plum Creek within the range of the grizzly bear. Approximately 38,148 acres are in the Cabinet-Yaak Ecosystem and 32,678 acres in the Northern Continental Divide Ecosystem. In addition, the amendment would extend coverage of the NFHCP to an additional 14,892 acres which was evaluated in the original FEIS (U.S. Fish and Wildlife Service 2000). However, coverage was postponed until an amendment to the NFHCP for the addition of grizzly bear was completed.

Of the total acres of Plum Creek lands covered under the NFHCP in Montana (1.4 million acres), the proposed amendment applies to 70,826 acres, or 5.0 percent and portions of the following counties in western Montana—Lincoln, Sanders, Flathead, Lake, Missoula, Powell, and Lewis and Clark. The proposed amendment requests incidental take authorization for take that occurs as a result of the following activities as described in the FEIS (U.S. Fish and Wildlife Service 2000)—(1) Commercial forestry and associated activities—Silvicultural activities such as tree planting, site preparation, timber harvest in riparian and upland areas, stand maintenance, prescribed burning, and forest nurseries and seed orchards; Logging road construction and maintenance; Gravel quarrying primarily for logging road construction; (2) Forest fire suppression; (3) Open range cattle grazing; (4) Miscellaneous forest and land product sales; Gravel and landscaping stones; (5) Conservation activities—Habitat enhancement and restoration; Scientific surveys and studies; (6) Special forest use permits—Commercial outfitting; Special recreation permits, such as club activities; Electronic facility sites; (7) Manufacturing of forest products, such as milling activities, lumber mills, plywood mills, and remanufacturing plants.

The proposed amendment to the Plum Creek NFHCP provides for conservation of the threatened grizzly on Plum Creek lands in Montana. It further would extend conservation commitments for the threatened bull trout and four unlisted native salmonids; the redband and westslope cutthroat trout, mountain whitefish, and pygmy whitefish. The proposal to amend the NFHCP would not affect the 30-year term of the permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: January 4, 2002.

Elliott Sutta,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 02–1449 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–01–1020–JA–VEIS]

Changes to the Schedule and Scope of Public Scoping Meetings for the Environmental Impact Statement for Vegetation Treatments, Watersheds and Wildlife Habitats on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental Notice to Change to Dates for Public Scoping Meetings and change the scope of the EIS.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on BLM's use of prescribed burning, biological control, cultural practices, mechanical, and chemical treatment of vegetation, including noxious weeds and other invasive species in public lands management. These methods will continue to be integrated into BLM's efforts to conserve and restore native vegetation, watersheds and wildlife habitats to protect people, sustain natural resources and provide for long-term multiple uses. The EIS addresses public lands administered by BLM in 16 western states, including Alaska. The public may submit comments during the initial scoping period through March 29, 2002.

DATES: You may submit written comments through March 29, 2002. The BLM will hold public scoping meetings to focus on human and environmental concerns, identify possible alternatives, and identify significant issues related to the proposed action.

New dates for the postponed Salt Lake City, Utah; Rock Springs, Wyoming; Socorro, New Mexico; and Phoenix, Arizona meetings are as listed in the following schedule:

Date and time	Locations	BLM contact
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT	Kim Leany (435) 688–3208.
January 23, 5–8 p.m	Utah Dept. of Natural Resources Bldg., 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 24, 2–5 p.m. and 6–9 p.m.	Grand Vista Hotel, 2790 Crossroads Blvd., Grand Junction, CO	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 106, 2715 Dickinson, Miles City, MT	Jody Weil (406) 896–5258.
January 30, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 31, 4–7 p.m	Elks Lodge, 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 4, 3–5 p.m. and 6–9 p.m.	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ	Deborah Stevens (602) 417–9215.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m.	Vista Inn, 2645 Airport Way, Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m and 6–9 p.m.	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 25, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM	Margie Onstad (505) 838–1256.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave, Bakersfield, CA	Stephen Larson (661) 391–6099.
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6th, Portland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel—Franklin Room, 10 Thomas Circle, (Massachusetts and 14th Street), Washington, DC.	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list for this EIS, contact Brian Amme, Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will support implementation of the Department of the Interior's cohesive strategy plan for restoring fire-adapted ecosystems. The EIS will also provide a comprehensive cumulative analysis of the variety of vegetation treatments BLM employs for the conservation and restoration of vegetation communities, watersheds and wildlife habitats that are designed to protect people, sustain natural resources and provide for long-term multiple uses (as specified in locally developed land use plans). Conservation and restoration activities analyzed in this document include prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems. The EIS will:

- Consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- Address human health risk assessments for proposed use of new chemicals on public lands.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive document to allow effective tiering to the EIS and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- An updated EIS is necessary for BLM to analyze proposed treatments on more than 6 million acres annually. Treatments will include prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Rehabilitation, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODs) equate to about 500,000 acres for the combined western states.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Colorado, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Kansas), Nevada, Oregon (Washington), Utah and Wyoming (Nebraska).
- This EIS will consolidate four existing BLM vegetation treatment EISs developed between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatments, including mechanical treatments, treatments benefitting wildlife habitat, restoration of ecological processes (predominately fire), watershed and vegetation community health treatments. It will consider the effects of these treatments on new listings of threatened and endangered species and on other sensitive and special status species, cultural properties and Native American/Alaskan Native subsistence practices. The EIS will also analyze new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and rehabilitation treatments following wildfire, and the effects of treatments on

vegetation, soils, watershed and water quality.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 02–1659 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP2–0026; OR 55981 and OR 55502]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using direct sale procedures.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, rehabilitation plan, planning and environmental documents, is available at the Eugene District Office, PO Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Madsen, Realty Specialist, Eugene District Office, at (541) 683–6948.

SUPPLEMENTARY INFORMATION: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel OR 55981, appraised fair market value: $1,100.00
T. 21 S., R. 1 W.
Sec. 31: Lot 38
Containing 0.16 acre.

Parcel OR 55502, appraised fair market value: $8,000.00
T. 21 S., R. 2 W.
Sec. 1:Lot 9
Containing 0.45 acre.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

These lands are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Parcel OR 55981 is being offered to Tony and Sonya Bratton and Parcel OR 55502 is being offered to James L. Bean using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land, in both cases, has been inadvertently occupied and utilized for many years as portions of residential yards, including buildings. Direct sale will resolve the unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale of both parcels are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a non-refundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. Parcel OR 55502 will not be offered for sale until the purchaser has completed and the Authorized Officer has accepted and approved the restoration of riparian vegetation on public land adjacent to the sale parcel. Restoration of the lands damaged without authorization will be at the expense of the purchaser and in accordance with the rehabilitation plan developed by the Bureau of Land Management.

Dated: December 26, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1379 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–02–1430–EU: GP02–0002; OR 55429]

Realty Action; Modified Competitive Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces the availability of two small parcels of public land in Lane County, Oregon, for sale using modified competitive sale procedures.

SUPPLEMENTARY INFORMATION: The following land is suitable for modified competitive sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value (FMV). The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

Parcel A

T. 21 S., R. 3 W.
Sec. 2: Lot 6
Containing 1.77 acres.
Appraised fair market value: $6,100.00.

Parcel B:

T. 21 S., R. 3 W.
Sec. 2: Lot 9
Containing 1.97 acres.
Appraised fair market value: $16,600.00.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this

disposal. Coordination with State, tribal and local governments concerning the sale has been conducted. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The two parcels will be offered for sale at public auction using modified bidding procedures authorized under 43 CFR 2711.3–2. Bidding for each parcel is open to all qualified bidders; however, the following adjacent land owners (designated bidders) will be given the opportunity to meet the highest bid received at the sale for either parcel: Spencer K. Adair and Jeanne L. Adair; Donna R. Dennis and Wanda Dennis; Marjorie A. Nord and Roylin A. Melton; Donald J. Overholser and Rodney G. Matthews; LaVerna Pitcher and Randy Pitcher; and Paul M. Tollefson and Elizabeth Tollefson. Modified competitive sale is appropriate since the land is part of a survey hiatus identified by cadastral survey in 1999 and has been inadvertently occupied and utilized for many years by a roadway providing access to adjoining lands. A Bonneville Power Administration electric transmission line corridor occupies portions of both parcels and a portion of a residential carport encroaches upon Parcel B.

The two parcels will be offered for sale at public auction beginning at 10 am, PST on March 25, 2002, at 2890 Chad Drive, Eugene, Oregon 97401–9336. Sale will be by sealed bid only. All sealed bids must be received by the BLM's Eugene District Office at 2890 Chad Drive, Eugene, Oregon 97401–9336, prior to 10 a.m. on the date of the sale, March 25, 2002. Bid envelopes must be marked on the lower left front corner, ''Sale OR 55429 Parcel A'' or ''Sale OR 55429 Parcel B''. Bids must be for not less than the appraised FMV specified in this notice. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of Interior, BLM for not less than 10 percent of the amount bid. Any parcel not sold as a result of the March 25, 2002, sale will be re-offered to the general public through continuing modified competitive sales. Offers for the unsold parcel will be accepted in a manner consistent with the process described herein; bids will be opened on the 15th day of each month thereafter until the apparent high bid is declared.

Under modified competitive sale procedures the written sealed bids will be opened and an apparent high bid for each parcel will be declared at the sale. The apparent high bidder and the designated bidders will be notified. The designated bidders will be given 30 days from the date of the sale to exercise the preference consideration given to meet the high bid, individually or in combination. Should the designated bidders fail to submit a written bid that matches the apparent high bid within the specified time period, the apparent high bidder will be declared high bidder. In case more than one written bid matching the apparent high bid is received from designated bidders, the interested bidders will be given an opportunity and instructions for submission of an additional sealed bid, meeting the above stated requirements, which additional sealed bids will be opened at a specified time, date and place, followed by oral bidding. At the conclusion of the oral bidding, the high bidder will be awarded the property. The total purchase price for the land shall be paid within 180 days of the date of this sale.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. A successful bid for a parcel will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. A nonrefundable $50.00 filing fee for the conveyance of the mineral estate will be required from the prospective purchaser. The mineral interests to be conveyed simultaneously with the sale of the land have been determined to have no known mineral value.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Parcel A:

(1) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(2) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(3) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their adjoining property.

b. Parcel B:

(1) Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to right-of-way OR 55407. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

(2) A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

(3) A requirement that the purchaser, at closing, grant an easement to LaVerna Pitcher, for ingress and egress to her adjoining property.

(4) A requirement that the purchaser, at closing, grant an easement to Donald J. Overholser and Rodney G. Matthews, for ingress and egress to their property adjoining Parcel A.

(5) A requirement that the purchaser, at closing, grant an easement to Donna R. Dennis and Wanda Dennis, for ingress and egress to their adjoining property.

(6) A requirement that the purchaser, at closing, grant an encroachment easement to Donna R. Dennis and Wanda Dennis, for an existing carport structure that encroaches upon Parcel B.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning the sale, including the reservations; sale procedures and conditions; form of the easements to be granted to the Bonneville Power Administration, LaVerna Pitcher, Donald J. Overholser and Rodney G. Matthews, and Donna R. Dennis and Wanda Dennis; and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Realty Specialist, Eugene District Office, at (541) 683–6403.

Dated: September 27, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 02–1487 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–01–1060–JJ]

Notice of Intent To Remove Wild Horses From Public Lands and Notice of Public Hearing on the Use of Helicopters and Motor Vehicles in Wild Horse Removal Operations

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Wild, Free Roaming Horse and Burro Act, as amended (PL 92–195), provides, among other things, that excess wild horses shall be removed from public lands.

The Bureau of Land Management (BLM) plans to remove 225 horses from the Stewart Creek Herd Management Area (HMA) and the area outside HMA boundaries known as I–80 North Beginning February 15, 2002, and continuing through March 30, 2002. This will reduce the population in the Stewart Creek HMA to the Appropriate Management Level (AML).

The Wild, Free Roaming Horse and Burro Act also provides for the use of aircraft and motor vehicles in all phases of the administration of the Act. The Code of Federal Regulations, at 43 CFR 4740.1 provides (a) that the authorized officer conducts a public hearing in the area where such use is to be made.

The BLM has and plans to continue use of helicopters in the removal of wild, free roaming horses from the public lands within the Rawlins, Lander, Rock Springs, Cody, and Big Horn Basin Field Office jurisdictions in calender year 2002.

Pursuant to the requirements noted above, the BLM will conduct a public hearing on the use of helicopters and motor vehicles in gathering operations during the calendar year of 2002. The hearing will occur on Tuesday, February 12, 2002, at 3 p.m., in the large conference room of the Rock Springs Field Office of the Bureau of Land Management located at 280 Highway 191 North, Rock Springs, Wyoming.

DATES: *Hearing Date:* February 12, 2002. *Roundup dates:* March 1 through March 30, 2002.

ADDRESSES: The Helicopter Hearing will be held at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003–1828. Phone: (307) 775–6256.

Dated: January 14, 2002.

Alan R. Pierson,

State Director.

[FR Doc. 02–1486 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska Region, Norton Basin

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations (Call).

SUMMARY: The Secretary's preliminary decision to consider offering the Norton Basin planning area in the Proposed OCS Oil and Gas Leasing Program for 2002–2007 provides for an 18-month ''special-interest'' process beginning with publication of this Call. Based on the information and specific nominations received as a result of this Call, a decision will be made whether to proceed with a sale. The MMS is issuing a Call at this time recognizing that the final decision on the 2002–2007 5-year program has not been made. Final delineation of the program areas and number of sales may change from that included in the proposed program.

DATES: Nominations and comments on the Call must be received no later than April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the Call.

SUPPLEMENTARY INFORMATION: The objective of this ''special-interest'' leasing option is to foster exploration in a frontier OCS area that is estimated to have over 1 trillion cubic feet of natural gas without investment of the considerable time and effort required for holding a typical lease sale. The general approach is to query industry regarding the level of interest in proceeding with a sale in Norton Basin that would offer only very small, very focused areas of specific interest for exploration. Norton Basin may contain quantities of natural gas, which might be used for western Alaska communities if economically feasible. We request comments from the general public on this special-interest leasing process, including the terms and conditions of a sale. The MMS will consider all comments and nominations in the decision on whether to proceed with leasing and on the terms and conditions of a lease sale proposal. A decision to offer an area for leasing will be conditioned on a commitment from industry to explore the area leased within a specific time period.

This Call does not indicate a preliminary decision to lease in the area described below. If there is no interest expressed, the MMS will defer the sale for one year and reissue the Call the following year. If the MMS decides to proceed with the sale process, the MMS will make the final delineation of the specific areas for possible leasing at a later date in the presale process and in compliance with the final 5-year program and with applicable laws including all requirements of the National Environmental Policy Act (NEPA) and the OCS Lands Act (OCSLA).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the OCSLA as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR part 256); and in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007, issued October 26, 2001.

2. Purpose of Call

The purpose of the Call is to gather preliminary information, to request nomination of specific areas of interest to industry, and to request comments on the terms and conditions of offering these special interest lands. The Call also serves to initiate the scoping process to assist in preparation of the NEPA analysis for this proposal. This proposal is in keeping with section 102(9) of the OCSLA Amendments of 1978, which states as a purpose of the statute, ''to insure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time.'' The objective of the ''special-interest'' leasing process is to encourage exploration in a frontier OCS area that might contain natural gas for potential use in local communities. Any sale would offer for lease both oil and gas.

Comments, information, and nominations on oil and gas leasing, exploration, and development and production within the Norton Basin are sought from all interested parties. Comments are also being sought on the terms and conditions of a sale in Norton Basin. Industry and other interested parties are strongly encouraged to contact the MMS, Alaska OCS Region, Mr. Tom Warren at (907) 271–6691, with questions or to discuss interest in the area. This early planning and consultation step is particularly important to this special interest lands process. The MMS will base its decision on whether to proceed with the presale

process and the terms and conditions of a sale on the nominations and other information received in response to this Call. This process will ensure a decision that considers the concerns of all respondents in future decisions in this leasing process pursuant to the OCSLA and regulations at 30 CFR part 256. Commenters are encouraged to submit comments and suggestions on the ''special-interest'' leasing process in general and on the potential for offering other frontier areas of the Alaska OCS, such as the Chukchi Sea and Hope Basin Planning Areas, using this process.

This Call is being issued in accordance with the Proposed OCS Oil and Gas Leasing Program 2002 to 2007 announced on October 26, 2001. The proposed program offers one sale in the Norton Basin during the 5-year program. If no interest is expressed in response to this first Call, the MMS will defer the sale for one year and reissue the Call the following year. This process will continue throughout the 5-year program until there is sufficient interest to hold a sale and the area nominated is deemed appropriate for leasing. Only one round of lease issuance in Norton Basin would occur during this 5-year program.

3. Description of Area

The area subject to this Call is located offshore the State of Alaska in the northern Bering Sea, west and south off the coast of the Seward Peninsula. It consists of approximately 4,742 whole and partial blocks (about 25 million acres). It extends offshore from about 3 to approximately 320 miles in water depths from about 25 feet to approximately 650 feet.

A page size map of the area accompanies this Notice. A large scale Call map showing the boundaries of the area on a block-by-block basis is available without charge from the Public Information Office at the address given below, or by telephone request at (907) 271–6438 or 1–800–764–2627. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302

4. Instructions on Call

The Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under Item 3, Description of Area.

The Call map delineates the area that is the subject of this Call. Respondents are requested to indicate specific areas of interest in and comment on the Federal acreage within the boundaries of the Call area that they wish to have included in a proposed sale in Norton Basin. If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. Under certain circumstances we can withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Areas of Interest to the Oil and Gas Industry

Industry must be candid and very specific regarding the areas they nominate if this process is to succeed. The purpose of this process is to identify and offer only small-focused areas where industry has a significant interest in exploration. Nominations covering large-scale areas will not be helpful in defining these areas.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Terms and Conditions of Lease Issuance

Respondents are requested to comment on the terms and condition of lease issuance for any leases that may be issued as a result of a sale in Norton Basin. The following terms and conditions have been used in past sales and are being considered for this use in this sale:

—Lease term of 10 years
—Annual rental rate of $13 per hectare or fraction thereof
—Minimum cash bonus bid of $62 per hectare
—Royalty rate of 12.5 percent

In addition, the following are suggested additional terms and incentives:

—Submission of an exploration plan within 4 years of lease issuance
—Cancellation of lease for failure to submit exploration plan within 4 years
—Suspension of royalties on initial production
—Delayed payment of cash bonus bid
—Other incentives
—Mitigating measures

C. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

5. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. We will use responses to:

—Determine whether to proceed with a competitive oil and gas lease sale in Norton Basin
—Identify specific areas of interest for oil and/or gas exploration and development
—Identify environmental effects and potential use conflicts
—Assist in the scoping process for the environmental analysis
—Develop possible alternatives to the proposed action
—Develop lease terms and conditions/ mitigating measures

—Identify potential conflicts between oil and gas activities and the Alaska CMP

6. Existing Information

An extensive environmental, social, and economic studies program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Item 3, Description of Area.

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to a Norton Basin sale in 2003:

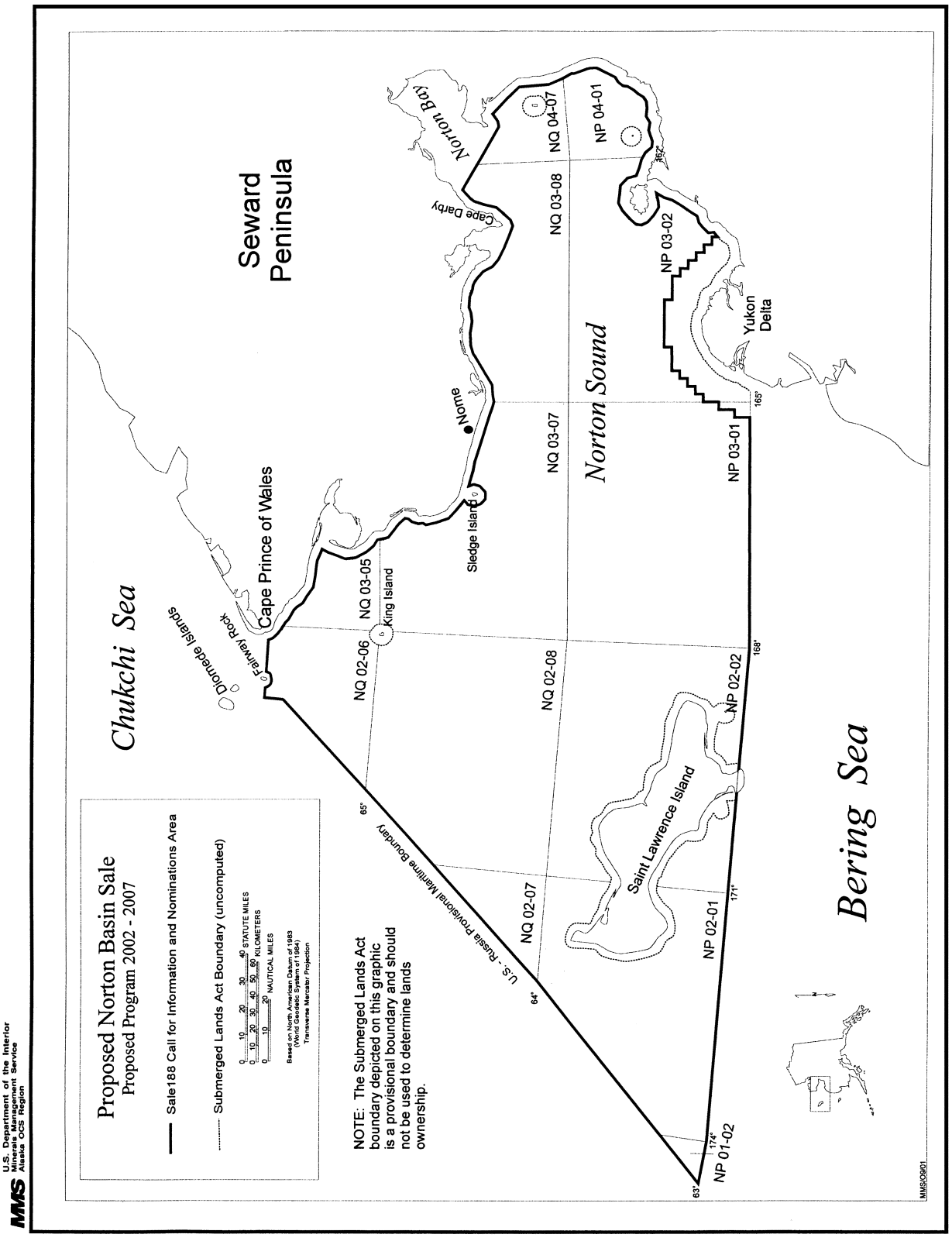
	Tentative process milestones for proposed 2003 Norton Basin sale
Call published/scoping initiated	January 2002.
Comments due on Call/scoping	April 2002.
Decision whether to proceed/Area Identification	May 2002.
NEPA analysis	February 2003.
Consistency Determination/Proposed Notice of Sale	April 2003.
Governor's Comments due	June 2003.
Final Notice of Sale published	August 2003.
Sale	September 2003.

Dated: January 3, 2002.

Lucy Querques Denett,

Acting Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 02–1414 Filed 1–18–02; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: February 14, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters To Be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–1516 Filed 1–22–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Commission for the Review of FBI Security Programs

ACTION: Notice of closed meeting.

Date: March 12, 2002.

Place: Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530.

Status: This meeting will be closed to the public.

Matters to be Considered: The purpose of the Commission for the Review of FBI Security Programs is to provide advice and recommendations on policy and procedural issues as they relate to the security programs of the Federal Bureau of Investigation. The Attorney General of the United States Department of Justice (DOJ) has determined that the meetings of the Commission will be closed to the public in accordance with the United States Code, Title 5, Section 552b, due to the likelihood that sensitive national security information regarding intelligence and counter-intelligence investigative techniques and procedures will be reviewed and discussed in an open forum. The potential release of this information could seriously jeopardize the integrity of our internal security programs; ongoing intelligence and counter-intelligence investigations, and could also endanger the lives and safety of FBI Special Agents, other intelligence community personnel, and individuals supporting our intelligence personnel.

FOR FURTHER INFORMATION CONTACT: George Ellard, Deputy Chief Investigative Counsel, (202) 616–1327.

Richard M. Rogers,

Deputy Chief Investigative Counsel, Commission for the Review of FBI Security Programs, Department of Justice.

[FR Doc. 02–1517 Filed 1–18–02; 8:45 am]

BILLING CODE 0A92–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on September, 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.*, (''the Act''), Animas Corporation and Sarnoff Corporation, as a joint research venture, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identifies of the parties are Animas Corporation, Frazer, PA; and Sarnoff Corporation, Princeton, NJ.

The nature and objectives of the venture are to develop and demonstrate a long term implantable glucose monitor.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1542 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on September 28, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cash Edge, New York, NY; DirectAdvice, Inc., Hartford, CT; and Innovius, Pleasontown, CA have joined the Consortium as associate members. Also, Chicago Clearing House, Chicago, IL has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 29, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39335).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1539 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PKI Forum, Inc.

Notice is hereby given that, on September 27, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Btexact Technologies, Ipswich, Suffolk, United Kingdom; ValiCert, Mountain View, CA; Canadian Payments Association, Ottawa, Ontario, Canada; Merck & Co., Inc., Whitehouse Station, NJ; Johnson & Johnson, New Brunswich, NJ; Seiko Instruments, Inc., Chiba, Japan; PKI Forum Singapore, Singapore, Singapore; TRW, Inc., Cleveland, OH; Chunghwa Telecom Laboratories, Taoyuan, Taiwan; Government of Canada PKI Secretariat, Ottawa, Ontario, Canada; and DOD/Federal PKIPMO, Ft. Mead, MD have been added as parties to this venture. Also, Spyrus, Inc., San Jose, CA; and Sybase, Inc., Emeryville, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PKI Forum, Inc. intends to file additional written notification disclosing all changes in membership.

On April 2, 2001, PKI Forum, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2001 (66 FR 22260).

The last notification was filed with the Department on June 27, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1540 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on October 3, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Agusta s.p.a., Cascina Costa di Samarate, Italy; EADS Airbus GmbH, Hamburg, Germany; EADS Airbus S.A., Paris, France; Embraer-Empresa Brasileira De Aeronautica S/A, São José dos Campos, Brazil; Israel Aircraft Industries Ltd., Ben-Gurion Airport, Israel; Korea Aerospace Industries Ltd., Kyungnam, Republic of Korea; Northrup Grumman Corporation, Melbourne, FL; Siemens Westinghouse Power Corporation, Orlando, FL; and Volvo Aero Corporation, Trollhättan, Sweden. The nature and objectives of the venture are to identify and prioritize, develop and implement new NASGRO capabilities for structural integrity analysis needed by the user community to address its current and anticipated problems, to provide a wider range of user support services, including but not limited to training and technical support, the facilitate the ongoing use of the NASGRO code by industry, to expand the user community of the NASGRO code, and to promote direct technical interactions among fracture mechanics experts and practitioners regarding the development and implementation of new state-of-the-art methods for structural integrity assessment. The NASGRO (previously NASA/FLAGRO) computer code was originally developed in the 1980's for fracture control analysis on NASA (National Aeronautics and Space Administration) space hardware.

Membership in this research project group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–1541 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Prices Power International Denial of Application

On or about May 8, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Price's Power International (PPI), located in Newport New, Virginia, notifying it of an opportunity to show cause as to why the DEA should not deny its application, dated August 25, 1998, for a DEA Certificate of Registration as a distributor of the List I chemicals, pursuant to 21 U.S.C. 823(h), as being inconsistent with the public interest. The order also notified PPI that, should not request for hearing be filed within 30 days, the right to a hearing would be waived.

The OTSC was received May 15, 2000, as indicated by the signed postal receipt. Since that time, no response has been received from the applicant nor any person purporting to represent the applicant. Therefore, the Administrator of the DEA, finding that (1) thirty days having passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that PPI is deemed to have waived its right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Administrator finds that on August 25, 1998, an application was received by the DEA Chemical Operations Registration section on behalf of PPI for DEA registration as a distributor of the List I chemicals pseudoephedrine, phenylpropanolamine, and ephedrine. PPI did not file this application in time to qualify for temporary exemption from registration pursuant to 21 CFR 1310.09. Accordingly, PPI was not authorized to distribute these chemicals before approval of the application for registration.

On February 25, 1998, an undercover DEA Special Agent (S/A) contacted PPI to discuss the purchase of nine bottles

of ''Revive Ephedrine.'' In response, on March 9, 1998, PPI sent nine bottles of 100 Guaifedrine ephedrine HCL 25 mg. tablets. On March 26, 1998, PPI sent the undercover S/A an additional twelve bottles of 100 Guaifedrine ephedrine HCL 25 mg. tables in response to an order placed by an undercover DEA S/A March 11, 1998.

On June 9, 1998, a clandestine methamphetamine laboratory was seized in Kansas. The seizures at the clandestine laboratory site included an ounce and a half of finished methamphetamine, 738 grams of pseudophedrine, twenty five bottles of 250 60 mg. pseudoephedrine tablets and nineteen bottles of 380 60 mg. pseudoephedrine tablets, all bearing the PPI label. Also seized were a number of order forms, invoices, and a catalogue from PPI. One order form detailed a shipment from PPI for 40 bottles of 380 60 mg. pseudoephedrine tablets (totaling 912 grams of pseudoephedrine) and 16 bottles of 375 37.5 mg. phenylpropanolamine tablets (totaling 225 grams of phenylpropanolamine). The recipient, Gardner's Littlehouse Minimart, and the shipping address of this business entity, were both determined to be nonexistent. In addition, documents seized at the site of the clandestine methamphetamine laboratory documented that a Federal Express package shipped on or about May 27, 1998, from PPI to Gardner's Littlehouse Minimart contained 30 bottles of 380 60 mg. pseudoephendrine tablets and 30 bottles of 250 60 mg. pseudoephedrine tablets, for a total amount of 1134 grams of pseudoephedrine. Documents obtained from Federal Express revealed that previously, on or about May 8, 1998, PPI had shipped a fourteen pound package of Gardner's Littlehouse Minimart, for which there is evidence to believe contained approximately 666 grams of pseudoephedrine.

On June 10, 1998, a Diversion Investigator (D/I) of the DEA Richmond Resident Office (R/O) visited PPI and spoke with the owner, Niles S. Price. During the visit, the D/I attempted to explain the DEA guidelines concerning the handling of List I chemicals. Mr. Price stated that he was aware of the chemical laws, and that he had contacted DEA's Richmond R/O and had just received an application for DEA registration. At this point the visit was terminated.

On June 15, 1998, a D/I in the DEA Kansas City District Office interviewed several Federal Express employees regarding the above-referenced shipments from PPI. These interviews revealed that there were at least two shipments, on May 8 and May 27, 1998, from PPI to Gardner's Littlehouse Minimart, a nonexistent business entity at a nonexistent shipping address. On both occasions, following confusion in the attempted delivery of the shipments, Federal Express employees in Kansas received calls from PPI attempting to locate the shipments. On May 11, 1998, during the first telephone call, a Federal Express employee spoke with an individual whom he believed to be the owner of PPI, telling him that the package could not be delivered because it was incorrectly addressed. The second package was mailed by PPI to the same address about two weeks later, on May 27, 1998. After several failed delivery attempts, Niles S. Price telephonically contacted the Federal Express office in Kansas in an attempt to locate the package. On both occasions, an individual identifying himself as ''Randy Jones'' picked up the packages from Federal Express immediately following each of the calls from PPI.

Also on June 15, 1998, a DEA S/A acting in an undercover capacity placed an order *via* mail with PPI for six bottles of 100 Guaifedrine 25 mg. ephedrine tablets and three bottles of 380 Maxi Thin 60 mg. pseudoephedrine tablets, which were shipped and received by DEA on or about June 25, 1998.

On or about July 16, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudophedrine 60 mg. tablets.

On August 6, 1998, three DEA Special Agents visited PPI and spoke with Niles S. Price. At that time, they delivered DEA's written Pseudoephedrine and Phenylpropanolamine Notices, together with a letter advising Mr. Price that he could not conduct any List I or List II chemical transactions until he was registered with DEA. The agents further orally advised Mr. Price that he could not distribute pseudoephedrine or phenylpropanolamine until he registered with DEA.

On or about September 1, 1998, in response to an order placed by an undercover DEA S/A, PPI shipped one bottle of 380 pseudoephedrine 60 mg. tablets.

Pursuant to 21 U.S.C. 823(h), the Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(h) requires the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Like the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Administrator may rely on any one or combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As a preliminary matter, DEA consistently has held that a retail store operates under the control of its owners, stockholders, or other employees, and therefore the conduct of these individuals is relevant in evaluating the fitness of and applicant or registrant for registration. See, e.g. Rick's Pharmacy, 62 FR 42595 (1997); Big T Pharmacy, Inc., 47 FR 51830 (1982). Since Niles S. Price is the owner of the applicant, and directed its operations, his conduct is relevant in determining whether or not to grant the applicant's application for registration. Moreover, PPI may be considered a retail store in that it distributes to both businesses and individuals, and also accepts walk-in customers.

Regarding factor one, the maintenance of effective controls against the diversion of listed chemicals, the Administrator finds that the preregistration inspection of the applicant conducted December 9, 1998, did not document any inadequacies in the applicant's security and recordkeeping arrangements.

Regarding factor two, the applicant's compliance with applicable law, the Administrator finds that the evidence shows that PPI and Niles S. Price significantly violated applicable law by distributing List I chemicals on at least seven separate occasions from March, 1998 through September, 1998, when not registered to do so, in violation of 21 U.S.C. 822 and 843(a)(9) and 21 CFR 1309.21(a).

PPI further violated applicable law by failing to obtain proof of identity for at least one of its business customers, in

violation of 21 U.S.C. 830(a)(3) and 842(a)(9) and 21 CFR 1310.07. The types of evidence constituting proof of identity are set forth at § 1310.07. That regulation states that the existence and apparent validity of a business entity should be checked by telephone directory, the local credit bureau, the local Chamber of Commerce or Better Business Bureau, or if the business entity is a registrant by verifying its DEA registration. Regarding sales to individuals or cash purchasers, the regulation states that the purchaser's signature, driver's license, and at least one other form of identification are required.

Section 830(a)(3) requires that each regulated person who engages in a regulated transaction to identify each other party to the transaction. PPI is a ''regulated person'' because it is a distributor of listed chemicals. 21 U.S.C. 802(38). PPI engaged in at least one ''regulated transaction'' when it shipped its May 27, 1998, Federal Express package containing an aggregate amount of 1134 grams of pseudoephedrine, exceeding the cumulative monthly threshold of one kilogram for that chemical established by 21 CFR 1310.04(f)(1). See 21 U.S.C. 802(39)(A)(II). There is evidence to show that the prior May 8, 1998, PPI shipment to Gardner's Littlehouse Minimart contained approximately 666 grams of pseudoephedrine, increasing PPI's distribution in excess of the cumulative monthly threshold for this List I chemical.

It is clear from the facts of this case that PPI consistently violated the proof of identity requirement. PPI sent at least two Federal Express packages containing List I chemicals about two weeks apart to Gardner's Littlehouse Minimart. The DEA investigation showed that both this business entity and address were nonexistent. A proper attempt to prove the identity of Gardner's Littlehouse Minimart in accordance with PPI's legal duty should have raised issues regarding the validity of this business entity, preventing the May 8, 1998, Federal Express shipment of List I chemicals. PPI's contacting the Federal Express office in Kansas in an effort to locate this package indicated that PPI knew something was amiss. What renders PPI's conduct especially egregious in this case is that about two weeks later, on or about May 27, 1998, it sent another package containing List I chemicals to the same bogus business entity at the same bogus address, and again had to call Federal Express in Kansas in an effort to locate the package. There is substantial documentary evidence to indicate that much of the pseudoephedrine seized at the clandestine methamphetamine laboratory on June 9, 1998, was shipped from PPI. If PPI had attempted to verify the legitimacy of Gardner's Littlehouse Minimart in accordance with its legal duty, it is likely that neither the May 8 nor the May 27, 1998 shipments of List I chemicals would have been shipped and later seized at the clandestine methamphetamine laboratory.

Regarding factor three, there is no evidence that the applicant or Niles S. Price has any record of convictions related to controlled substances or to chemicals controlled under Federal or State law.

Regarding factor four, the applicant's past experience in the distribution of chemicals, the Administrator finds that the DEA investigation revealed that the applicant significantly violated applicable law, as set forth above.

Regarding factor five, other factors relevant to and consistent with the public safety, the Administrator finds that PPI, through its owner Niles S. Price, significantly violated applicable law by distributing List I chemicals without being registered to do so, and by failing to identify the other parties to regulated List I chemical transactions. Mr. Price stated during the June 10, 1998, interview with the DEA Richmond R/O D/I that he was award of the chemical laws regarding the distribution of listed chemicals, and was in the process of obtaining a DEA Registration. Yet, on at least three occasions following this statement, Mr. Price through PPI continued to distribute List I chemicals in response to orders submitted by undercover DEA Special Agents. PPI even continued to distribute List I chemicals following the August 6, 1998, visit by the three DEA Special Agents, who informed Mr. Price by both written and oral notice that he could not distribute listed chemicals until he was registered with DEA. Subsequently, on or about September 1, 1998, PPI shipped additional List I chemicals in response to an order from an undercover DEA Special Agent. In addition, at PPI's December 9, 1998, preregistration inspection, Mr. Price stated to investigators that he requires customers to fax a copy of their driver's license prior to purchases, and that he only ships to the address listed on the license. Yet Mr. Price did not request any form of identification whatsoever for any of the five undercover purchases made by DEA Special Agents previously set forth above. The Administrator finds this lack of candor, taken together with PPI's and Mr. Price's demonstrated cavalier disregard of the statutory law and regulations concerning the registration and distribution of List I chemicals, makes questionable PPI's and Mr. Price's commitment to the DEA regulatory requirements designed to protect the public from the diversion of controlled substances and listed chemicals. Aseel Incorporated, Wholesale Division, 66 FR 35,459 (2001); Terrence E. Murphy, 61 FR 2841 (1996). Indeed, this case is a prime example of the dangers created by the failure to follow applicable law regarding the distribution of listed chemicals. PPI's List I chemical products, distributed in violation of statutory law and regulation, were discovered in significant quantities at a clandestine methamphetamine laboratory site, together with a quantity of finished methamphetamine. If PPI had complied with applicable law, it is doubtful that these List I chemicals would have reached the hands of drug traffickers.

Therefore, for the above-stated reasons, the Administrator concludes that it would be inconsistent with the public interest to grant the application of Price's Power International. The evidence indicates that the applicant has violated applicable law by distributing List I chemicals while not registered with DEA, and by failing to identify other parties to regulated transactions.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certification of Registration submitted by Aseel be denied. This order is effective February 21, 2001.

December 21, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 02–1415 Filed 1–18–02; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–7 CARP SD 2000]

Ascertainment of Controversy for the 2000 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for notices of intention to participate.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to royalty fees collected under the section 119 statutory license in 2000 to

submit comments as to whether a Phase I or a Phase II controversy exists as to the distribution of these fees, and a Notice of Intention to Participate in a royalty distribution proceeding. Parties who submit a Notice of Intention to Participate may also submit comments on the Public Broadcasting Service's motion for a partial distribution and the scheduling of a CARP proceeding.

DATES: Comments and Notices of Intention to Participate are due no later than February 1, 2002.

ADDRESSES: If sent by mail, an original and five copies of written comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office for the retransmission of over-the-air broadcast signals to their subscribers. 17 U.S.C. 119. These royalties are, in turn, distributed to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and for whom a claim for royalties was timely filed with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty fees, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the distribution of the royalty fees that remain in controversy. See 17 U.S.C. chapter 8.

On October 30, 2001, the Library of Congress published a Notice in the **Federal Register** requesting comments from interested parties as to the existence of controversies over the distribution of 2000 satellite royalty fees collected under 17 U.S.C. 119; 66 FR 54789 (October 30, 2001). The Library requested that interested parties submit their comments, along with Notices of Intention to Participate in the 2000 distribution proceeding, by November 29, 2001. In addition, the Library sought comment on a petition for royalty distribution filed by the Public Broadcasting Service (''PBS''), seeking collection of 2000 and 2001 royalties submitted under 17 U.S.C. 119(b) for the satellite feed.

On November 6, 2001, the Motion Picture Association of America, Inc. (''MPAA'') filed a motion seeking an extension of the November 29, 2001, deadline to January 15, 2002. MPAA asserted that it could not submit its Notice of Intention to Participate until it had an opportunity to examine the list of claimants who had filed for the 2000 satellite funds. This list was not made available to the public until early December. Consequently, in response to the MPAA motion, the Office suspended the November 29, 2001, date for filing comments and Notices of Intention to Participate and requested comments on MPAA's motion. See 66 FR 58761 (November 23, 2001).

Three parties filed comments in response to this notice: the Public Broadcasting Service, the MPAA, and the Joint Sports Claimants (''JSC''). In its comment, JSC stated that it was prepared to file its Notices of Intention to Participate at any time and provided additional comment on the scheduling of the proceeding. Similarly, PBS had no apparent objection to the MPAA request but it did ask that the date for filing the requisite notices not be extended beyond the January 15, 2002 date identified by MPAA in its motion and that the PBS motion for a distribution of the disputed funds be expedited upon the filing of the notices.

MPAA, for its part, acknowledged that with the release of the 2000 satellite claimant list it was now able to prepare its Notice of Intention to Participate. However, it argued that the Office should give the parties a minimum of 30–45 days after the release of the list to prepare and file the notices and suggested January 25, 2002, as an appropriate date for filing the Notices of Intention. MPAA also offered comments on scheduling.[1]

Notices of Intention to Participate. Since the Notices of Intention to Participate must list the name of each copyright owner on whose behalf the notice is being filed, the Office agrees that interested parties should have adequate time to review the official list of satellite claimants for 2000 before being required to file a Notice of Intention to Participate in a proceeding concerning the distribution of the 2000 satellite royalty fees. Moreover, interested parties must have adequate notice of the date for filing such notices. Consequently, the Office is setting a later date for filing a Notice of Intention to Participate in a proceeding to decide the distribution of the 2000 satellite royalty fees than that requested in the MPAA comment. Notices of Intention to Participate in such a proceeding shall be due no later than February 1, 2002.

Section 251.45(a) of title 37 of the Code of Federal Regulations requires that parties file a Notice of Intention to Participate in a CARP proceeding, but it does not prescribe the contents of the notice. The Office, however, has addressed the issue of what constitutes a sufficient Notice and to whom it is applicable. See Orders in Docket No. 2000–2 CARP CD 93–97 (June 22, 2000, and August 1, 2000); see also 65 FR 54077 (Sept. 6, 2000). In light of these rulings, the Office advises those parties filing Notices of Intention to Participate in this proceeding to comply with the following instructions.

Each claimant that has a dispute over the distribution of the 2000 satellite royalty fees, either at Phase I or Phase II, shall file a Notice of Intention to Participate that contains the following: (1) The claimant's full name, address, telephone number, and facsimile number (if any); (2) identification of whether the Notice covers a Phase I proceeding, a Phase II proceeding, or both; and (3) a statement of the claimant's intention to fully participate in a CARP proceeding.

Claimants may, in lieu of individual Notices of Intention to Participate, submit joint Notices. In lieu of the requirement that the Notice contain the claimant's name, address, telephone number and facsimile number, a joint Notice shall provide the full name, address, telephone number, and facsimile number (if any) of the person filing the Notice and it shall contain a list identifying all the claimants that are parties to the joint Notice. In addition, if the joint Notice is filed by counsel or a representative of one or more of the claimants identified in the joint Notice, the joint Notice shall contain a statement from such counsel or representative certifying that, as of the date of submission of the joint Notice, such counsel or representative has the authority and consent of the claimants to represent them in the CARP proceeding.

Motion of Public Broadcasting Service for Distribution of PBS National Satellite Feed Royalty Funds for Calendar Years 2000 and 2001. On June 21, 2001, PBS filed a motion for distribution of PBS national satellite feed royalty fees for calendar years 2000 and 2001 and sent a copy of the motion to those entities that have participated

[1] MPAA's and JSC's comments on scheduling were unsolicited and beyond the scope of the November 23, 2001 notice and, thus, will not be considered at this time.

in past satellite distribution proceedings. In an earlier notice, the Office determined that, as a matter of law, consideration of a distribution of the 2001 satellite royalty fees was premature. See 66 FR 54789 (October 30, 2001). Consequently, the Office stated that it would consider the PBS motion only so far as it concerns the distribution of the 2000 satellite royalty fees and only after all interested parties have been identified by filing the Notices of Intention requested herein and such parties have had an opportunity to respond to the motion. *Id.*

Parties who file Notices of Intention to Participate in this proceeding in accordance with this notice may, at this time, file comments on the PBS motion. The Copyright Office has posted the PBS motion for distribution of PBS national satellite feed royalty funds for 2000–2001 on the Copyright Office website at: (*http://www.loc.gov/copyright/carp/pbsmotion.pdf*). The motion is also available for copying in the Office of the General Counsel along with any additional responsive filings that have been filed in the Office of the General Counsel.

Comments on the Existence of Controversies. Before commencing a distribution proceeding or making a partial distribution, the Librarian of Congress must first ascertain whether a controversy exists as to the distribution of the royalty fees and the extent of those controversies. 17 U.S.C. 803(d). Therefore, any comments filed in response to the PBS motion as to the distribution of the 2000 satellite fees must address the existence and extent of any controversies at Phase I and Phase II.

In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by satellite carriers. The categories have traditionally been syndicated programming and movies, sports, commercial and noncommercial broadcaster-owned programming, religious programming, and music programming. The Office seeks comments as to controversies between these categories for royalty distribution.

In Phase II of a satellite royalty distribution, royalties are distributed to claimants within a program category. If a claimant anticipates a Phase II controversy, the claimant must state each program category in which he or she has an interest that has not, by the end of the comment period, been satisfied through a settlement agreement.

The Copyright Office must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Schedule of CARP proceeding. Outstanding controversies concerning the distribution of 1996, 1997, 1998, and 1999 satellite royalty fees still remain. Before setting a schedule for a CARP proceeding to resolve any controversies over the distribution of the 2000 satellite royalty fees at issue in the PBS motion, the Office must first decide whether to resolve the remaining controversies in the preceding years or set these aside and focus on the distribution of the 2000 satellite royalty fees as requested by PBS. Therefore, the Office invites comments from all interested parties on whether to continue to conduct distribution proceedings in a sequential manner as has been the practice historically or to set aside the unresolved controversies in the earlier years and proceed immediately to the controversies surrounding the 2000 satellite royalty fees.

Dated: January 16, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–1543 Filed 1–18–02; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with this requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques of other forms of information collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by March 25, 2002 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the national Science Foundation's Local Systemic Change Through Teacher Enhancement Program (LSC).

OMB Control No.: 3145–0161.

Expiration Date of Approval: May 31, 2002.

Abstract: The National Science Foundation (NSF) requests an extension of approval of instruments to be used in the evaluation of the Local Systemic Change (LSC) through Teach Enhancement Program that were previously approved through May 2002 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teach in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at

up to $6 million each. The database projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

Expected Respondents: A total of 150 teachers and 55 principals from schools in each of the 72 LSC projects, for a total of 10,800 t4eachers and 3,960 principals participating in the LSC program.

Burden On The Public: 3,960 hours for teachers and 990 hours for principals per year.

Dated: January 15, 2002.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 02–1416 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

DATES/TIMES: February 7, 2002, 8:30 am–5 pm and February 8, 2002, 9 am–2 pm.

PLACE: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

TYPE OF MEETING: Open.

CONTACT PERSON: John Wilkinson, Executive Liaison to CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone (703) 292–8741.

MINUTES: May be obtained from the Executive Liaison at the above address.

PURPOSE OF MEETING: To provide advice and recommendations concerning broadening participation in science and engineering.

AGENDA

Thursday, February 7, 2002

8:30 a.m. Welcome; Approval of June 2001 Minutes
9:15 a.m. Discussion of NSF Data Collection and Reporting
12:30 p.m. Lunch
1:30 p.m. Discussion of Use of Supplements to Broaden Participation
5:00 p.m. Adjourn for the day

Friday, February 8

9:00 a.m. Committee Discussion
10:15 a.m. Discussion with Director, NSF
11:00 a.m. Discussion of article ''Hopwood and the Top 10 Percent ''—Next Steps
12:00 p.m. Lunch
1:00 p.m. Committee Discussion: Wrap-up and Future Directions
2:00 p.m. Adjourn

Dated: January 15, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–1417 Filed 1–18–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 132nd meeting on February 7–8, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B1.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Thursday, February 7, 2002

A. *8:30–9:40 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *10–12 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES* (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACRS will participate in this discussion.

C. *1–2 P.M.: Update on Igneous Activity including PA Analyses* (Open)—The staff will provide an update on the igneous activity KTI, including the related PA analyses.

D. *2–6 P.M.: Preparation for Meeting with the NRC Commissioners* (Open)—The next meeting with the NRC Commissioners is scheduled to be held in the Commissioners' Conference Room, One White Flint North on March 20, 2002. The Committee will review its proposed presentations.

Friday, February 8, 2002

E. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–10:15 A.M.: Annual Research Report to the Commission* (Open)—The Committee will discuss its annual report to the Commission on waste-related research.

G. *10:30–12 Noon: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Proposed Amendment to 10 CFR Part 63
- Update on Igneous Activity including PA Analyses
- Annual Research Report to the Commission
- Key Technical Issue Status (tentative)

H. *1:30–3:30 P.M.: Preparation for Meeting with the Commissioners* (Open)—The Committee will continue its discussion of preparations noted in item D above.

I. *3:30–5 P.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

J. *5–6 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend

should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1488 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 7–9, 2002, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 26, 2001 (66 FR 59034).

Thursday, February 7, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:45 A.M.: Risk-Informed Regulation Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding update to risk-informed regulation implementation plan.

10:00 A.M.–12:00 Noon: Meeting with the EDO and the Office Directors of NRR, NMSS, and RES (Open)—The Committee will hold discussions with the NRC Executive Director for Operations (EDO), and Directors of the Office of Nuclear Reactor Regulation (NRR), Office of Nuclear Regulatory Research (RES), and Office of Nuclear Material Safety and Safeguards (NMSS) on items of mutual interest. Members of the ACNW will participate in this discussion.

1:00 P.M.–2:30 P.M.: Proposed Final Revision to Regulatory Guide 1.174 and SRP Chapter 19 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision to Regulatory Guide 1.174 and associated Standard Review Plan (SRP) Chapter 19 to address the use of probabilistic risk assessment (PRA) in license amendment reviews and plans to develop guidance related to PRA quality, including possible endorsement of industrial standards proposed by the American Society of Mechanical Engineers and American Nuclear Society.

2:50 P.M.–4:50 P.M.: PTS Technical Bases Reevaluation Project (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the Pressurized Thermal Shock (PTS) Technical Bases Reevaluation Project, including initial results of the Oconee Unit 1 reactor pressure vessel failure frequency calculated by using the Fatigue Assessment of Vessels—Oak Ridge (FAVOR) code, and the associated models, inputs, and assumptions used in this code.

5:10 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on the NRC Safety Research Program.

Friday, February 8, 2002

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:00 A.M.: Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the Thermal-Hydraulic Phenomena Subcommittee on matters discussed at the January 16–18, 2002 meeting.

9:00 A.M.–10:00 A.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

10:00 A.M.–10:15 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:35 A.M.–12:00 Noon: Follow-up Items Resulting from the January 24–26, 2002, ACRS Retreat (Open)—The Committee will discuss the follow-up items resulting from the ACRS retreat on January 24–26, 2002, assignments, and schedule for closure of these items.

3:00 P.M.–7:00 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 9, 2002

8:30 A.M.–12:30 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 P.M.–1:00 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50462). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 15, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–1489 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 6, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, February 6, 2002—1:30 p.m. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 14, 2002.

Sher Bahadur,

Associate Director for Technical, Support, ACRS/ACNW.

[FR Doc. 02–1490 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 28, 2001 through January 10, 2002. The last biweekly notice was published on January 8, 2002 (67 FR 924).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 21, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: November 9, 2001.

Description of amendments request: The amendments would revise Technical Specification (TS) 5.6.5b to add topical report CENPD–404–P–A, ''Implementation of ZIRLO™ Cladding Material in CE Nuclear Power Fuel Assembly Designs,'' to the list of analytical methods used to determine core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows the use of methods required for the implementation of ZIRLO™ clad fuel rods in PVNGS [Palo Verde Nuclear Generating Station], Units 1, 2, and 3. The use of this methodology will not increase the probability of an accident because the plant systems will not be operated outside of design limits, no different equipment will be operated, and system interfaces will not change.

As ZIRLO™ material is introduced to the reactor, transition cores will exist in which ZIRLO'' and Zircaloy-4 clad fuel assemblies are co-resident. Fuel assemblies clad with each material will be evaluated based on the approved topical reports.

The use of this additional methodology will not increase the consequences of an accident because Limiting Conditions of Operation (LCOs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will restrict plant transients so that the consequences of accidents will be acceptable. In addition, the consequences of the accidents will be calculated using NRC accepted methodologies.

The transition cores that will exist as ZIRLO'' clad fuel is introduced to the reactor will not increase the consequences of an accident. Operation within the LCOs and RPS setpoints will continue to restrict plant transients so that the consequences of accidents will be acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The ZIRLO™ clad fuel rod design does not introduce features that could initiate an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Safety Limits ensure that Specified Acceptable Fuel Design Limits (SAFDLs) are not exceeded during steady state operation, normal operational transients and anticipated operational occurrences. All fuel limits and design criteria shall be met based on the approved methodologies defined in the topical reports. The RPS in combination with the LCOs will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure, and thermal power level that would result in a violation of the Safety Limits. Therefore, the proposed changes will have no impact on the margins as defined in the Technical Specification bases.

The safety analyses determine the LCO settings and RPS setpoints that establish the initial conditions and trip setpoints, which ensure that the Design Basis Events (Postulated Accidents and Anticipated Operational Occurrences) analyzed in the Updated Final Safety Analysis Report (UFSAR) produce acceptable results. In addition, all fuel limits and design criteria shall be satisfied. The Design Basis Events that are impacted by the implementation of ZIRLO'' cladding will be analyzed using the NRC accepted methodology described in CENPD–404–P–A.

The change in the fuel rod cladding material and the use of the ECCS [emergency core cooling system] performance evaluation models, CENPD–132, Supplement 4–P, ''Calculative Methods for the CE Nuclear Power Large Break LOCA Evaluation Model'' and CENPD–137, Supplement 2–P, ''Calculative Methods for the CE Small Break LOCA Evaluation Model'' will not involve a reduction in the margin of safety because LCOs and Limiting Safety System Settings (LSSS) will be adjusted, if necessary, to maintain acceptable results for the impacted Design Basis Events.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 13, 2001.

Description of amendments request: The amendments would add (1) the phrase ''or if open, capable of being closed'' to Limiting Condition for Operation 3.9.3, ''Containment Penetration,'' and (2) Surveillance Requirement (SR) 3.9.3.3 on verifying the capability to close the equipment hatch, if open. For refueling operations, the amendments would allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment[s] to Technical Specification (TS) 3.9.3 ''Containment Penetrations,'' would allow the equipment hatch to remain open, but capable of being closed, during CORE ALTERATIONS or movement of irradiated fuel assemblies within containment. The position of the equipment hatch (open or closed) is not an initiator of any accident.

The fuel handing accident (FHA) contained in the *Updated Final Safety Analysis Report,* Revision 11, currently assumes that the entire

airborne radioactivity reaching the containment is released to the outside environment. This results in a maximum offsite dose of 74.7 rem to the thyroid and 0.39 rem to the whole body. The calculated control room dose of 11.5 rem thyroid and 0.13 whole body are within the acceptance criteria specified in General Design Criteria 19 ''Control Room.''

Therefore, the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to TS 3.9.3 ''Containment Penetrations,'' allowing the equipment hatch to be open and capable of being closed does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment to TS 3.9.3 ''Containment Penetrations,'' allowing the equipment hatch to be open and capable of being closed remains bounded by previously determined radiological dose consequences for a FHA inside containment. The previously analyzed dose consequences were determined to be within the limits of 10 CFR [part] 100, ''Reactor Site Criteria,'' and they meet the acceptance criteria of NUREG–0800 Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants Section 15.7.4 ''Radiological Consequences of Fuel Handling Accidents.'' Therefore, the proposed amendment request does not involve a significant reduction in a margin of safety. Additionally, a new surveillance will be added to verify the capability to close the equipment hatch, if open and CORE ALTERATIONS or movement of irradiated fuel assemblies are in progress within containment, at a frequency of seven days.

Based on the above, APS [the licensee] concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No 3, New London County, Connecticut

Date of amendment request: October 1, 2001.

Description of amendment request: The proposed amendment would modify the Millstone Nuclear Power Station, Unit No. 3 (MP3) Technical Specifications (TSs) to increase the emergency diesel generator (EDG) allowed outage time (AOT), to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements. The Bases of the affected TSs will be modified to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis, which is based on the representation made by the licensee in the October 1, 2001, application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes to increase the EDG AOT, to perform a verification of the offsite circuits within 1 hour prior to or after entering the condition of either an inoperable offsite source or inoperable EDG, to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, and to improve the format of the electrical power sources action requirements are not accident initiators nor will they impact the consequences of any previously evaluated accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TSs do not impact any system or component that could cause an accident nor do the proposed changes alter the plant configuration or require any unusual operator actions or alter the way any structure, system, or component functions. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The TS changes to revise the requirements for the pressurizer heaters and the pressurizer power operated relief and block valves, the TS change to allow verification of offsite circuits within 1 hour prior to or after entering the condition of an inoperable offsite source or inoperable EDG, and the changes to improve the format of the electrical power sources action requirements do not change the TS-required safety limits or safety system settings; therefore, these additional changes will not result in a significant reduction in a margin of safety. The proposed TS changes to increase the EDG AOT do not affect any assumptions or inputs to the safety analyses. Unavailability of a single EDG due to maintenance or repair activities does not reduce the number of EDGs below the minimum required to mitigate all DBAs. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina and Docket Nos. 50–413 and 50–414 Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 6, 2001.

Description of amendment request: The proposed amendments would decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 & 2 Overpower Delta Temperature (OPΔT) Allowable Values. OTΔT and OPΔT are trip functions provided in the reactor trip system to protect against departure from nucleate boiling and to ensure fuel integrity under all overpower conditions. The licensee states that due to changes in reload reactor core designs since the 1.0°F hot leg streaming uncertainty value was determined, it is now necessary to increase the uncertainty value to 1.21°F. Associated changes in the TS Table 3.3.1–1 OTΔT and OPΔT allowable values have been proposed. The licensee states that the decreases are in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Reports. In addition, the licensee has proposed

two minor editorial changes for Catawba Units 1 & 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

First Standard

Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This license amendment request [LAR] proposes to decrease the McGuire Units 1 & 2 and Catawba Unit 1 Overtemperature Delta Temperature (OTΔT) Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 Overpower Delta Temperature (OPΔT) Allowable Values. This decrease is in the conservative direction and will not adversely affect the steady-state or transient analyses documented in the Updated Final Safety Analysis Report. These changes have no impact on accident probabilities or consequences.

The proposed changes to the Catawba Table of Contents and Bases are solely administrative in nature and have no impact on any accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Second Standard

Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes contained in this LAR only correct administrative errors and add conservative operability requirements which are consistent with the plants' existing licensing bases. No new or different kinds of accidents are being created.

3. Involve a significant reduction in margin of safety.

Third Standard

Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. These barriers are unaffected by the changes proposed in this LAR. Consequently, no margin of safety will be significantly impacted by this LAR.

Conclusion

Based upon the preceding evaluation, performed pursuant to 10CFR50.92, Duke Energy Corporation has concluded that implementation of this LAR at McGuire and Catawba Nuclear Station will not involve a significant hazards consideration. The changes proposed in this LAR make a conservative decrease in the McGuire Units 1 & 2 and Catawba Unit 1OTΔT Allowable Values and the McGuire Units 1 & 2 and Catawba Units 1 and 2 OPΔT Allowable Values and correct unrelated administrative errors. Following implementation of these proposed changes, McGuire and Catawba will continue to be operated in a conservative manner.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would change the McGuire Technical Specifications (TS) to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits. This proposed change is consistent with the NRC approved Industry Technical Specifications Task Force (TSTF) Standard Technical Specifications Traveler TSTF–363, ''Revise Topical Report References in ITS 5.6.5 COLR''. Implementation of the changes proposed in this license amendment request will have no adverse impact on Duke's practices for controlling the methodologies used to develop the core operating limits for McGuire. The complete citations (i.e., report number, title, revision number, report date or NRC safety evaluation date, and any supplements) for each of the topical reports listed in TS 5.6.5 will be displayed as applicable in each station's Core Operating Limits Report (COLR). NRC review and approval of new or revised topical reports will continue to be obtained in the same manner. Changes to the COLRs will be controlled by 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation has made the determination that this license amendment request (LAR) for McGuire Technical Specifications (TS) involves No Significant Hazards. This determination was made through the application of the standards established by 10CFR50.92. The three standards are discussed below.

1. Would implementation of the changes proposed in this LAR involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to TS 5.6.5.b, Core Operating Limits Report (COLR), affecting a list of documents that are separately reviewed and approved by the NRC. The changes proposed to TS 5.6.5.b have no substantive impact on the McGuire licensing bases. Only NRC-approved methodologies will be used to generate the core operating limits. Based on these considerations, it has been determined that the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The analytical methodologies used to generate the core operating limits are unchanged by this LAR. As such, this LAR has no affect on margins of safety. Future changes to these methodologies will remain subject to NRC review and approval. Therefore, this proposed amendment does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) Bases Control Program to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with

an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the McGuire licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10CFR50.59 regulation. Implementation of the revised 10CFR50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 16, 2001.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate changes resulting from the use of an alternate source term and the implementation of several plant modifications. The proposed TS changes include the following:

- The Penetration Room Ventilation System (PRVS) will be removed from TS because the PRVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- The Spent Fuel Pool Ventilation System (SFPVS) will be removed from TS because the SFPVS will not be credited in licensing analyses that determine Control Room and off-site doses.
- During certain refueling operations, the containment air locks and/or the equipment hatch and penetrations providing direct access from the containment atmosphere to the outside atmosphere will be permitted to be unisolated under administrative controls. Additionally, the requirement to maintain an operable automatic isolation capability for the Reactor Building Purge system during refueling will be removed from TS.
- The allowable value for the Reactor Building leakage rate will be lowered from 0.25 w%/day to 0.20 w%/day.
- The requirement to measure Reactor Building leakage in excess of 50% of L_a to the penetration room will be removed from TS.
- The Ventilation Filter Testing Program (VFTP) will be revised to remove all references to the PRVS and SFPVS and their testing requirements.
- The VFTP acceptance criterion for the Control Room Ventilation System Booster Fan trains will be revised to require ≥ 97.5% radioactive methyl iodide removal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The AST [Alternative Source Term] and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accidents for Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and the implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the Oconee Nuclear Station. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would revise the licensing basis associated with the failure of non-Category I (non-seismic) piping.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The License Amendment Request (LAR) proposes to change the licensing basis for non-Category I (non-seismic) piping to assume a through-wall crack as the postulated piping failure. The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not affect any Chapter 15 accident analyses. Duke evaluated the effects of flooding caused by a leak from a crack size calculated using the SRP [Standard Review Plan] guidelines in the 16-inch HPSW [High Pressure Service Water] header. This evaluation concluded that for the bounding case, the effects of flooding can be mitigated without adversely affecting safety-related equipment. At least an hour is available from detection for operator action to isolate the leak. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

No. The License Amendment Request (LAR) changes the licensing basis associated with non-seismic moderate energy line breaks. The impact of flooding from a seismically induced crack in non-seismic moderate energy piping has been evaluated. Adequate time exists for operator action to isolate flooding sources prior to adversely affecting safety-related equipment required for safe shutdown. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: December 20, 2001.

Description of amendment request: The proposed amendments would make changes in the Technical Specifications (TS) to eliminate the use of the term ''unreviewed safety question.'' The change is proposed by the licensee to reflect changes in the NRC's regulations in 10 CFR 50.59 as noticed in the **Federal Register** on October 4, 1999. The proposed changes in the license amendment request are consistent with an NRC approved Technical Specifications Task Force Standard TS Traveler (TSTF–364).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would implementation of the changes proposed in this LAR [license amendment request] involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This LAR makes an administrative change to the Technical Specifications [TS] made necessary as part of Duke's implementation of revised NRC regulations. The changes proposed to these TS have no substantive impact on the Oconee licensing bases, nor Duke's ability to conservatively evaluate changes to these licensing bases. Therefore, the proposed changes have no impact on any accident probabilities or consequences.

2. Would implementation of the changes proposed in this LAR create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This LAR makes administrative changes that have no impact on any accident analyses.

3. Would implementation of the changes proposed in this LAR involve a significant reduction in a margin of safety?

No. The proposed changes are administrative, an implementation of the revised 10 CFR 50.59 regulation. Implementation of the revised 10 CFR 50.59 regulation provides the necessary regulatory requirements to ensure that nuclear plants' margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: Richard J. Laufer, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick (JAF) Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 2, 2001.

Description of amendment request: The proposed change to the JAF Nuclear Power Plant Technical Specifications establishes a combined leakage rate limit for the sum of the four main steam line leakage rates that is equal to four times the current main steam line valve (MSIV) leakage rate limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the JAF plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR [Code of Federal Regulations] 50.92 since it would not: Involve an increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a change to structures, components, or systems that would affect the probability of an accident previously evaluated in the FitzPatrick Updated Final Safety Analysis Report (UFSAR).

The proposed amendment results in no change in radiological consequences of the design basis LOCA [loss-of-coolant accident] as currently analyzed for the FitzPatrick Plant. These analyses were calculated assuming a combined total MSIV leakage at accident pressure for determining acceptance to the regulatory limits for the offsite, control room, and Technical Support Center (TSC) radiation doses as contained in 10 CFR 100 and 10 CFR 50, Appendix A, GDC 19 [General Design Criteria]. The proposed change does not compromise existing radiological equipment qualification, since the combined total MSIV leakage rate has been factored into existing equipment qualification analyses for 10 CFR 50.49.

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify the MSIVs or any other plant system or structure associated with this amendment and therefore, will not affect their capability to perform their design function. The combined total main steam line leakage rate is included in the current radiological analyses for the assessment of radiation exposure following an accident.

This proposal changes the allowable leakage rate from a per valve limit to a total combined leakage rate limit for all four main steam lines but does not change the cumulative limit. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Involve a significant reduction in a margin of safety.

The leakage rate limit specified for the MSIVs is used to quantify the maximum amount of bypass leakage assumed in the LOCA radiological analysis. Results of the analysis are evaluated against the dose guidelines contained in GDC 19 and 10 CFR 100. The margin of safety in this context is considered to be the difference between the calculated dose exposures and the guidelines provided by the GDC 19 and 10 CFR 100. Therefore, since the proposed combined total main steam line leakage rate limit is unchanged from the assumed maximum leakage rate for MSIVs, for the purpose of calculating potential radiation dose, the margin of safety is not affected because the postulated radiation doses remain the same.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: L. Raghavan, Acting.

Exelon Generation Company, LLC (Exelon), Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 21, 2001.

Description of amendment request: Exelon proposed changes that would revise Technical Specification (TS) 2.1 to incorporate revised Safety Limit Minimum Critical Power Ratios (SLMCPRs) due to the cycle-specific analysis performed by Global Nuclear Fuel for LGS Unit 1, Cycle 10, which will include the use of the GE–14 fuel product line.

Basis for proposed no significant hazards consideration determination: As required by Section 50.91(a) of Title 10 of the Code of Federal Regulations (CFR), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards or 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TSs, and its use to determine cycle-specific thermal limits, has been performed using the methodology discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000, which incorporates Amendment No. 25. Amendment No. 25 provides the methodology for determining the cycle-specific MCPR safety limits that replaces the former generic fuel type dependent values. Amendment No. 25 was approved by the NRC (Nuclear Regulatory Commission) in a March 11, 1999, safety evaluation.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling. The probability of fuel damage will not increase as a result of this change. Likewise, the consequences of accidents previously evaluated are not affected by the revised SLMCPRs values. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, calculated to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core if the limit is not violated. SLMCPRs are based on a calculation using an NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. The SLMCPR is not an accident initiator, and its revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The new SLMCPRs are calculated using NRC-approved methodology discussed in NEDE–24011–P–A–14 (GESTAR-II), and U.S. Supplement, NEDE–24011–P–A–14–US, June 2000. This methodology uses the same standards and margins that were used in the former generic fuel type methodology. Therefore, the proposed TS change will not involve a significant reduction in a margin of safety previously approved by the NRC.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

National Aeronautics and Space Administration (NASA), Docket No. 50–30, Plum Brook Reactor Facility (PBRF), Sandusky, Ohio

Date of amendment request: December 20, 1999, as supplemented on March 26, November 19, and December 20, 2001.

Description of amendment request: The proposed amendment would allow decommissioning of the Plum Brook Test Reactor Facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed approval of the PBRF Decommissioning Plan involve a significant increase in the probability or consequences of an accident previously evaluated?

All nuclear fuel has been removed from the PBRF site. Radioactive inventories at the PBRF are very small compared to those in operating reactors (both power and non-power) and in various kinds of fuel cycle facilities subject to NRC regulation. Analyses indicate that decommissioning activities would not involve a significant increase in the probability or consequences of an accident previously evaluated in the current Final Hazards Summary for the NASA Plum Brook Reactor Facility.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed approval of the PBRF Decommissioning Plan create the possibility of a new or different kind of accident from any accident previously evaluated?

The current Final Hazards Summary for the NASA Plum Brook Reactor Facility evaluated those cause-and-effect accidents related to external events and loss/failure of reactor support systems that would result in the dispersal of fission products and radioactive materials to the environment. Due to the combined absence of fuel at the PBRF site and the non-operational condition of reactor support systems, NASA has determined that decommissioning activities, as described in the Decommissioning Plan, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Summary: NASA considers that the approval of the Decommissioning Plan does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Current Technical Specifications adequately restrain the scope and nature of decommissioning activities to loose equipment removal and preparations for dismantlement. Approval of the proposed Decommissioning Plan provides for additional controls prior to commencement of dismantlement activities, thereby achieving a greater margin of safety.

Summary: NASA considers that the approval of the Decommissioning Plan does not involve a significant reduction in a margin of safety.

Based on the above evaluations, NASA concludes that the activities associated with

the above described changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c) and, accordingly, a finding by the NRC of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for the Licensee: J. William Sikora, Esquire, 21000 Brookpark Road, Mail Stop 500–118, Cleveland, OH 44135.

NRC Section Chief: Patrick M. Madden.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: October 5, 2001; as revised on January 4, 2002. This notice supersedes a previous notice (66 FR 55020) published on October 31, 2001, which was based upon the licensee's application dated October 5, 2001.

Description of amendment request: The licensee proposed to amend the Technical Specifications (TSs) to change the licensing basis requirement for establishing containment hydrogen monitoring ''within 30 minutes'' to ''within 3 hours'' of initiating emergency core cooling following a loss-of-coolant accident (LOCA). The January 4, 2002, revision reduces the proposed delay from 3 hours to 90 minutes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Updated Safety Analysis Report (USAR) Chapter 15 accident analyses do not require or take credit for hydrogen monitoring to be established shortly after a loss of coolant accident (LOCA). Post-LOCA hydrogen production occurs over a long period of time, and an extension from ''30 minutes'' to ''90 minutes'' for establishing hydrogen monitoring will have a positive impact on the ability of the operators to concentrate on their more immediate actions while having no negative impact on containment integrity or the long-term assessment efforts. Therefore, the proposed license amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Control room operators use the containment hydrogen monitors following a LOCA to establish hydrogen control measures should it become necessary. The proposed license amendment would not eliminate the requirement to establish hydrogen monitoring, but would allow it to be delayed until those actions required to mitigate the accident and verify proper operation of essential safety equipment have been completed. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not create a new or different kind of accident from any accident previously evaluated.

(3) The operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The need to establish hydrogen control measures will not be present within the first 90 minutes following a LOCA since there will not be significant hydrogen accumulation. By extending the time allowed to establish containment hydrogen monitoring, the operators can remain focused on the actions necessary to mitigate the accident before directing their attention to hydrogen control measures and other long-term actions. The proposed extension maintains the requirement to establish hydrogen monitoring well before calculated conditions inside the containment indicate any need to initiate hydrogen control measures. Therefore, the proposed license amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington DC 20005–3502.

NRC Section Chief: L. Raghavan, Acting.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: December 21, 2001.

Description of amendment request: The proposed changes would revise Technical Specification (TS) Surveillance Requirements (SR) 4.3.1.2 and 4.3.2.2 to allow verification in place of demonstration of response time associated with certain pressure sensors, differential pressure sensors, process protection racks, nuclear instrumentation, and logic systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not result in a condition where the design, material, and construction standards that were applicable prior to the proposed changes are altered. The same Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) instrumentation is being used; the response time allocations/modeling assumptions in the Seabrook Station UFSAR [updated final safety analysis report] analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and will not increase the probability or consequences of an accident previously evaluated since these events are independent of this change.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures.

Therefore, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not alter the performance of the pressure and differential pressure sensors used in the plant protection systems, nor do the proposed changes alter the performance of the Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. The sensors will still have their response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time; and the plant protection systems will still have response time verified by test before being placed in operational service.

For the pressure and differential pressure sensors; and for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems; changing the method of periodically verifying instrument response from time

response testing to calibration and channel checks (assuring equipment operability) will not create any new accident initiators or scenarios.

The periodic calibration of the pressure and differential pressure sensors will detect significant degradation in the sensor response characteristic.

The periodic calibration of the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems will continue to be used to detect significant degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS 3/4.3.1 and TS 3/4.3.2 do not affect the total system response time assumed in the Seabrook Station UFSAR analyses. The periodic system response time verification method for the pressure and differential pressure transmitters; and the periodic system response time verification method for the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems, is modified to allow use of actual test data or engineering data. The method of verification will continue to provide assurance that the total system response is within that defined in Seabrook Station UFSAR analyses.

For the pressure and differential pressure sensors, calibration tests will detect degradation, which might significantly affect sensor response time.

For the Process Protection racks, the Nuclear Instrumentation, and the Logic Systems calibration tests will continue to be performed which would detect significant degradation which might cause the response time to exceed the total allowance. The total time response allowance for each function bounds degradation that cannot be detected by the periodic surveillance.

Thus, it is concluded that these proposed revisions to TS 3/4.3.1 and TS 3/4.3.2 do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The proposed amendment will remove requirements for having the equipment hatch closed with four (4) bolts and one door of the personnel access lock (PAL) closed during core alterations and refueling operations for the Fort Calhoun Station (FCS). The technical specification (TS) for other containment penetrations will be modified to delete the requirement to be closed by an operable ventilation isolation actuation signal during core alterations and refueling operations. The proposed amendment will modify requirements for radiation monitors during core alterations and refueling operations. The TS Bases that are affected by the changes described above will be modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to FCS TS modify requirements to have containment closure in place during core alterations and refueling operations in containment. These TS changes do not impact operation of other equipment or systems important to safety. The proposed TS changes reflect the parameters used in the radiological consequence calculations described in Section 5.0 of this license amendment request.

The proposed change to TS 2.8.2(1) will be to delete the requirement for having equipment hatch closed and held in place by at least four (4) bolts and the requirement to have at least one door in the PAL closed. The requirements for containment penetration isolation via an operable VIAS [ventilation isolation actuation signal] have been deleted with these proposed changes. Administrative controls will be put in place instead for ''defense in depth'' action in regards to containment penetrations. These administrative controls include:

a. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall be capable of being closed in less than one hour of a FHA [fuel handling accident].

b. The Equipment Hatch Enclosure (Room 66) doors or the equipment hatch and one door in the PAL shall not be obstructed unless capability for rapid removal of obstructions is provided (such as quick disconnects for hoses).

c. Penetrations providing direct access from the containment atmosphere to the outside atmosphere shall be capable of being closed on one side in less than one hour of a FHA.

d. An individual or individuals shall be designated and available during core alterations and refueling operations, capable of closing the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one door in the PAL, and penetrations that provide direct access from the containment atmosphere to the outside atmosphere.

In addition, allowance will be granted to have penetration flow paths with direct access from the containment atmosphere to the outside atmosphere to be unisolated during core alterations and refueling operations. These proposed changes are based on a re-analysis that was performed with respect to radiological consequences. The FHA re-analysis (Reference 10.1 [in the December 14, 2001, submittal]) was performed in accordance with current accepted methodology, and consequences were expressed in TEDE [total effective dose equivalent] dose.

The proposed change to TS 2.8.2(3) will delete the requirement for two gaseous radiation monitors being operable and supplied by independent power supplies. Instead, only one gaseous radiation monitor is required to be operable. VIAS actuation upon radiation monitor alert is not credited in the FHA re-analysis. VIAS actuation for containment purge or other penetration isolation is not credited.

The current methodology as described in 10 CFR 50.67 specifies dose acceptance criteria in terms of TEDE dose. The revised FHA analysis results as discussed in Section 5.0 meet the applicable TEDE dose acceptance criteria (specified also in RG [regulatory guide] 1.183) for AST [alternative source term]. The most current FHA analysis does not credit containment integrity and, hence, is conservative in that aspect. These administrative controls proposed as stated above ensure that in the event of a FHA in containment (even though the containment fission product control function is not required to meet dose consequence criteria) that the Equipment Hatch Enclosure (Room 66) doors or the equipment hatch, one PAL door, and other pathways can be promptly closed.

Currently the equipment hatch is closed with four (4) bolts, at least one PAL door closed, and other penetrations either are closed or capable of being closed on VIAS during core alterations and refueling operations to prevent the escape of radioactive material in the event of a FHA in containment. Whether the equipment hatch or other penetrations are open or closed during core alterations and refueling operations has no effect on the probability of any accident previously evaluated.

Based on the TS changes approved in Reference 10.1, the changes being proposed in this amendment request will not affect assumptions contained in other plant safety analyses (Updated Safety Analysis Report) or the physical design of the plant, nor do they affect other TS that preserve safety assumptions.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The current FHA analysis (Reference 10.1) assumes that all the iodine and noble gases become airborne, escape, and reach the site boundary and low population zone with no credit for filtration, containment closure, or deposition. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident (DBA) events were postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). The FHA analysis documented in Reference 10.1 was performed consistent with 10 CFR 50.67 and RG 1.183. Not crediting filtration systems for EAB/LPZ dose consequences and only crediting natural forces is conservative from the aspect of dose consequences.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The implementation of the proposed changes does not reduce the margin of safety as defined in the alternate source term design basis site boundary and control room dose analyses (Reference 10.1). The radiological analyses results, with the proposed changes, remain within the regulatory acceptance criteria (10 CFR 50.67) utilizing the TEDE dose acceptance criteria directed in RG 1.183. These criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The licensee proposes to (1) revise Technical Specifications 3.7(2)d and 3.7(4) to allow the tests to be performed on a refueling frequency outside of a refueling outage, and (2) correct the docket concerning inconsistencies in the 1973 Fort Calhoun Station (FCS) Safety Evaluation Report (SER) associated with the 13.8 kV transmission line capability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications Sections 3.7(2)d and 3.7(4) only provide greater flexibility in the time of testing. The periodicity remains the same, i.e., refueling frequency. There are no physical alterations proposed or being made to the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed changes continue to address and comply with the regulatory requirements as described in Fort Calhoun Station Responses to 70 Criteria, Reference 9.2. The proposed changes will continue to assure that the D.C. emergency transfer switches and the 13.8 kV–480 V service will perform their design function. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the D.C. emergency transfer switches or 13.8 kV–480 V service, or any plant configuration, systems, equipment, or operational characteristics. There will be no change in operating modes or safety limits. With the proposed changes, the technical specifications retain requirements for operability and functionality on a refueling frequency. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide flexibility in the time of performance of the required surveillance tests. The proposed changes will not alter any physical or operational characteristics of the D.C. emergency transfer switches or the 13.8 kV–480 V service. The proposed surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The licensee has proposed to change Technical Specification (TS) 2.10.4, to decrease the minimum required reactor coolant system (RCS) flow rate from 206,000 gallons per minute (gpm) to 202,500 gpm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the RCS flow rate is the same as the indicated RCS flow rate prior to the TS Amendment 193 (Reference 10.1 [in the December 14, 2001, submittal]). The plant was operated with the same RCS flow rate as the proposed value prior to Amendment 193. Chapter 14 events and design basis accidents were analyzed with the RCS flow rate of 202,500 gpm using NRC approved methodology.

In 1999 Fort Calhoun Station was granted TS Amendment 193 to increase the minimum indicated RCS flow rate to 206,000 gpm as a result of the removal of the steam generator orifice plates. Transient and thermal hydraulic analyses were performed using the amended RCS flow rate to verify that the minimum departure from nucleate boiling ratio (MDNBR) does not fall below the limiting value that supports the DNB specified acceptable fuel design limits.

The FRA–ANP analysis confirms that the proposed reduction in RCS flow rate does not degrade the margin to the mechanical fuel design limits and that the fuel design criteria continue to be met.

In view of the above confirmation, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the RCS flow rate is not new since the plant was operating with

the same value prior to TS Amendment 193. The proposed revision does not change any equipment required to mitigate the consequences of an accident. OPPD will continue to analyze all applicable USAR Chapter 14 events and design basis accidents as part of the reload analyses to establish the safety margin to the mechanical fuel design limits and confirm that all the fuel design criteria continue to be met. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The decreased RCS flow rate has been analyzed for thermal hydraulic effects on the reactor core. The analysis has confirmed that the proposed amendment does not degrade the margin to the mechanical fuel design limits and meets the fuel design criteria. The RCS flow rate surveillance requirements will continue to assure that the design functions are met. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001.

Description of amendment request: The proposed amendment deletes technical specification (TS) Figures 2–1A (Reactor Coolant System (RCS) Pressure—Temperature Limits for Heatup) and 2–1B (RCS Pressure—Temperature Limits for Cooldown) and replaces them with the single TS Figure 2–1. Additionally, the licensee proposes to change the lowest service temperature from 182°F to 164°F to be in compliance with Reference 4, American Society of Mechanical Engineers (ASME) Section III, NB–2332 and the basis for the minimum boltup temperature to be in compliance with Reference 5, ASME Section XI, Appendix G. The Basis section for Technical Specification 2.1.2 is being updated to reflect the use of ASME Code Case N–640 and Westinghouse Electric Company/Combustion Engineering's (W/CE) pressure temperature (P–T) limit curve methodology as applicable. Finally, based on the replacement of Figures 2–1A and 2–1B with the single Figure 2–1, the following TS are required to be changed: 2.1.1(8), 2.1.2, 2.1.2(1), 2.1.2(2), 2.1.2(6), 2.1.2(6)(a), 2.1.2(6)(c), 2.1.2(6)(d), and 2.1.6(4) as they reference the deleted curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequence of any accident for the following reasons:

(1) TS Figure 2–1 is proposed to incorporate the use of ASME Code Case N–640, which has been approved by the NRC as being acceptable for the development of P–T curves. Additionally, it is being updated for operation to higher neutron fluence values for use in the ART [adjacent reference temperature] calculations.

(2) Reducing the lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(3) The shift in the basis for minimum boltup temperature is in compliance with 10 CFR 50 Appendix G.

(4) Updating the fluence and EFPY [effective full power years] applicability is in compliance with Regulatory Guide 1.99, Revision 2.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision does not change any equipment required to mitigate the consequences of an accident. The continued use of the same Technical Specification administrative controls prevents the possibility of a new or different kind of accident. Since the proposed changes do not involve the addition or modification of equipment nor alter the design of plant systems, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes proposed do not change how design basis accident events are postulated nor do the changes themselves initiate a new kind of accident or failure mode with a unique set of conditions (proposed administrative controls). Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS Figure 2–1 does not constitute a significant reduction in the margin of safety due to the following:

(1) The current LTOP [low temperature overpressure protection] analysis setpoints are bounding and applicable to this TS Figure.

(2) The use of ASME Code Case N–640 has been approved by the NRC as acceptable for the development of P–T limit curves. W/CE's P–T limit curve methodology has been approved for the development of P–T curves.

(3) The reduction in lowest service temperature is in compliance with Reference 10.9, Section III, NB–2332.

(4) The shift in the basis of the minimum boltup temperature from NDTT to RT_{NDT} is in compliance with Reference 10.4, Section XI, Appendix G.

(5) Updating the fluence and EFPY applicability of the TS Figure 2–1 to maintain validity is in compliance with Regulatory Guide 1.99, Revision 2.

The P–T curve results, with the proposed changes, remain within the regulatory acceptance criteria utilizing W/CE methodology and ASME Code Case N–640. These criteria, 10 CFR 50.36(c)(2), have been developed for application to analyses performed for long term operation of reactor vessels. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 14, 2001.

Description of amendment request: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * *up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3 ''A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model

safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 14, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Richard J. Laufer, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 2, 2001.

Description of amendment request: Proposed amendments would revise Technical Specification 3/4.6.1.6, ''Containment Structural Integrity,'' and replace it with reference to containment Post-Tensioning System Surveillance Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed changes to the Technical Specifications do not involve any significant hazards consideration as defined in 10 CFR 50.92.

Criterion 1: Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the surveillance requirements for the containment post-tensioning inservice inspection program as required by 10 CFR 50.55a(b)(2)(vi) and 10 CFR 50.55a(b)(2)(viii). The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. The function of the containment post-tensioning system components are not altered by this change. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

Criterion 3: Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change does not impact the margin of safety included in the design pressure compared to the peak calculated pressure because the proposed activity does not alter, in any way, the available force provided by the tendons. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

Based on the evaluation provided above, the proposed changes do not involve a significant hazards consideration under 10 CFR 50.92(c), and will not have a significant effect on the safe operation of the plant. Therefore, there is reasonable assurance that operation of the South Texas Project in accordance with the proposed revised Technical Specifications will not endanger the public health and safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of

10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 22, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specification Limiting Condition for Operation for Containment Penetrations to allow the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether the proposed amendment involves a significant hazards consideration by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

(1) Will operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch to be open during core alterations and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch are bounded by the current analysis described in the UFSAR [Updated Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with the proposed amendment create the possibility of a new different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident previously evaluated.

(3) Will operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the personnel airlock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP section 15.7.4 and GDC 19. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 3, 2001.

Description of amendments request: The proposed amendments would revise the Technical Specifications (TSs) for the Auxiliary Feedwater (AFW) System to provide consistent allowed outage times (AOT) and required actions for any inoperable motor driven AFW pump(s). The AOT for one inoperable motor drive AFW pump is also proposed to be extended from 72 hours to 28 days based on a risk-informed approach.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

STPNOC [South Texas Project Nuclear Operating Company] has evaluated whether a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92 as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Therefore, the proposed AOT change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The administrative change involves no increase in the probability or consequences of an accident.

If all four AFW trains are inoperable in Mode 1, 2, or 3, the unit is in a seriously degraded condition with only limited means for conducting a cooldown. In such a condition, the unit should not be perturbed by any action, including a power change that might result in a trip. The seriousness of this condition requires that action be started immediately to restore one AFW train to operable status. Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO [limiting condition for operation] 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) involves no increase in the probability or consequences of an accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, the proposed AOT change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The change does not create the possibility of any accident.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation dose to the public.

The proposed TS change reflects the STP four-train AFWS design in the required actions and AOTs. No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, will not relax any safety systems settings, and will not relax the bases for any limiting conditions of operation. Therefore, the proposed AOT change does not involve a significant reduction in a margin of safety.

The administrative change of deleting the words ''At least'' clarifies that there are only four AFW pumps in the design. The change does not involve any reduction in a margin of safety.

Required Action (d) is modified by adding a sentence indicating that all required mode changes or power reductions are suspended until one AFW train is restored to operable status. This statement reflects the same sentence for the case of all AFW trains being inoperable in NUREG–1431, TS 3.7.5. In this case, LCO 3.0.3 is not applicable because it could force the unit into a less safe condition. Therefore, the addition of the sentence to Action (d) does not involve a significant reduction in a margin of safety.

Based on the above, STPNOC concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92, and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2001.

Brief description of amendments: A change is proposed to Surveillance Requirement (SR) 3.0.3 to allow a longer period of time to perform a missed surveillance. The time is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated December 18, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 6, 2001.

Description of amendment request: The amendment would revise the following Technical Specifications (TSs): (1) TS 3.3.6, ''Containment Purge Isolation Instrumentation;'' (2) TS 3.3.7, ''Control Room Emergency Ventilation

System (CREVS) Instrumentation;'' and (3) TS 3.9.4, ''Containment Penetrations.'' The revisions to TS 3.3.6 would alter Condition C of the Actions for the Limiting Condition for Operation (LCO), and delete footnotes (a) and (b) from applicable Modes for the automatic actuation logic and actuation relays function and the containment purge exhaust radiation gaseous function in Table 3.3.6–1. The revisions to TS 3.3.7 would add (1) Surveillance Requirement (SR) 3.3.7.6, (2) footnote (c) to Table 3.3.7–1, (3) the fuel building exhaust radiation gaseous function to the table, and (4) footnote (c), 2 trains, and SR 3.3.7.6 to the applicable Modes, required channels, and surveillance requirements columns for the automatic actuation logic and actuation relays and control room radiation control room air intakes functions in Table 3.3.7–1. The revisions to TS 3.9.4 are to add the phrase ''or if open, capable of being closed'' to item a on the equipment hatch in LCO 3.9.4, delete the word ''closed'' from item b on the emergency air lock in LCO 3.9.4, add SR 3.9.4.2 on verifying the capability to install the equipment hatch when it is open, and renumber the existing SR 3.9.4.2 to SR 3.9.4.3. The revisions to the TSs are to allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment. The revisions to TSs 3.3.6 and 3.3.7 are to eliminate the requirement for automatic actuation of containment purge isolation during core alterations and/or during movement of irradiated fuel to allow the containment purge system to remain in operation during refueling when the equipment hatch is open, and to add a new surveillance to response time test the channels for the control room radiation monitor detectors, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will allow the equipment hatch [or the emergency air lock] to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the equipment hatch or the emergency air lock during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open equipment hatch [or open emergency air lock] are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the equipment hatch [or the emergency air lock], the proposed change[s do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the [equipment hatch or emergency] air lock doors open remain bounding for the proposed changes. Those previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP [Standard Review Plan] section 15.7.4 and GDC 19 [for exposure of control room operators].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 21, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Sequoyah to insert tritium-producing burnable absorber rods into the reactor core.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 65000).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: April 20, 2001.

Brief description of amendments: Will revise the Final Safety Analysis Report to reflect a change in the spent fuel pool cooling analysis methodology.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 64998).

Expiration date of individual notice: January 16, 2002.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: August 20, 2001.

Brief description of amendments: Will revise the Technical Specifications to allow Watts Bar to insert tritium-producing burnable absorber rods into the reactor core.

Date of publication of individual notice in the ***Federal Register:*** December 17, 2001 (66 FR 65005).

Expiration date of individual notice: January 16, 2002.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application

complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 31, 2001, as supplemented August 1, 2001, and September 26, 2001.

Brief description of amendment: The amendment approves a change to the Technical Specifications and Bases associated with the operability of A.C. electrical power sources to increase the allowed outage time (AOT) for one inoperable emergency diesel generator (EDG) from 72 hours to 14 days. This change to the AOT allows the performance of various EDG maintenance and repair activities during plant operation.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 261.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in *Federal Register:* August 8, 2001 (66 FR 41614).

The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

*Date of initial notice in **Federal Register**:* August 8, 2001 (66 FR 41614). The August 1, 2001, and September 26, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.18, ''PASS [Post Accident Sampling System]/Sampling and Analysis of Plant Effluents,'' for Millstone Nuclear Power Station, Unit No. 2 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 262.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment deletes Technical Specifications Section 6.8.4.d, ''Post Accident Sampling,'' for Millstone Nuclear Power Station, Unit No. 3 and thereby eliminates the requirements to have and maintain the post-accident sampling program.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 201.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* October 31, 2001 (66 FR 55011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 23, 2001, as supplemented by letters dated June 29, July 19, and November 13, 2001.

Brief Description of amendment: The amendment changes Technical Specification (TS) 3.4.1.6, ''Reactor Coolant System—Isolated Loop Startup'' which includes revisions to the limiting condition for operation. Some of the changes to TS 3.4.1.6 affect restrictions that were included as part of the original Millstone Unit 3 licensing basis allowing power operation with one isolated reactor coolant system loop.

Date of issuance: January 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 202.

Facility Operating License No. NF–49: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 11, 2001 (66 FR 36338). The letters dated June 29, July 19, and November 13, 2001, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or

expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: April 13, 2001.

Brief description of amendment: The change relaxes the allowable cooldown rate in the Reactor Coolant System (RCS) Technical Specifications (TS) 3.4.8.1, ''Pressure/Temperature Limits.'' Specifically, the change eliminates the limitation of a 10 °F per hour cooldown rate when the RCS temperature is below 135 °F. The proposed limitations permit a 100 oF per hour cooldown rate to continue down to an RCS temperature of 110 °F, at which point the rate is reduced to 30 °F per hour.

Date of issuance: January 8, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 177.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 2, 2001 (66 FR 22029).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 9, 2001.

Brief description of amendments: The proposed amendments would incorporate TS changes that are being made to provide consistency with the changes to 10 CFR 50.59, ''Changes, tests, and experiments,'' as published in the **Federal Register** (64 FR 53582), dated October 4, 1999. Specifically, the changes replace the terms ''safety evaluation'' with ''10 CFR 50.59 evaluation'' and ''unreviewed safety question'' with ''requires NRC approval pursuant to 10 CFR 50.59.''

Date of issuance: December 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 125 and 120.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 22, 2001 (66 FR 44170).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 28, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 21, 2001.

Brief description of amendments: The amendments delete Technical Specification 5.5.3, ''Post Accident Sampling,'' and thereby eliminate the requirement to have and maintain the Post Accident Sampling System at the Braidwood Station, Unit Nos. 1 and 2, and Byron Station, Units Nos. 1 and 2.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 365 days.

Amendment Nos.: 126 and 121.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* October 31, 2001 (66 FR 55018).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: June 15, 2001, as supplemented by letter dated November 12, 2001.

Brief description of amendments: The proposed amendments would allow use of ATRIUM 10 fuel from Framatome Advanced Nuclear Fuel, Inc.

Date of issuance: December 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 152 and 138.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* August 8, 2001 (66 FR 41618).

The November 12, 2001, submittal was clarifying in nature and did not change the scope of the original notice or proposed no significant hazards finding dated August 8, 2001 (66 FR 41618). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 27, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 14, 2000, as supplemented December 19, 2001.

Brief description of amendment: The amendment changes the operating license to reflect a change in the name of IES Utilities, Inc., a co-owner of the Duane Arnold Energy Center and licensee, to Interstate Power and Light Company.

Date of issuance: January 2, 2002.

Effective date: As of January 1, 2002, and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–49: The amendment revised the operating license.

Date of initial notice in ***Federal Register***: July 26, 2000 (65 FR 46009).

The December 19, 2001, supplemental letter provided notification that (1) the required regulatory approvals for the merger had been received and (2) the projected schedule for the merger was January 1, 2002. The supplemental letter did not change the staff's initial proposed no significant hazards consideration determination or expand the application beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 2, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 8, 2001, as supplemented on February 6, December 7, and December 27, 2001.

Brief description of amendment: The amendment revises Technical Specification (TS) 4.5.1.b.1 to change the minimum acceptable Core Spray subsystem flow from 6,350 gallons per minute (gpm) to 6,150 gpm.

Date of issuance: January 7, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 136.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register****:* January 22, 2001 (66 FR 6701).

The letters dated February 6, December 7, and December 27, 2001, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: April 16, 2001, as supplemented on July 5, 2001.

Brief description of amendments: The amendments revise Technical Specifications (TSs) requirements associated with the operation and surveillance testing of the 28 Volt D.C. (VDC) Batteries. The revised Limiting Condition for Operation (LCO) and Surveillance Requirements (SRs) are now more consistent with the 125 VDC Battery System LCO and SRs as well as similar to standard TSs provided by NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995.

Date of issuance: January 4, 2002.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 249 and 229.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* November 14, 2001 (66 FR 57124).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 4, 2002.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001.

Brief description of amendments: The amendments modified Facility Operating License Nos. NPF–87 and NPF–89 to reflect the direct transfer of control of TXU Electric Company's operating authority and 100-percent ownership interest in the Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, to a newly formed generating company: TXU Generation Company LP.

Date of issuance: January 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 7 days from the date of issuance.

Amendment Nos.: 90 and 90.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register***: August 20, 2001 (66 FR 43594).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 21, 2001.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission,

John A. Zwolinski,

Director, Division of Licensing, Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–1210 Filed 1–18–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Meeting

Time and Date: Thursday, January 31, 2002, 1:00 PM (Open Portion) 1:30 PM (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC

Status: Meeting Open to the Public from 1 p.m. to 1:30 p.m. closed portion will commence at 1:30 p.m. (approx.).

Matters to be Considered:

1. President's Report
2. Appointment: Daniel A. Nichols
3. Meeting Schedule Through September 2002

Further Matters to be Considered: (Closed to the Public 1:30 PM)

1. Finance Project in Indonesia
2. Finance Project in Pakistan
3. Pending Major Projects
4. Reports

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 17, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–1677 Filed 1–17–02; 4:02 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form CB, OMB Control No. 3235–0518, SEC File No. 270–457

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form CB is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c). It also is used by a subject company pursuant to Exchange Act Rule 14e–2(d). This information is made available to the public. Information provided on Form CB is mandatory. Approximately 200 issuers file Form CB annually and it takes approximately .5 hours per response for a total of 100 annual burden hours. Finally, persons who respond to collection contained in Form CB are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 11, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1424 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45276; File No. SR–NASD–202–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to extend through July 15, 2002, two pilot programs contained in NASD Rule 6541, which prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board (''OTCBB'') securities. NASD Rule 6541 was established on a pilot basis through February 8, 2002. Portions of NASD Rule 6541 were separately amended for a pilot period that originally ran for a three-month period from August 1, 2001, to November 1, 2001, and was later extended through January 14, 2002. Nasdaq is proposing no changes to the language of NASD Rule 6541.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and has provided the Commission with the 5-day notice required by Rule 19b–4(f)(6)(iii). Nasdaq requests that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii). If such waiver is granted by the Commission, the two pilots programs would continue to operate without interruption, remaining in effect until July 15, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Section, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, extended the basis customer limit order protection principles—that presently apply to Nasdaq securities—to designated securities traded on the OTCBB.[4] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from ''trading ahead'' of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the ''Manning Rule''). In *Manning*, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has fiduciary duty not to trade for its own account at prices more favorable than the customer order.[5] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[6] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to file a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[7] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current insider spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541 (b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

At the expiration of that period, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[8] Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. At the same time, Nasdaq eliminated the provision of the pilot

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

[5] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988 (''Manning'').

[6] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[7] *See* also Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

[8] *See* Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order, without filling the limit order, applies to all limit orders in OTCBB securities covered by NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread.

Nasdaq has represented that it is actively studying the impact of NASD Rule 6541 on quoting and trading of OTCBB securities. Nasdaq believes that a six-month extension of both pilots is necessary to allow Nasdaq to collect and analyze sufficient data upon which to base its analysis. Nasdaq further believes, preliminarily, that NASD Rule 6541 has had a positive effect on investors. Accordingly, it is Nasdaq's intent to implement limit order protection on a permanent basis at or before the end of this pilot extension.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) maintain the current rule language without a lapse, in keeping with the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative immediately. The Commission finds that granting this request is consistent with the protection of investors and the public interest, as the price improvement standards under NASD Rule 6541 will remain in effect on an uninterrupted basis, thereby furthering the aim of protecting investors and the public interest.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–06 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[9] The Commission notes that permanent approval of limit order protection for OTCBB securities would require the NASD to submit a proposed rule change to this effect under Section 19(b) of the Act, 15 U.S.C. 78s(b).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45277; File No. SR–NASD–99–04]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiative—Recommendation Rule

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change was published for comment in the **Federal Register** on March 1, 1999.[3] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the rules of the Association to add a new rule, Rule 2315. Below is the text of the proposed new rule, as filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41075 (February 9, 1999), 64 FR 10037.

with the Commission on January 13, 1999 and as modified by Amendment No. 1. Proposed additions under Amendment No. 1 are in italics; proposed deletions are in brackets.

* * * * *

2315. Recommendations to Customers in OTC Equity Securities

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

(a) Review Requirement

[(1)] No member or person associated with a member shall recommend [to a customer the purchase, sale, or exchange of] *that a customer purchase or sell short* any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium unless the member has reviewed *the* current financial statements of [,] *the issuer,* [and] current *material* business information about [j] the issuer, and [makes] made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(b) Definitions

(1) For purposes of this Rule, *the term* ''current financial statements'' shall include:

(A) For issuers who are not foreign private issuers,

(i) a balance sheet as of a date less than [16] *15* months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 6 months before the date of recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, foreign regulatory authorities, bank and insurance regulators, and

(v) all *publicly available* financial information [contained in regulation statements, including any amendments, with respect to securities transactions registered under the Securities Act of 1933 (Securities Act), or in the case of securities offered pursuant to the exemptions from registration provided by Regulation A, Rule 505, or Rule 506 under the Securities Act, all financial information provided in connection with offerings conducted pursuant to those rules] *filed with the Commission during the 12 months preceding the date of the recommendation contained in registration statements or Regulation A filings.*

(B) For foreign private issuers.

(i) a balance sheet as of a date less than 18 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 9 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer; and

(iv) publicly available financial statements and other financial reports filed during 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the Commission, foreign regulatory authorities, bank and insurance regulators.

(2) For purposes of this Rule, *the term* ''quotation medium'' shall mean any [quotation system, publication, electronic communication network, or any other device, including any issuer or inter-dealer quotation system, that is used to regularly disseminate quotations or indications of interest in transactions in equity securities that are not listed on Nasdaq or on a national securities exchange, including offers to buy or sell at a stated price or otherwise or invitations of offers to buy or sell]:

(A) System of general circulation to brokers or dealers that regularly disseminates quotations or indications of interest of identified brokers or dealers; or

(B) Publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations or indications of interest to others.

(c) Compliance Requirements

(1) A member [firm] shall designate a registered [individual] *person* to conduct the review required by this *R*[r]ule. In making such designation, the member [firm] must ensure that:

(A) *E*[e]ither the [individual] *person* is registered as a Series 24 principal, or [his] the person's conduct in complying with the provisions of this Rule is appropriately supervised by a Series 24 [individual] principal; and

(B) *S*[s]uch designated [individual] *person* has the requisite skills, background and knowledge to conduct the review required under this *R*[r]ule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information.

(d) Additional Review Requirement for Delinquent Filers

If an issuer has not made current filings required by [any] *the issuer's principal financial or securities* regulatory authority *in its home jurisdiction,* including the Commission, [a] foreign regulatory [authority] *authorities,* or bank and insurance regulators, such review must include *an* inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(e) Exemptions

(1) The requirements of this Rule shall not apply to:

(*A*)[1] *T*[t]ransactions that meet the requirements of Rule 504 of Regulation D under the Securities Act *of 1933 (''Securities Act'')* and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act.

(*B*)[2] *T*[t]ransactions with or for an account that qualifies as an ''institutional account'' under Rule 3110(c)(4) or with a customer that is a *''qualified institutional buyer'' under Rule 144A promulgated under the Securities Act or* ''qualified purchaser'' under Section [3(c)(7) *2(a)(51)* of the Investment Company Act of 1940;

(*C*)[3] *T*[t]ransactions in an issuer's securities if the issuer has [$100] *at least $50* million in *total* assets and $10 million in shareholder's equity as [of date of the issuer's most recent audited

balance sheet, which balance sheet should be of a date within 6 months prior to the recommendation] *stated in the issuer's most recent audited current financial statements, as defined in this Rule*;

(*D*)[4] *T*[t]ransactions in securities of a bank [under] *as defined in* Section 3(a)[(4)] (*(6)* of the Securities Exchange Act of 1934 and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority [.];

(E) A security with a worldwide average daily trading volume value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation;

(F) A convertible security, if the underlying security meets the requirement of Section (e)(1)(E) of this Rule;

(G) A security that has a bid price, as published in a quotation medium, of at least $50 per share. If the security is a unit composed of one or more securities, the bid price of the unit divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be at least $50; or

(2) *Pursuant to the Rule 9600 Series, the Association, for good cause shown after taking into consideration all relevant factors, may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of this Rule if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.*

* * * * *

9600. Procedures for Exemptions

9610. Application

(a) Where To File

A member seeking exemptive relief as permitted under Rules 1021, 1070, 2210, *2315*, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

a. Background

NASD Regulation has been concerned with abuses in the trading and sales of thinly traded, thinly capitalized (''microcap'') securities quoted in the OTC market, and in particular, with the connection between potential fraud and manipulation and the lack of reliable and current financial information about issues of microcap securities. NASD Regulation proposed to amend NASD rules to include new NASD Rule 2315, entitled ''Recommendations to Customers in OTC Equity Securities'' (''Recommendation Rule''). As described in the rule filing and in this amendment, the Recommendation Rule requires a member, before it recommends a transaction in an OTC equity security, to review certain financial and business information and determine that there is a reasonable basis for making the recommendation. The proposed rule also provides certain exemptions from the rule's requirements.

The requirements of the Recommendation Rule are in addition to other existing member obligations under NASD rules and the federal securities laws, including obligations to determine suitability of particular securities transactions for customers and to have a reasonable basis for any recommendation made to a customer. The rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under NASD rules or the federal securities laws.

The Recommendation Rule is one of the NASD's microcap initiatives that was originally published for comment in *NASD Notice to Members 98–15* in January 1998. In May 1998, the NASD Board of Governors and NASD Regulation Board of Directors approved certain modifications, and at its meeting in December 1998, the NASD Board approved additional changes.

On March 1, 1999, the Commission published the Recommendation Rule for public comment in the **Federal Register** and specifically sought comment on the potential need for exemption from proposed Rule 2315.[4] The Commission received six comment letters in response to the **Federal Register** publication. The comment letters were from Goldman, Sachs & Co. (''Goldman''); A.G. Edwards & Sons, Inc. (''Edwards''); National Quotation Bureau (''NQB''); Securities Industry Association (''SIA'') Enstar Group, Inc. (''Enstar''); and Sullivan & Cromwell (''S&C'').

After considering the comments, NASD Regulation has made changes to the proposed Recommendation Rule. The text of the proposed rule provided in Amendment No. 1 reflects these changes, which include revised definitions, modified review requirements, and additional and revised exemption provisions.

b. *Issues Raised in Comment Letters*

The commenters generally supported the concept behind the microcap initiative, that is, as a regulator, NASD Regulation should continue to combat fraud, manipulation and other abuses in the sale of microcap securities. The comments were directed primarily at modifying and clarifying the language in the proposed rule. Absent changes, a number of the commenters believed that the rule would impose an inappropriate burden on competition.

1. *Application of the Rule*

Proposed Rule 2315, as published in the **Federal Register**, would apply when a member or associated person recommends to a customer the purchase, sale or exchange of any OTC equity security. Two commenters, Edwards and S&C, asked that the rule define the term ''recommendation.'' Edwards believed the definition should distinguish a ''recommendation'' from a ''solicitation,'' while S&C was concerned whether a research report with a ''buy'' recommendation would

[4] *See supra* note 3. NASD Regulation is filing the amendment notwithstanding that the Commission has not acted on reproposed Exchange Act Rule 15c2–11. To ensure more consistency, NASD Regulation originally had intended to await action on reproposed Rule 15c2–11 before filing the amendment. NASD Regulation will consider whether further revisions are required to this proposal following Commission action on reproposed Rule 15c2–11.

constitute a ''recommendation'' under the proposed rule. NASD Regulation believes that it is not necessary to define the term ''recommendation'' in this rule. For guidance, members are directed to NASD Rule 2310 ''Recommendations to Customers (Suitability)'' and the accompanying interpretive material. Further, NASD *Notices to Members* provide supplemental advice regarding questions relating to suitable recommendations.[5]

Edwards, the SIA and NQB proposed that ''sales'' be eliminated from the requirement of the rule, arguing that there should not be any potential regulatory barrier to allowing a broker to recommend, for example, that a client sell a security from what the broker may suspect is a ''pump-and-dump'' scheme. NASD Regulation agrees that the regulatory benefits of this rule apply to recommendations to purchase or sell short, but not to recommendations to sell. Therefore, it has revised the requirement by deleting the requirement that the rule apply to recommendations to sell or exchange a security and adding the requirement that the rule apply to recommendations to sell short.

The rule applies to any equity security that is not listed on Nasdaq or on a national securities exchange and is published or quoted in a quotation medium. The SIA and Goldman stated that the rule should apply only when the member has actual knowledge that the security is published or quoted in a quotation medium. NASD Regulation, concerned about possible circumvention of the rule, does not agree that the rule should apply only when the member has actual knowledge that the security is being published or quoted.

2. *Definitions*

Several commenters, Edwards, Goldman, SIA and S&C, offered changes to the definition of ''current financial statements'' in the proposed Recommendation Rule. They argued that the definition did not take into account the customary accounting periods of foreign issuers. For example, Goldman noted that many nations, such as the United Kingdom and Germany, permit their domestic issuers to report financial information on a semi-annual basis rather than on a quarterly basis. Several commenters recommended that the definition be harmonized with that in reproposed Rule 15c2–11,[6] which distinguishes between the foreign private issuers and non-foreign private issuers. NASD Regulation agrees with these suggestions and has revised the definition to be consistent with the language in reproposed Rule 15c2–11 for non-reporting companies,[7] including foreign private issuers. The term ''foreign private issuer'' is defined in Rule 3b–4 promulgated under the Act.

Edwards, Goldman, the SIA and S&C criticized the requirement in the Recommendation Rule that firms review financial statements and other financial reports filed with ''any regulatory authority'' as being overly broad. The SIA, for example, pointed out that these financial reports could include an endless array of filings, such as tax filings, filings with trade authorities and even filings with environmental or labor authorities. As to foreign issuers, commenters recommended that the rule be limited to filings made by the issuer with the principal securities regulator in its home jurisdiction, rather than ''any regulatory authority.'' NASD Regulation has revised the requirement in response to the comments.

Further, the definition of ''current financial statements'' included, among other things, all financial information provided in offerings made pursuant to Rule 505 or rule 506 of Regulation D. The same four commenters requested that this requirement be eliminated, pointing out that the offering materials are not publicly available. NASD Regulation has removed from the definition of ''current financial statements'' financial information provided in offerings made pursuant to Rules 505 and 506. However, the requirement that a broker review certain financial information prior to making a recommendation would clearly apply to the secondary trading of covered securities that were originally offered pursuant to any small or private offering exemption, including Rule 505 or Rule 506.

Finally, NASD Regulation notes that current financial statements must be prepared in accordance with generally accepted accounting principles (''GAAP'') or foreign GAAP. If the financial statements are not audited, the issuer must provide a representation that the financial statements are prepared in accordance with GAAP or foreign GAAP.

The Recommendation Rule also defined the term ''quotation medium.'' Edward argued that the rule should apply only to priced quotation, while the NQB suggested that the rule apply to all non-Nasdaq securities, as that term is defined in the Rule 6700 Series. The SIA suggested that the definition of ''quotation medium'' be limited to those that give period quotations, and it recommended that the definition mirror the language in reproposed Rule 15c2–11, NASD Regulations does not believe it should narrow the rule to include only priced quotations, nor does it believe it should expand the rule so broadly as to encompass all non-Nasdaq securities, including those not published or quoted in quotation medium. However, it has determined to revise the definition of ''quotation medium'' to be consistent with that in reproposed Rule 15c2–11.[8]

3. *Requirements*

NASD Regulation received comments on several areas relating to the Recommendation Rule's requirements. First, S&C expressed concern that the proposed rule would, in effect, add a new suitability requirement that would apply in addition to the suitability requirement in NASD Rule 2310. S&C suggested that NASD Regulation modify the rule to focus on a members's need to be ''familiar'' with the security and the issuer. As stated in the ''Preliminary Note'' to the proposed rule, the requirements of the Recommendation Rule are clearly in addition to existing obligations, including obligations to determine suitability. NASD Regulation believes that the Recommendation Rule is necessary to address abuses in the trading and sales of microcap securities, and in light of the exemptions, applies appropriately.

Second, as originally proposed, Rule 2315 required members to review current business information about an issuer. Edwards and the SIA expressed concern that the requirement was too broad and could conceivably include almost any fact or rumor published by anyone in periodicals or in sites on the Internet. In response, NASD Regulation has changed the requirements so that members need review only current *material* business information about the issuer. Generally, current material

[5] *See NASD Notice to Members 01–23*, ''Suitability and Online Communications'' (April 2001); NASD *Notice to Members—For Your Information*, ''Clarification of *Notice to Members 96–60*'' (March 1997); *NASD Notice to Members 96–60*, ''Clarification of Members' Suitability Responsibilities under NASD Rules with Special Emphasis on Member Activities in Speculative and Low-Priced Securities'' (September 1996); and *NASD Notice to Members 96–32*, ''Members Reminded to Use Best Practices When Dealing in Speculative Securities'' (May 1996).

[6] *See* Securities Exchange Act Release No. 41110 (February 25, 1999), 64 FR 11124 (March 8, 1999).

[7] *Id.* at 11144.

[8] NASD Regulation has slightly modified the definition found in reproposed Rule 15c2–11 to expressly included dissemination of indications of interest. However, the NASD Regulation believes that this change remains consistent with reproposed Rule 15c2–11 because that rule incorporates indications of interest through its definition of ''quotation.'' NASD Regulation's proposed Recommendation Rule does not contain a separate definition of ''quotation''.

business information would include that material information that is available or relates to events that have occurred within the last twelve months prior to the recommendation.

Third, the proposed Recommendation Rule required that a registered person conduct the review of the financial and business information. Goldman and the SIA expressed concern that it was to restrictive to limit this function to registered persons. However, NASD Regulation maintains that the review should be conducted by a registered person over whom it has jurisdiction; it has not made changes to this requirement. NASD Regulation also requires that the member document the information reviewed, the date of the review and the name of the person who conducted the review.

Finally, NASD Regulation received comments on the requirements that members conduct an inquiry when an issuer has into made current filings. Goldman suggested that the provision be strengthened to say that no recommendation can be made if the filings are delinquent. The SIA and S&C stated that the reference to ''any regulatory authority'' was too broad, and that it should be changed to the ''issuer's principal financial or securities regulatory authority in its home jurisdiction.'' NASD Regulation does not agree that the rule should unilaterally prohibit a recommendation if the issuer is delinquent in its filing. However, it has narrowed the reference from ''any regulatory authority'' to ''issuer's principal financial or securities regulatory authority in its home jurisdiction'' which is consistent with the change to the definition of ''current financial statements.''

4. Exemptions

NASD Regulation amended the exemption provisions of the Recommendation Rule in several ways. First, the response to comments by the S&C, NASD Regulation added ''qualified institutional buyers'' as defined under Rule 144A to the list of customers for whom the rule would not apply.

Second, commenters recommended changes to the exemption large issuers, that is issuers with $100 million in assets and $10 million in shareholder's equity. Goldman and the SIA recommended reducing the asset threshold to $25 million in assets, while Enstar recommended changing the test to a net tangible asset test found in reproposed Rule 15c2–11. NASD Regulation recognizes that the asset amount could be reduced without significantly diminishing the effectiveness of the rule, although it believes that a reduction to $50 million in assets is sufficient. Also, the exemption was revised to refer to the revised definition of ''current financial statements'' so as to address comments regarding the age of the balance sheets in the original proposed Recommendation Rule.

Third, in response to comments by Edwards, Goldman, the SIA and S&C, to new exemption were added to ensure the rule focused on small issuers, where the microcap abuses have been found. NASD Regulation determined that it was appropriate to include exemptions which were consistent with those provided in reproposed Rule 15c2–11. Thus, NASD Regulation added provisions to exempt a security based on the security's average daily trading volume (''ADTV'') and the security's bid price. Specifically, an exemption applies to a security with a worldwide ADTV value of at least $100,000 during each month of the six full calendar months immediately before the date of the recommendation; the exemption also covers a convertible security, if the underlying security meets the ADTV requirement. An exemption also applies when a security has a bid price of at least $50 per share, as published in a quotation medium.

Finally, in response to comments by the NQB, NASD Regulations has provided that members may seek an exemption for good cause shown, pursuant to the Rule 9600 series. The exemption may be for any person, security of transaction, or for certain classes of persons, securities or transactions, such as securities listed on certain foreign exchanges.

However, NASD Regulation did not adopt two further proposals for exemptions. Goldman and the SIA suggested that the rule not apply to members who are also investment advisers, and to members who are subject to Rule 472 ''Communications with the Public'' of the New York Stock Exchange (''NYSE''). NASD Regulation believes that the provisions of Rule 472 do not have the specificity of the Recommendation Rule and thus, the Recommendation Rule is appropriately applied to NASD members who are also NYSE members. NASD Regulation does not agree that the rule should have an exemption for members who are also investment advisers.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will address actual and potential frauds in the quotation and trading of unlisted securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On March 1, 1999, the Commission published the Association's proposal and solicited comments in the **Federal Register.**[10] The comment period ended on March 22, 1999. As discussed above, the Commission received six comment letters. After considering the comments, the Association is proposing Amendment No. 1 to the rule filing, as outlined above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceeding to determine whether the proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See supra* note 3.

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–99–04 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1426 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45264; File No. SR–NASD–2001–87]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2002,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increases the fee assessed on NASD members that continue to use the x.25 Computer-to-Computer Interface (''CTCI'') to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol (''TCP/IP'') CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

Rule 7010. System Services

(a)–(l) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber.

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router	$1275/month.
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy.	1600/month.
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), includes base bandwidth of 128kb.	8000/month.
Disaster Recovery Option: Single 56kb line with single hub and router (for remote disaster recovery sites only).	975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	4000/month per 64kb increase above 128kb T1 base.
Installation Fee	2000 per site for dual hubs and routers. 1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP Lines within a single location)	1700 per relocation.

(g)–(q) No change.

**As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87, the fee for x.25 CTCI circuits, which has remained $200 per month per circuit—is increased to $1,275 per month per circuit; until the date of the termination of such circuits.*

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[5] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is incerasing the monthly charge to $1,275 per circuit.[6] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[7] Nasdaq has provided and will continue to provide notice to market participants of these dates through Nasdaq Trader.com alerts, direct mail, and telephone calls to NASD members that

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 10, 2002, the Commission received a letter from the NASD containing the rule text of the proposed rule filing. The proposed rule change is treated as filed on the date that the letter was received. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 8, 2002.

[4] 15 U.S.C. 78s(3)(A)(ii).

[5] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[6] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[7] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not forsee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is any change in these dates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Items IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull Connecticut processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq's Small Order Execution (''SOES'') and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of ''sunsetting'' its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second (''kb''). The new CTCI network operates over the Enterprise Wide Network II (''EWIN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25 CTCI circuits held by 60 firms remained active. Nasdaq is urging NASD members that still rely upon these outmoded connections to complete their conversions as soon as possible. Nasdaq believes that charging a higher price to NASD members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, Nasdaq believes that as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. Nasdaq believes that the fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to ''sunset'' the x.25 CTCI network on March 31, 2002 (or sooner if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule is one establishing or changing a due, fee or other charge change and thus has become effective pursuant to Section 19(b)(3)of the Act [9] and subparagraph (f) of Securities Exchange Act Rule 19b–4.[10] At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD 2001–87 and should be submitted by February 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1428 Filed 1–18–02; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 768s(b)(3).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3383]

State of Mississippi; Amendment #2

In accordance with information received from the Federal Emergency Management Agency, dated January 10, 2002, the above-numbered Declaration is hereby amended to include Coahoma and Tallahatchie Counties in the State of Mississippi as a disaster area due to damages caused by severe storms, tornadoes, and flooding and to establish the incident period for this disaster as beginning on November 24, 2001 and continuing through December 17, 2001.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for economic injury is September 9, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 14, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–1458 Filed 1–18–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3880]

Culturally Significant Objects Imported for Exhibition Determinations: ''European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia''

AGENCY: United States Department of State.

ACTION: Notice; Correction.

SUMMARY: On October 3, 2000, Notice was published in the **Federal Register** (Volume 65, Number 192) by the Department of State concerning the exhibition ''European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia.'' The referenced Notice is corrected as follows. I hereby determine that an additional work scheduled to be imported from abroad on or about January 21, 2002 is of cultural significance and that its temporary exhibit in the U.S. is in the national interest. In the summary after ''January 6, 2002,'' add the following additional venue: ''and at the Birmingham Museum of Art, Birmingham, AL from on or about February 10, 2002, to on or about April 14, 2002, is in the national interest.'' In addition, an object from the National Gallery of Victoria, previously on display in the Metropolitan Museum of Art in New York and included in a Notice by the Department of State published July 30, 2001 (Volume 66, Number 146), will be added to the exhibit in Birmingham.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 14, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 02–1492 Filed 1–18–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11275]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms should reach us on or before February 29, 2002.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–6164; by faxing 202–267–4700; or by e-mail Jshort@comdt.uscg.mil. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary of Transportation, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for seven positions that expire or become vacant in June 2002. To be eligible, you should have experience in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: January 7, 2002.

Jeffrey P. High,

Acting, Assistant Commandant for Marine Safety and, Environmental Protection.

[FR Doc. 02–1513 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–11242]

National Preparedness for Response Exercise Program

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on Preparedness for Response Exercise Program (PREP) triennial exercise schedule for 2002, 2003, and 2004.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA) and the Minerals Management Service (MMS), in concert with the states, the oil industry, and concerned citizens, developed the Preparedness for Response Exercise Program (PREP). This notice announces the PREP triennial cycle, 2002–2004, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before March 25, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–11242), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/g-m/gmhome.htm* (see index, then oil response). To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 1994 PREP Guidelines booklet is available at no cost by writing or faxing the TASC Dept Warehouse, 3341 Q 75th Avenue, Landover, MD 20785, fax: 301–386–5394. The stock number of the manual is USCG–X0191. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2001–11242], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

The Coast Guard, EPA, RSPA and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, EPA, MMS, and Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

The following table is the PREP schedule for calendar years 2002, 2003, and 2004.

PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES

Area	Agency	Date/qtr[1]	Participant
Calendar Year 2002:			
South FL (MSO Miami)	CG	1	
SW LA/SE TX (MSO Morgan City, MSO Port Arthur, Exxon/Mobil & Stolt)	CG SONS[2]	2	
Hawaii (MSO Honolulu)	CG	3	
Central CA Coast (MSO San Francisco)	CG	3	
EPA Region VII	EPA	3	
Boston (MSO Boston)	CG	4	
Calendar Year 2003:			
Saipan (MSO Guam)	CG	1	
SE Alaska (MSO Juneau)	CG	2	
Philadelphia (MSO Philadelphia)	CG	3	
Savannah (MSO Savannah)	CG	3	
EPA Region II	EPA	3	
Florida Panhandle (MSO Mobile)	CG	4	
Calendar Year 2004:			
Charleston, SC (MSO Charleston)	CG	1	
Duluth Superior (MSO Duluth)	CG	2	

PREP SCHEDULE—GOVERNMENT—LED AREA EXERCISES—Continued

Area	Agency	Date/qtr[1]	Participant
SF/LA/LB/San Diego (MSO San Francisco, MSO Los Angeles/Long Beach & MSO San Diego).	CG SONS[2]	2	
Prince William Sound (MSO Anchorage)	CG	3	
EPA Region I	EPA	3	
South Texas (MSO Corpus Christi)	CG	4	

PREP SCHEDULE—INDUSTRY—LED AREA EXERCISES

Area	Planholder type[3]	Date/qtr[1]	Participant
Calendar Year 2002:			
Tampa (MSO Tampa)	v	1	
Northwest (MSO Puget Sound)	v	1	
South LA/LB (MSO LA/LB)	f(mtr)	1	
EPA Oceania	f(nonmtr)	1	
EPA Region II	p	2	
Eastern Wisconsin (MSO Milwaukee)	v	3	
Detroit (MSO Detroit)	v	3	
Maine/New Hampshire (MSO Portland)	v	3	
Providence (MSO Providence)	v	3	
Virginia Coastal (MSO Hampton Roads)	f(mtr)	4	
Houston/Galveston (MSO Houston/Galveston	p	4	
Alabama/Mississippi (MSO Mobile)	f	4	
EPA Region VI	f(nonmtr)	4	
Calendar Year 2003:			
New Orleans (MSO New Orleans)	p	2	
W. Lake Erie (MSO Toledo)	f(nonmtr)	2	
North Coast Area (MSO San Francisco	f(mtr)	2	
EPA Region IV	f(nonmtr)	2	
EPA Region IX	p	2	
Northwest Area (MSO Portland)	v	3	
Eastern Great Lakes (MSO Buffalo)	f(mtr)	3	
Cleveland, OH (MSO Cleveland)	f(mtr)	3	
Caribbean Area (MSO San Juan)	v	4	
Jacksonville (MSO Jacksonville)	v	4	
EPA Region III	f(nonmtr)	4	
Calendar Year 2004:			
New York City (Activities NY)	f(mtr)	1	
Southern Coastal NC (MSO Wilmington)	v	1	
Guam (MSO Guam)	v	1	
Long Island Sound (MSO Long Island Sound)	f	2	
EPA Region V	f	2	
EPA Region VII	f(nonmtr)	2	
San Francisco Bay (MSO San Francisco with MSO LA/LB)	tbd SONS[2]	3	
Saulte Ste Marie (MSO Saulte Ste Marie)	f	3	
South TX Coastal Zone (MSO Corpus Christi)	v	3	
SW LA / SE Texas (MSO Morgan City)	p	3	
Maryland Coastal CG (Activities Baltimore)	v	4	
Chicago (MSO Chicago)	v	4	
Northwest (MSO Seattle)	v	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: Spill of National Significance.
[3] Planholder Type: v-vessel; f(mtr)-marine transportation-related facility; f(nonmtr)-nonmarine transportation-related facility; p-pipeline; tbd-to be determined.

Dated: January 10, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1514 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier and General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of public meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of two meetings of the Aviation Rulemaking Advisory Committee to discuss Air Carrier and General Aviation Maintenance Issues. Specifically, the committee will discuss two tasks concerning quality assurance and ratings for aeronautical repair stations.

DATES: The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. Arrange for teleconference capability and

presentations no later than 3 business days before a meeting.

ADDRESSES: The meetings will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Wilkins, Federal Aviation Administration, Office of Rulemaking (ARM–207), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8029; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is here by given of two meetings of the Aviation Rulemaking Advisory Committee to discuss air carrier and general aviation maintenance issues. The meetings will be held on January 31 and February 20–21, 2002, from 9 a.m. to 5 p.m. at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC 20005.

On January 31, the committee will discuss ratings for aeronautical repair stations. On February 20, and 21, the committee will discuss quality assurance systems for aeronautical repair stations.

Attendance is open to the interested public, but will be limited to the space available. The FAA will arrange teleconference capability for individuals to participate by teleconference if we receive notification no later than 3 business days before each meeting. Arrangements to participate by teleconference can be made by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Callers outside the Washington metropolitan area will be responsible for paying long distance charges.

To present oral statements at a meeting, members of the public must make arrangements no later than 3 business days before the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested no later than 10 business days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 11, 2002.

David E. Cann,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–1483 Filed 1–16–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lancaster County, Pennsylvania

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 will be prepared for the SR 30 Section S01 (US 30) corridor in East Lampeter Township, Salisbury Township, Leacock Township, and Paradise Township, Lancaster County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Deborah Suciu Smith, Environmental Specialist, Federal Highway Administration, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: 717–221–3785, or Larry Graeff, Project Manager, Pennsylvania Department of Transportation 2140 Herr Street, Harrisburg, Pennsylvania 17103, Telephone 717–783–5119.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT) and the Lancaster County Planning Commission, will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives to address transportation problems within the SR 30 Section S01 corridor. The proposed project study area runs approximately from the PA 896/U.S. 30 intersection on the west and the PA 897/U.S. 30 intersection on the east, including the intersection with PA 41.

Notices of Intent concerning this proposal were previously published in the **Federal Register**. The Notice published on February 27, 1987 described a two-phase approach to identify and evaluate alternatives that would provide a variable means of relieving traffic congestion on Traffic Route (T.R.) 23 and US 30 in Eastern Lancaster County, Pennsylvania. The Notice published on June 16, 1988 announced that separate Environmental Impact Statements to evaluate alternatives for the two projects would be prepared.

Improvements to the corridor are considered necessary to provide for the existing and project traffic demand. A needs study has been undertaken and a range of transportation alternatives, including but not limited to No-Build, Transportation Systems Management (TSM), widening the existing three-lane highways to five lanes, bypasses around communities, and constructing a four-lane limited access highway on new location will be considered. These alternatives will be developed consistent with land use strategies to address the identified transportation needs. The development of alternatives will be based on traffic demands, engineering requirements, environmental and socioeconomic constraints, the county's growth management plan, and public input. Public involvement and inter-agency coordination will be maintained throughout the development of the EIS.

To issue that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Catalog of Federal Domestic Assistant Program Number 20, 205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 15, 2002.

James A. Cheatham,

Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 02–1454 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lehigh and Northhampton Counties, Pennsylvania; Cancellation of the Notice

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the notice of intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued May 8, 2000) to prepare an Environmental Impact Statement for a proposed highway project along U.S. Route 22 between its interchanges with Interstate 78 to the west and State Route 248 to

the east, a distance of approximately 31 km (19 miles).

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, PA 18103, Telephone (610) 798–4131.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that the proposed project consists of distinct sections based on traffic patterns, origins and destinations, safety and capacity needs. Environmental Assessments of Categorical Exclusion Evaluations will be prepared for each section, as appropriate, based on project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administator, Harrisburg, PA.

[FR Doc. 02–1544 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

[Docket No. RSPA–00–7021 (PD–23(RF))]

Research and Special Programs Administration Federal Motor Carrier Safety Administration; Morrisville, PA Requirements for Transportation of ''Dangerous Waste''

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Decision on petition for reconsideration of administrative determination of preemption.

PETITIONER: Borough of Morrisville, Pennsylvania.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: The Borough's petition for reconsideration is denied, and RSPA and FMCSA reaffirm their determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively ''Med/Waste''), applied for a determination that Federal hazardous material transportation law preempts provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania (''Borough''): (1) defining ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' and using the term ''dangerous waste''; (2) limiting trucks transporting dangerous waste within the Borough to Route 1; and (3) requiring trucks carrying dangerous waste to carry and have available for inspection the uniform manifest required for hazardous wastes. RSPA and FMCSA published the text of Med/Waste's application and a responding letter from the Borough in the **Federal Register** and invited interested parties to submit comments. 65 FR 20258 (April 14, 2000). Comments were received from Med/Waste, Sanitec, the Medical Waste Institute (''Institute''), Biosystems, and American Waste Industries, Inc. The Borough did not submit further comments.

On July 17, 2001, RSPA and FMCSA published in the **Federal Register** their determination on Med/Waste's application in PD–23(RF), 66 FR 37260. RSPA and FMCSA found that Federal hazardous material transportation law preempts:

(1) the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 of Ordinance No. 902 because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR; and the term ''dangerous waste'' because it is used and defined throughout the ordinance in a manner that is substantively different from the use of the word ''dangerous'' in the HMR;

(2) the limitation that trucks transporting dangerous waste may only travel on Route 1 within the Borough, in Section 02 of Ordinance No. 902, because the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted a routing limitation; and

(3) the requirement in Section 05(a) of Ordinance No. 902 that a uniform hazardous waste manifest must be carried on any truck transporting dangerous waste within the Borough because that requirement is not substantively the same as requirements in the HMR for the ''preparation, execution, and use of shipping documents,'' which do not require the use of any specific form for shipments of regulated medical waste (or other materials that are not hazardous wastes).

In Part I.B. of their July 17, 2001 determination, RSPA and FMCSA discussed Federal regulation of the transportation of medical waste as a hazardous material since 1972 and the fact that ''regulated medical wastes must be distinguished from (and are not within the category of) 'hazardous wastes.' '' 66 FR at 37261. These agencies noted that the HMR specifically state that ''A hazardous waste is not subject to regulation as a regulated medical waste,'' 49 CFR 173.134(b)(2); and that the Pennsylvania Department of Transportation has adopted as State law the HMR in 49 CFR parts 171–173 and 178–180 and FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

In Part II of their determination, RSPA and FMCSA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 66 FR at 37261–62. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a local (or other

non-Federal) requirement is preempted if:

—It is not possible to comply with both the local requirement and a requirement in the Federal hazardous material transportation law or regulations;
—The local requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous material transportation law or regulations;
—The local requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations, including ''the designation, description, and classification of hazardous materials,'' and the ''preparation, execution, and use of shipping documents''; or
—The locality establishes on or after November 14, 1994, a designation, limitation, or requirement related to highway routing of hazardous materials that fails to comply with FMCSA's standards in 49 CFR part 397.

These preemption provisions stem from congressional findings that State, local, or Indian tribe requirements that vary from Federal hazardous material transportation law and regulations can create ''the potential for unreasonable hazards in other jurisdictions and confound[] shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 Sections 2(3) & 2(4), 104 Stat. 3244 (Nov. 16, 1990).

RSPA and FMCSA also explained that their ''[p]reemption determinations do not address issues arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law.'' 66 FR at 37262. RSPA and FMCSA specifically rejected the Borough's argument that the Resource Conservation and Recovery Act authorizes a State or locality to establish ''more stringent'' requirements applicable to the transportation of hazardous materials (including medical waste) than the HMR. 66 FR at 37262–63.

Within the 20-day time period provided in 49 CFR 107.211(a) and 397.223(a), the Borough filed a petition for reconsideration of PD–23(RF) and certified that it had mailed a copy of its petition to Med/Waste and all others who had submitted comments in this proceeding. Responses to the Borough's petition for reconsideration were submitted by Med/Waste, the Institute, and Sanitec.

B. Petition for Reconsideration

In its petition, the Borough never takes direct issue with the findings in PD–23(RF) that definitions in Ordinance No. 902 and the manifest requirement are substantively different than provisions in the HMR. Nor does the Borough dispute the finding that its routing limitation does not comply with FMCSA's standards in 49 CFR part 397. Rather, the Borough asserted that RSPA and FMCSA:

1. failed to determine ''whether compliance with both federal law and the Borough Ordinance is impossible as required by the two-part preemption test set forth in *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 158 (1978)'' with respect to both the definitions in Section 01 of Ordinance No. 902 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

2. failed to find ''why the terms of Ordinance 902, though different from the HMR, are more stringent than the federal regulations,'' with respect to both the definitions in Section 01 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

3. improperly equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR and improperly concluded that ''dangerous'' in Ordinance No. 902 is a ''synonym for ''hazardous.'''

4. ''failed to consider that there are alternate routes, outside of the Borough of Morrisville,'' that would allow Med/Waste to reach its facility on Pennsylvania Avenue, and also failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to highways and roads other than interstate highways.''

II. Discussion

A. The Statutory Criteria for Preemption

The Borough appears to misread and misunderstand the criteria for preemption in 49 U.S.C. 5125(a) and (b)(1) of the Federal hazardous material transportation law. It misstates the law when it asserts, as a ground for reconsideration, that RSPA failed to determine ''whether compliance with both federal law and the Borough ordinance is impossible.'' Similarly, its claim that RSPA failed to find ''why the terms of Ordinance No. 902 * * * are more stringent than Federal regulations'' seems to be based on an incorrect assumption that only ''more stringent'' requirements are preempted by 49 U.S.C. 5125.

1. ''Conflict'' Preemption and the ''Obstacle'' Test

In the *Ray* case, the Supreme Court used the word ''or'' to make it perfectly clear that the ''dual compliance'' and ''obstacle'' criteria are alternate tests of ''conflict'' preemption.[1] A non-Federal standard may be preempted under either of these alternate criteria:

> A state statute is void to the extent that it conflicts with a valid federal statute. A conflict will be found ''where compliance with both federal and state regulations is a physical impossibility'' * * * or where the state ''law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

435 U.S. at 158, 98 S. Ct. at 994 (citations omitted). The five specific subject areas where non-Federal requirements must be ''substantively the same as'' the Federal requirements are simply areas where any substantive difference creates an ''obstacle.'' As Congress found when it amended the Hazardous Materials Transportation Act (HMTA) in 1990 (*see* Pub. L. 101–615, 104 Stat. 3244), these subject areas

> are critical both to the safe transportation of hazardous materials and to the free flow of commerce. Thus, requiring near-uniformity by both Federal and non-Federal entities is crucial.

H. Report 101–444, Part 1, Committee on Energy and Commerce, 101st Cong., 2d Sess., p. 33 (Apr. 3, 1990).

In this respect, the 1990 amendments to the HMTA reflected prior inconsistency rulings by RSPA that consistency is necessary in these subject areas. For example, in IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991, 51994 (Nov. 18, 1982), RSPA discussed its statutory responsibility to ''designate'' materials as hazardous and found that

> differing hazard class definitions present an obstacle to the accomplishment of the general Congressional purpose of promoting uniformity in hazardous materials transportation [and] * * * to the more

[1] The preemption provisions in 49 U.S.C. 5125 are a form of ''conflict'' preemption, which differs from ''field'' preemption. Field preemption exists when Federal regulation is ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' *Ray,* 435 U.S. at 157, 94 S. Ct. at 994, quoting from *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947). Thus, when there is field preemption, Congress has ''completely foreclosed state legislation in a particular area.'' *Ray,* 435 U.S. at 158, 94 S. Ct. at 994.

specific purpose of achieving the maximum level of compliance with the HMR. * * * [I]f it were to be determined that differing hazard class definitions are an appropriate field for local regulation, * * * the potential for regulatory chaos is obvious.

Consistent with RSPA's decision in IR–5, Congress stated that conflicting designations, descriptions, or classifications of hazardous materials ''by non-Federal entities would undermine the consistency needed to promote uniform requirements for all hazardous materials [and] * * * serve no useful purpose.'' H. Report 101–444, Part 1, p. 34.

Congress also stated that ''consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials.'' *Id.* This conclusion followed RSPA's finding in IR–5 that ''the shipping paper requirements of the HMR are exclusive and that any additional shipping paper requirements are inconsistent under the HMTA'' because the need to obtain or provide additional information ''would obviously result in widespread confusion which could lead to noncompliance with applicable Federal regulations.'' 47 FR at 51994.

In this case, there was no need for RSPA to address whether it is impossible to comply with both the HMR and provisions in Ordinance No. 902 defining various terms and requiring a uniform hazardous waste manifest.[2] The classification of hazardous materials in Ordinance No. 902 and its requirement to carry the uniform hazardous waste manifest are not substantively the same as the HMR. Therefore, these provisions are preempted under 49 U.S.C. 5125(b)(1)(A) and (C), respectively.

2. The Nature of the Ordinance as More ''Stringent''

In their July 17, 2001 determination, RSPA and FMCSA discussed and rejected the Borough's argument ''that RCRA allows state, regional, and local authorities 'to control the collection and disposal of solid waste as one of their primary functions.' '' 66 FR at 37262. RSPA and FMCSA explained that medical wastes are not within the category of hazardous wastes regulated under RCRA and that the provision in 42 U.S.C. 6929 allowing ''more stringent'' provisions in a State-authorized program does not authorize transportation requirements otherwise preempted by 49 U.S.C. 5125. *Id.* at 37262–63.

In its petition for reconsideration, the Borough advances an argument that a non-Federal transportation requirement must be ''more stringent'' in order to be preempted. However, that is not one of the criteria in 49 U.S.C. 5125. Under that section, a requirement of a State, political, subdivision of a State, or Indian tribe is preempted when:

—It does not meet the dual compliance or obstacle criterion in subsection (a);
—It concerns any of five subject matter areas listed in subsection (b)(1) and is not substantively the same as a provision in the Federal hazardous material transportation law or the HMR; or
—It is a highway routing designation, limitation, or requirement established after November 1994 and does not comply with FMCSA's standards issued under 49 U.S.C. 5112(b), as provided in 49 U.S.C. 5125(c)(1).

It is not necessary to find that the Ordinance's provisions are ''more stringent'' than the HMR. However, the plain language of the Ordinance would support such a finding. As discussed in the July 17, 2001 determination, Ordinance No. 902 applies to substances that ''are not regulated under the HMR,'' 66 FR at 37263. The manifest requirement in Section 05(a) is also an additional requirement, above and beyond the requirements for shipping papers in the HMR. In this manner, Ordinance No. 902 clearly contains more stringent requirements than the HMR's provisions on regulated medical waste. The Borough's argument on this issue is both irrelevant and incorrect.

B. The Use of the Word ''Dangerous'' in the Ordinance

The Borough is wrong when it asserts, in its petition for reconsideration, that RSPA equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR or concluded that ''dangerous'' in the Ordinance is a synonym for ''hazardous'' in the HMR. Rather, it is precisely the opposite. RSPA specifically found that ''the term 'dangerous waste' in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR.'' 66 FR at 37263.

As explained in the July 17, 2001 determination, ''in the overall context of the HMR, 'dangerous' is a synonym for the word 'hazardous,' '' and the ''HMR use the term 'hazardous materials' in the same manner as the term 'dangerous goods' is used in international regulations.'' *Id.* However, the word ''dangerous'' is used differently in Ordinance No. 902, and ''the term 'dangerous waste' does not correspond to the category of 'hazardous waste' in the HMR.'' *Id.* Thus, the Borough's petition has it backward. It was not RSPA who equated ''dangerous'' in the Ordinance to ''hazardous'' in the HMR; it is the Borough that *failed* to make that equation in its Ordinance and, therefore, created a definition and classification of hazardous materials that are preempted because they are not substantively the same as the HMR's use of the word dangerous to define and classify hazardous materials.

C. The Applicable Federal Highway Routing Standards

Although the Borough now claims in its petition for reconsideration that Med/Waste had ''reasonable access'' to its facility over ''alternate routes, outside of the Borough of Morrisville,'' it provides no evidence to support this claim. In addition, the Borough does not show that it actually considered either (a) the existence of these alternate routes and the effect of requiring carriers to use those alternate routes or (b) any of the other conditions in 49 CFR for the establishment of a highway routing limitation after November 1994, including:

—A finding that this limitation ''enhances public safety'' within the Borough and in neighboring jurisdictions through which vehicles carrying ''dangerous waste'' must travel if those vehicles are limited to Route 1 within the Borough (49 CFR 397.71(b)(1));
—The required notice to the public, consideration of a public hearing, and the opportunity of the public to submit comments on the original proposal to limit vehicles carrying ''dangerous waste'' within the Borough to Route 1 (49 CFR 397.71(b)(2));
—Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes,'' and any other parties that are affected by the routing limitation, and completion of the routing designation process within 18 months of the notice to the public or notice to the other affected jurisdictions (49 CFR 397.71(b)(3), (6));
—Assurance of ''through highway routing * * * between adjacent areas'' (49 CFR 397.71(b)(4));

[2] Similarly, in IR–5, RSPA made no finding whether the local provisions failed the ''dual compliance'' test but found that differing hazard class definitions and additional shipping paper requirements are preempted because they ''are an obstacle to the accomplishment of the HMTA and its regulations.'' 47 FR at 51994.

—A finding that there will not be an unreasonable burden on commerce and consideration whether there was agreement by any other affected State (49 CFR 397.71(b)(5)); and
—Consideration of other specific factors besides the existence of alternate routes and the burden on commerce, including population density, emergency response capabilities, continuity of routes, potential delays in transportation, and congestion and accident history (49 CFR 397.71(b)(9)).

Because it is clear that the Borough failed to meet these conditions and did not comply with FMCSA's standards in 49 CFR part 397, its limitation of vehicles carrying dangerous waste to Route 1 is preempted. Moreover, reconsideration of this determination is not warranted on the Borough's claim that DOT somehow failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to provisions and roads other than interstate highways.''

The authority of Congress to regulate interstate and intrastate commerce is not limited to traffic on interstate highways, nor is the authority of DOT in 49 U.S.C. 5112(b) to ''prescribe by regulation standards for States and Indian tribes to use'' in establishing a highway routing limitation limited to the transportation of hazardous materials on interstate highways. Similarly, 49 U.S.C. 31114 limits the restrictions that a State may place on a carrier's ''access'' between interstate highways and terminals or other facilities, all of which are presumably not located on an interstate highway itself. Accordingly, this ground for reconsideration of the July 17, 2001 determination has no more basis than any of the other positions taken by the Borough in its petition.

D. Expansion of the Preemption Determination

In its comment on the Borough's petition for reconsideration, Med/Waste asked RSPA and FMCSA ''to consider complete preemption of the entire Ordinance 902.'' RSPA and FMCSA decline to expand or extend the scope of their July 17, 2001 determination for the same reason that they previously declined to determine whether specific provisions not originally challenged in Med/Waste's application are preempted—because the notice inviting public comment on that application ''did not clearly indicate that RSPA and FMCSA would consider these other requirements.'' 66 FR at 37265. Nonetheless, it would seem that the Borough would be precluded from enforcing any provision in Ordinance No. 902 that applies to ''infectious waste,'' ''hospital waste,'' or ''dangerous waste,'' because the definitions of these terms are preempted and the use of the term ''dangerous waste'' throughout the Ordinance is also preempted.

III. Ruling

For the reasons set forth above, the Borough's petition for reconsideration is denied. RSPA and FMCSA incorporate and reaffirm the determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance;

2. the designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02; and

3. the requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

IV. Final Agency

In accordance with 49 CFR 107.211(d) and 397.223(d), this decision constitutes the final agency action by RSPA and FMCSA on Med/Waste's application for a determination of preemption as to provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania. Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, D.C. on January 15, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Joseph M. Clapp,

Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–1443 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11211]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for 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 February 21, 2002.

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**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (AMMI@) (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2002 Harley Davidson VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Harley Davidson VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*.

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR Part 565 are already affixed to non-U.S. certified 2002 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red rear reflectors that are certified to meet the standard. The petitioner states that although there are no daytime running lights on the non-U.S. certified version of the vehicle, its headlamp and tail lamp are activated when the ignition is turned on.

Standard No. 120 Tire Selection and Rims for Vehicles other than Passenger Cars: installation of a tire information label. The petitioner states that the vehicle is equipped with rims that are certified to meet the standard.

Standard No. 123 Motorcycle Controls and Displays: installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1511 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11210]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Cadillac Seville Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Cadillac Seville 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 1991 Cadillac Seville 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 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 February 21, 2002.

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 a.m. to 5 p.m.].

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**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''WETL'')(Registered Importer 90–005) has petitioned NHTSA to decide whether 1991 Cadillac Seville passenger cars originally manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1991 Cadillac Seville passenger cars that were manufactured for sale in the United States and certified by their manufacturer, General Motors Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991 Cadillac Seville 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.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1991 Cadillac Seville 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 1991 Cadillac Seville 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,* 110 *Tire Selection and Rims,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 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,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1991 Cadillac Seville passenger cars comply with the Bumper Standard found in 49 CFR part 581 and with the Vehicle Identification Number plate requirement of 49 CFR part 565.

Petitioner also contends that the non-U.S. certified 1991 Cadillac Seville passenger cars are not identical to their U.S. certified counterparts, as specified below, but still comply with the following Standard in the manner indicated:

Standard No. 101 Controls and Displays: the speedometer indicates both kilometers per hour and mile per hour. The odometer indicates kilometers and is labeled as such. The brake warning indicator meets the requirements.

Petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: removal and replacement of the headlamps and tail lamps with U.S.-model components.

Standard No. 111 Rearview Mirror: inscription of the required warning statement on the passenger side rearview mirror by applying to the mirror's face a photomask template bearing the required wording and sandblasting, with a mini-sandblaster, the photomasked area with 150 grit aluminum oxide.

Standard No. 114 theft Protection: installation of an audible warning device that will be activated whenever the key is left in the ignition and the driver's door is opened.

The petitioner also states that a certification label must be affixed to the driver's side door jamb to meet the requirements of 49 CFR part 567.

Standard No. 208 Occupant Crash Protection: installation of a seat belt warning buzzer module, wired to the driver's seat belt latch. The petitioner states that the vehicle is equipped with U.S.-model driver's and passenger's side air bags and knee bolsters, and with Type II seat belts at all front and rear outboard seating positions.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicle that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

The petitioner states that the vehicles will also require the installation of a certification label in the driver's side door jamb that meets the requirements of 49 CFR part 567.

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 a.m. to 5 p.m.]. 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: January 16, 2002.

Harry Thompson,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–1512 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34160 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No.

34160[1] to permit the trackage rights to expire, as they relate to the operations extending from Fort Worth, TX, to Temple, TX, on February 23, 2002.

DATES: This exemption is effective on February 21, 2002. Petitions to stay must be filed by February 1, 2002. Petitions to reopen must be filed by February 11, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34160 (Sub-No. 1) 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 all pleadings must be served on petitioner's representative Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339].

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 11, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1389 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 27, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe (BNSF) to grant temporary overhead trackage rights to UP over approximately 129 miles of BNSF's Ft. Worth Subdivision between BNSF milepost 6.1, near Ft. Worth, TX, and BNSF milepost 218.1, near Temple, TX. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34160 (STB served Jan. 11, 2002). The agreement is scheduled to expire on February 23, 2002. The trackage rights operations under the exemption were scheduled to be consummated on or after January 3, 2002.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33928]

Norfolk Southern Corporation and Norfolk Southern Railway Company—Construction and Operation—in Indiana County, PA

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of filing of application and request for public comments.

SUMMARY: Norfolk Southern Corporation and Norfolk Southern Railway Company have filed an application under 49 U.S.C. 10901(a) for authority to construct and operate a 5.26-mile line of railroad in Indiana County, PA.[1] The Board will entertain comments and replies on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: Comments are due on January 31, 2002. Replies are due on February 5, 2002.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Finance Docket No. 33928 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Constance A. Sadler, Sidley Austin Brown & Wood, 1501 K Street, NW., Washington, DC 20005 and John V. Edwards, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On December 27, 2001, Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS) filed an application under 49 U.S.C. 10901(a)[2] for authority to construct and operate a 5.26-mile line of railroad between Saltzburg and Clarksburg, in Indiana County, PA (the Saltzburg Connection).[3] The new line is part of a larger project creating a new route from the south for NSR to serve the Reliant Energy Keystone Generating Plant (Keystone Plant) at Shelocta, PA (the Keystone Project).[4]

NSR currently serves the Keystone Plant over the Northern Route, a circuitous and mountainous route utilizing trackage rights over a substantial portion of the route. Northern Route coal originates with Pittsburgh Steam coal producers located in southwest Pennsylvania and northern West Virginia on the NS-operated Monongahela Line.

NS contends that the new Southern Route will have a greater capacity than the existing Northern Route, and that it will save time, crews and locomotives required to provide rail deliveries to the Keystone Plant. NS further asserts that it will be a shorter, more efficient, effective, and environmentally superior alternative to the Northern Route. Although no shippers other than the Keystone Plant will be served by the new Southern Route, NS claims that the new route will provide an efficient service outlet to the rest of the NS system should new businesses locate in the area served by that route in the future.

Environmental review of the application is currently ongoing by the Board's Section of Environmental Analysis (SEA). On November 17, 2000, SEA granted NS's request for a waiver of the 6-month prefiling notice generally required for construction projects under 49 CFR 1105.10(a). NS filed a request for waiver of the Environmental Impact Statement under 49 CFR 1105.6 on January 16, 2001, which was granted by SEA in a letter dated January 24, 2001. Because a third-party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. *See* 49 CFR 1105.10(d).

Written comments (an original and 10 copies) on the application to construct

[1] In anticipation of the filing of the application, applicants requested that the Board grant a protective order to maintain the confidentiality of sensitive materials. The request was granted in a decision served February 8, 2001.

[2] On the same day, NS filed a Petition for Procedural Schedule proposing a timetable for the submission of public comments and replies regarding this project, not including environmental review. The Board's regulations governing construction applications at 49 CFR 1150.10 establish the procedures for public participation. NS cited a need for expedition in support of its schedule. But the only effect of the schedule proposed by NS is to give itself additional time to reply to any comments. A need for expedition does not justify such a request. If the comments filed require more time for reply than that provided by the regulations, NS may seek additional time at that time. This proceeding shall be conducted according to 49 CFR 1150.10(g) and (h), as set forth in this notice.

[3] According to applicants, NSC, NSR or one of their respective subsidiaries will construct, and NSR will operate, the new line of railroad.

[4] The other parts of the project involve the rehabilitation of an out-of-service line between Clarksburg and Shelocta and the modification of the existing Keystone Connection near Shelocta that will connect the rehabilitated Clarksburg Segment with the existing Shelocta Industrial Running Track. The three parts of the project will be collectively referred to as the Shelocta Secondary.

and operate the above-described rail line must be filed with the Board not later than January 31, 2002. Comments must contain the basis for the party's position either in support or opposition, and must contain the name and address of the commenting party. Applicants must be concurrently served with a copy of each comment. Any replies (an original and 10 copies) by applicants to written comments must be filed with the Board not later than February 5, 2002.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

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

Decided: January 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1515 Filed 1–18–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of 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 February 21, 2002 to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0120.

Form Number: None.

Type of Review: Extension.

Title: Commercial Invoice.

Description: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties,. The invoice(s) is attached to the CF 7501. The information which is supplied by the foreign shipper is used to ensure compliance with statutes and regulations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 46,500,000.

Estimated Burden Hours Per Respondent : 10 seconds.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 130,200 hours.

Clearance Officer: Tracey Denning (202) 927–1429, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1484 Filed 1–18–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 14, 2002.

The Department of 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 February 21, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1478.

Regulation Project Number: INTL–3–95 Final.

Type of Review: Extension.

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: Other (Once).

Estimated Total Reporting Burden: 1,000 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 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.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–1485 Filed 1–18–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 14

Tuesday, January 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

Correction

In notice document 01–31663 beginning on page 66477 in the issue of Wednesday, December 26, 2001, make the following correction:

On page 66480, in the table, in the fifth column titled ''Other (full/third party), under section **11. Rehabilitative Services**, in the second line, ''70.00'' should read, ''170.00''.

[FR Doc. C1–31663 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45177; File No. SR–Amex–2001–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to a Utilization Fee for the ''Smart'' Wiring Program

December 20, 2001.

Correction

In notice document 01–404 beginning on page 946 in the issue of Tuesday, January 6, 2002, make the following correction:

On page 946, in the second column, in the second paragraph, in the first sentence ''$15.00'' is changed to read ''$150.00''.

[FR Doc. C2–404 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Simplify the Manner in Which a Contrary Exercise Advice is Submitted and to Extend by One Hour the Time for Members to Submit Customer's Contrary Exercise Advices

January 8, 2002.

Correction

In notice document 02–946 beginning on page 2003 in the issue of Tuesday, January 15, 2002, make the following correction:

On page 2004, in the third column, under the section **IV. Solicitation of Comments**, in the second line from the bottom, ''[insert date 21 days from date of publication].'' should read, ''February 5, 2002''.

[FR Doc. C2–946 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 14

Tuesday, January 22, 2002

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OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care Treatment Furnished by the United States; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

Correction

In notice document 01–31663 beginning on page 66477 in the issue of Wednesday, December 26, 2001, make the following correction:

On page 66480, in the table, in the fifth column titled ''Other (full/third party), under section **11. Rehabilitative Services**, in the second line, ''70.00'' should read, ''170.00''.

[FR Doc. C1–31663 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45177; File No. SR–Amex–2001–103]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange LLC Relating to a Utilization Fee for the ''Smart'' Wiring Program

December 20, 2001.

Correction

In notice document 01–404 beginning on page 946 in the issue of Tuesday, January 6, 2002, make the following correction:

On page 946, in the second column, in the second paragraph, in the first sentence ''$15.00'' is changed to read ''$150.00''.

[FR Doc. C2–404 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45253; File No. SR–Amex–2001–92]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Simplify the Manner in Which a Contrary Exercise Advice is Submitted and to Extend by One Hour the Time for Members to Submit Customer's Contrary Exercise Advices

January 8, 2002.

Correction

In notice document 02–946 beginning on page 2003 in the issue of Tuesday, January 15, 2002, make the following correction:

On page 2004, in the third column, under the section **IV. Solicitation of Comments**, in the second line from the bottom, ''[insert date 21 days from date of publication].'' should read, ''February 5, 2002''.

[FR Doc. C2–946 Filed 1–18–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 22, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 570

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4698–P–01]

RIN 2506–AC10

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend the Community Development Block Grant (CDBG) Entitlement program regulations by requiring grantees to obtain HUD's approval to demolish HUD-owned housing units. The proposed amendment will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units. In addition, the application of this rule will aid in preserving the supply of affordable housing that is available to low- and moderate-income persons.

DATES: Comments Due Date: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Director, Entitlement Communities Division, Office of Block Grant Assistance, Room 7282, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number). Hearing-or speech-impaired individuals may access the telephone number listed in this section by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) establishes the statutory framework for the CDBG program. HUD's regulations implementing the CDBG program are codified at 24 CFR part 570 (entitled ''Community Development Block Grants'').

II. This Proposed Rule

This rule proposes to change § 570.201(d), Clearance activities, which currently allows the demolition of HUD-assisted housing units only if HUD has approved the demolition. The proposed change will require that grantees also obtain the approval of HUD before proceeding with CDBG-assisted demolition of HUD-owned housing units.

HUD believes that the proposed revision will aid in achieving three primary objectives: (1) Ensure that grantees notify HUD of their plans to demolish HUD-owned housing units; (2) prevent grantees from demolishing, without reasonable cause, HUD-owned housing units; and, (3) ensure that grantees preserve the supply of affordable housing available to low- and moderate-income persons.

III. Background Information Concerning the Proposed Rule

As discussed above, the proposed rule would revise the CDBG Entitlement program (24 CFR part 570) regulations at § 570.201(d), Clearance activities, to prohibit grantees from using CDBG funds for the demolition of HUD-owned housing units without prior approval from HUD. The current regulation at § 570.201(d) requires that a grantee obtain HUD's approval to demolish HUD-assisted housing units. Although the CDBG regulations do not contain a definition of the term ''HUD-assisted housing units'', the term has been considered to include various forms of subsidized housing such as section 8 or public housing. It has not been HUD policy to interpret the regulation as including HUD-owned properties. Thus, a regulatory change to § 570.201(d) is required to ensure that CDBG-assisted demolition of HUD-owned housing units can only be carried out with the prior approval of HUD.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 7:30 a.m. and 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, NW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa,

Community development block grant, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs-housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: November 26, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–1411 Filed 1–18–02; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Tuesday,
January 22, 2002

Part II

Department of Housing and Urban Development

24 CFR Part 570

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4698–P–01]

RIN 2506–AC10

Requirement of HUD Approval Before a Grantee May Undertake CDBG-Assisted Demolition of HUD-Owned Housing Units

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development (HUD) proposes to amend the Community Development Block Grant (CDBG) Entitlement program regulations by requiring grantees to obtain HUD's approval to demolish HUD-owned housing units. The proposed amendment will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units. In addition, the application of this rule will aid in preserving the supply of affordable housing that is available to low- and moderate-income persons.

DATES: Comments Due Date: March 25, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

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Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Although HUD has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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Accordingly, for the reasons stated above, HUD proposes to amend 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.201 is amended by revising paragraph (d) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

* * * * *

Dated: November 26, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–1411 Filed 1–18–02; 8:45 am]

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Federal Register

Tuesday,

January 22, 2002

Part III

Environmental Protection Agency

40 CFR Parts 260, 264, and 271

Amendments to the Corrective Action Management Unit Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 271

[FRL–7124–3]

RIN 2050–AE77

Amendments to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is today promulgating amendments to the regulations governing Corrective Action Management Units. Corrective Action Management Units, or ''CAMUs,'' are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993.

In today's action, EPA is amending the 1993 CAMU rule in six ways. First, EPA is establishing a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. Second, the Agency is establishing more detailed minimum design and operating standards for CAMUs in which waste will remain after closure, with opportunities for Regional Administrators to approve alternate design standards under certain circumstances. Third, the Agency is establishing treatment requirements for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. Fourth, EPA is establishing more specific information requirements for CAMU applications and is explicitly requiring that the public be given notice and a reasonable opportunity for public comment before final CAMU determinations are made. Fifth, the Agency is establishing new requirements for CAMUs that will be used only for treatment and storage. Sixth, today's rulemaking ''grandfathers'' certain types of existing CAMUs and allows them to continue to operate under the 1993 rule.

Today's rulemaking amends the regulations for ''staging piles'' to expressly allow for mixing, blending, and other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if they are treated to meet CAMU treatment standards (somewhat modified).

Finally, today's rule grants interim authorization for these CAMU amendments to states that are authorized for the 1993 CAMU rule, and it expedites state authorization for the CAMU rule for states that are authorized for the RCRA corrective action program but not the 1993 CAMU rule.

Today's amendments were proposed on August 22, 2000, referred to throughout this rulemaking as ''the proposal.'' EPA also proposed a supplemental proposal on November 20, 2001, referred to as ''the supplemental proposal.''

DATES: This final rule is effective April 22, 2002.

ADDRESSES: The official record for this rulemaking under docket number F–2002–ACAF–FFFFF is located at the RCRA Docket Information Center (RID), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. It is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The Final Rule, index, and some supporting materials are also available electronically. See the Supplementary Information section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Tricia Buzzell, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8632, or e-mail *buzzell.tricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Copies of today's Final Rule are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu.* Printed copies of the final rule and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The index and some of the supporting materials are available on the Internet at *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu.*

Outline

The contents of today's preamble are listed in the following outline.

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2. As-Generated vs. Cleanup Wastes
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b. Extension of Approach to Buried Containers to Include Buried Tanks
c. Interpretations of ''Intact or Substantially Intact,'' ''Found During Cleanup'' and ''Excavated During Cleanup''
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5. Limited Use of Nonhazardous ''As-Generated'' Waste in CAMUs (40 CFR 264.552(a)(1)(iii))
C. Discretionary Kickout (40 CFR 264.552(a)(2))
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(2) Use of TCLP and Alternative Leach Tests
(3) Assessment of 90% Reduction
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(1) Adjustment Factor A: Technical Impracticability (40 CFR 264.552(e)(4)(v)(A))
(2) Adjustment Factor B: Consistency with Site Cleanup Levels (40 CFR 264.552(e)(4)(v)(B))
(3) Adjustment Factor C: Community Views (40 CFR 264.552(e)(4)(v)(C))
(4) Adjustment Factor D: Short-Term Risks (40 CFR 264.552(e)(4)(v)(D))
(5) Adjustment Factor E: Engineering Design and Controls (40 CFR 264.552(e)(4)(v)(E))
(6) If / Then Chart Illustrating Application of Adjustment Factor E
c. Relationship between Minimum National Treatment Standards and Adjustment Factors
d. Treatment in CAMUs within a Reasonable Time (40 CFR 264.552(e)(4)(vi))
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H. Constituents at or below Site Cleanup Levels or Goals (40 CFR 264.552(g))
I. Storage and/or Treatment Only CAMUs (40 CFR 264.552(f))
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c. Examination of Existing CAMUs for Small Entity Status
d. Significant Impact Screen of Facilities for Which Size Was Undetermined
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C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. National Technology Transfer and Advancement Act
F. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)
G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)
H. Federalism (Executive Order 13132)
I. Environmental Justice (Executive Order 12898)
J. Congressional Review Act
K. Energy Effects (Executive Order 13211)

I. Authority

These regulations are promulgated under the authority of sections 1006, 2002(a), 3004, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Since the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act of 1976 (RCRA), EPA has recognized that the comprehensive regulatory framework that generally governs identification, generation, transportation, treatment, storage, and disposal of hazardous wastes can present serious disincentives to management of hazardous wastes during cleanups. As discussed in the proposal[1] and in numerous other Agency documents and rulemakings,[2] these disincentives arise for three primary reasons.

First, the broad objectives of the hazardous waste program—to prevent releases through a comprehensive set of management requirements, to minimize generation of hazardous waste, and to promote legitimate reuse and recycling—are not, in general, the same as the Agency's objectives during cleanup. During cleanup, the Agency is faced primarily with remediating a release that has already occurred. In this context the Agency may, in fact, desire to maximize the amount of waste generated (i.e., maximize the amount of waste managed for implementing cleanup).

Generators of hazardous waste, for the most part, do not have a choice about whether they trigger application of the RCRA hazardous waste regulations (once the waste is generated). If a hazardous waste is generated, RCRA applies. The application of the RCRA hazardous waste regulations, however, discourages its generation in the first

[1] All references to ''the proposal'' are to the proposal of today's amendments, 65 FR 51080, August 22, 2000.

[2] For a fuller discussion of this issue, see the preamble discussions accompanying the Land Disposal Restrictions (LDR) Phase IV rule, 63 FR 28556, 28603–28604 (May 26, 1998); Clarification of the LDR Treatment Variance Standard (the ''environmentally inappropriate'' variance), § 268.44(h), 62 FR 64504, 64505–64506 (December 5, 1997); and the HWIR-Media rule, 63 FR 65874, 65876–65878 (November 30, 1998), and sources cited therein.

place and encourages generators to reuse materials, to reduce waste, and to use fewer hazardous constituents in production processes. These outcomes are desirable and consistent with the broad objectives of RCRA. Conversely, in a cleanup situation, the waste already exists, but site owners/operators often have legal options that allow them to minimize or avoid application of the RCRA regulations, which thus discourage cleanup or the amount of wastes cleaned up. In large part, these legal options involve capping waste in place, or in some cases not engaging in cleanup at all. In general, these types of approaches are less desirable than remedies that involve excavation of some, or all, cleanup waste for more aggressive treatment and/or off-site disposal.

Second, the RCRA regulations have been conservatively designed and uniformly applied to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. The land disposal restriction (LDR) treatment standards for most hazardous wastes, for example, are established at levels achieved by the best demonstrated available technology for treating the waste in question. Likewise, the minimum national design and operation standards for hazardous waste land disposal units were developed to be protective in a range of disposal scenarios. Cleanups, on the other hand, are fundamentally site-specific and essentially risk-based. During cleanup, the Agency generally has the site- and waste-specific information it needs to develop protective management requirements for the particular site and waste in question; therefore, there is less need for generic management approaches to ensure protectiveness in a range of scenarios.

Finally, in addition to the differences in the context for regulating hazardous wastes from ongoing industrial operations versus cleanup described above, there are often (but not always) significant physical and chemical differences between wastes generated by industrial processes (or ''as-generated'' wastes) and cleanup wastes. These physical and chemical differences further support the need for different approaches for wastes managed for implementing cleanup.

In practice, application of the RCRA regulations developed for as-generated wastes to wastes managed for implementing cleanup often presents remediation project managers with only two choices: (1) pursue the legal option of capping or treating cleanup wastes in place, thereby avoiding application of many RCRA requirements, or (2) excavate cleanup wastes and, in accordance with RCRA requirements, treat them to the fullest extent possible given available technology and place them in a permitted hazardous waste landfill. Often neither of these options represents the best remedial approach. And the desire to avoid costs associated with the second option creates an incentive to select the first.

While recognition of this problem came relatively early, EPA and stakeholder groups have grappled for more than ten years with the policy challenges associated with solving the problem. Developing approaches to regulating cleanup wastes differently from as-generated wastes presents a number of challenges. For example, how does the Agency develop approaches tailored to cleanup wastes while at the same time leaving in place the basic features of the RCRA program as they apply to as-generated wastes? How does the Agency create a management structure for cleanup wastes that minimizes disincentives for cleanup without creating incentives to mismanage as-generated wastes? How do EPA and the states ensure that cleanup wastes are managed safely while providing for the site-specific flexibility that effective cleanups demand?

In an effort to deal with these questions, the Agency has developed over the years numerous policies, regulations, and guidance documents addressing the application of the RCRA Subtitle C regulations for as-generated wastes to wastes managed for implementing cleanup.[3] As part of its efforts to address these issues, the Agency promulgated the original CAMU rule in 1993. (February 16, 1993, 58 FR 8658) The 1993 CAMU rule created a special type of hazardous waste management unit—a Corrective Action Management Unit, or CAMU—to be used only for on-site treatment, storage, and disposal of hazardous wastes managed for implementing cleanup. Consolidation or placement of cleanup wastes into a CAMU is not considered land disposal and, therefore, does not trigger RCRA LDR requirements. 40 CFR 264.552(a)(1). Similarly, consolidation or placement of cleanup waste into a CAMU does not create a unit subject to RCRA's minimum technology requirements. 40 CFR 264.552(a)(2). Instead of applying RCRA LDRs, minimum technology requirements, and other hazardous waste requirements, overseeing agencies had considerable flexibility under the 1993 CAMU rule to tailor design, operating, closure and post-closure, and waste treatment requirements to site- and waste-specific conditions. This approach allowed a significantly broader range of cleanup options at individual sites and has led, at individual sites, to prompter and more aggressive cleanup.

Many stakeholders supported the 1993 CAMU rule. In implementation, the Agency believes the 1993 CAMU rule has resulted in appropriate, protective, site-specific remedies. (See the CAMU Site Background Document in the docket for today's rule.) Not all stakeholders, however, supported the 1993 CAMU rule. As discussed in the proposal, the 1993 CAMU rule was legally challenged after promulgation. (*Environmental Defense Fund* v. *EPA,* No. 93–1316 (D.C. Cir. filed May 14, 1993.) Among other things, the Petitioners were concerned with provisions in the 1993 CAMU rule providing that land disposal restrictions, minimum technology requirements, and other Part 264 and 265 unit requirements did not apply to CAMUs. After an extended stay of the challenge, during which EPA and stakeholders pursued a number of other approaches to addressing RCRA regulation of hazardous remediation wastes, the Agency entered into settlement discussions and reached a settlement agreement on February 11, 2000. Today's amendments to the 1993 CAMU rule are the result of this settlement process.

In developing today's amendments and in negotiating the CAMU settlement, the Agency's primary purpose was to allow continued use of CAMUs so as to remove the disincentives to cleanup that result from applying RCRA regulations for as-generated hazardous wastes to cleanup wastes. As the Agency stated in the proposal:

> The Agency recognizes the benefits of including minimum standards in a rule of this nature, i.e., such standards can make the process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse. However, the Agency did not want to include more detailed standards if they would result in potentially limiting the usefulness of the

[3] These include, the ''area of contamination'' policy; the ''contained-in'' policy; the ''Phase IV LDR'' treatment standards for contaminated soil; and, the provisions for ''Remedial Action Plans'' or RAPs. Descriptions of many of these and other relevant policies and regulations, including references, are included in the October, 1998 memorandum, ''Management of Remediation Waste Under RCRA,'' EPA 530–F–98–026. These regulations, policies, and guidance documents are not changed by today's rulemaking.

rule, thereby delaying or inhibiting cleanups. (65 FR 51084.)

It was the Agency's conclusion at the time of proposal that the proposed amendments achieved an appropriate balance, realizing the benefits of increased regulatory detail without reinstating the disincentive to cleanup the CAMU rule was originally designed to address. As discussed in the proposal, the Agency's analyses showed that the vast majority of CAMUs approved under the 1993 rule could be approved with few or no changes under the proposed amendments. The Agency requested comment on these conclusions.

The Agency received mixed comments on the proposed CAMU amendments. Many commenters, including the Petitioners from the 1993 CAMU litigation, strongly supported the proposal as remedying ''major legal and policy deficiencies with [the 1993 CAMU rule], principally by providing for baseline standards rather than unconstrained discretion.'' Some commenters opposed the CAMU amendments, believing they were not needed to protect human health or the environment and disagreeing with the Agency's conclusion that they would not reinstate disincentives to cleanup. On balance, however, even most commenters who thought that amendments to the 1993 CAMU rule were not necessary, expressed the view that, if the Agency was convinced that amendments to the 1993 CAMU rule were needed, the proposed approach was reasonable.

After considering these comments, the Agency has decided to finalize the CAMU amendments largely as proposed. The Agency agrees with commenters who pointed out (as EPA did at proposal) that the 1993 CAMU rule has had a positive effect on cleanups and has promoted more aggressive remediation at individual sites. But the Agency continues to believe that the benefits that derive from the more specific regulatory standards of this rule will not be gained at the cost of reinstating the regulatory disincentive to cleanup that the CAMU was intended to address. This result, in EPA's view, argues in favor of promulgating today's amendments. Although many commenters expressed concern that today's rule would recreate disincentives, they provided general arguments rather than specific evidence. Furthermore, no commenter disputed the Agency's conclusion that the areas in which the Agency provides flexibility from the minimum standards cover the full variety of situations where the minimum standards might operate to discourage aggressive remediation. Similarly, comments submitted on the effects of increased CAMU processing costs (monetary and temporal) for CAMU approval expected to result from today's amendments did not convince the Agency either that such costs alone would likely outweigh the benefits to facilities of obtaining a CAMU, thereby reversing the benefits realized from the 1993 rule. The Agency is therefore promulgating the proposed amendments with only minor changes from the proposal (see discussion of specific changes below).[4]

III. Section-by-Section Analysis

A. Grandfathering CAMUs (40 CFR 264.551)

EPA proposed that CAMUs approved prior to the effective date of the final CAMU amendments (i.e., the effective date of this rulemaking) and CAMUs for which substantially complete applications (or equivalents) were submitted to the Agency on or before ninety (90) days after publication of the proposal (i.e., November 20, 2000), would generally continue to operate under the 1993 CAMU regulations and would not be subject to the CAMU amendments finalized today. This approach is referred to as ''grandfathering.'' Commenters generally supported the grandfathering provisions and, in today's rulemaking, EPA is finalizing these provisions as proposed. Issues associated with grandfathering are discussed in section L, at the end of the section-by-section analysis.

B. Eligibility of Wastes for Management in CAMUs (40 CFR 264.552(a))

EPA's approach to defining the types of wastes that may be placed in CAMUs is an important element in its effort to strike a balance between encouraging aggressive remediation and maintaining RCRA's incentives to avoid releases and minimize wastes in the first instance. EPA's intention in the 1993 CAMU rule and in today's action is to clearly limit the wastes that may be placed in CAMUs to wastes that are managed as a result of cleanup, except under specifically described and limited circumstances.

Under the 1993 CAMU rule, the term ''remediation waste'' defined the types of wastes that may be placed in a CAMU. ''Remediation waste'' is defined at 40 CFR 264.10 as ''all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.'' [5] The definition of remediation waste is also used in regulations pertaining to Remedial Action Plans (see part 270, subpart H), staging piles (see 40 CFR 264.554), and site-specific LDR treatment variances under the ''environmentally inappropriate'' variance provisions (see 40 CFR 268.44(h)(2)(ii)).

Working from the definition of ''remediation waste,'' EPA proposed a number of changes to define more specifically the types of remediation waste that may be placed in CAMUs. First, the Agency proposed to establish a separate subcategory of waste, within the broader category of remediation waste, to govern the types of wastes that may be placed in a CAMU. EPA proposed to call this subcategory of waste ''CAMU-eligible waste.'' Second, EPA proposed to include in the definition of CAMU-eligible waste clarifying language to better distinguish between as-generated and cleanup wastes. Third, EPA proposed, with some exceptions, to explicitly prohibit waste in containers and other non-land-based units from being placed in CAMUs. Fourth, the Agency proposed to allow nonhazardous, as-generated wastes to be placed in a CAMU if such placement would facilitate treatment or the performance of the CAMU. The Agency also proposed to ban placement of liquids in CAMUs except under certain circumstances and to allow the Regional Administrator, under certain circumstances, to ''kick out'' or disallow placement in a CAMU of wastes that would otherwise be CAMU-eligible.

Commenters generally supported EPA's overall proposed approach to more specifically defining the types of remediation waste that may be placed in

[4] In finalizing today's amendments, the Agency has published the entire text of the CAMU rule as it will appear in the CFR. EPA took this approach for the sake of clarity. However, it is important to note that the CAMU regulatory provisions on which the Agency did not seek comment in the proposal (i.e., those which, at proposal, were simply repeated from the 1993 rule) are not modified by today's amendments. In addition, to further aid the reader, the Agency has placed a ''redline/strikeout'' version of the CAMU regulations in the docket for today's rulemaking. This document indicates exactly where changes to the 1993 rule are being finalized.

[5] As discussed in the proposal, the remediation waste definition promulgated with the 1993 CAMU regulations was modified by the Agency in the Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media). See, 63 FR 65874, November 30, 1998. The remediation waste definition quoted above is the definition as modified by the HWIR-Media rule. The Agency is today promulgating an editorial change to the remediation waste definition, as discussed later in this section of the preamble.

CAMUs, and today the Agency is finalizing its approach largely as proposed. In response to comments, however, the Agency is making two changes to the CAMU-eligible waste definition in today's final rulemaking. First, the Agency is making an editorial change to the definition of CAMU-eligible waste (and a conforming change to the related definition of ''remediation waste'') to make clear that these definitions include both hazardous and nonhazardous wastes (including hazardous and nonhazardous environmental media and debris), when such materials are managed for implementing cleanup. Second, the Agency is expanding the definition of CAMU-eligible wastes to include intact and substantially intact tanks. With this change, both containers and tanks excavated during cleanup (and materials they may hold) are generally CAMU eligible. The details of the Agency's approach to defining wastes eligible for management in CAMUs, including the two changes made in response to comments, are discussed below.

1. Definitions of ''Remediation Waste'' and ''CAMU-Eligible Waste''

EPA proposed: (1) To establish a separate subcategory of waste to more specifically define the types of remediation wastes that can be placed in CAMUs, (2) to call the subcategory of waste ''CAMU-eligible waste,'' and (3) to promulgate the definition of CAMU-eligible waste in the CAMU regulations at 40 CFR 264.552(a)(1) rather than in the general definitions section at 40 CFR 260.10. To complement the new definition of CAMU-eligible waste, EPA proposed to revise the definition of Corrective Action Management Unit to refer to ''CAMU-eligible waste'' rather than ''remediation waste.'' Also, to make clear that the changes to the definition would not apply beyond the CAMU rule, the Agency proposed to move the definition of CAMU from the general definitions section at 40 CFR 260.10 to the CAMU regulations at 40 CFR 264.552(a) and, for grandfathered CAMUs, at 40 CFR 264.551(a).

EPA proposed to define CAMU-eligible waste as ''[a]ll solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous waste or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.'' The first sentence of the proposed definition reiterated the definition of remediation waste. The second sentence added language from the preamble to the 1993 CAMU rule to more explicitly prohibit management of as-generated wastes in CAMUs.

EPA did not receive adverse comments on the proposal to promulgate the definition of CAMU-eligible waste in the CAMU regulations, on the proposed conforming change to the definition of CAMU, or on the proposal to move the definition of CAMU from the general definitions section to the CAMU regulations. The Agency is promulgating those provisions as proposed.

Commenters also generally supported establishing a separate definition for CAMU-eligible waste; however, in evaluating the new definition, a number of commenters expressed concern that the definition could be read to preclude placement of nonhazardous cleanup wastes (or environmental media and debris that contain solid but not hazardous wastes) in a CAMU. The Agency believes this misreading—which it understands but never intended—could unnecessarily delay approvals of CAMUs and delay cleanups, so it is taking today's opportunity to make editorial changes necessary to clarify the definition of CAMU-eligible waste and the related definition of remediation waste, as discussed below.

The current definition of remediation waste is ''All solid and hazardous waste, and all media (including groundwater, surface water, soils, and sediments) and debris *that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic* and are managed for implementing cleanup'' (emphasis added). EPA included the phrase ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic'' to make clear that media brought under regulation through the ''contained-in'' policy were eligible for management in a CAMU. Under the Agency's longstanding contained-in policy, EPA requires that contaminated environmental media, although not hazardous wastes themselves, be managed as if they were hazardous waste as long as they contain hazardous waste or exhibit a characteristic of hazardous waste.[6] Commenters expressed concern that, because it is not clear which portions of the definition of remediation waste are modified by the phrase ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic,'' the definition could be read to limit media and debris placed in a CAMU to those containing listed waste or exhibiting a characteristic, and not to include contaminated environmental media or debris that contain solid (but not hazardous) waste.

Commenters additionally raised concerns that the definition of ''CAMU-eligible waste''—which is based on the definition of remediation waste—could similarly be read to exclude nonhazardous wastes managed for implementing cleanup. This reading would preclude management of nonhazardous remediation wastes in CAMUs.[7] Clearly, this reading does not reflect the Agency's intent as expressed in the preamble to the proposal or in earlier Agency discussions of remediation waste, and therefore the Agency is making editorial changes to the definition of CAMU-eligible waste.

As discussed in detail in the 1993 CAMU rule, ''the definition of remediation waste includes nonhazardous solid waste . . . [although] management of such wastes would not require the designation of a CAMU . . . since [RCRA] Subtitle C requirements would not apply to management of [nonhazardous solid waste]'' (58 FR 8664, February 16, 1993). The Agency also addressed this issue in the 1998 HWIR-Media rulemaking, where it indicated that ''remediation waste'' includes ''both hazardous and nonhazardous solid wastes managed as a result of cleanup'' (63 FR 65881, November 30, 1988). Nonetheless, to prevent any potential confusion over this issue, the Agency is revising the wording of the definition of CAMU-eligible waste to remove the

[6] The contained-in policy is described in the October 1998 memorandum, ''Management of Remediation Waste Under RCRA,'' EPA A530-F–98–026, which is included in the docket for today's rulemaking.

[7] The confusion is caused by the restrictive clauses in the definitions of CAMU-eligible and remediation waste. In the case of remediation waste, the definition is: ''Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.'' Some commenters feared that the restrictive clauses ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic . . .'' would be read to limit media and debris placed in a CAMU to those containing listed wastes or exhibiting a characteristic. This interpretation would mean that nonhazardous media and debris could not be managed in a CAMU. In an alternative reading, commenters feared that the restrictive clauses could be read to modify ''all solid and hazardous wastes, and all media . . .,'' that is, to require that solid or hazardous waste ''contain listed hazardous wastes'' or ''exhibit a hazardous characteristic'' in order to be covered by the definitions. While EPA believes that most readers understood what it intended in the definition, the Agency agrees that the wording is confusing and has, therefore, made the editorial changes discussed in today's rulemaking.

phrase ''that contain listed hazardous wastes or that themselves exhibit a characteristic.'' The definition of CAMU-eligible waste promulgated today, in pertinent part, reads: ''CAMU-Eligible Waste means: (i) all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.''

EPA emphasizes that this editorial change does not reflect a change in the Agency's approach toward implementing the definition of CAMU-eligible waste. Rather, it reflects the Agency's conclusion, based on comments, that the proposed definition created a potential for confusion which could hinder implementation of the CAMU amendments. EPA further emphasizes that the exclusion of nonhazardous ''as-generated'' waste from the definition of CAMU-eligible waste is not affected by this change. As discussed later in today's rulemaking, nonhazardous as-generated waste is generally not within the definition of CAMU-eligible waste and can be placed in CAMUs only under certain limited circumstances.

EPA is also taking this opportunity to make the same change to the definition of remediation waste. The revised definition of remediation waste reads: ''Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.'' EPA is making this change to avoid confusion that might result from using different wording in the definitions of remediation and CAMU-eligible waste. The Agency notes that it is making these changes solely for clarity and consistency and that they will have no substantive effect on either definition.

The Agency also received a number of comments on the inclusion of the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste. These comments are discussed in the section ''As-Generated versus Cleanup Wastes,'' below.

2. As-Generated versus Cleanup Wastes

The 1993 CAMU rule limited wastes placed in CAMUs to ''remediation waste,'' i.e., to wastes, environmental media, and debris that ''are managed for implementing cleanup.'' The preamble to the 1993 rule explained what was generally meant by this definition: ''(t)oday's definition of remediation waste excludes ''new'' or as-generated wastes (either hazardous or nonhazardous) that are generated from ongoing industrial operations at a facility'' (58 FR 8658 and 8664, February 16, 1993). While the Agency believes the 1993 CAMU rule language is clear, it also understands the concerns of critics of the rule, who argued that the regulations could benefit from additional language creating a ''firewall'' between industrial process waste and cleanup waste by specifically prohibiting placement of as-generated wastes in CAMUs. In response to these concerns, the Agency proposed to add the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes'' to the new definition of CAMU-eligible waste. Commenters supported adding this express exclusion, and the Agency is finalizing this part of the definition of CAMU-eligible waste as proposed.

As discussed in the proposal, including the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes'' in the definition of CAMU-eligible waste does not change the way the Agency currently distinguishes between as-generated and cleanup wastes (65 FR 51085 and 51086, August 22, 2000). It is simply a way to reflect more explicitly the original intent of the 1993 definition.

''As-generated'' continues to have the same meaning that it did in 1993. For example, hazardous wastes generated by an industrial process (e.g., an electroplating operation at a metals-finishing facility), managed in an operating hazardous waste surface impoundment or landfill, are considered as-generated wastes. As such, these wastes must be managed, treated, and disposed of in compliance with applicable RCRA hazardous waste requirements.

EPA has also not changed the meaning of ''from ongoing industrial operations.'' EPA is including this phrase in the definition of CAMU-eligible wastes solely to aid program implementers in distinguishing between wastes that are managed as a result of routine hazardous waste management activities at a facility, and wastes that are managed for implementing cleanup. Wastes from ongoing industrial operations include wastes produced during commercial operations as well as any wastes that are produced during management of such wastes. For example, hazardous sludges that, in accordance with 40 CFR 268.4, must be removed at least annually from operating hazardous waste surface impoundments are considered wastes from ongoing industrial operations. They are not considered wastes ''managed for implementing cleanup'' and thus are not CAMU-eligible (65 FR 51085, August 22, 2000). However, as discussed in the proposal, soil that becomes contaminated by releases (including leachate) from operating hazardous waste units would be CAMU-eligible when managed for implementing cleanup (65 FR 51085, August 22, 2000).

Similarly, soil or other materials contaminated by product spills or releases from ongoing industrial processes are not considered as-generated wastes and, as such, are CAMU-eligible when managed for implementing cleanup. Note, however, that EPA fully expects—and requires—facility owners/operators to avoid spills and unintended releases of any sort. Also, facility owners and operators should note that today's rulemaking provides that soils and other materials contaminated by spills or releases—although generally within the meaning of CAMU-eligible—might be disallowed from management in a CAMU under the discretionary kickout provision. The discretionary kickout provision is discussed later in today's rulemaking.

EPA specifically requested comment on whether including the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste might have unintended consequences, for example, by eliminating actual or potential practices where as-generated waste is appropriately placed in a CAMU as a legitimate part of cleanup. In response to this request, one commenter expressed the concern that the phrase ''generated from ongoing industrial operations'' suggests a temporal condition that could be interpreted to mean that only historical wastes are CAMU-eligible. For example, this reading might preclude placement of materials contaminated by spills from ongoing industrial processes in a CAMU. As explained above, the Agency appreciates this concern and takes this opportunity to state explicitly that CAMU-eligible waste is not limited to historical waste or contamination. The Agency does not consider cleanup of contaminated soils or similar materials to be an ongoing industrial process—even if the contamination itself derives from ongoing industrial processes. Thus, material contaminated by spills from industrial processes would not be ''as-generated'' wastes from these processes. When managed for

implementing cleanup, these materials are CAMU eligible.

Another commenter expressed a similar concern that the phrase ''from ongoing industrial operations'' could be read to preclude management of historical wastes in a CAMU simply because the industrial process that caused the wastes to be generated in the first instance continues to operate. Many industrial facilities have industrial operations that have been ongoing for a number of years. As this commenter pointed out, management strategies for wastes generated by these ongoing industrial operations typically have changed over time, in part to respond to new regulatory requirements. For example, wastes currently generated by an ongoing industrial operation might be sent off site for RCRA Subtitle C disposal; these are clearly as-generated waste. At the same time, wastes previously generated by this same industrial operation might remain on site in solid waste management units that are now subject to RCRA corrective action requirements. If these solid waste management units require cleanup, wastes removed from them during cleanup (and materials contaminated by releases from them) would be CAMU eligible. This is because removal of the wastes would be a remedial activity, rather than part of an ongoing industrial process.

3. Wastes Managed During Closure

In the proposal, the Agency clarified the circumstances under which wastes associated with closure of land-based hazardous waste treatment, storage or disposal units are ''managed for implementing cleanup'' and, therefore, when they are eligible for placement in a CAMU. This distinction is based primarily on a distinction between ''permanent'' and ''non-permanent'' land-based units.

Closure with waste in place is an option for permanent land-based units, e.g., landfills, surface impoundments, and land treatment units. Given the availability of the closure with waste-in-place option, EPA considers closure by removal to be ''cleanup'' for such permanent land disposal units. Therefore, wastes removed from closed or closing permanent land-based units are considered wastes ''managed for implementing cleanup'' and are CAMU eligible (65 FR 51086, August 22, 2000). As discussed in the proposal, ''closed or closing'' means units that have received their final volume of wastes (65 FR 51086, August 22, 2000).[8]

Conversely, non-permanent units, e.g., container and tank storage units and waste piles, are not intended as the final resting place for wastes. Rather, removal of waste from these units in general is part of the normal course of operations. Therefore, EPA believes that, typically, it is inappropriate to consider waste removed from non-permanent units to be CAMU-eligible, because removal is part of the operating life cycle of the unit (65 FR 51086, August 22, 2000).[9]

Many commenters were concerned with EPA's position that wastes associated with closure of waste piles and other non-permanent units are generally not ''managed for implementing cleanup'' and would not be CAMU-eligible. In particular, commenters disagreed with EPA's view that waste piles and other units are ''non-permanent'' units. Commenters pointed out that regulations at 40 CFR 264.197 and 40 CFR 265.197 (for tank systems) and 40 CFR 264.258 and 40 CFR 265.258 (for waste piles) require that when these units do not comply with secondary containment and liner requirements, respectively, facility owners/operators must prepare contingent plans to close these units as if they were hazardous waste landfills. Also, for both tank systems and wastes piles, landfill closure is required if, after a reasonable effort is made to meet the clean-closure performance standard, an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated.[10]

EPA agrees that a clarification is warranted. The Agency recognizes that waste piles and tank systems (or, more likely, environmental media contaminated by releases from these units) may be closed as landfills if it is not practicable to remove or decontaminate all contaminated material during an attempt to achieve clean closure. The Agency does not believe, however, that these circumstances justify a change to the interpretation that, as a general matter, wastes removed from these typically non-permanent units are not ''managed for implementing cleanup'' and therefore are not CAMU-eligible.

As explained earlier as well as in the proposal, the Agency does not typically consider waste removed from closing non-permanent land-based units (such as waste piles) to be ''managed for implementing cleanup,'' because removal of wastes from waste piles and other non-permanent land-based units is a normal part of unit operation. (65 FR 51086, August 22, 2000.) These units are not intended as the final resting place for wastes, and the existence of a regulatory option allowing contamination to remain in the unexpected circumstance where clean closure is not practicable does not alter this general conclusion. However, the Agency does agree that when these units are closed as landfills in situations where clean closure is not practicable, they are the final resting place for the remaining wastes, and any waste thereafter removed from them would be ''managed for implementing cleanup'' and would therefore be CAMU eligible.[11] Also, as discussed earlier in

[8] As discussed in the proposal, the Agency believes the ability to place such wastes in CAMUs will promote its objective of encouraging the removal and/or treatment of wastes during closure of RCRA units (65 FR 51086).

[9] As discussed in the proposal, ''typically'' is intended to indicate the Agency's ability, for example, at abandoned facilities, to place waste found in old piles or similar units in a CAMU, because once they are abandoned, management of wastes they contain is for implementing cleanups. Note also that there is a distinction between removal of waste from a closed or closing unit for placement in a CAMU and incorporation of a unit into a CAMU. EPA's position that wastes removed from non-permanent land-based units are generally not CAMU-eligible does not preclude incorporation of such units into a CAMU under appropriate circumstances. 40 CFR 552(b). As with any other regulated unit that is incorporated into a CAMU, the Subpart F, G and H requirements and the unit-specific requirements of 40 CFR Part 264 or 265 that applied to the regulated unit will continue to apply to that portion of the CAMU (i.e., the portion encompassing the former regulated unit) after incorporation into the CAMU. See, 40 CFR 264.552(b). Under § 264.110 or § 265.110, however, the Regional Administrator may defer any of these standards to the site's corrective action requirements, if certain conditions are met (most importantly, the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and the regulated unit and the solid waste management units or areas of concern are likely to have contributed to the release).

[10] The regulations for tank systems at 40 CFR 264.197 and 40 CFR 265.197 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste. If an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required, the owner/operator must close the tank system as a landfill. The regulations for waste piles at 40 CFR 264.258 and 40 CFR 265.258 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required, the owner/operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner/operator must close the waste pile as a landfill.

[11] Guidance on the clean closure standard is available in the 1998 guidance memorandum Risk-Based Clean Closure. See Elizabeth Cotsworth to

today's rulemaking, environmental media, such as soil, ground-water, and debris contaminated by hazardous waste placed in waste piles or other non-permanent land-based units generally are CAMU eligible. Therefore, if contamination resulting from the release of waste from a waste pile or tank system is cleaned up, either during closure or otherwise, the contaminated material would generally be CAMU-eligible.[12]

One commenter also requested the Agency's view on whether miscellaneous units approved under the 40 CFR part 264, subpart X provisions are considered permanent or non-permanent land-based units, and therefore whether wastes from these units might be ''managed for implementing cleanup.'' Given the diversity of units that may be approved under the subpart X provisions, the Agency cannot offer a generic answer. In general, the Agency expects the determination of whether wastes from a subpart X miscellaneous unit are ''managed for implementing cleanup'' will be made on a unit-specific basis, considering the purpose of the unit (e.g., is it intended for permanent disposal or will wastes be removed at closure?), the design and operating standards applied to the unit at the time the unit was permitted, and its similarity to conventional units. The Agency notes that many subpart X units (e.g., drum crushers or vitrification plants) are not land-based units and are more analogous to hazardous waste tanks or incinerators. Wastes managed in such units generally would not be CAMU eligible. If a subpart X unit were intended to be a final disposal site for wastes (for example, as indicated in the unit closure plan), it would likely be considered a permanent land-based unit.

Finally, the Agency reiterates the guidance offered in the proposal on abandoned units. The Agency interprets today's rule to provide that waste removed from abandoned land-based units, whether the units were intended to be permanent or non-permanent, is waste ''managed for implementing cleanup'' and is CAMU eligible (see, 65 FR 51086, August 22, 2000).

RCRA Senior Policy Advisors, Risk-Based Clean Closure, March 16, 1998.

[12] Also, as discussed earlier in today's rulemaking, environmental media, such as soil, ground water, and debris contaminated by hazardous waste managed in waste piles or other non-permanent land-based units will generally be CAMU-eligible. Therefore, if waste that has been released from a waste pile or tank system is cleaned up, either during closure or otherwise, such waste will generally be CAMU-eligible.

4. Wastes in Intact or Substantially Intact Containers, Tanks, or Other Non-Land-Based Units (40 CFR 264.552(a)(1)(ii))

The Agency proposed to prohibit management in a CAMU of wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, even if those wastes would otherwise be within the meaning of CAMU-eligible (i.e., wastes managed for implementing cleanup). ''Other non-land-based units'' include intact or substantially intact non-land-based units that are not ''containers'' or ''tanks,'' but were designed to contain wastes (e.g., containment buildings under part 264, subpart DD, and part 265, subpart DD). The Agency also proposed two exceptions to this general prohibition. First, the Agency proposed to allow management in a CAMU of wastes that are first placed in tanks, containers, or other non-land-based units as part of cleanup. Second, the Agency proposed to allow management in a CAMU of containers (even if they are substantially intact) that are excavated during the course of cleanup.

The Agency did not receive any adverse comment on its general exclusion of wastes in intact or substantially intact containers, tanks, or other non-land-based units, or on the proposed exemption for wastes first placed in tanks, containers or other non-land-based units as a part of cleanup. The Agency is finalizing these provisions as proposed.

Most commenters also supported the proposed exemption to allow placement in a CAMU of intact or substantially intact containers excavated during cleanup. One commenter opposed this approach. After evaluating these comments, the Agency has decided to promulgate the exemption for intact or substantially intact containers as proposed, as discussed below.

a. Intact and Substantially Intact Containers Excavated during Cleanup Are CAMU–Eligible

In developing the proposed exemption allowing placement in a CAMU of intact and substantially intact containers excavated during cleanup, EPA reflected the concerns of many stakeholders that excluding buried containers might create a disincentive to their excavation and would raise practical implementation issues. While off-site management may be chosen for these containers in many cases, in other cases (for example, where the waste in intact containers differs little from other remediation waste at the site, or where off-site management is difficult to arrange for), it may be sensible for the Regional Administrator to consider on-site treatment and disposal options chosen as part of the CAMU process. As explained in the preamble to the proposal, buried containers will typically be much more difficult to assess and manage than those found above ground and could complicate, and potentially slow cleanup, as well as possibly create an incentive not to excavate the container in the first place (65 FR 51087, August 22, 2000). For these reasons, the Agency proposed to allow intact and substantially intact containers (and the wastes they may contain) excavated during cleanup to be placed in CAMUs. (Interpretations of ''intact,'' ''substantially intact,'' and ''excavated during cleanup'' are discussed below.)

Most commenters supported this approach. One commenter opposed the approach, arguing generally that, if a container (or tank—see discussion below) is excavated and it is intact, there is no reason that the waste it contains should not be subject to normal RCRA Subtitle C requirements and the waste should not be disposed of in a CAMU. Focusing on tanks only, however, the commenter argued that requiring RCRA Subtitle C management would not create an incentive to leave buried tanks unexcavated on site (potentially to leak); presumably, therefore, the commenter would also disagree with EPA that excluding buried containers from CAMU eligibility might also act as a disincentive to excavation. The commenter was also not persuaded by EPA's concerns for practical issues of implementation, arguing that if a container is still intact after excavation, it should be managed under normal RCRA Subtitle C requirements.

As discussed in the proposal, the Agency agrees that, as a matter of practice, site-specific remedy decisions will often include off-site management under the RCRA Subtitle C requirements for intact containers (and the wastes they may hold) excavated during cleanup (65 FR 51087, August 22, 2000). EPA's analysis of CAMUs approved under the 1993 CAMU rule shows no evidence that waste in intact containers has been placed in CAMUs (65 FR 51086–51087, August 22, 2000 and CAMU Site Background Document). The Agency, however, does not agree that it should categorically exclude placement of intact containers in CAMUs.

First, EPA continues to believe that a blanket requirement excluding ''substantially intact'' excavated containers from placement in a CAMU could act as a disincentive for

excavation of the containers in the first place. Buried containers are similar to other buried wastes in that facility owners/operators will often be under no obligation to excavate them; if removal automatically triggers RCRA Subtitle C land disposal restrictions, minimum technology requirements, and similar obligations—because placement in a CAMU is not allowed—the RCRA Subtitle C disincentives for excavation might be considerable. EPA is concerned therefore, that prohibiting placement of these wastes in a CAMU—regardless of the site-specific circumstances—could discourage aggressive cleanups.

EPA also believes the commenter underestimates the practical difficulties that could arise. As explained in the preamble to the proposal, buried containers ''will typically be much more difficult to assess and manage than those found above ground'' (65 FR 51087, August 22, 2000). For example, buried containers are more likely to be damaged or deteriorating than containers stored above-ground (for example, because of the burial process and conditions), and therefore questions as to whether a container is or is not ''substantially intact'' are much more likely to arise. EPA believes that attempts to resolve such questions at a specific site might lead to fruitless argument, would unnecessarily distract from the focus on the most effective remedial strategies at the site, and therefore might delay cleanup. Furthermore, as the commenter acknowledges, removal of ''intact'' containers may be dangerous, or it may be technically challenging. In such cases, as another commenter observed, the most prudent approach might be to remove the container's contents and place them in a CAMU before excavation of the container is attempted. Prohibiting placement of wastes in ''intact'' containers in CAMUs could discourage this practice.

More generally, it will typically be easy for remediators to identify and plan for intact containers that are on the surface before a cleanup begins, while buried containers will often not be discovered until an excavation is on-going. At that point, it will be potentially much more disruptive to cleanups if operations have to stop for a judgment on intactness and to arrange for off-site disposal. Yet this process may be unnecessary (for example, where only a few containers are involved and they contain the same waste that is being placed in the CAMU).

For these reasons, EPA is finalizing the inclusion of intact and substantially intact buried containers among CAMU-eligible wastes, as proposed. By allowing intact and substantially intact containers (and the wastes they may hold) that are excavated during cleanup to be placed in CAMUs, the Agency believes it will reduce the likelihood that the CAMU amendments would create disincentives to excavation of buried containers and their contents. As discussed in the proposal, the Agency is less concerned that these disincentives will be created for intact or substantially intact above-ground containers, tanks or other non-land-based units, because these units are much easier to assess and manage in accordance with RCRA Subtitle C requirements for as-generated wastes (65 FR 51087, August 22, 2000). For these reasons, the Agency is finalizing the provisions allowing intact or substantially intact containers excavated during cleanup to be placed in CAMUs as proposed.

b. Extension of Approach to Buried Containers to Include Buried Tanks

EPA specifically requested comment on whether the proposed exemption for buried containers that are excavated during the course of cleanup should also apply to buried tanks (65 FR 51087, August 22, 2000). The Agency received similar comments on the issue of allowing placement in a CAMU of tanks excavated during cleanup as it did on the exemption for containers excavated during cleanup: most commenters supported CAMU eligibility for intact and substantially intact tanks excavated during cleanup; one commenter opposed CAMU eligibility, arguing that—if substantially intact—tanks (and the wastes they may hold) are more appropriately managed under the RCRA Subtitle C requirements for as-generated wastes.

After evaluating these comments, the Agency is persuaded by the view of commenters that intact and substantially intact tanks excavated during cleanup should be addressed in the same way as intact and substantially intact containers excavated during cleanup.[13] The Agency has reached this conclusion based primarily on three considerations. First, as with buried containers, facility owners/operators will often have the option of leaving buried tanks in place during a cleanup action. Therefore, as commenters pointed out, the disincentives to excavation (or aggressive remediation) that application of RCRA Subtitle C requirements for as-generated wastes can impose on cleanup will apply to both buried tanks and buried containers. As discussed throughout the proposal and today's rulemaking, the primary purpose of CAMUs is to remove these disincentives. Second, the same practical difficulties that apply to excluding buried containers from CAMU-eligibility (discussed above) apply equally to buried tanks. Third, as discussed in the proposal, it could be difficult in burial situations to always distinguish between tanks and containers—a point seconded by one set of commenters. In the regulation of as-generated wastes, regulators and facility owners/operators sometimes engage in lengthy discussions over whether a particular storage unit is a ''tank'' or a ''container'; these discussions could be considerably more complicated in the case of excavated ''units'' containing wastes, particularly if the original function or use of the unit is not clear (e.g., at the time it was being used, was the unit ''portable''—making it a ''container'' under § 260.10—or ''stationary''—making it a ''tank''). Thus, extending the container approach to tanks furthers EPA's objective of eliminating from the cleanup context distinctions that serve a useful purpose for management of as-generated hazardous waste, but that, in a cleanup context, distract from the overall objective of achieving cleanups without adding significant value.

Furthermore, as discussed in the proposal, any material found in tanks (or containers) after excavation must meet the new CAMU treatment requirements, ensuring that any principal hazardous constituents are adequately treated so as to ensure protection of human health and the environment (65 FR 51087, August 22, 2000). The CAMU treatment requirements are discussed later in today's rulemaking.

c. Interpretations of ''Intact or Substantially Intact,'' ''Found During Cleanup'' and ''Excavated During Cleanup''

Today's exemption from the prohibition on placement of containers in CAMUs applies to ''intact or substantially intact'' tanks and containers that are ''excavated during cleanup.'' ''Intact'' and ''substantially intact'' continue to have the meanings

[13] Note that products and waste in operating underground storage tank systems would not be CAMU-eligible under today's approach. This is because operating underground storage tank systems are considered part of on-going industrial operations at a facility. They are addressed by today's proposal in the same way as operating waste piles and other non-permanent land-based units. That is, waste removed from such systems is generally not considered waste managed for implementing cleanup and is not CAMU-eligible. Environmental media and debris contaminated by releases from such systems is, if excavated, considered managed for implementing cleanup and is CAMU-eligible.

discussed in the proposal. That is, intact or substantially intact containers, tanks, and other non-land-based units can be removed without likelihood of a significant release. Minor imperfections should not prevent a unit from being considered ''intact'' (65 FR 51087, August 22, 2000). Commenters who addressed this issue supported this approach.

One commenter asked for clarification of the distinction between the phrases ''found during cleanup'' and ''excavated during cleanup.'' As discussed in the proposal, ''found during cleanup'' refers to wastes being addressed in the context of cleanup, as opposed to as-generated wastes that may also be stored at a site undergoing cleanup. It is the phrase ''excavated during cleanup,'' not the phrase ''found during cleanup,'' that defines whether waste in a tank, container, or similar unit is CAMU eligible. Waste ''found during cleanup'' might include waste in intact and substantially intact containers, tanks, or similar units that are above ground (e.g., in an old warehouse) as well as wastes that are buried. Wastes in the above ground units would not be CAMU eligible. Only the wastes in intact and substantially intact containers, tanks, or similar units that were buried and are ''excavated during cleanup'' are CAMU eligible. ''Excavated'' is intended to have its normal meaning of ''unearthed'' or ''dug up.''

d. Placement of ''Historic Wastes'' in CAMUs

In the proposal (65 FR 51087), the Agency also discussed the CAMU-eligibility of historic wastes left onsite in units that arguably could meet the definition of either a land-based unit or a ''tank.'' Under today's rulemaking, as under the proposal, historic wastes would be CAMU-eligible if they are found in a land-based unit and managed for implementing cleanup. In the proposal, EPA identified wastes at manufactured coal gas production facilities as an example of ''historic'' wastes (although the Agency also noted that these wastes would not be hazardous under the TCLP). These facilities often have old ''gas holders'' that contain historic coal gas manufacturing wastes. In most cases, such units would be considered land-based units under RCRA (e.g., old building foundations, which are analogous to concrete vaults), and the wastes would be CAMU-eligible. EPA is also aware that some facilities have old units that have not been used in decades that would arguably meet the definition of a tank, and therefore would potentially not be CAMU-eligible. If such a unit were a tank and it was buried, then it and the waste it contained would be CAMU-eligible. If the ''historic'' tank were not buried, the rule requires that the Regional Administrator determine whether it is intact or substantially intact to decide whether the waste is CAMU-eligible. In some cases, given the age, construction, and size of such units, the Agency believes that it would be reasonable to assume that the units are not substantially intact. As a result, waste removed from the units would be CAMU-eligible (65 FR 51087, August 22, 2000). In other cases, historic units would be considered land-based units under RCRA (e.g., old building foundations), and the waste would not be excluded from CAMU eligibility. Commenters supported this approach.

5. Limited Use of Nonhazardous ''As-Generated'' Waste in CAMUs (40 CFR 264.552(a)(1)(iii))

EPA believes that, as a general matter, it is not appropriate to manage as-generated waste in CAMUs. This longstanding position was discussed in the preamble to the 1993 CAMU regulations (58 FR 8658 and 8664, February 16, 1993), in the proposal to this rulemaking (65 FR 51085 and 51086, August 22, 2000) and in the section on ''as-generated vs. cleanup wastes'' above. At the same time, the Agency acknowledges that there are accepted practices where nonhazardous as-generated wastes are used in cleanup remedies. The new language on as-generated waste added to the CAMU-eligible waste definition, however, would expressly prohibit these practices in CAMUs. EPA proposed, therefore, that Regional Administrators might allow placement of nonhazardous as-generated cleanup waste in a CAMU when such waste is being used to facilitate treatment or the performance of the CAMU. Commenters supported this approach, and the Agency is finalizing this provision as proposed.

As discussed in the proposal, the Agency is aware of two common practices that use nonhazardous as-generated wastes to facilitate treatment of cleanup wastes or the performance of waste disposal units. The first practice is to use fly ash or cement kiln dust (CKD) or similar materials as stabilization agents to reduce leaching of metals from metal-bearing wastes. The second practice is to use similar agents, such as coal combustion wastes, to provide increased structural stability for wastes, such as sludges, that do not have sufficient strength to bear their own weight or the additional weight of a cap without risk of failure. Such practices facilitate treatment or the performance of the CAMU and are within the meaning of today's exemption for placement of nonhazardous as-generated wastes.

EPA requested comment on whether Regional Administrators should also have the discretion to allow placement of hazardous as-generated waste in a CAMU if such placement would facilitate treatment or the performance of the CAMU (65 FR 51086, August 22, 2000). Most commenters did not address this issue. One commenter did suggest, however, that Regional Administrators should have the discretion to allow such placement. The commenter offered, as a hypothetical example, the situation where the corrosive properties of an otherwise hazardous waste might be useful in stabilizing other materials. EPA carefully evaluated this comment. At this time, the Agency is not persuaded to allow placement of hazardous as-generated waste in CAMUs. The Agency is concerned that such an approach might weaken the distinction between wastes generated from ongoing industrial operations and wastes managed for implementing cleanup and does not believe the appropriateness of such a provision has been demonstrated by one hypothetical example. At the same time, EPA acknowledges that there may be individual cases where placement of as-generated hazardous waste in a CAMU could safely facilitate a remedy. If experience shows that the absolute prohibition on placement of as-generated hazardous waste in CAMUs is counterproductive, the Agency may revisit the issue in the future.

Although EPA is not allowing placement of hazardous as-generated waste in CAMUs, the Agency—as commenters pointed out—has sought to encourage the use of materials such as cement kiln dust and coal combustion wastes to facilitate treatment or performance of disposal units, and it would consider these to be legitimate uses of such secondary materials. Their use in a CAMU would be allowed.

C. Discretionary Kickout (40 CFR 264.552(a)(2))

The RCRA Subtitle C regulations ensure that hazardous wastes are handled according to stringent national standards. As discussed in the 1993 CAMU rule and in the proposal to today's rulemaking, these requirements, when applied to existing contamination problems, can provide a strong incentive for leaving wastes in place or for selecting remedial approaches that minimize regulation under RCRA Subtitle C. In the 1993 CAMU rule and

in these amendments, EPA's primary purpose is to provide appropriate opportunities to tailor the RCRA Subtitle C standards to provide better incentives to manage hazardous wastes during cleanup. At the same time, EPA does not want the CAMU regulations to reward facility owners for non-compliance with applicable RCRA Subtitle C requirements for as-generated wastes.

All facility owners/operators are legally obligated to make themselves aware of and comply with applicable RCRA Subtitle C requirements. To ensure that the CAMU rules do not create any incentive to mismanage as-generated wastes (e.g., to create a remediation waste eligible for management in a CAMU), or do not reward past non-compliance, EPA proposed that a Regional Administrator might disallow the management of CAMU-eligible waste in a CAMU where he or she has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of 40 CFR part 268, or applicable 40 CFR part 264 or part 265 unit design requirements, or that noncompliance with other applicable RCRA requirements likely contributed to the release of the waste. This is referred to as the ''discretionary kickout'' provision.

EPA received numerous comments on the discretionary kickout provision. Some commenters strongly supported the provision and thought it should be expanded. Other commenters questioned the need for the provision at all and expressed concern over how the provision might be implemented. As discussed below, EPA was not persuaded that the scope of the discretionary kickout provision should be expanded or reduced. The Agency continues to believe that the discretionary kickout provision strikes a reasonable balance between facilitating cleanups through CAMUs and ensuring that facility owners are not rewarded for improper waste management. EPA, therefore, is finalizing the discretionary kickout provision as proposed, and as discussed below.

As mentioned above, several commenters strongly supported the discretionary kickout provision and thought it should be expanded. One group of commenters suggested that the discretionary kickout should generally be applied to wastes previously managed in violation of major RCRA requirements and ideally should be made mandatory at least with respect to the non-complying owner/operator and affiliated parties. Similarly, other commenters argued that the discretionary kickout provision should be expanded to give Regional Administrators the discretion to exclude CAMU-eligible wastes from management in a CAMU under circumstances other than those outlined in the proposal in order to support more stringent state requirements and state risk-based cleanup evaluations.

The Agency carefully evaluated these comments. As discussed in the proposal, EPA wants to be sure that the CAMU regulations do not create incentives for noncompliance, whether the noncompliance is intentional to take advantage of the CAMU rule requirements or is the result of careless management practices (65 FR 51088, August 22, 2000). The Agency also believes that it will generally be most appropriate to apply the discretionary kickout to owners/operators (or affiliated parties) who are responsible for acts of noncompliance rather than subsequent owners/operators or government agencies conducting the cleanup.[14]

The Agency is not, however, persuaded that the discretionary kickout provision should be made mandatory with respect to such owner/operators. The circumstances where noncompliance may have led to a release will be varied, and EPA believes it would be a mistake to automatically eliminate the possibility of a CAMU in such cases, even where the entity conducting the cleanup is responsible for the original noncompliance. In many cases, CAMUs may allow remedial alternatives that all parties agree are most appropriate for a site—for example, they might facilitate a treatment alternative where, without a CAMU, the most likely alternative might be capping in place without treatment. In other cases, a compromise remedial alternative established through a CAMU might allow a protective remedy to move forward promptly, avoiding years of contention and litigation. Finally, EPA believes that making the discretionary kickout mandatory would inevitably move discussions about CAMUs away from the question of what type of remedy is most appropriate for a site and toward questions surrounding the exact set of circumstances of past waste disposal and management, whether specific management practices did or did not involve a violation, and whether a release occurred as a result of past management before or after the present owner held the property. In other words, it might undercut the objectives of developing protective remedies and avoiding wasteful disputes over ancillary issues. In such cases, action on a CAMU (and more broadly on a cleanup) might be put on hold until all these issues were resolved.

EPA remains convinced that the discretionary kickout provision will be an important tool, especially where violations are clear, or there are indications of intentional noncompliance. However, for the reasons discussed above, the Agency has determined that making the discretionary kickout mandatory—and thereby removing any discretion from overseeing agencies—would be counterproductive by increasing the transaction costs associated with CAMUs, resulting in the potential delay of cleanups, and, in some cases, precluding the most effective remedy for a site. Instead, the Agency continues to believe that the Regional Administrator should have the flexibility to consider both the significance of the violation at issue and other site-specific factors (see discussion of site-specific factors, below) when making a determination as to whether to exercise the discretionary kickout provision.

The Agency is also not persuaded that the language of the discretionary kickout provision needs to be changed in order to accommodate more stringent state approaches. Under RCRA section 3009, states are not restricted from establishing state regulations that are more stringent than the federal RCRA Subtitle C regulations. This would include state provisions to restrict additional wastes from being placed in CAMUs and provisions to establish additional circumstances under which wastes that would otherwise be CAMU-eligible may not be placed in a CAMU.

Other commenters questioned the need for the discretionary kickout provision and expressed concern over its implementation. One group of commenters expressed the view that the discretionary kickout provision could have untoward effects on cleanups, and that other mechanisms and incentives exist that would adequately promote compliance with RCRA Subtitle C standards (e.g., enforcement action against the violations). This group also suggested that if the discretionary kickout provision is retained: (1) It should be limited in all cases to situations where noncompliance ''likely contributed to the release of the waste'' and, in the case of LDR requirements, it should be limited to instances of

[14] Indeed, as discussed in the proposal, EPA generally would not exercise its discretion to disallow placement of CAMU-eligible wastes in a CAMU when the entity applying for the CAMU is not the same as or affiliated with the entity that mishandled the waste (65 FR 51089, August 22, 2000).

noncompliance with the prohibition against actual land disposal without required treatment (i.e., not to the other related requirements of 40 CFR part 268); (2) the Agency should designate additional illustrative factors that Regional Administrators should consider when deciding whether to exercise the kickout, including ''(i) whether the violation was a substantial factor that likely contributed to the release of the waste, (ii) the impact or likely impact of the release in comparison to other releases that may have contributed to the need for cleanup, and (iii) whether the violation was intentional;'' and (3) the Agency should establish a fair and responsible process to ensure that discretionary kickout decisions are properly made by overseeing agencies.

The Agency understands that most facility owners/operators are conscientious and are making their best efforts to understand and comply with applicable environmental requirements; however, the Agency is not persuaded that the discretionary kickout provision should be eliminated on that basis. EPA agrees that other mechanisms—e.g., enforcement mechanisms—also promote compliance, but the Agency continues to believe that the discretionary kickout provision is important to ensure that facilities do not benefit inappropriately from non-compliance. As discussed above, the Agency continues to believe that the discretionary kickout provision represents a reasonable balance between facilitating cleanups with CAMUs and maintaining incentives for waste minimization and proper waste management in the first instance. The discretionary kickout provision will play an important role in maintaining that balance because it provides a significant incentive to owners/operators to manage as-generated hazardous waste properly. A facility owner/operator who understands that the Regional Administrator may deny, at his or her discretion, placement of otherwise CAMU-eligible waste in a CAMU based on relevant noncompliance may focus more closely on safe management of the waste in the first place.

The Agency is also not persuaded that the discretionary kickout provision should be changed to limit its application, in the case of LDRs and design standards, to situations where the noncompliance ''specifically contributed to the release of the wastes.'' As discussed in the proposal, the Agency singled out LDRs and unit design requirements in the discretionary kickout provision because they are fundamental RCRA Subtitle C requirements aimed at preventing or minimizing releases of hazardous waste (65 FR 51088, August 22, 2000). They are also provisions from which CAMUs may provide relief. EPA appreciates that commenters would prefer for the Agency to place less importance on violations of these key requirements, but commenters failed to address EPA's underlying assumption—that substantive violations of LDRs and unit design standards are the kinds of RCRA violations that are likely to lead to environmental contamination—and therefore the Agency is unpersuaded by their argument that the rule should not single out these requirements as a basis for the Regional Administrator to exercise the discretionary kickout.

EPA believes that it has already at least partially addressed the commenter's concern that the discretionary kickout provision would be exercised for non-germane violations of the land disposal restrictions or minimum technology requirements. The discretionary kickout provision, as written, focuses on the substantive requirements of the LDRs and unit design standards. The Agency notes that it specifically highlighted in the proposal that ''unit design requirements'' refers to substantive design standards, such as the tank design standards under 40 CFR 264.192 or the design requirements for waste piles under 40 CFR 264.251 and that maintenance requirements, such as the requirements that owners/operators inspect tanks under 40 CFR 264.195, are not ''unit design requirements'' and thus would be addressed under the phrase ''or that non-compliance with the other applicable RCRA requirements likely contributed to the release of the waste.'' (65 FR 51088, August 22, 2000) Similarly, the element of the discretionary kickout provision related to the LDR requirements is limited, as proposed, to noncompliance with applicable ''land disposal *treatment* standards'' (emphasis added). The Agency believes that this clearly refers to land disposal without required treatment. Therefore, EPA has already focused the discretionary kickout provision on the aspects of LDR requirements and unit design standards that are most likely to be related to environmental releases.

The Agency does believe that it is reasonable to expect the Regional Administrator to consider a number of factors when making decisions about whether and how to apply the discretionary kickout provision. As discussed in the proposal, the Agency emphasizes that it does not intend to exercise its discretionary kickout authority in every instance of noncompliance with LDR treatment requirements or substantive unit design requirements. The Agency expects the Regional Administrator to consider, as appropriate, the significance of the violation at issue, whether it was intentional,[15] facility owner/operator has a history of violations, the extent to which it likely contributed to the release of the waste, and the likely management approach for waste excluded from placement in a CAMU, among other factors, when applying the discretionary kickout provision.

The Agency also agrees that a fair and responsible process should be used to make decisions about applying the discretionary kickout provision; however, the Agency does not agree that it is necessary to include a specific process in today's rulemaking. Decisions to apply the discretionary kickout provision will be made in the context of CAMU approvals, using the CAMU approval process, which relies on existing administrative procedures (e.g., permitting procedures) augmented by CAMU-specific requirements (i.e., public notice and opportunity for comment, as discussed later in today's rulemaking) to review and make decisions about CAMU applications. Therefore, decisions about application of the discretionary kickout provision are subject to review in accordance with available administrative and judicial review procedures.

D. Information Submission (40 CFR 264.552(d))

To implement the more specific requirements for identifying wastes eligible for management in a CAMU (discussed above), EPA also proposed to define more specifically the types of information that owners/operators must submit to enable the Regional Administrator to designate a CAMU. For wastes proposed for placement in a CAMU, the Agency proposed that owners/operators must submit information, unless not reasonably available, on (1) the origin of the waste and how it was subsequently managed

[15] This is not to say, of course, that an intent to violate RCRA has to be present where the kickout is exercised. As EPA stated in the preamble to the proposed rule, ''EPA does not want the CAMU to create any incentives for non-compliance, whether intentional to take advantage of alternate requirements in the CAMU rule, or as result of careless management practices (which could, by example, thereby encourage others to ignore applicable requirements.'' 65 FR 51088. EPA does believe, however, that intent may be an issue appropriate for the RA to take into account when deciding whether to exercise the kickout (for example, in a situation where the facility intentionally mismanaged waste to take advantage of the flexibility in the CAMU rule).

(including a description of the timing and circumstances surrounding the disposal and/or release), (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release, and (3) whether the waste was subject to the land disposal requirements of 40 CFR part 268 at the time of disposal and/or release.

In addition to general comments on the information requirements, the Agency specifically requested comment on an alternative approach to information on LDRs. Specifically, the Agency asked whether it should require facility owners/operators to submit information on whether ''the disposal and/or release of the waste occurred before or after the LDR requirements of part 268 of this chapter were in effect for the associated listing'' rather than whether wastes were ''subject to the land disposal restriction requirements.''

The Agency is promulgating the information requirement on waste origin and management, the information requirement on whether wastes were listed or identified as hazardous at the time of disposal and/or release, and the standard that information be provided ''unless not reasonably available'' as proposed. EPA received considerable comment on the ''reasonably available'' standard. These comments are discussed later in this section. EPA did not receive comments specifically on the other two terms. After evaluating comments received on the issue, the Agency has chosen to finalize its alternative approach to the information requirement on LDR requirements, as discussed below.

The Agency believes that requiring facility owner/operators to submit factual information on the dates of waste disposal and/or release relative to the effective dates of LDR requirements will be more efficient than expecting owners/operators to make determinations of whether wastes were ''subject to'' LDR requirements. Determinations of whether wastes are ''subject to'' LDR requirements can be complex (for example, as one commenter pointed out, the question might arise as to whether a waste was ''prohibited'' or ''restricted'' under the land disposal restrictions, and it was not clear how a facility owner should answer the ''subject to'' question based on the answer). In contrast, facility owners/operators can easily compare the timing of waste disposal/release to the effective dates for LDR requirements (these effective dates are published by the Agency in 40 CFR part 268, Appendix VII—Effective Dates of Surface Disposal Wastes Regulated in the LDRs) and, using this information, the Agency can make any necessary judgments about whether wastes were subject to LDR requirements at the time of disposal or release. Commenters who addressed this issue supported the alternate approach to providing information on LDRs.

In finalizing the alternate approach to information on LDRs, EPA is making a minor clarifying change to the language discussed in the proposal. The alternative language for 40 CFR 264.552(d)(2) discussed in the proposal would have required facility owners/operators to provide information on whether ''the disposal and/or release of the waste occurred before or after the land disposal restriction requirements of part 268 of this chapter were in effect for the *associated listing*'' (emphasis added). By referring explicitly to ''the associated listing,'' this language does not address information requirements for characteristic wastes (although, obviously, for characteristic waste, EPA would expect information on the timing of the disposal and/or release compared to the effective date of the LDRs for the associated characteristic). To address this imprecision, EPA has revised the language of the final regulation so that it clearly covers both listed and characteristic wastes. Under the new language, facility owners/operators must submit information (unless not reasonably available) on whether ''the disposal and/or release * * * occurred before or after the land disposal restrictions * * * were in effect for the *waste listing or characteristic*'' (emphasis added).

The specific information now required under 40 CFR 264.552(d)(1) though (3) covers the circumstances surrounding the origin and subsequent management of wastes proposed for placement in CAMUs. The information required (unless not reasonably available) under 40 CFR 264.552(d)(1) covers waste origins and past management because that is the information the Agency needs to distinguish between as-generated and cleanup wastes and, thus, to make decisions about CAMU eligibility. The Regional Administrator would use this information for the purposes of deciding whether the waste is CAMU-eligible, including whether such waste is one for which kickout should be considered. The information required (unless not reasonably available) under 40 CFR 264.552(d)(2) and (3) speaks to whether wastes proposed for placement in a CAMU were subject to RCRA Subtitle C requirements and whether one key requirement—the land disposal restrictions—was in effect at the time of release or disposal. The Agency will use this information to make decisions about whether, because of previous mismanagement, the discretionary kickout provision should be considered.

The Agency emphasizes that the purpose of the new information submission requirements is to give Regional Administrators and the public information necessary for these specific decisions. Given the importance of restricting CAMUs to management of legitimately CAMU-eligible waste and the need for overseeing agencies to properly exercise the discretionary kickout provision, this information is important. At the same time, the Agency expects that information collection will be focused on what is needed to allow informed decisions to be made and will avoid the collection of unnecessary information. This is consistent with the Agency's general guidance on collection of information in cleanup situations. (See, e.g., 61 FR 19944, May 1, 1996, where EPA observed that ''poorly focused investigations can become a drain on time and resources and, in some cases, unnecessarily delay remedial actions'' and encouraged program implementers and facility owners/operators to use a variety of mechanisms to focus site investigation activities.)

EPA emphasizes that, in general, facility owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) prior to requesting approval of a CAMU. Where a CAMU is proposed for a RCRA treatment, storage or disposal facility, information on the origin and historical management of wastes, and on the sources and causes of contamination, will routinely be available in permit applications, RCRA Facility Assessments, and RCRA Facility Investigations. This information can also be found in similar documents prepared under other cleanup programs (e.g., preliminary assessments and site investigations under the federal Superfund program or remedial assessments under state programs). Other cleanup documents, such as remedial work plans, engineering reports, and analyses of remedial alternatives, also typically include information about the waste origin and historical management. Therefore, EPA does not believe that providing this information will be burdensome or will require a special exercise in information development. Commenters agreed.

As discussed in the proposal, if information meeting the requirements of 40 CFR 264.552(d)(1) through (3) has been submitted to the Agency in the past and it remains timely and accurate, owners/operators can simply identify

the information in this past submittal. EPA generally would not expect owners/operators to resubmit information that has been provided previously (65 FR 51089, August 22, 2000). Where information required under 40 CFR 264.552(e)(1) through (3) is not reasonably available, facility owners/operators can fulfill these requirements by informing EPA of the extent of their knowledge about waste origin and history. (See discussion of the ''reasonably available'' standard, below.) As discussed in the proposal, EPA recognizes that there will be situations where information on the origins of contamination or the past management of waste will simply not be reasonably available. For example, there will be situations where contamination cannot be linked with specific waste management activities historically associated with a facility (e.g., characteristically hazardous soil not associated with any hazardous waste management unit). In such cases, facility owners/operators must provide what they know. If the information required by 40 CFR 264.552(d)(1) through (3) is not reasonably available, they are not required to submit it (see discussion at 65 FR 51090, August 22, 2000).

Also as discussed in the proposal, when information submitted in response to the requirements of 40 CFR 264.552(d)(1) through (3) is already in the Agency's possession, or information brought to the Regional Administrator's attention by citizens raises significant concerns about waste eligibility or past waste management practices, the Agency expects the Regional Administrator should, where appropriate, seek additional, reasonably available, information regarding waste history beyond that initially submitted pursuant to § 264.552(d), in order to make properly informed decisions about CAMU eligibility and the use of the discretionary kickout provision (65 FR 51090, August 22, 2000). Facility owners/operators and overseeing agencies often engage in a series of back-and-forth discussions, information exchanges, and requests for additional information throughout the CAMU-application process. While sometimes necessary, these exchanges, of course, should be focused on the information needed for the decision at hand (e.g., for decisions about whether waste is CAMU eligible) and should avoid the collection of information not necessary to inform or support the decision in question.

1. ''Unless Not Reasonably Available'' Standard

As explained above, the information specified in 40 CFR 264.552(1) through (3) is required ''unless not reasonably available.'' Under this standard facility owners/operators must make a good faith effort to gather and provide information meeting the requirements. Also as explained above, the Agency believes that most owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) as part of their general facility records or in site investigation reports, cleanup work plans, and other documents. In instances where this is not the case, the Agency expects that facility owners/operators will be able to gather the information from existing site- and waste-specific records. As discussed in the 1998 Phase IV LDR rule establishing treatment standards for contaminated soil, such site- and waste-specific records generally include manifests; vouchers; bills of lading; sales and inventory records; sampling and analysis reports; accident, spill investigation, and inspection reports; enforcement orders; and permits (63 FR 28619, May 26, 1998). Relevant information might also be obtained by talking with current and, in some cases, former employees, particularly where written documentation is absent.

The Agency received a number of comments on the ''reasonably available'' standard. In particular, some commenters were concerned with EPA's reference, in the proposal, to discussions with former employees (65 FR 51090, August 22, 2000). These commenters were concerned that the Agency might expect all facility owners/operators to interview former employees as part of a good faith effort to meet the ''reasonably available'' standard and that this expectation was not, in fact, reasonable. The Agency does not expect facility owners/operators to have to interview former employees in order to meet the ''reasonably available'' standard, except in unusual circumstances. The Agency also agrees with commenters that, in general, it is not reasonable to expect facility owners/operators routinely to contact former employees who might have knowledge relevant to meeting the new information submission requirements, solely to meet these requirements. Rather, the Agency expects that contacting former employees will likely not be necessary, because, as discussed above, facility owners/operators will already have information sufficient to meet the 40 CFR 264.552(d)(1) through (3) requirements. Where that is not the case, contact with former employees themselves would be subject to the same ''reasonably available'' standard. As discussed above, if the information required by 40 CFR 264.552(1) through (3) is not reasonably available, facility owners/operators do not have to provide it. At the same time, the Agency rejects the notion that it is categorically ''not reasonable'' to contact former employees. For example, it might be reasonable in a particular case for a facility owner/operator to contact a former plant environmental manager with a known address (or one that can be readily located) if that person had information about waste origin or past management that was not readily available through other means.

In response to one commenter, EPA also clarifies that, when the Agency asks for additional information under § 264.552(1)–(3), beyond what was submitted in a facility's initial CAMU application, the request would be limited to information that is ''reasonably available.'' In other words, EPA's authority would be limited to the same standard that pertains to information in the original submission.

2. Application of New CAMU Information Submission Requirements to P- and U-Listed Wastes

In the proposal, the Agency clarified application of the new, more specific information requirements in 40 CFR 264.552(d) to commercial chemical products. Because there is often the potential for confusion around commercial chemical products and because, as discussed above, EPA is promulgating the alternate approach to information on LDRs, the Agency discusses the issue again here. For commercial chemical products, 40 CFR 264.552(d)(2) requires that facility owners state whether the listing associated with the commercial chemical product was in effect at the time the commercial chemical product was disposed of or released. EPA has changed the language from the proposal (as discussed above), so the discussion of previous language dealing with commercial chemical products in the proposal preamble (65 FR 51090) is no longer relevant. Under the approach to 40 CFR 264.552(d)(3) promulgated today, for commercial chemical products facility owners/operators must indicate whether the disposal or release took place before or after the effective date of the prohibition for the relevant P or U listing.[16]

[16] As explained in the proposal, commercial chemical products are not ''wastes'' until they are

Continued

3. Interpretation of General CAMU Information Submission Performance Standard

The more specific information requirements promulgated today do not eliminate the general information submission performance standard established in the 1993 CAMU rule. Under the general performance standard, owners/operators must provide information sufficient to enable Regional Administrators to designate CAMUs ''in accordance with the criteria in 40 CFR 264.552.'' As discussed in the proposal, despite the Agency's use of the term ''criteria'' to refer to the requirements in 40 CFR 264.552(c) in the preamble to the 1993 CAMU rule (58 FR 8671, February 16, 1993), EPA interprets the general information performance standard to require information relating to all aspects of implementation of the CAMU regulations (65 FR 51090, August 22, 2000). This includes, for example, implementation factors that are not specifically referenced in 40 CFR 264.552(c), such as information relating to the inclusion of a regulated unit in a CAMU under 40 CFR 264.552(b).

E. Liquids in CAMUs (40 CFR 264.552(a)(3))

EPA proposed a general prohibition against the placement of liquids in CAMUs, with an exception allowing placement of liquids when they facilitate the remedy selected for the waste being managed in the CAMU. As discussed in the proposal, EPA believes that the general basis for prohibiting the placement of liquids in landfills—that liquids fundamentally increase the risk of future releases from the landfill—also applies to CAMUs. The Agency does not believe that, in general, placement of liquids enhances the performance of long-term disposal units (65 FR 51091, August 22, 2000). Commenters generally supported this approach, and the Agency is promulgating these provisions as proposed.

EPA is promulgating four provisions related to the placement of liquids in CAMUs. First, at 40 CFR 264.552(a)(3)(i), the Agency prohibits the placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU except where placement of such wastes facilitates the remedy selected for the waste. Second, at 40 CFR 264.552(a)(3)(ii), EPA prohibits placement of containers holding free liquids in CAMUs, unless such placement facilitates the remedy selected for the waste.

Third, at 40 CFR 264.552(a)(3)(iii), EPA prohibits placement of any liquid that is not a hazardous waste in a CAMU unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 40 CFR 264.314(f). Under this demonstration, the Regional Administrator must determine that the only reasonable alternative to placement in a CAMU is placement in a landfill or unlined surface impoundment that contains (or may be reasonably anticipated to contain) hazardous waste and that placement in a CAMU will not present a risk of contamination of any underground source of drinking water, as defined in 40 CFR 144.3. Fourth, EPA specifies that the absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 40 CFR 264.314(c) and that sorbents used to treat free liquids in CAMUs must meet the requirements of 40 CFR 264.314(e).

These changes essentially extend the prohibitions currently in place on placement of liquids in hazardous waste landfills to CAMUs, with the exception that placement of liquids in CAMUs is allowed if it facilitates the remedy for the waste being managed in a CAMU. As discussed in the proposal, the Agency took this approach for two reasons. First, the general basis for prohibiting placement of liquids in hazardous waste landfills—that liquids fundamentally increase the risk of future releases from the landfill—generally applies to CAMUs. Therefore, the prohibitions on placement of liquids in hazardous waste landfills should apply equally to CAMUs. Second, unlike hazardous waste landfills, which are used for permanent disposal, CAMUs are used to implement a range of remedies, including treatment remedies (65 FR 51091, August 22, 2000). In some cases, remedies may involve placement of liquid CAMU-eligible waste for treatment or other management in a CAMU (e.g., dewatering of CAMU-eligible wastes containing liquids or placement of hazardous ground water in CAMU for infiltration); in other cases, placement of liquids in a CAMU may promote the remedy for non-liquid CAMU-eligible wastes (e.g., when liquids are used for soil washing or to promote certain types of bioremediation). To ensure that these legitimate remedial practices could continue, EPA proposed (and is today finalizing) an exemption to the general prohibition on placement of liquids in CAMUs when such placement facilitates the remedy.

Commenters supported the general prohibition on placement of liquids in CAMUs and the exemption for placement of liquids when such placement would facilitate the remedy, and the Agency is finalizing these provisions as proposed.

In the proposal (65 FR 51091), EPA specifically identified the use of water or leachate for dust suppression while a CAMU is under construction or operating as a reasonable cleanup waste management approach, allowable as facilitating ''the remedy selected for the waste.'' One commenter expressed concern that the regulatory standard, in fact, would not cover this situation. The commenter requested that EPA amend the proposed language so that it allowed placement of liquids where they facilitate ''the performance of the CAMU'' as well as ''the remedy selected for the waste.'' EPA appreciates the commenter's concern, but it does not believe a regulatory change is necessary. In EPA's view, if placement of a liquid facilitates the performance of a CAMU used to manage the waste as part of a cleanup remedy, then clearly it also facilities the remedy selected for the waste.

EPA also recognizes that it may have confused the issue by identifying dust suppression as a use of liquids that would not be subject to the liquids prohibition, because it would facilitate the performance of the remedy. In fact, EPA would not consider use of non-hazardous liquids for dust suppression or similar purposes to be subject to the prohibition in the first place. EPA has long maintained that use of nonhazardous liquids in landfills for dust suppression, watering vegetative caps, and similar purposes is not prohibited by the statutory or regulatory prohibition of liquids in landfills. Because the standard promulgated today simply repeats the statutory prohibition on nonhazardous liquid (with the added condition that placement of liquids would be allowed if it ''facilitates the remedy for the waste''), it similarly

discarded or intended to be discarded by being abandoned (or used as fuels or in a manner constituting disposal when these are not their normal manner of use). 40 CFR 261.33. Therefore the associated LDR requirement would not apply to the product as it was spilled, even if it was spilled after the effective date of the LDR prohibition. Thus, the spill would not constitute a land ban violation triggering consideration of the discretionary kickout provision. For the sake of consistency, however, EPA concludes that it will be easier for facility owners/operators to indicate (if the information is reasonably available) whether a release of a commercial chemical product occurred before or after the date of the land disposal prohibition for the relevant P or U listing.

allows application of nonhazardous liquid wastes for such uses.[17]

F. Design Standards for CAMUs

Today EPA is finalizing, essentially as proposed, three amendments to the design standards for CAMUs in which wastes will remain in place after closure. First, owners/operators must meet minimum liner requirements for new, replacement, or laterally expanded CAMUs. Second, owners/operators must meet minimum design criteria for CAMU caps. Third, owners/operators must notify and take corrective action, as necessary to protect human health and the environment, for any releases from CAMUs to ground water. Today's amendments also establish opportunities for owners/operators to propose, and Regional Administrators to approve, alternate liner and cap designs to accommodate site- and waste-specific circumstances.

EPA proposed these additional design standards as reasonable for CAMUs in which wastes will remain in place after closure and are appropriately consistent with current standards for the design, operation, and closure of other units used for long-term disposal. Given the site-specific nature of cleanups and the need to maintain the incentives for remediation that the CAMU rule provides, the Agency also proposed to allow alternate liner and cap designs, under certain circumstances (65 FR 51091–51095, August 22, 2000).

Comments on the proposal to make the CAMU design standards more specific were mixed. Some commenters supported the new design standards. A number of commenters opposed the Agency's decision to develop minimum national design standards for CAMUs. These commenters suggested that the new minimum national design standards would slow future cleanups using CAMUs or would lead owners/operators to cap cleanup wastes in place rather than pursue more aggressive remediation. Some commenters suggested that EPA abandon the minimum design standards for CAMUs altogether, or express the standards as guidance rather than in regulation. Others suggested that standards for CAMU design should be modeled after the risk reduction goals of the National Contingency Plan or otherwise based on a risk management finding.

As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability in CAMU design and operation and flexibility to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum national design standards are a key element of this balance.

The Agency is not persuaded that minimum national design standards will significantly affect the kinds of remedies selected at cleanup sites (since CAMUs approved to date generally meet these standards). Furthermore, EPA does not have evidence (and commenters did not provide specific evidence) that today's rule would increase the likelihood that facility owners/operators would cap wastes in place rather than pursuing more aggressive remedial approaches. As discussed in the proposal, the majority of new, replacement or laterally expanded CAMUs approved under the 1993 CAMU rule already include liners and capping requirements that would comply with the standards promulgated today. Where liners or caps were not used, there were legitimate reasons related to the cleanup for that decision, and the design generally would have been allowed under today's rule. (65 FR 51092, August 22, 2000; Corrective Action Management Unit (CAMU) Site Background Document, 2001). Nor did commenters provide evidence that today's rule would significantly slow approval of CAMUs. EPA designed the processes in today's rule to mirror those actually used today in CAMU approval, and therefore it does not believe today's rule would significantly add to existing processes. For these reasons, EPA sees no reason why specifying minimum standards, generally consistent with practice to date, would slow down or deter cleanups. Instead, these standards will provide for important predictability in CAMU decision-making and for transparency to the public.

The Agency also does not agree that minimum national design standards should be replaced by a risk-reduction performance goal. While EPA agrees that site-specific factors (including site-specific factors related to risk) are of central importance in cleanup and CAMU determinations, the Agency is not persuaded that a performance standard based solely on risk would ensure the minimum baseline of protection or provide the predictability in CAMU design and operation that the Agency and many stakeholders desire. As discussed above, site- and waste-specific factors are appropriately accommodated in the opportunities for owners/operators to propose and the Regional Administrator to approve alternate CAMU design standards. Commenters provided no specific examples of where a legitimate cleanup would not be accommodated by this approach.

On balance, most commenters who addressed the minimum design standards for CAMUs, including commenters who opposed or questioned the need for such standards, recognized that EPA had to balance a range of concerns in developing the CAMU amendments. Overall, these commenters thought that, if EPA was persuaded that the design standards for CAMUs should be more specific, the approach of establishing minimum national design standards for CAMUs with opportunities for Regional Administrators to approve alternate standards, and the specific standards and approaches proposed, were reasonable. The Agency appreciates this support, and is finalizing the minimum design standards as discussed below.

1. Liner Standard

In the 1993 CAMU rule, the fourth general decision criterion for designation of CAMUs (40 CFR 264.552(c)(4)) specifies that ''areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize further releases to the extent practicable.'' As discussed in the proposal, EPA intended this standard, in conjunction with the closure and post-closure provisions for CAMUs in 40 CFR 264.552(e), to ensure that long-term controls adequate to protect human health and the environment are imposed for CAMUs in which wastes will remain for long-term disposal (65 FR 51091, August 22, 2000).

In practice, pursuant to the 1993 CAMU rule, Regional Administrators have required liners on a site-specific basis for most new, replacement, or laterally expanded CAMUs. The 1993 CAMU rule, however, does not have explicit minimum liner requirements for CAMUs in which wastes will remain after closure. Some stakeholders expressed the concern that the 1993

[17] See, e.g., the April 30, 1986 guidance, ''Restrictions on Placement on Nonhazardous Liquids in Hazardous Waste Landfills'' OSWER Directive 9487.01–1A(85), in which EPA states, ''uses of nonhazardous liquids that are necessary to meet other regulatory or safety requirements, including EPA-approved corrective actions are not considered to be subject to the restrictions under RCRA section 3004(c)(3). . . . For this reason, uses such as the following should not be subject to the restrictions under section 3004(c)(3): dust suppression, fire fighting, intermittent watering of vegetative cover, moistening of a clay cap to prevent cracking or offgassing, washing of landfill equipment, and herbicide or pesticide treatment to control certain organisms that could break a cap or liner. In addition, EPA believes that the use of liquids for approved corrective action purposes (e.g., landfill washing or soil flushing to reduce hazardous waste concentrations) does not require an owner or operator to apply for an exemption under section 3004(c)(3).''

CAMU rule standard, while implemented appropriately in practice to date, was too open-ended and would benefit from increased detail to better ensure that liners are designed adequately and used where appropriate. This approach would also make CAMU design more predictable for the public. In response to these concerns, EPA proposed and is today finalizing a minimum national liner standard for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. To ensure the flexibility needed for cleanups, the Agency also proposed and is today finalizing opportunities for owners/operators to propose and Regional Administrators to approve alternate liner standards. Comments on the standards are addressed in the standard-specific sections, below.

a. Standard Liner Design (40 CFR 264.552(e)(3)(i))

Today's minimum national CAMU liner standard at 40 CFR 264.552(e)(3)(i) is modeled after the uniform design standard for municipal solid waste landfills currently in place at 40 CFR 258.40(a)(2). Under today's CAMU standard, all new, replacement, or laterally expanded CAMUs in which wastes will remain after closure must be constructed with a composite liner and a leachate collection system (unless the Regional Administrator approves an alternate site-specific standard). Today's standard requires a composite liner consisting of two components: (1) An upper flexible membrane liner with a minimum thickness of 30-mil, and (2) a lower component consisting of at least two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$cm/sec. The rule requires the upper flexible membrane liner component to be installed in direct and uniform contact with the compacted soil component. Flexible membrane liners consisting of high density polyethylene must be at least 60-mil thick. The leachate collection system must be constructed to maintain less than a 30-cm depth of leachate over the liner. Commenters who addressed the specific minimum national liner design requirements generally supported the requirements as reasonable, and the Agency is finalizing these provisions as proposed.

The Agency believes that these standards are appropriate minimum national standards for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure, because they will, among other things, be protective across a wide range of waste and site conditions. They also reflect what has generally been EPA and state practice at CAMUs to date. (See CAMU Site Background Document.) Indeed, commenters who addressed the specific liner and leachate collection standards proposed generally agreed that the RCRA Subtitle D standards were appropriate for CAMUs. In addition, by using the standards for municipal solid waste landfills as a guide, the Agency avoids the implementation issues associated with promulgation of a new standard. Guidance on application of the standards for municipal solid waste landfills is already available. See, for example, Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991 and EPA's 1993 guidance, Solid Waste Disposal Facility Criteria: Technical Manual (EPA 530–R–93–017, November 1993), available on the Internet at *www.epa.gov/epaoswer/non-hw/muncpl/landfill/tecnman/intro.pdf.*

The new minimum national design standards (and alternate standards, discussed below) apply only to new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. As discussed in the proposal, the terms ''new,'' ''replacement,'' or ''laterally expanded'' should be interpreted consistently with guidance EPA has developed for ''new,'' ''replacement,'' and ''laterally expanded'' landfills and surface impoundments in the context of the liner and leak detection requirements of RCRA section 3004(o) (65 FR 51092, August 22, 2000). Unlike hazardous waste landfills and surface impoundments addressed by section 3004(o), however, as discussed above, ''existing'' and ''new'' CAMUs are not defined by a specific date. For CAMUs, ''new'' has its common meaning. That is, a CAMU built as part of a remedial action would be ''new.'' An existing unit that a Regional Administrator designates as a CAMU is not ''new'' and would not be subject to the design standards promulgated today. Over the years, EPA has issued guidance on application of the terms ''new,'' ''replacement,'' and ''laterally expanded.'' The Agency has placed key elements of this guidance in the docket for today's rulemaking.

One commenter expressed the concern that the proposal did not adequately describe ''existing'' units. Citing a 1985 EPA memorandum on application of the section 3004(o) standards,[18] the commenter argued that relying on this interpretation of ''existing'' would eliminate virtually all nonhazardous solid waste management units at corrective action facilities.

The guidance cited was not placed in the docket for the proposal and does not define the Agency's approach for determining which units are ''existing'' for purposes of today's CAMU design standards. RCRA section 3004(o) established minimum liner and leachate detection standards for hazardous waste landfills and surface impoundments built after November 8, 1984, the effective date of HSWA. Therefore, EPA guidance at the time defined ''new'' in relation to the specific effective date of the section 3004(o) requirements—i.e., units built after that effective date were considered ''new.'' In referencing guidance on the terms ''new,'' ''replacement,'' and ''laterally expanded'' in the proposal, the Agency was referring to its general principles for application of these terms, not to its determinations of specific effective dates of section 3004(o) requirements for specific types of units. To respond directly, EPA clarifies that, for the purposes of the CAMU design standards promulgated today, solid waste management units that are in existence at the time of a remedial action are not considered ''new'' units if they are designated as a CAMU.

b. Alternate Liner Designs (40 CFR 264.552(e)(3)(ii))

EPA proposed two provisions that would allow Regional Administrators to approve alternate liner designs for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. Under certain circumstances, such designs may include alternatives that do not include a liner or leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(A), owners/operators may propose and Regional Administrators may approve alternate liner and leachate collection system designs based on a finding that alternate design and operating practices, together with location characteristics, will prevent migration of hazardous constituents into ground or surface water at least as effectively as the standard liner and leachate collection system. As discussed in the proposal, this standard is patterned on the statutory alternate liner standard for hazardous waste land disposal units at RCRA section (o)(2), promulgated by EPA at 40 CFR 264.301(d) (65 FR 51092, August 22, 2000). This allows for alternate liner and leachate collection

[18] The guidance document cited by the commenter is Applicability of the HSWA Minimum Technology Requirements Respecting Liners and Leachate Collection Systems, April 1, 1985, available in the RCRA permit policy compendium as document 9480.1985(01).

system designs for hazardous waste landfills provided the alternate design, in conjunction with location characteristics, will achieve technical performance equal to the standard liner and leachate collection system design. As discussed in the proposal (65 FR 51092), EPA expects this provision would provide flexibility for designs that take into account local factors, including state design protocols and availability of construction materials.

Several commenters addressed the proposal to include ''location characteristics'' as a consideration in determining whether an alternate liner design would prevent migration as effectively as the standard liner and leachate collection system. Commenters who addressed this issue agreed that allowing Regional Administrators to consider location characteristics when approving alternate liner designs is appropriate. Commenters suggested that location characteristics that might influence technical performance of alternate liner and leachate collection system designs could include climate, geology, hydrology, and soil chemistry at a site. The Agency agrees that these considerations are among the location characteristics that might be considered.

Commenters also suggested that the chemical and physical characteristics of specific wastes that will remain in a CAMU after closure should be considered ''location characteristics'' that may influence the technical performance of alternate liner and leachate collection designs. The Agency does not agree with this view. At the same time, it is reasonable for Regional Administrators to consider the physical and chemical characteristics of waste, such as a waste form's potential for leaching hazardous constituents, in comparing whether an alternate liner system will prevent migration as effectively as the standard liner and leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(B) owners/operators may propose and Regional Administrators may approve alternate approaches to liner and leachate collection systems for new, replacement, and laterally expanded CAMUs in which wastes will remain after closure, where a CAMU is ''to be established in an area with significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.'' Commenters generally support this approach, and EPA is finalizing these provisions as proposed.

As discussed in the proposal, EPA believes that it may be appropriate to approve CAMU designs that do not include a liner or leachate collection system under certain circumstances (65 FR 51093, August 22, 2000). For example, at some highly contaminated facilities, CAMUs may be located in areas of significant contamination is pervasive throughout the subsurface. At such facilities, remedial approaches may involve long-term ground water pump-and-treat systems, or subsurface soil contamination may be expected to remain in place as a source of ground water contamination. At these types of facilities, a liner and leachate collection system to reduce migration of hazardous constituents into an already significantly contaminated subsurface likely would not meaningfully increase protection of human health or the environment and would not be the best use of cleanup resources. When approving alternate designs that do not include a liner or leachate collection system, the Regional Administrator must find that potential migration of hazardous constituents from the CAMU will be consistent with the remedial goals for the facility (for example, not cause cleanup goals to be exceeded at locations where potential receptors would be located) (see 65 FR 51093).

The Agency also believes that the alternate approaches to liners and leachate collection systems allowed under 40 CFR 264.552(e)(3)(ii)(B) will be helpful when CAMUs are used for land treatment. As discussed in the proposal, land treatment generally does not involve the use of liners because it typically requires that rainwater or introduced liquids percolate through the waste and the underlying soil column (65 FR 51093, August 22, 2000). Also, as discussed in the proposal, EPA expects that many CAMUs used for land treatment will be existing units (see discussion above) and will not be subject to the minimum liner standards established today. In situations where an existing unit is not used, the Agency believes that land treatment CAMUs will be established in areas of significant contamination and thus will be accommodated by this provision allowing approval of CAMUs without liners or leachate collection systems. The Agency specifically requested comment on whether its proposed approach to alternate liners and leachate collection systems adequately addressed land treatment. Commenters who addressed this issue believed that land treatment was adequately accommodated.

2. Cap Standard

Under the 1993 CAMU rule at 40 CFR 264.552(e)(4)(ii)(B), owners/operators are required to cap CAMUs in which waste will remain in place after closure. Similar to the 1993 approach to liner and leachate collection systems (discussed above), the 1993 CAMU rule did not have explicit minimum cap design criteria for CAMUs. Some stakeholders expressed the concern that the 1993 CAMU rule standard was too open-ended and would benefit from increased detail to better ensure that caps are properly designed. In response to these concerns, EPA proposed and is today finalizing a minimum national cap design standard for CAMUs in which wastes will remain after closure. To maintain the flexibility necessary to encourage cleanups, the Agency also proposed, and is today finalizing, opportunities for owners/operators to propose and Regional Administrators to approve alternate cap standards.

The proposed cap standard for CAMUs would have required caps for all CAMUs where waste remained in place after closure. However, the Agency also specifically requested comment on situations where treatment of waste in a CAMU would reduce concentrations of hazardous constituents to health-based levels or below. The Agency expressed the concern that, although ''waste'' may remain in such units after closure, capping would not be needed to protect humans or the environment, because constituent concentrations would already be at or below health-based levels. Therefore, requiring capping would be an unnecessary and inappropriate use of cleanup resources. EPA offered specific alternative regulatory language to address this issue in the proposal; under the alternate language, caps would be required only where waste remained in place at the closed CAMU ''above remedial levels or goals applicable to the site'' (65 FR 51094, August 22, 2000.)

Commenters who addressed this issue agreed that caps would not be appropriate where concentrations of hazardous constituents are at or below health-based levels. In response to these comments, the Agency is modifying the standard for CAMU caps as discussed in the proposal. The final standard now reads, in pertinent part: ''At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU with constituent concentrations above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to

meet the following performance criteria * * * '' As discussed later in today's rulemaking, this approach is consistent with the Agency's approach to situations where concentrations of hazardous constituents are at or below health-based levels when wastes are first placed in a CAMU. (See discussion of 40 CFR 264.552(g).)

a. Standard Cap Design (40 CFR 264.552(e)(6)(iv))

Today's minimum national cap design standard for CAMUs in which wastes will remain after closure is modeled after the cap design standards for hazardous waste landfills at 40 CFR 264.310(a). Under today's rule, unless Regional Administrators approve alternate site-specific standards, CAMU caps must be designed and constructed to meet five performance criteria. First, the cap must provide long-term minimization of migration of liquids through the closed CAMU. Second, the cap must function with minimum maintenance. Third, the cap must promote drainage and minimize erosion or abrasion of the cover. Fourth, the cap must accommodate settling and subsidence so that the integrity of the cover is maintained. Fifth, the cap must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. As discussed earlier in this preamble (see section III.F, above), comments on the overarching concept of minimum national design standards for CAMUs were mixed. However, as with the standards for liners discussed above, commenters who specifically addressed the proposed minimum national standards for CAMU caps generally supported the proposed standards as reasonable. With the change discussed above, the Agency is finalizing the cap standard as proposed.

As discussed in the proposal, although the performance criteria for CAMU caps are modeled after the criteria for hazardous waste landfills, the Agency believes that CAMU caps will not generally be constructed like the caps required under RCRA Subtitle C for hazardous waste landfills (65 FR 51094, August 22, 2000). This is because the standard for permeability of the cap is set in relationship to the liner—the cap must be of equal or lower permeability than the liner. The minimum national standards for CAMU liners promulgated today apply only to new, replacement, or laterally expanded CAMUs and are modeled after the liner standards for municipal disposal facilities regulated under Subtitle D, not the standards for hazardous waste landfills regulated under Subtitle C. Given the range of liner approaches that may be taken for CAMUs under today's regulations (e.g., existing units where the new minimum national liner standards do not apply; new, replacement, or laterally expanded CAMUs with Subtitle D type liners; new, replacement, or laterally expanded CAMUs with alternate liner designs), the Agency expects a similar range of approaches to the design and construction of CAMU caps.

Also as discussed in the proposal, the minimum permeability standard for CAMU caps may be met in a variety of ways including with systems that are designed to use the water uptake capability of vegetation (65 FR 51094, August 22, 2000). As a result, it will not always be necessary for the construction materials of the cap to match the construction materials of the liner (if a liner is present) to meet the permeability standard. For more discussion on the range of cap designs that might meet the minimum permeability standard, see the preamble discussion to the July 1997 revised standards for municipal solid waste landfills (62 FR 40710, July 29, 1997).

b. Alternate Cap Designs (40 CFR 264.552(e)(6)(iv)(B))

EPA proposed and is today finalizing a provision allowing Regional Administrators to approve alternate cap designs. Under this provision, owners/operators may propose and Regional Administrators may approve alternate cap designs when such designs facilitate treatment or the performance of the CAMU. As discussed in the proposal, this provision might be used, for example, to promote continued biotreatment of wastes remaining in CAMUs after closure by allowing infiltration of rainwater through the cap into the wastes (65 FR 51094, August 22, 2000). Alternative designs might also be appropriate for caps that rely on evapotranspiration through plants to prevent infiltration of liquids. Commenters who addressed this issue generally supported the Agency's approach to alternate cap standards, and the Agency is finalizing these provisions as proposed.

3. Releases to Ground Water (40 CFR 264.552(e)(5)(iii))

The 1993 CAMU rule included at 40 CFR 264.552(e)(5) a provision for monitoring existing releases to ground water and identifying any new releases from wastes remaining in CAMUs after closure. The 1993 rule, however, did not include provisions that specifically require owners/operators to notify Regional Administrators of releases to ground water from CAMUs or to take corrective action for such releases. As discussed in the proposal, EPA expected that such requirements would be imposed on a site-specific basis under the general CAMU designation criteria at 40 CFR 264.552(c)(2) and other authorities (65 FR 51095, August 22, 2000). However, because protection from future releases is a critical aspect of CAMUs (or any hazardous waste management unit), the Agency proposed and is today finalizing an express requirement for ''notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water'' from CAMUs. Commenters who addressed the issue generally supported this approach.

As discussed in the proposal, the new requirement for notification and corrective action as necessary to protect human health and the environment does not change the more general performance standards for CAMUs. Consistent with the Agency's policies on ground water remediation,[19] the Agency believes that decisions about the details of ground water monitoring programs, including monitoring and reporting (i.e., ''notification'') frequencies for CAMUs and, if necessary, decisions about corrective action for releases to ground water from CAMUs, should be made in the context of overall site remedial approaches (65 FR 51095, August 22, 2000). For example, as discussed in the proposal, monitoring and reporting frequencies are typically established on a site-specific basis in sampling and analysis plans that reflect site-specific conditions. These conditions may include the extent of existing contamination, distance to nearest ground water well, ground water flow rates, and statistical sampling protocols.

The Agency expects that notification requirements, will similarly be determined on a site-specific basis in the context of these types of site-specific plans. Like the standard for ground water monitoring established in the 1993 CAMU rule, the standard for notification and corrective action for releases to ground water established today—''as necessary to protect human health and the environment''—is a performance standard. The Agency expects that more detailed

[19] See, e.g., Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking at 61 FR 19432, 19461 (May 1, 1996) and Presumptive Response Strategy and Ex Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites, EPA 540/R–96/023, October, 1996.

specifications or performance goals for ground water monitoring, notification, and corrective action will be included in CAMU permits or orders based on site-specific information and conditions.

G. Treatment Requirements (40 CFR 264.552(e)(4))

Today's rulemaking establishes a new framework for treatment of wastes placed in CAMUs. Under this new framework, ''principal hazardous constituents,'' or ''PHCs,'' must meet either minimum national treatment standards adapted from the LDR Phase IV soil treatment standards or, in specific circumstances, site-specific treatment standards based on defined adjustment factors. In the 1993 CAMU rule, EPA did not establish specific minimum treatment requirements. Instead, the Agency emphasized the importance of treatment in a performance standard, requiring that CAMUs ''enable the use, when appropriate, of treatment technologies * * * to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility or volume of wastes that will remain in place after closure.'' The new framework for treatment of wastes placed in CAMUs and the specific treatment standards and adjustment factors established today address concerns that the 1993 CAMU rule did not contain explicit requirements for treatment (or treatment standards) and that this deficiency might, in some cases, result in insufficient treatment of higher-risk wastes.[20] As EPA explained in the proposal (65 FR 51084), the Agency believes that minimum national standards will have significant benefits. Such standards can make the CAMU process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse.

Treatment requirements for CAMU-eligible wastes and, more generally, the application of RCRA LDR treatment standards to wastes managed during cleanups are, perhaps, the most difficult issues addressed by the CAMU amendments. The Agency's position on these issues was clearly articulated in the proposal and, because these are important and longstanding issues, bears repeating:

> In developing today's treatment requirements, EPA considered what approaches to treatment would be appropriate in the context of the primary purpose of the CAMU rule, i.e., in the context of reducing disincentives to cleanup. During cleanup it is not always straightforward, possible, or reasonable to require owners/operators to excavate or remove contaminated material, because of the costs and practical issues associated with potential application of the RCRA requirements for as-generated wastes to excavated material and because there is often a legal option to leave material in place. This is particularly an issue with respect to application of the LDR treatment standards for as-generated wastes to wastes managed for implementing cleanup. Part of the benefit of the LDR treatment standards for as-generated wastes is that they create an incentive to generate less waste. At cleanup sites, contamination has already occurred, i.e., ''wastes'' have already been generated, and the incentive to generate less waste tends to work against the goal of cleanup, which is often to maximize the amount of waste managed in order to more aggressively manage and, where appropriate, remove the threats it poses. For a fuller discussion of this issue, see the May 26, 1998, LDR Phase IV rule establishing the soil treatment standards, at 63 FR 28556, 28603. All of the Agency's attempts to address these issues have been designed to promote more aggressive cleanups, that is, to promote cleanups that rely more heavily on excavation and management and include an appropriate degree of treatment. EPA believes that, in general, these types of cleanup result in more permanent remedies. (65 FR 51095, August 22, 2000).

Comments on EPA's proposal to establish treatment requirements, and specific treatment standards and adjustment factors for wastes placed in CAMUs were mixed. As with the CAMU design and operating standards discussed above, some commenters supported the proposed establishment of a baseline treatment requirement for wastes placed in CAMUs. Other commenters opposed the new treatment requirements, arguing that they would slow future cleanups or recreate disincentives to excavating and managing wastes and contaminated materials during cleanup. Some commenters suggested that EPA eliminate the treatment requirements altogether or, if treatment must be required, provide that treatment requirements be developed on a site-specific basis considering site risks.

The Agency does not agree that proposed CAMU treatment standards should be eliminated. As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability for CAMU operation and the flexibility necessary to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum treatment requirements for wastes that are placed in CAMUs are an important element of this balance.

The Agency does not believe that today's treatment requirements will deter cleanups. As discussed in the proposal, EPA evaluated CAMUs approved under the 1993 rule against today's treatment requirements and concluded that existing CAMU remedies involving treatment would still require treatment under today's requirements and that, similarly, existing CAMU remedies that do not involve treatment would not require treatment under today's requirements (65 FR 51096, August 22, 2000 and CAMU Background Document). Likewise, the amount of treatment required in specific instances is not expected to change. Nothing in the comments on the proposal (nor in the Agency's update of its analysis for today's rule) counters these conclusions. As explained earlier, EPA also believes these standards will have significant benefits in terms of consistency, predictability and reduction in the likelihood of mistakes or abuse.

While the Agency agrees that site-specific factors, including site-specific factors related to risk, are appropriate (under certain circumstances) to consider in adjusting treatment requirements, the Agency is not persuaded that a risk-reduction standard alone would provide the predictability in decision making about treatment of wastes placed in CAMUs that the Agency and many stakeholders desire. It is EPA's conclusion, based on its evaluation of CAMUs approved under the current risk-based CAMU standards (and the lack of comments on that evaluation), that site- and waste-specific factors, including factors related to risk, are appropriately accommodated in the treatment standard adjustments, as discussed later in today's rulemaking. The Agency also notes that, while some commenters supported a completely risk-based approach, most supported the proposed treatment requirements as reasonable.

For these reasons, EPA is promulgating the treatment requirements essentially as proposed and as discussed below.[21]

[20] As discussed in the proposal, the Agency does not believe the 1993 CAMU rule has resulted in insufficient treatment in practice. Treatment has been used at more than 70% of CAMUs approved under the 1993 rule. EPA continues to believe that CAMU remedies that require treatment under the 1993 rule would likewise require treatment under today's rulemaking; similarly, EPA believes that CAMU remedies that, under the 1993 rule do not require treatment where treatment was not required under the 1993 rule would properly not require treatment under today's rulemaking (65 FR 51096, August 22, 2000).

[21] EPA suggests that readers interested in more specific insight into how EPA intends to apply the treatment conditions of today's rule may wish to

Continued

1. Identification of ''Principal Hazardous Constituents'' (PHCs) (40 CFR 264.552(e)(4)(i) and (ii))

The Agency proposed that the treatment standards established today would apply only to ''principal hazardous constituents,'' or ''PHCs.'' Commenters supported this approach, and the Agency is finalizing the PHC approach with one clarifying change. As discussed below, the Agency is amending the proposed regulatory language defining PHCs based on ground water risks to emphasize that the general performance standards for PHCs apply to the selection of these PHCs as well.

Under today's rulemaking, PHCs are defined as those constituents that ''pose a risk to human health or the environment that is substantially higher than the cleanup levels or goals at the site.'' The Regional Administrator selects PHCs from those constituents that would otherwise be subject to treatment under the RCRA LDR treatment standards for as-generated waste. As proposed, EPA is requiring that ''in general, the Regional Administrator will designate as principal hazardous constituents: carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.''

Today's rule also requires that: ''The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.'' Note that, in response to comment and to be consistent with the description of designation of ''other constituents'' as PHCs (below), the Agency has added the phrase ''when risks to human health and the environment are substantially higher than the cleanup levels or goals for the site.''

Finally, as proposed, the Agency is requiring that ''The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.''

Each of the PHC criteria are discussed more completely in the sections below.

a. Approach to Identifying PHCs

During the site characterization efforts associated with cleanup, owners/operators and overseeing agencies typically identify which wastes are hazardous, which materials warrant remediation or removal, and which constituents will be used to set site cleanup levels. This process results in the identification of what are generally known as the ''risk drivers'' at a site. As discussed in the proposal, EPA continues to expect that the site characterization and evaluation processes that lead to remedy selection and (in some cases) to the decision to consider use of a CAMU will reliably identify PHCs. The Agency emphasizes that it views identification of PHCs as a normal part of well-designed cleanup processes, not a separate analysis. Commenters who addressed this issue agreed that the site characterization typically carried out during well-designed cleanups would generally provide the information necessary to support a PHC determination and that, therefore, a separate analysis should not be needed.

As discussed in the proposal, the designation of PHCs is made in relation to site cleanup levels or goals—that is, PHCs are those constituents that pose a risk to human health and the environment substantially higher than cleanup levels identified as protective of human health and the environment for the site (65 FR 51097, August 22, 2000). EPA took this approach based on a view that it is appropriate to designate PHCs in the context of the cleanup levels or goals set for a site, because in situations where PHCs are designated, the CAMU will generally be a permanent disposal unit.[22] Site cleanup levels or goals typically take into account such factors as reasonably anticipated land use (e.g., residential, industrial, or agricultural) and exposure pathways of concern. Therefore, the Agency believes it is appropriate to designate PHCs in the context of these factors, because the PHC concept is meant to distinguish higher-level risks relative to the risk-reduction goals for a particular site. The Agency did not propose generic national concentrations for PHC determinations, since generic concentrations would almost certainly not reflect remedial activities at individual sites.

As discussed in the proposal, in making determinations of whether PHCs are present in CAMU-eligible wastes, overseeing agencies and owners/operators cannot use pre-treatment of the waste to avoid a PHC determination that would otherwise be made. That is, PHC determinations and the related application of today's treatment standards and adjustment factors should be made based on constituent concentrations in CAMU-eligible waste as the waste is initially managed, not after pre-treatment or other activity intended to reduce constituent concentrations to below PHC levels.

In determining whether PHCs are present, based on risks from ingestion and inhalation, the Regional Administrator to will assume that an individual is directly exposed to the constituents in the CAMU-eligible waste, consistent with the exposure assumptions used to develop site-specific cleanup levels or goals, and to consider reasonably anticipated land use (which could be residential or non-residential). Fate and transport will only be considered for assessing the migration of constituents from waste into ground water or air, for the purpose of determining the risk posed by direct exposure to the ground water or inhalation. Some commenters questioned this approach, recommending that PHC determinations reflect plausible exposures that take into account the protection from exposure provided by a CAMU; these commenters argued that, where the engineering design of a CAMU makes direct contact implausible, EPA should not assume that the exposure might occur. EPA is not persuaded that designation of PHCs should reflect protection from exposure afforded by the engineering of a CAMU, at least when ingestion and inhalation are of concern (see discussion of waste-to-ground water pathway below). As discussed in the proposal, one of the reasons for specifying treatment requirements for CAMUs and for using the PHC approach is to protect against the potential for direct exposure to higher risk constituents in the event a CAMU fails (65 FR 51098, August 22, 2000). (Commenters did not challenge the possibility of such a failure occurring.) Therefore, in PHC determinations, fate and transport can be used only for assessing the potential migration of constituents from CAMU-

consult EPA's Corrective Action Management Unit (CAMU) Site Background Document (October 2001), which is available in the docket to today's rule.

[22] When CAMUs are not intended to be a permanent feature, the Agency believes they will generally be implemented through the provisions for storage and/or treatment only CAMUs, discussed in section I of today's preamble. In this case, the treatment standards would not apply to wastes within the CAMU, since their removal would be required at closure.

eligible waste into ground water or air for the purpose of determining the risk posed by direct exposure to the constituents in ground water or by inhalation at points where receptors are located.

Finally, as discussed in the proposal, the Regional Administrator does not have to wait to make site-specific PHC determinations until activities associated with development and approval of site-specific cleanup levels or goals have been completed. In many cases, it will be possible and appropriate for Regional Administrators to designate site-specific PHCs based on standard cleanup values (see discussion of the use of standard tables, later in today's rulemaking) and/or information available at the time CAMU determinations are made. The Agency believes that, as a general rule, if there is enough information at a site to make a CAMU determination, there will be enough information to identify PHCs in wastes proposed for management in the CAMU.

b. Constituents from Which PHCs Are Drawn (40 CFR 264.552(e)(4)(ii))

The set of constituents from which Regional Administrators might designate PHCs is the set of constituents that, absent a CAMU, would be subject to the LDR treatment requirements. That is, for listed wastes, the ''regulated hazardous constituents'' for the relevant listing found in 40 CFR 268.40, Treatment Standards for Hazardous Wastes); for characteristic hazardous waste, all ''underlying hazardous constituents'' (40 CFR 268.2(c), § 268.40(e)); and for contaminated soil, ''constituents subject to treatment'' (40 CFR 268.49(d)). As discussed in the proposal, the Agency believes that it is appropriate to limit PHCs to constituents that would otherwise be subject to the LDRs, because one of the primary objectives of the CAMU rule is to provide relief from application of the LDR requirements to wastes managed for implementing cleanup (65 FR 51096, August 22, 2000). Commenters supported this approach.

c. Carcinogenic and Non-Carcinogenic PHCs

Under today's rule, the Regional Administrator will generally identify carcinogenic constituents as PHCs when they pose a direct risk from inhalation or ingestion that is at or above a 10^{-3} risk level. As discussed in the proposal, the Agency believes that risks at or above 10^{-3} will generally be ''substantially higher than the cleanup levels or goals at the site'' given that EPA (and most state cleanup programs) generally sets site-specific cleanup levels or goals for carcinogenic constituents within the risk range of 10^{-4} to 10^{-6}, with 10^{-6} used as a point of departure.[23]

In the rare cases where site cleanup levels or goals are established at the upper end of the risk range (i.e., at 10^{-4} risk levels), constituents with concentrations at or above the 10^{-3} risk level should generally be identified as PHCs, because, in general, a level of risk an order of magnitude above the upper end of the risk range would typically be considered a risk substantially higher than site cleanup levels or goals. The Regional Administrator would look closely at concentrations above but near the 10^{-3} risk level in light of assumptions that underlie the risk estimate (e.g., waste characteristics and site conditions) prior to determining whether the particular constituents were principal hazardous constituents. For example, if a constituent posed risks close to a 10^{-3} level, based on conservative default assumptions (e.g., promulgated state default tables or generic assumptions used to determine bioavailability), and the underlying assumptions were not applicable at the site in question, the Regional Administrator could determine that the constituents should not be designated as principal hazardous waste constituents.

Today's rulemaking also provides that the Regional Administrator will generally designate non-carcinogenic constituents as PHCs when they pose a risk from inhalation or ingestion that is greater than or equal to ten times the hazard quotient[24] for the constituent (i.e., an order of magnitude or greater over the reference dose). Hazard quotients are used as a measure of unacceptable exposure to constituents that produce toxic endpoints other than cancer. As discussed in the proposal, the Agency believes that risks ten times the hazard quotient or greater will generally be ''substantially higher than the cleanup levels or goals for the site,'' given that EPA typically sets cleanup goals for individual non-carcinogens at a hazard quotient of one or less. (65 FR 51098, August 22, 2000).

Commenters supported this approach.

Carcinogenic and non-carcinogenic constituents may be identified as PHCs either through a site-specific risk assessment or by a comparison of site concentrations to standard values. As discussed in the proposal, many state (and federal) cleanup programs publish standard tables with cleanup levels based on risks from inhalation or ingestion under various exposure scenarios (65 FR 51097, August 22, 2000). The Regional Administrator may use these tables, where appropriate, to assist in making PHC determinations by extrapolating 10^{-3} risk levels from the standard 10^{-6} table values. While commenters generally agreed with the Agency that such tables could be useful in designating PHCs, some commenters were concerned that the Agency intended the Regional Administrator to require use of standard tables (and, therefore, standard exposure assumptions and assumptions about other factors) to the exclusion of more site-specific approaches. The Agency emphasizes that it is not requiring the use of standard tables to identify PHCs and that either standard tables or site-specific approaches may be used. The Agency recognizes that, in many cases, standard tables are developed using conservative exposure and other assumptions and that these assumptions may not match actual site-specific conditions. As discussed earlier in today's rulemaking, the Agency expects PHCs to be identified as a normal part of the site characterization and evaluation activities associated with well-designed cleanups.

Today's rule, like the proposal, requires that the Regional Administrator ''generally'' identify hazardous constituents as PHCs if constituent concentrations exceed the specified risk levels for carcinogens and non-carcinogens discussed above. However, as discussed in the proposal, there may be site-specific situations where these risk levels are not appropriate for determining PHCs (65 FR 51097, August 22, 2000). The Agency emphasizes that PHC determinations are made on a site-specific basis in the context of site cleanup levels or goals. In situations where the Regional Administrator decides not to identify constituents that meet the above descriptions as PHCs, the Agency expects them to document and explain the decision in the supporting materials associated with the CAMU determination.

[23] For a full discussion of the use of the risk range in setting site-specific cleanup levels or goals in the RCRA corrective action program, see the Corrective Action ANPR (61 FR 19432, 19450, May 1, 1996).

[24] The hazard quotient is the estimated site-specific exposure (dose) over a specified period divided by the reference dose for the constituent in question over similar exposure conditions. A reference dose is an estimate of a daily exposure to the general population of humans, including sensitive sub-populations, that is not likely to have an appreciable risk of adverse effects during a lifetime. The magnitude of an adverse effect is not always related directly to the magnitude of the hazard quotient. The Agency's Integrated Risk Information System (IRIS) database has a more detailed description of reference doses and hazard quotients, see *www.epa.gov/iris*.

d. PHCs Identified Based on the Waste-to-Ground Water Pathway (40 CFR 264.552(e)(4)(i)(B))

In addition to designating PHCs based on carcinogenic and non-carcinogenic risks to humans from direct exposure through inhalation and ingestion, Regional Administrators will, where appropriate, designate PHCs based on the risk posed by the potential migration of constituents from wastes to ground water. As discussed in the proposal, the Agency expects that in making such determinations Regional Administrators will consider site-specific factors that could affect constituent migration. These site-specific factors could include factors such as the location of the CAMU, the nature of the wastes placed in the CAMU (e.g., mobility), how the waste placed in the CAMU will be managed (e.g., the type of CAMU that will be used and potential rates of liquid percolation into and out of the unit), factors that affect transport of constituents to ground water, and beneficial uses of ground water. As discussed in the proposal, in situations where constituents in soil pose a significant potential threat through the ground water pathway (e.g., based on fate and transport modeling) and the soil is excavated for disposal in a CAMU, the Regional Administrator should strongly consider whether to designate such constituents as PHCs if they are not otherwise designated as PHCs under the approach for direct human exposure to carcinogens and non-carcinogens discussed above (65 FR 51098, August 22, 2000).

The approach to designating PHCs based on risks from the waste-to-ground-water pathway is different from the approach taken to designating PHCs based on direct exposure through ingestion. It does not specify a generally appropriate risk level that would typically define PHCs, and it allows for consideration of additional factors that potentially affect exposure. As discussed in the proposal, EPA believes that this approach is appropriate because, among other things, of the highly site-specific nature of the waste-to-ground-water pathway (65 FR 51098, August 22, 2000). Commenters supported this conclusion.

While commenters who addressed the issue generally supported EPA's proposed approach to identification of PHCs based on the waste-to-ground-water pathway, some commenters expressed concern about the specific regulatory language. Commenters argued that, because the regulatory language describing identification of PHCs based on the waste-to-ground-water pathway did not include the overall PHC standard of ''risks substantially higher than site cleanup levels or goals,'' the provision could be read as standardless. The Agency believes that the overreaching standard for identifying PHCs at 40 CFR 264.552(e)(4)(i) is clear; PHCs are constituents that, on a site-specific basis, ''pose a risk substantially higher than the cleanup levels or goals for the site.'' However, to eliminate any potential confusion over the PHC standard as it applies to the waste-to-ground-water pathway, the Agency has modified from the proposal the regulatory language describing the waste-to-ground-water pathway to reiterate the overall standard for identification of PHCs. The new language reads, ''The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health or the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.'' This revised regulatory language is consistent with the comparable regulatory language addressing the designation of PHCs based on other risks (see 40 CFR 264.552(e)(4)(i)(C) and discussion below).

e. Designation of Other PHCs (40 CFR 264.552(e)(4)(i)(C))

As discussed above, EPA is today establishing a general framework for site-specific identification of PHCs that emphasizes risks to humans from direct ingestion and inhalation and highlights the waste-to-ground-water pathway. The Agency believes that this framework will result in the identification of constituents that pose risks ''substantially higher'' than the cleanup levels or goals for a site. The Agency also believes that this approach will screen out constituents posing lower risks, and CAMU-eligible wastes with lower concentrations of higher-risk constituents. However, there may be other types of site-specific circumstances where constituents pose risks that are ''substantially higher than the cleanup levels or goals for the site,'' for example, based on risk scenarios not otherwise addressed in the other PHC determinations.

The Regional Administrator might, on a site-specific basis, for example, designate PHCs based on ecological concerns, potential risks posed by dermal contact, or constituent mobility. PHCs might be designated at risk levels higher or lower than the standard risk levels discussed for carcinogens and non-carcinogens above. For example, the Regional Administrator could determine that a highly mobile constituent posing a risk of 10^{-4} is a principal hazardous constituent at a site where protection of ground water is an especially significant issue. To emphasize that PHCs may be designated based on all appropriate site-specific considerations, EPA proposed and is today finalizing a provision that ''the Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals for the site.''

Some commenters expressed concern that, by emphasizing the Regional Administrator's ability to designate PHCs based on risks other than those posed by direct exposure to humans through inhalation or ingestion or from the waste-to-ground-water pathway, the Agency would render moot the general guidelines for establishing PHCs. The Agency disagrees that this result will occur. As discussed throughout today's rulemaking, during cleanups overseeing agencies encounter a diversity of site-specific conditions. While EPA believes that considering risks posed by direct exposure to humans through inhalation and ingestion as well as risks posed by migration of contamination from wastes to ground water will most often result in appropriate identification of PHCs (because these are the issues that typically drive cleanup decisions), the Agency cannot rule out identification of PHCs based on other site-specific risk factors. As with other PHC designations, these designations would be made only when constituents pose risks that are ''substantially higher than the cleanup levels or goals for the site.'' The Agency would expect PHCs based on factors other than direct exposure to humans through ingestion or inhalation or risks from the waste-to-ground-water pathway would be considered where such factors were among the risk drivers for cleanup at a site, and contaminants were identified at levels substantially higher than cleanup goals.. On the other hand, the Agency does not expect that PHCs will be designated based on ecological risks unless ecological risk concerns are among the drivers for site cleanup levels or goals.

f. Relationship of PHCs to ''Principal Threats'' Guidance

In the proposal, the Agency discussed its approach to principal hazardous constituents and to treatment requirements in relation to the Agency's general and longstanding preference for treatment of higher-risk wastes during cleanup (65 FR 51098, August 22, 2000). The Agency observed that the PHC concept is consistent with the ''principal threats'' approach used in the CERCLA and RCRA corrective action programs to express the Agency's general preference for treatment of higher-risk wastes. Commenters were concerned that this presentation of the PHC approach as consistent with the ''principal threats'' approach could be misleading. These commenters noted that the principal threats approach is often used to inform choices between various remedial approaches and to determine which wastes are likely to need active management, while the PHC approach is meant to identify higher-risk constituents in CAMU-eligible wastes that would, absent the CAMU regulations, be subject to RCRA LDR treatment standards. Furthermore, these commenters noted that the PHC concept applies after a decision has been made to excavate and manage cleanup wastes.

The Agency agrees that the PHC approach and the ''principal threats'' concept apply at different points in cleanup processes and are used for different purposes. EPA's statements on this matter were only meant to observe that, like the ''principal threats'' concept, the PHC approach focuses on the higher-risk subset of wastes under consideration. For a fuller discussion of the application of the ''principal threats'' concept during RCRA corrective action, see Corrective Action ANPR (61 FR 19432, 19448 (May 1, 1996)). Also see ''A Guide to Principal Threats and Low Level Threat Waste,'' OSWER Directive 9380.3–06FS, November 1991.

2. Treatment Standards (40 CFR 264.552(e)(4)(iii))

Under today's new framework for treatment of wastes placed in CAMUs, principal hazardous constituents must be treated to achieve minimum national treatment standards or, in certain circumstances, site-specific treatment standards developed through application of a number of adjustment factors. As discussed in the proposal, the Agency believes that this approach—minimum national standards with appropriate opportunities for site-specific adjustments—represents a reasonable balance by setting specific treatment standards while preserving the flexibility needed to address a range of site- and waste-specific circumstances. The Agency also believes that the CAMU treatment standards and specified adjustment factors will provide a valuable benchmark against which the public can review treatment options under consideration. Details of the minimum national treatment standards and application of the adjustment factors are discussed below.

a. Minimum National Treatment Standards (40 CFR 264.552(e)(4)(iv))

(1) Standard of 90% Capped by 10XUTS

EPA proposed and is today finalizing a minimum national treatment standard of ninety (90) percent reduction in concentrations of PHCs unless such treatment would result in concentrations that are less than ten (10) times the relevant Universal Treatment Standard (UTS), in which case treatment would be capped at ten times the universal treatment standard. This standard was established for hazardous contaminated soil in the LDR Phase IV rule and is commonly referred to as ''90% capped by 10xUTS.'' For details on implementation of this standard, see the description in the LDR Phase IV rule, 40 CFR 268.49, 63 FR 28556, 28605 (May 26, 1998). Universal treatment standards are identified in 40 CFR 268.48, Universal Treatment Standards Table.

Today's treatment standard applies to both soil and non-soil wastes, including sludges and debris. Debris subject to today's treatment standards (i.e., CAMU-eligible debris that contain PHCs) must be treated using the current LDR treatment standards for hazardous debris at 40 CFR 264.45 or the CAMU treatment standards, whichever the Regional Administrator deems appropriate. Consistent with the approach it took for hazardous contaminated soils in the Phase IV rule, EPA is also requiring that wastes subject to today's treatment standards (i.e., CAMU-eligible waste that contains PHCs) that exhibit the hazardous characteristics of ignitability, corrosivity, or reactivity must be treated to eliminate such characteristics.

As discussed in the proposal, the Agency believes the 90% capped by 10xUTS treatment standard is appropriate and will generally result in meaningful treatment (65 FR 51100, August 22, 2000). Reducing concentrations of PHCs by 90% is a substantial reduction and, in cases where treatment is capped at 10xUTS, this is a relatively small increment over constituent concentrations established at the limits of the performance of available technology (i.e., the UTS levels that are established based on a Best Demonstrated Available Technology standard). The Agency continues to believe that the 90% capped by 10xUTS treatment standard is generally achievable in soils using technologies other than combustion. Because soil contaminated with hazardous waste is generally more difficult to treat than hazardous waste alone, the Agency believes that today's treatment standards can likewise be achieved in non-soil CAMU-eligible wastes using technologies other than combustion. For a fuller discussion of the achievability of the soil treatment standards, see the LDR Phase IV rule at 63 FR 28556, 28603 (May 26, 1998). As discussed in the proposal, in situations where today's treatment standards cannot be achieved using non-combustion technologies, the Agency has established an adjustment factor allowing Regional Administrators to adjust treatment standards based on a finding that the minimum national treatment standard is technically impracticable. The ''technical impracticability'' adjustment factor is discussed later in today's rulemaking.

Some commenters generally supported treatment standards, but opposed the 90% capped by 10xUTS standard as excessively stringent. They argued that this standard would likely limit the usefulness of CAMUs and therefore provide a significant disincentive to cleanups. The Agency does not believe that the 90% capped by 10xUTS standard is excessively stringent. As discussed in the proposal, the Agency's goal in designing today's treatment standards was that the treatment standards should provide a meaningful level of treatment and be achievable, but should not be so onerous as to discourage cleanup (65 FR 51100, August 22, 2000). The Agency also sought to ensure that today's treatment standards would not require treatment to levels significantly below those that are necessary to protect human health and the environment. The Agency continues to believe that the 90% capped by 10xUTS treatment standard, with opportunities to adjust treatment standards on a site-specific basis using the adjustment factors, meets these goals.[25] Given the fact that

[25] The Agency notes that, as part of comments opposing the 90% capped by 10xUTS treatment standard, one commenter observed that while ''the proposed regulations do allow for alternate treatment standards * * * departures from specific standard requirements are very often difficult to

Continued

treatment applies only to principal hazardous constituents, the general achievability of the numerical standards, the availability of adjustment factors, and EPA's analysis that treatment in CAMUs under the previous standards meet those of today's rule, EPA is not persuaded that the minimum national treatment standard promulgated today will reinstate disincentives to cleanups.

Today's treatment standard apply to PHCs in CAMU-eligible wastes when such wastes will be placed in a CAMU for permanent disposal. EPA is not requiring that treatment standards be met prior to placement. Treatment may occur either before or after wastes are placed in a CAMU—as is appropriate given that CAMUs will often be used to facilitate remedies involving treatment. Commenters who addressed the issue supported this approach. In addition, EPA is not requiring treatment when wastes are placed in CAMUs used for storage and/or treatment only. Requirements for CAMUs that will be used for storage and/or treatment only are discussed later in today's rulemaking.

(2) Use of TCLP and Alternative Leach Tests

EPA proposed that the Toxicity Characteristic Leaching Procedure (TCLP) be used to determine compliance with the CAMU 90%/10xUTS treatment standard under § 264.552(e)(4)(iv)(B) and (C) for metals. As noted in the proposal, the TCLP has been used as a broadly applicable leach test for assessing the potential mobility of both organic and inorganic constituents under plausible, reasonable worst-case management conditions for solid waste. The TCLP has performed reliably in many applications, with a few exceptions, and the Agency continues to believe that it is an appropriate evaluative test for waste classification and treatment compliance. This is particularly so when industrial wastes might plausibly be co-disposed under conditions similar to those typically present in municipal solid waste landfills, and also particularly when wastes are tested and managed without regulatory oversight. Thus, the TCLP is a reasonable and appropriate test for both identifying and evaluating the treatment of wastes, and today's rule establishes the TCLP as the default test for determining compliance with the CAMU treatment requirements. Today's rule also provides Regional Administrators with the flexibility to use alternatives to the TCLP for CAMU compliance, in some cases.

EPA noted in the CAMU proposal (65 FR 51101) that hazardous remediation waste will not often be co-disposed of with municipal solid waste in CAMUs. (No commenters on the proposal disputed this conclusion.) Since the TCLP reflects some key leaching conditions likely to be present in municipal solid waste landfills, but not necessarily in CAMUs, EPA, suggested that it may not always be the most appropriate predictor of waste leaching behavior in CAMUs. In addition, the Agency stated that the circumstances associated with disposal at a CAMU site will be well defined and known (although conditions at CAMUs will vary from site to site, depending on the wastes disposed of there and any previous uses of the site). Thus, leaching tests that more closely reflect individual site conditions might, in some instances, be better suited than the TCLP to estimate the behavior of waste disposed of in a CAMU. EPA sought public comment in the proposal on the appropriateness of using leach tests other than the TCLP for determining compliance with the CAMU treatment standards for metals, when warranted by site conditions.

For the most part, commenters on this issue expressed skepticism about the universal relevance of the TCLP test for cleanups, and generally supported the use of alternatives to the TCLP when warranted by site conditions. Several commenters broadly supported the use of alternative tests, while others specifically pointed to the Synthetic Precipitation Leaching Procedure or SPLP (which simulates acid rain conditions, rather than conditions in a municipal solid waste landfill). One commenter, for example, argued that the TCLP, by virtue of its design, does not appropriately simulate leachability of metals under circumstances in which metal-bearing wastes are not co-disposed with municipal wastes. On the other hand, another commenter stated that EPA should retain the TCLP as the standard test, but, where the TCLP may not be appropriate for ''unusual wastes,'' the Regional Administrator should be allowed to require the use of supplemental tests.

After reevaluating this issue in consideration of these comments, EPA concludes that the leaching conditions represented in the TCLP may not be present at many remediation sites, and that the TCLP will, therefore, not always be the most reliable test for predicting site-specific leaching behavior for waste disposed of at these sites. (See CAMU Site Background Document).[26] The TCLP anticipates general municipal solid waste landfill conditions (as reasonable, plausible worst-case management for waste), and is not tailored to reflect conditions of other waste management unit types or specific sites. It may, to some degree, either over- or under-predict leaching potential of some waste constituents at any particular site. For example, in the Agency's recent experience with monofilling of treated K088 waste (spent aluminum pot liners), the TCLP under-predicted arsenic leaching (see 62 FR 41005, July 31, 1997, and 62 FR 63458, December 1, 1997). On the other hand, some soils are less acidic than the TCLP (particularly in the western United States), and do not have the levels of acetic acid found in municipal solid waste landfills, and the TCLP might therefore over-predict leaching of some metals from these contaminated soils.[27] Because of these types of concerns, the Agency relied on other leach tests when waste was not being disposed of in municipal solid waste landfills in its recent rulemakings on inorganic chemicals and chlorinated aliphatics manufacturing wastes (see 65 FR 55695, September 14, 2000, and 65 FR 67100, November 8, 2000). EPA therefore concludes that, where a regulatory agency can specify a disposal site for remediation waste (such as a CAMU), and conditions at the specific cleanup site differ from those simulated by the TCLP, tests other than the TCLP that are tailored to reflect conditions at the site may be better suited to assess the likely leaching behavior of waste disposed of at that site (including in a CAMU).

Section 264.552(e)(4)(iv)(F) of today's final rule, therefore, provides the Regional Administrator the flexibility to specify alternative leach tests to determine compliance with the CAMU treatment requirements for metals (except where metals removal technologies are used, and compliance is based on total concentrations). Under today's rule, the Regional Administrator must find that an available alternative to the TCLP would ''more accurately

support and defend, even when they are entirely appropriate.'' The Agency reiterates that it sees the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors as equally available.

[26] For additional information on this issue, see Evanko and Dzombak, 1997, Remediation of Metals-Contaminated Soils and Groundwater, Technology Evaluation Report TE–97–01, Groundwater Remediation Technologies Analysis Center, Pittsburgh, PA.

[27] Particularly metal salts that are more soluble under acidic conditions, or which are soluble in acetate (both TCLP conditions), such as lead or mercury. On the other hand, some eastern U.S. soils are moderately acidic (pH 4.5–5.5) or highly acidic (pH 3.5–4.5), and most soils are buffered to stable pH values (Brady and Weil, 1999).

reflect the conditions at the site that affect leaching.'' Thus, the tests must better reflect site conditions, based on available site-specific information. Site-specific use of alternatives to the TCLP would most often be appropriate in cases where disposal conditions are known and differ from municipal solid waste landfill conditions, the waste will not be co-disposed with municipal solid waste (where the TCLP would more likely be appropriate), and there is an appropriate alternative test that more accurately reflects the individual site conditions. Where important factors affecting leaching are similar to municipal solid waste landfill conditions, the TCLP will likely be most appropriate even if there is no municipal solid waste co-disposed with the CAMU wastes. This may occur when acidic chemicals (particularly organic acids, such as phenols and cresols) are found in CAMU remediation wastes. The flexibility in today's rules, allowing the Regional Administrator to specify alternatives to the TCLP, could mean that either more or less treatment will be needed to meet the standard compared with evaluating treatment with the TCLP.

In determining that an alternative test was likely to better predict waste behavior at a selected disposal site, the Regional Administrator would be expected to consider site- and waste-specific factors affecting metals leaching. These might include disposal site and waste pH, anticipated rainfall infiltration of the site, characteristics of other waste co-disposed at the site, and the anticipated long-term structural integrity and porosity of wastes stabilized using cement or other pozzolonic treatment materials. Appropriate use of alternative tests might include testing over a range of pH values known to occur at the site, or adjusting liquid/solid ratios either in the test or mathematically after testing to estimate metals leaching rates and annual mass that would be leached. In the K088 monofilling case cited above, for example, performing a leaching test in the highly alkaline range (pH > 11) might well have identified the high leaching potential of arsenic from the treated waste under the actual site conditions at the disposal facility (leachate pH of 13), before high arsenic levels were detected in the landfill leachate. EPA emphasizes that these findings are site-specific.

Today's rule requires that an alternative leach test be ''appropriate for use.'' Leach testing is currently an active research area.[28] While some alternatives to the TCLP exist today, other testing approaches may be developed into test protocols in the future. Ideally, an appropriate alternative leach test will have a defined test protocol that has been subjected to a peer review.[29] Tests that have been incorporated into EPA technical guidance, or used routinely by other federal agencies, or published by third-party technical accreditation organizations (such as ASTM or ANSI) may be appropriate. Of tests currently available, a plausible alternative for some sites may be the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312).[30] Other tests that rely on multiple pH values and that vary other test conditions to better reflect a range of possible site conditions are under development or have been adopted by European countries, including the Netherlands.[31] However, even for established tests, the relevance of the test to the particular site circumstances must be considered in selecting and using an alternative test at that site.

One commenter recommended that EPA discuss other leaching tests that could be applied to remediation wastes, and explicitly identify and recommend alternative types of leaching tests, or specify criteria for selection of leaching tests based on site-specific application criteria (e.g., waste type, environmental setting). This commenter urged EPA to develop a leaching test, or a series of leaching tests, that reflect site specific conditions. EPA has addressed this comment in the preceding paragraph, by identifying site and waste conditions that may affect metals leaching. EPA, however, is not at this time prepared to recommend a specific set of tests, given the evolving state of the science. EPA has been conducting a broad review of leach testing, including funding of research on waste leaching and leach testing, and will continue to monitor and participate in developments in this area and provide appropriate guidance as new information and testing approaches are developed and evaluated.

Another commenter appears to suggest that non-TCLP tests be used as supplemental to the TCLP for evaluating unusual wastes, rather than as an alternative to the TCLP. While this commenter clearly supports the use of TCLP as the default test for evaluating the effectiveness of treatment, it is unclear what conditions it believes warrant departure from the TCLP, except for the opinion that such departures would be ''unusual.'' [32] The Agency disagrees that non-TCLP tests should only supplement the TCLP. Assuming that this is an accurate reading of this comment, the Agency disagrees that non-TCLP tests should only supplement the TCLP (that is, be used in addition to the TCLP), when the question is determining compliance with CAMU treatment requirements. Rather, the Agency believes that, in a situation (such as remediation) in which adequate administrative controls and knowledge of site and waste conditions supports it, the test most likely to be accurate for the particular waste under the identified conditions should be used. Because conditions vary from site-to-site, there is no one established test that will always be most accurate.

That being said, however, EPA notes that it is retaining the TCLP as the default test because some CAMU sites may have conditions similar to those simulated by the test (due to either the nature of the site contamination or where there is naturally acidic soil), and because the TCLP is well known and widely used for determining compliance with treatment requirements. The Agency has considerable experience with the TCLP in evaluating waste treatment over a number of years (which it does not have with possible alternative tests), and the Agency believes implementation and administration of CAMU remediations

[28] See, for example, van der Sloot, et al., 1997, *Harmonization of Leaching/Extraction Tests;* Garrabants and Kosson, 2000, *Use of a chelating agent to determine the metal availability for leaching from soils and wastes,* Waste Management 20, 155–165; Sanchez et al., 2000, *Environmental assessment of a cement-based solidified soil contaminated with lead,* Chemical Engineering Science 55, 113–128; Kosson, D.S., van der Sloot, H.A., Sanchez, F., and Garrabants, A.C. 2002, *An Integrated Framework for Evaluating Leaching in Waste Management and Utilization of Secondary Materials,* submitted for publication in Environmental Engineering Science, on 12/13/2001; and Sanchez, F., Kosson, D.S., Mattus, C.H., and Morris, M.I., 2001, *Use of a New Leach Testing Framework for Evaluating Alternative Treatment Processes for Mercury-Contaminated Mixed Waste (Hazardous and Radioactive*), Vanderbilt University Department of Civil and Environmental Engineering, December 14, 2001.

[29] See the *EPA Peer Review Handbook,* EPA document number EPA 100–B–00–001, December 2000, or a review of similar rigor.

[30] EPA has used and recommended use of the SPLP in some instances where municipal solid waste co-disposal is not occurring or is not plausible because it addresses one concern about the TCLP in these situations, the pH of the leaching solution.

[31] See Dutch Availability Test, NEN 7341; NEN 7349; and ongoing work of the CEN (European Committee for Standardization) working group CEN/TC292/WG2.

[32] The Agency is not clear as to what ''unusual'' wastes are of concern to the commenter. Any metal-bearing waste treated with solidification/stabilization treatment may generate a high pH, so these wastes are not unusual and are, in fact, common.

will be facilitated by establishing a default test, rather than requiring that a test be selected and supported in every CAMU decision.

Several commenters asked EPA to clarify that the Regional Administrator should define the testing approach for determining acceptable treatment at the onset of CAMU consideration, and that the approach should not be revised after treatment technologies have been selected or the CAMU approved. EPA expects that the Regional Administrator will approve specific leaching tests at the onset of CAMU designation, as part of the overall approach for determining acceptable treatment. At the same time, EPA cannot categorically say the testing approaches would never be changed after approval of the CAMU. For example, a change in testing approach might be warranted if the waste treatment method were changed, or if new site information unknown at the time of approval indicated that site conditions were somewhat different from what was originally believed. Commenters can be assured, however, that any changes to testing methods or other CAMU conditions would have to go through the appropriate procedural steps. In the case of permits, for example, EPA could only modify the permit only under certain defined circumstances, unless the change was requested by the permittee. See 40 CFR 270.41 and 270.42.

In allowing the Regional Administrator to approve alternatives to the TCLP, today's rule of course assumes of course that the Regional Administrator knows exactly how and where the CAMU-eligible waste will be disposed of—that is, the waste will be disposed of in a CAMU that he or she has approved. But, today's rule also includes an option that would allow the disposal of CAMU-eligible wastes in off-site hazardous waste landfills.[33] EPA expects that the TCLP would be used in these cases to measure compliance with treatment requirements, because the regulatory authority at the remediation site would not know the details of how the disposal site is managed or the local conditions at the site (indeed, in many cases, the regulator may not know which disposal site will eventually receive the waste—but only that the landfill must meet design standards for RCRA subtitle C landfills). Therefore, EPA believes that it will be generally unlikely that the Regional Administrator will be able to approve an alternative to the TCLP to measure treatment compliance before off-site disposal. Nevertheless, EPA recognizes that there may be limited circumstances where the Regional Administrator knows, with complete assurance, where the waste is going and also knows the specific conditions at the receiving site. (For example, this might conceivably occur where the disposal sites were in the same state under the oversight of the same regulator.) In this case, EPA believes that it might be reasonable for the Regional Administrator to accept (or require) alternative tests to the TCLP to demonstrate treatment compliance. Therefore, EPA has not precluded this possibility by regulation, although it believes that the TCLP will almost always be the appropriate test for off-site disposal.[34]

The Agency reiterates that today's rule changes retain the TCLP as the presumptive test for evaluating compliance with the CAMU treatment requirements. Alternatives to the TCLP may be used only as determined to be appropriate (based on an assessment of waste and site conditions) by the Regional Administrator. The Agency believes that, given the degree of regulatory supervision of CAMU site remediations, it is possible to appropriately implement the use of alternatives to the TCLP for determining CAMU treatment compliance, on a site-specific basis. EPA continues to find the TCLP to be an appropriate test for situations where regulatory agencies do not supervise waste testing and disposal, and where disposal in a municipal landfill (or a unit resembling a municipal landfill) is a plausible waste management or mismanagement scenario. The Agency emphasizes that the proposal, and today's rule, deal only with the use of the TCLP in determining compliance with the CAMU treatment requirements. Neither the proposal nor today's rule have any effect on existing requirements regarding use of the TCLP to determine whether a waste is hazardous or has been adequately treated under the LDR program.

(3) Assessment of 90% Reduction

As discussed in the proposal, EPA expects that the facility owner/operator will rely on normal waste and soil characterization techniques and procedures for representative sampling to determine 90% reduction in constituent concentrations. (65 FR 51101, August 22, 2000.) The Agency has recently issued draft guidance for public comment, in the context of the Phase IV Land Disposal Restrictions rule, on establishing and validating the 90% reduction levels for contaminated soil (see 66 FR 52198, October 18, 2001). EPA recommends the use of this guidance (when finalized) in assessing whether the 90% reduction standard for CAMU wastes has been achieved. In general, if the CAMU-eligible hazardous waste has a treatment standard that is measured by total constituent concentrations (i.e., organics and cyanide), then the 90% reduction would be measured using total constituent concentrations. If the treatment standard for the waste is measured using the TCLP or an approved alternative leach test (i.e., for metals), then the 90% reduction would also be measured using the TCLP or the proposed alternative leach tests. If wastes contaminated with metal constituents were treated using a technology which removed, rather than stabilized metals, the 90% reduction would be measured using total constituent concentrations.

b. Site-specific Treatment Standards based on Adjustment Factors (40 CFR 264.552(e)(4)(v))

EPA proposed and is today finalizing five factors that outline circumstances under which Regional Administrators may adjust the minimum national treatment standards on a site-specific basis: technical impracticability, consistency with site cleanup standard, community views, short-term risks, and protection offered by engineering controls under specified circumstances. When one or more of the adjustment factors are applied, EPA is requiring that the resulting site-specific treatment standard be ''protective of human health and the environment,'' as discussed below.

As discussed in the proposal, in developing the adjustment factors, the Agency identified circumstances both where it might be appropriate to require less treatment than would be required by the minimum national treatment standards (i.e., less treatment than 90% reduction in concentrations of PHCs capped by 10xUTS) and where it might be appropriate to require more treatment than would be required by the minimum national treatment standards.[35] When one or more

[33] For further discussion of this provision, see section K of today's preamble.

[34] In particular, the regulator at the remediation site is unlikely to know conditions of co-disposal at the off-site landfill, which is often a critical factor in determining whether an alternative to the TCLP is acceptable.

[35] Of course, Regional Administrators do not need the adjustment factors to require more treatment than would be required by the minimum national treatment standards, since such treatment could be required, where necessary to protect human health or the environment, using the provision allowing for additional CAMU requirements when necessary to protect human health or the environment. See 40 CFR 264.552(i), discussed later in today's rulemaking. Agencies overseeing cleanups may also

adjustment factors are applied, the result is a site-specific treatment standard. Today's rule requires that such site-specific treatment standards be protective of human health and the environment. The Agency discussed the application of the ''protective of human health and the environment'' standard in the proposal through a specific example, which it repeats here:

> An example of how this [protection of human health and the environment standard] would be implemented is a site where there are two technologies that are available to treat the CAMU waste. Technology A, although it would technically meet the proposed generic standards, presented an unacceptable risk to site workers (e.g., because of risks of explosion). Technology B, on the other hand, did not present that risk, but could only achieve a 75% reduction in PHC concentrations. In this case, because the factors associated with adjustment factor D (''short-term risks,'' discussed below) were present, the Regional Administrator could consider an alternative standard; such standard could only be imposed where the alternate level (75% reduction) was protective. EPA expects that the Regional Administrator would undertake this assessment of protectiveness of the alternate standard as part of the overall remedy decision process. In judging protectiveness of the alternate standard, the Agency would expect the Regional Administrator to consider, as appropriate, the characteristics of the waste, including such factors as concentrations and mobility, how the wastes will be managed (e.g., the type of unit), and site characteristics, such as depth to groundwater and factors that affect fate and transport to potential receptors. Note, as discussed below under adjustment factor E, that protection offered by the engineering of the unit as the initial basis for considering an alternate standard is limited to a specific set of circumstances. 65 FR 51101 and 51102, August 22, 2000.

Commenters generally supported the approach of allowing adjustment of the minimum national treatment standards to accommodate certain site-specific conditions and, in general, supported the specific adjustment factors established today. EPA is finalizing the adjustment factors as proposed.

One commenter expressed the concern that the Agency might use the adjustment factors to change treatment requirements in the middle of a cleanup. The Agency clarifies that it expects decisions about treatment standards (including application of the adjustment factors) to be made as a part of CAMU determinations and, as a general matter, apply for the life of the CAMU. After a CAMU has been approved, any changes made to treatment (or other) requirements would be in response to an evolution of understanding of site-specific conditions that might occur during an iterative cleanup process. The existence of adjustment factors does not make such changes any more or less likely than they were under the 1993 CAMU rule. Furthermore, any changes would be subject to appropriate procedural safeguards—for example, the permit modification process if a CAMU were incorporated into a permit, or, in the case of orders, procedures for amending orders.

(1) Adjustment Factor A: Technical Impracticability (40 CFR 264.552(e)(4)(v)(A))

Using the technical impracticability adjustment factor, the Regional Administrator may adjust the minimum national treatment standards on a site-specific basis when it is not technically practicable to achieve these standards because of factors related to technologies or cost.

As discussed in the proposal, in some cases a facility owner/operator may find that it is not technically practicable to achieve the minimum national treatment standards, or to conduct meaningful treatment at all, because of factors relating to the performance capability or cost of technology. Factors related to the technical performance capabilities of technology and cost are routinely discussed in the remedy decision process in the federal CERCLA and RCRA corrective action cleanup programs and as part of remedy selection in state cleanup programs. As explained in the preamble to the proposal, the Agency intends that the technical impracticability adjustment factor will include the general concepts of ''technically infeasible'' and ''inordinately costly,'' as those terms are used in the federal CERCLA program (65 FR 51102, 51103, August 22, 2000). As explained in the preamble to the CERCLA National Contingency Plan, technical impracticability should be based on ''engineering feasibility and reliability, with cost generally not a major factor unless compliance would be inordinately costly'' (55 FR 8666, 8748 (March 8, 1990)). These concepts are also described in the RCRA corrective action ANPR at 61 FR 19432 (May 1, 1990) and in the Role of Cost in the Superfund Remedy Selection Process, Publication 9200.3–23FS, September 1996.

Factors relating to the performance of technology and cost are also addressed in the RCRA LDR treatment standard requirements in the provisions for variances. As discussed in the proposal, the Agency intends for the technical impracticability adjustment factor to encompass the concepts contained in the current ''unachieveable'' LDR treatment variance at § 268.44(h)(1) and the ''technically inappropriate'' variance at § 268.44(h)(2)(i) (65 FR 51102, August 22, 2000). Under the ''unachieveable'' LDR treatment variance, a new treatment standard can be developed when it is not physically possible to meet the otherwise applicable treatment standard. The Agency believes this concept is equally appropriate for adjusting treatment standards for PHCs placed in CAMUs, because imposition of a treatment standard that is impossible to meet would likely result in a containment remedy that would not involve any treatment at all. See 53 FR 31138, 31199 (August 17, 1988) for a discussion of the ''unachieveable'' variance. Under the ''technically inappropriate'' variance, the Regional Administrator may approve a site-specific treatment standard if treatment to the otherwise applicable standard is not appropriate, even though such treatment is technically possible. For example, the Agency has repeatedly expressed the view that it is technically inappropriate to require combustion of large amounts of mildly contaminated environmental media. See, 53 FR 31138, 31199 (August 17, 1988) and 62 FR 64504 (December 5, 1997) for a discussion of the technically inappropriate variance.

EPA received no adverse comments on the technical impracticability adjustment factor and is today finalizing this factor as proposed.

(2) Adjustment Factor B: Consistency with Site Cleanup Levels (40 CFR 264.552(e)(4)(v)(B))

Under the ''consistency with site cleanup levels'' adjustment factor, the Regional Administrator may adjust the minimum national treatment standards, on a site-specific basis, to require more or less treatment of principal hazardous constituents when treatment to the minimum national treatment standards would result in concentrations of PHCs that are significantly above or below the cleanup levels for the site. In the proposal, the language in adjustment factor B did not specify that it would be used to adjust treatment requirements only for principal hazardous constituents, although this was clearly the Agency's intent (i.e., because the treatment standards in today's rule apply only to principal hazardous constituents). EPA has modified the final rule accordingly.

As discussed in the proposal, EPA intends that in considering whether to apply this adjustment factor, Regional

require additional treatment when selecting cleanup remedies.

Administrators will compare concentrations of PHCs that would be attained through treatment to the minimum national standards (i.e., 90% reduction in PHCs capped by 10 x UTS) to site cleanup levels that assume there is direct exposure of a receptor to the PHC (i.e., site cleanup levels based on direct exposure) (65 FR 51103, August 22, 2000). Site cleanup levels based on direct exposure could be drawn from default standards established under state or federal law, where appropriate, or from a more site-specific analysis and/or a site-specific risk assessment. Site cleanup levels are typically established in consideration of a number of factors that influence the risk potential of a site, including fate and transport considerations (e.g., migration of contamination from soil to ground water); distinctions between residential, industrial and other types of land use; and the locations of potential receptors. In some cases, these factors are standardized (e.g., when standard assumptions of exposure correspond with standard land use assumptions). In other cases, these factors are populated with site-specific data, for example, as might occur during a site-specific risk assessment. Consideration of the protection from exposure provided by the engineering of a CAMU cannot be included in the evaluation. This is because, as discussed earlier in today's rulemaking, the treatment requirements are designed, in part, to minimize the risks of adverse effects on humans or the environment in the unlikely event that the containment provided by a CAMU should fail.

In the proposal, EPA solicited comment on whether it should expressly state in adjustment factor B that site cleanup levels used for comparison had to be based on assumptions of ''direct exposure'' to the principal hazardous constituents (65 FR 51103). EPA explained that it assumed that state cleanup programs routinely used direct exposure scenarios in setting cleanup levels, and therefore it was not necessary to explicitly make use of a direct exposure scenario a condition in adjustment factor B language. One group of commenters stated that they disagreed with EPA's assumption that cleanup programs typically base site goals or levels on ''direct exposure,'' arguing instead that cleanup programs did not assume direct exposure without considering actual or likely exposure scenarios at a site. The commenters, therefore, recommended that EPA not specifically require direct exposure assumptions in adjustment factor B. On the other hand, these commenters also asked EPA to clarify in the preamble to the final rule that adjustment factor B should be interpreted consistently with the Agency's interpretation of the § 268.44(h)(3) variance—which allows land disposal restriction variances for contaminated soil where LDR standards ''would result in concentrations of hazardous constituents that are below * * * the concentrations necessary to minimize short- and long-term threats to human health and the environment'' and which further specifies that determinations that threats have been minimized may ''not consider post-land disposal controls'' (§ 268.44(h)(3)(ii)).

EPA believes that commenters may have misunderstood what EPA meant by ''direct exposure'' in the preamble, because the Agency certainly agrees that cleanup programs do and should consider ''actual or likely exposure'' in setting cleanup levels. As stated in the preamble to the proposal, EPA agrees that ''site-specific cleanup standards are typically derived after consideration of factors that influence the risk potential at the site, including fate and transport considerations (e.g., in setting levels in soils that are protective of ground water), distinctions between residential, industrial and other types of land use, and location of potential receptors'' (65 FR 51103). Again, cleanup levels based on these assumptions would certainly be appropriate under adjustment factor B. EPA also reaffirms—as it clearly stated in the CAMU proposal (65 FR 51103)—that it interprets adjustment factor B in a manner consistent with its interpretation of the § 268.44(h)(3) variance. In particular, as the Agency stated in the preamble to the regulation, ''Consistent concentrations that achieve [levels based on the Agency's risk range for cleanup levels or goals] should be calculated based on a reasonable maximum exposure scenario—that is, based on an analysis of both current and reasonably expected future land uses, with exposure parameters chosen based on a reasonable assessment of the maximum exposure that might occur.'' (See 63 FR 28606–28608, May 26, 1998). EPA does note, however, that this land disposal restriction variance explicitly provides that, in setting ''minimize threat'' levels, the Agency cannot consider ''post-land-disposal'' controls (§ 268.44(h)(3)(ii)), and in the preamble to the Phase IV rule EPA cautions that site-specific determinations under this variance ''cannot be based on the potential safety of land disposal units, or engineered structures such as liners, caps, slurry walls or any other practice occurring after land disposal'' (63 FR 28607). Similarly, as EPA explained in the preamble to the CAMU proposal, levels established under adjustment factor B could not reflect the ''protection offered by the CAMU itself'' (65 FR 51103).

Given that the commenters are mistaken in their concern that EPA intended to disallow consideration of actual or likely exposure scenarios in this adjustment factor, and given that no other commenters argued that cleanup programs do not routinely use ''direct'' exposure assumptions in setting cleanup levels or goals, the Agency continues to believe that adding the phrase ''direct exposure'' to this adjustment factor is unnecessary. As discussed above, EPA does reemphasize, however, that, in determining whether adjustment was appropriate under this adjustment factor—as in the LDR variance at § 268.44(h)(3)—EPA or the state would not consider protection offered by the disposal unit or engineering controls as a basis for adjusting treatment levels. As explained later in this preamble, protection offered by the CAMU as a basis for departing from the 90%/10×UTS standard is appropriately considered under adjustment factor E.

(3) Adjustment Factor C: Community Views (40 CFR 264.552(e)(4)(v)(C))

Under the community views adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards based on the views of the affected community on the treatment levels or treatment methods. As discussed in the proposal, at some sites, communities express concerns about factors such as the long-term reliability of remedies, worker safety, cross-media transfer of pollutants, and interference with their day-to-day lives (e.g., from traffic, odors, or noisy technologies) (65 FR 51103, August 22, 2000). EPA expects that such community concerns could provide the impetus to either reduce or increase treatment requirements.

EPA believes it is reasonable to include community views as an explicit criterion to justify adjustment of treatment requirements, because, in the Agency's experience, treatment is often an area of specific concern to the public. For example, many communities are very concerned about the use of combustion technologies. Consideration of community views is supported by the requirement (discussed later in today's rulemaking) that the public be provided notice and an opportunity for public comment on all CAMU determinations

before such determinations are made final.

Commenters who addressed this issue supported the community views adjustment factor, and the Agency is finalizing this provision as proposed.

(4) Adjustment Factor D: Short-Term Risks (40 CFR 264.552(e)(4)(v)(D))

Under the short-term-risk adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards if the technology necessary to achieve the minimum national treatment standards would cause unacceptable short-term risks to workers or the public. Unacceptable short-term risks might be presented by a technology necessary to achieve treatment standards, or by the analysis necessary to determine whether treatment standards have been achieved. As discussed in the proposal, short-term risks associated with remedies and proposed treatment technologies are routinely considered during the remedy-selection process under the federal CERCLA program and the RCRA corrective action program (65 FR 51104, August 22, 2000). Commenters who addressed this issue supported consideration of short-term risks in adjusting treatment requirements, and the Agency is finalizing the short-term risk adjustment factor as proposed.

(5) Adjustment Factor E: Engineering Design and Controls (40 CFR 264.552(e)(4)(v)(E))

EPA proposed and is today finalizing an opportunity for Regional Administrators to adjust the minimum national treatment standards on a site-specific basis to require less treatment than would otherwise be required because of the protection offered by the engineering design of a CAMU. Under this provision, Regional Administrators may adjust the minimum national treatment standard based on the long-term protection offered by the engineering design of the CAMU and related engineering controls in five sets of circumstances: first, when the minimum national treatment standards are substantially met and PHCs are of very low mobility; second, when cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes land disposal units at 40 CFR 264.301(c) and (d); third, when the Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the liner and leachate collection requirements for new hazardous waste land disposal units at 40 CFR 264.301(c) and (d); fourth, when cost-effective treatment has been used and PHCs in the treated wastes are of very low mobility; and fifth, when the Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii), or the CAMU provides substantially equivalent or greater protection. Each of these site-specific circumstances is described more completely below.

As discussed in the proposal, the Agency means the phrase ''engineering design of the CAMU and related engineering controls'' to include the design of the unit itself (*e.g.*, presence and type of liner, leachate collection, and cap) and any associated engineering systems such as slurry walls, systems that produce inward hydraulic gradients in the vicinity of the unit, French drains, associated pump and treat systems, and ground water monitoring systems (65 FR 51105, August 22, 2000). Along with an assessment of the protection offered by the engineering design and related engineering controls for a CAMU, the Agency expects that the Regional Administrator's determination regarding a site-specific treatment standard would consider whether wastes placed in the CAMU pose any potential for unacceptable releases over the long term. This consideration should examine factors such as the concentrations and mobility of the PHCs in the CAMU-eligible waste, the waste matrix (soil or other), the site environment (e.g., fate and transport considerations), and how wastes might be affected by potential liquid infiltration into the CAMU.

Commenters generally supported the standards of proposed adjustment factor E. One commenter argued that EPA's proposed approach was too complicated, and that EPA should allow a broader risk-based approach. As discussed earlier, EPA does not believe the risk-based approach would provide the level of consistent protection, or of predictability for the public, that EPA's seeks in today's rule. Other commenters stressed the importance of adjustment factor E in ensuring that today's rule would not discourage aggressive remediation. As indicated in EPA's study of past CAMU decisions (included in the docket), many currently approved CAMUs would be allowed today only with consideration of adjustment factor E. EPA, therefore, agrees with these commenters on the likely importance of this adjustment factor in promoting effective cleanups

The specific subfactors available under adjustment factor E are discussed below. See also the if/then options illustrated in the chart presented in the following section of this preamble, section G.2.b(6). EPA has modified the proposed regulatory language for adjustment factor E for the sake of clarity (addressing commenters' concern with the complexity of this adjustment factor), but has not changed the substantive standards of this factor.[36]

The minimum national treatment standards are substantially met and PHCs in the waste or residuals are of very low mobility (40 CFR 264.552(e)(4)(v)(E)(1)). Adjustment factor E(1) allows Regional Administrators to adjust the minimum national treatment standards to require less treatment than would otherwise be required, based on the long-term protection offered by the engineering design of the CAMU and related engineering controls when: (1) the minimum national treatment standards are ''substantially met,'' and (2) PHCs are of ''very low mobility.'' EPA proposed this provision to address concerns that, where constituents in the waste are of low mobility and where the minimum national treatment standards are substantially met, it may not be reasonable to impose strict compliance with the minimum standards given (1) the level of protection provided by substantial compliance, and (2) the added protection offered by the engineering design of a CAMU and related engineering controls.

As discussed in the proposal, the term ''substantially met'' for purposes of adjustment factor E is meant to reflect situations where a treatment technology may result in concentrations of PHCs that meet the minimum national treatment standards for the most part, but do not precisely attain the minimum national treatment standards for all of the PHCs. In the proposal, the Agency gave two examples of application of the ''substantially met'' standard, which it repeats here:

> For example, the most appropriate technology at a site for wastes containing organic contaminants that have low migration potential (*e.g.*, certain polyaromatic hydrocarbons) might be biodegradation. This technology might come close to, but not achieve, 10 X UTS for the contaminants with low migration potential. Given that the contaminants have a low

[36] The regulatory language of today's rule breaks out the individual provisions of proposed § 264.555(e)(4)(v)(E)(2)(i)-(iii) into four different subfactors, but the regulatory language and substantive conditions remain identical.

migration potential, the Regional Administrator could assess site-specific factors that affect mobility, including the geologic setting, precipitation, and evaporation, and make the determination that an alternate treatment standard based on this technology would provide long-term protection of human health and the environment. In another example, the treatment standards would be substantially met where the overwhelming majority of constituents have been treated to meet the treatment standards, but a very few immobile constituents do not meet the standards. 65 FR 51106, August 22, 2000.

The term ''very low mobility'' reflects the concept that certain constituents (including constituents that may present significant risks in the event of direct exposure) have very little ability to migrate from waste to receptors through media such as air, soil, or water . As discussed in the proposal, the ability of a constituent to migrate is a function of the physical and chemical properties of the constituent and of site-specific conditions such as the waste matrix, the site environment (e.g., fate and transport considerations), conditions associated with the disposa unit, and how wastes might be affected by potential liquid infiltration into a CAMU (65 FR 51105, August 22, 2000.) In the proposal, the Agency gave two examples of the application of the very low mobility standard, which it repeats here for guidance:

One example of immobile constituents are certain metals, such as lead, that have a strong affinity for organic matter and can, under proper site conditions (which are typically strongly affected by pH conditions), demonstrate very low mobility. Another common example of immobile constituents is polyaromatic hydrocarbons (PAHs), such as benzo(a)anthracene and benzo(a)pyrene. PAHs can reliably be considered non-mobile constituents (with the notable exception of when the PAHs are concentrated to the extent that they are in a free-phase—i.e., as non-aqueous phase liquids (NAPLs)—when they are dissolved in a mobile substrate, such as oil). PAHs can be present as a direct result of historical industrial processes, or may be found as a residuum of formerly more complex mixtures of organic contamination that have been exposed to breakdown processes in the environment, or as a result of applying biological treatment technologies to the wastes. At some sites, such as petroleum refineries, PAHs can be found in high concentrations in old refinery wastes and contaminated soils, PAHs tend not to be found in significant concentrations in ground water, because of their low mobility and tendency to adhere to organic matter in soils and sludges. 65 FR 51106, August 22, 2000.

Cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes landfills at 40 CFR 264.301(c) and (d). (40 CFR 264.552(e)(4)(v)(E)(2). Under adjustment factor E(2), the Regional Administrator may adjust the minimum national treatment based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, this adjustment factor reflects the Agency's concerns about the uncertainties of long-term containment; thus, when the national treatment standards have not been substantially met, this adjustment factor would require more robust engineering controls to reduce the potential for and consequences of unit failure. It would also require cost-effective treatment. (If cost-effective treatment was not reasonably available, adjustment of the treatment standards would still be possible, as provided by adjustment factor E(3)).

As discussed in the proposal, the concept of ''cost-effective'' treatment for the purpose of adjustment factor E means that the additional cost associated with increased treatment is proportionate to the increase in protection that the treatment would provide. EPA expects that assessments of cost-effectiveness will be made based on a reasonable review of the costs and the increased protection provided by treatment and on the best professional judgment of the Regional Administrator (65 FR 51106, August 22, 2000). Commenters on ''cost-effectiveness'' supported EPA's proposed approach.

This adjustment factor requires a more rigorous approach to engineering design and related controls than the minimum national design standards for CAMUs in that it requires compliance with the liner and leachate collection requirements for new hazardous waste land disposal units at 40 CFR 264.301(c) and (d). As discussed in the proposal, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time (65 FR 51107, August 22, 2000). Because the engineering design and related engineering controls required by this provision are very robust, the Agency is not limiting this adjustment factor to PHCs of very low mobility.

As discussed in the proposal, the Agency does not expect that CAMUs typically will be constructed to meet the liner and leachate collection standards for new hazardous waste landfills (65 FR 51107, August 22, 2000). Where they are designed to meet these standards, however, adjustment factor E(2) would allow treatment levels to be adjusted based on the protection offered by the unit design.

The Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills at 40 CFR 264.301(c) and (d). (40 CFR 264.552(e)(4)(v)(E)(3)). Under adjustment factor E(3), the Regional Administrators may also adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment is not reasonably available, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, today's rulemaking reflects the general presumption that PHCs will be treated if cost-effective treatment is reasonably available (65 FR 51106, August 22, 2000). The Agency recognizes, however, that cost-effective treatment is not always reasonably available. In such cases, today's rule would allow the Regional Administrator to adjust the minimum national treatment standard based on the engineering design of the CAMU and related engineering controls, even where treatment is not used (that is, under this adjustment factor, when the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills, and, under adjustment factor E(5) (discussed below), when the CAMU meets the liner standards for new CAMUs promulgated today and PHCs in the waste are of very low mobility).

As discussed in the proposal, the Agency expects that reviews to determine whether potentially appropriate cost-effective treatment technologies are ''reasonable available'' will be carried out consistently with the types of technology evaluations that are commonly associated with remedy selection under federal and many state cleanup programs (65 FR 51106, 51107, August 22, 2000). These reviews consider the availability and timing of goods and services associated with implementing a technology and issues associated with administrative feasibility as well as technical capability, feasibility, and reliability of the technology. Thus, while an individual technology might appear, in theory, to be cost-effective and capable of meeting a treatment standard, it

might not be ''reasonably available'' because of practical and implementation issues. Because of the range of site- and waste-specific factors that inform the types of treatment technologies that might be appropriate, the level of effort involved in reviews for reasonable availability should be determined on a site-specific basis.

Under this adjustment factor, the potential increase in risk to human health and the environment that corresponds to reduced or no treatment (because cost-effective treatment is not available) is balanced by the requirement to meet the liner and leachate collection system design standards for new hazardous waste landfills. As discussed above, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time.

Cost-effective treatment has been used and PHCs in the treated waste are of very low mobility. (40 CFR 264.552(e)(4)(v)(E)(4). Under adjustment factor E(4), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) PHCs are of very low mobility. As discussed in the proposal, this adjustment factor is meant to accommodate circumstances where cost-effective treatment is available and will be used for PHCs, but the treatment will not meet or substantially meet the minimum national treatment standards. The Agency believes that it is reasonable for the Regional Administrator to make adjustments to the minimum national treatment standards when the engineering design of CAMUs and related engineering controls offer adequate protection and PHCs have been treated using cost-effective treatment and are unlikely to reach a receptor because they are of very low mobility. In these circumstances, the Agency believes that, even if unexpected failure of a CAMU were to occur, the constituents would not migrate far (and therefore would not be likely to reach receptors). The concepts of ''cost-effective treatment'' and ''very low mobility'' are discussed above.

The Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs in the wastes are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii) or the CAMU provides substantially equivalent or greater protection. (40 CFR 264.552(e)(4)(v)(E)(5)). Under adjustment factor E(5), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) Cost-effective treatment is not available, (2) PHCs in the wastes are of very low mobility, and (3) the CAMU meets the design and operation standards for new, replacement or laterally expanded CAMUs promulgated today (including alternative standards). As discussed in the preamble to the proposal, this adjustment factor requires less rigorous engineering design standards than adjustment factor (E)(2) because it is limited to situations where PHCs are of very low mobility (65 FR 5107, August 22, 2000).

In situations where PHCs are of very low mobility, the Agency believes that the possibility of an increase in risk to human health or the environment resulting from reduced treatment (because cost-effective treatment is not available and therefore treatment does not take place) is balanced by the requirement that a CAMU be designed to meet the minimum standards for new, replacement, or laterally expanded CAMUs established today (or alternative standards) at 40 CFR 264.552(e)(3)or that the ''CAMU provides substantially equivalent protection.'' The liner standards at 40 CFR 264.552(e)(3) are based on the standards for municipal solid waste landfills and are discussed earlier in today's preamble. As discussed in the proposal, the concept of a CAMU providing ''substantially equivalent protection'' to the liner standards under 40 CFR 264.552(e)(3) allows for consideration of the entire CAMU unit and location characteristics (65 FR 51107, August 22, 2000).

In the proposal, the Agency gave two examples of when it might find that a CAMU provides ''substantially equivalent protection.'' These examples are repeated here for guidance:

> If an existing unit without a liner were to be potentially used for a CAMU under the conditions of this adjustment factor, the Regional Administrator could examine the protectiveness offered by the CAMU components (e.g., cap, ground water monitoring, ancillary engineering features), as well as mobility of constituents in the waste within the unit (which will be very low), and geology associated with the unit, in assessing equivalent protection. In another example, soils contaminated with PAHs, with no cost-effective method of treatment reasonably available, are proposed to be disposed in an existing unit with a liner that does not meet the § 264.552(e)(3) standards. Given the very low mobility of these constituents and the calculated infiltration rate of rainwater into the unit, it might be calculated that only very low concentrations of constituents would potentially migrate from the unit, that any migration would be for a very short distance, and that the CAMU would provide substantially equivalent protection to the liner standard under § 264.552(e)(3). 65 FR 51107–51108, August 22, 2000.

(6) If / Then Chart Illustrating Application of Adjustment Factor E

Application of adjustment factor E relies on a number of site-specific determinations made in specific combinations. To assist program implementors in properly applying this adjustment factor, the Agency has prepared the following ''if/then'' chart, which was also included in the proposal, as guidance.

If	And If	And If	Then
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	Cost-effective treatment has *not* been used.	RA has *not* determined that cost-effective treatment is not reasonably available.	RA may *not* consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.''
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	The PHCs in the waste or residuals are of very low mobility.	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*1*)

If	And If	And If	Then
Cost-effective treatment has been used.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d).	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*2*)
The Regional Administrator determines that cost-effective treatment is not reasonably available.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d).	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*3*)
Cost-effective treatment has been used.	The PHCs in the treated waste are of very low mobility.	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*4*)
The Regional Administrator determined that cost-effective treatment is not reasonably available.	The PHCs in the waste are of very low mobility.	Either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraph (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*5*)

c. Relationship Between Minimum National Treatment Standards and Adjustment Factors

Commenters expressed a range of views about the relationship between the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors. Some commenters expressed the view that ideally the minimum national treatment standards should be adjusted only in exceptional circumstances. Other commenters thought that EPA should clarify that facility owners/operators could choose either the minimum national treatment standards or site-specific treatment standards.

EPA expects program implementors, in making treatment determinations, to start from the minimum national treatment standard and then to consider whether, based on site-specific circumstances, any of the adjustment factors apply. The minimum national treatment standards may be adjusted only in accordance with the adjustment factors. The Agency, as a general matter, has a preference neither for nor against application of the factors. EPA recognizes that the minimum national treatment standards will often be the preferable approach; at the same time as discussed in the proposal, the adjustment factors reflect circumstances where, in EPA's view, adjustment of the minimum national treatment standards might be appropriate because they represent circumstances where failure to adjust treatment could result in discouraging aggressive cleanup (65 FR 51101, August 22, 2000). Therefore, as discussed above, the Agency believes it is appropriate to have neither a preference for nor against application of the factors.

d. Treatment in CAMUs Within a Reasonable Time (40 CFR 264.552(e)(4)(vi))

EPA proposed and is today finalizing provisions that allow treatment of PHCs to the minimum national treatment standards (or site-specific treatment standards based on application of the adjustment factors) to occur either before placement of wastes in CAMUs or within a reasonable time after placement of waste in a CAMU. This is different from the approach taken in the LDR requirements, where treatment generally is required prior to placement. As discussed in the proposal, the Agency believes it is appropriate to allow treatment requirements to be met either before or after placement of wastes in a CAMU so that CAMUs can be used to facilitate treatment remedies (65 FR 51108, August 22, 2000). As discussed throughout today's rulemaking, promoting aggressive remedial approaches that involve excavation and treatment of contaminated wastes and materials (i.e., removing disincentives to cleanup) is the primary purpose of the CAMU rule. The Agency received no adverse comment on this provision.

As discussed in the proposal, determinations of what is a ''reasonable time'' for treatment should be made on a site-specific basis in the context of the remedy selected for the waste (65 FR 51108, August 22, 2000). As a general rule, EPA expects that treatment technologies, such as biotreatment, that are implemented after wastes are placed in a CAMU will achieve treatment standards within months or years, not decades, except in very unusual circumstances. (Today's rulemaking also establishes specific provisions for storage and/or treatment only CAMUs, from which wastes will be removed at closure. Storage and/or treatment only CAMUs are described in detail later in today's rulemaking.)

d. Assessing Compliance With Treatment Standards (40 CFR 264.552(e)(4)(vii))

The Agency proposed and is today finalizing provisions to allow, on a site-specific basis, for the analysis of a subset of PHCs to determine whether treatment standards are achieved rather than requiring analysis of all PHCs present. As discussed in the proposal, the Agency believes that in many cases it will not be necessary to require analysis of all PHCs being treated to accurately assess whether treatment standards are being achieved for all constituents. The Agency received no adverse comment on this provision.

Analyzing a subset of constituents to assess performance of treatment is a common practice in cleanup and generally involves consideration of factors such as the difficulty of treatment and grouping of constituents with similar properties. Today's rule

requires that Regional Administrators consider those factors when making site-specific determinations about analysis of a subset of PHCs. As discussed in the proposal, EPA also expects the Regional Administrator to consider the ability to analyze the constituents when selecting the subset of PHCs to be evaluated (65 FR 51088, August 22, 2000). The Agency gave an example of application of this concept in the proposal, which it repeats here as guidance:

> A general strategy is to analyze, within a group of constituents with similar treatment properties, the most difficult constituents to treat, following the reasoning that treatment of the most difficult to treat constituents will result in treatment of the other constituents as well. For example, when wastes containing mixtures of organic molecules are subjected to bioremediation, certain compounds tend to be more recalcitrant and take longer to treat. It might be reasonable to focus analysis on measurement of the compounds that are most resistant to bioremediation, to assess whether the treatment standards had been met. 65 FR 51108, August 22, 2000.

H. Constituents at or Below Site Cleanup Levels or Goals (40 CFR 264.552(g))

EPA proposed that, where all wastes placed in a CAMU have constituent concentrations at or below cleanup [37] levels or goals applicable to the site, the CAMU would not have to meet the requirements for liners and leachate collection systems, caps, or ground water monitoring requirements discussed earlier in today's rulemaking or the design requirements for storage and/or treatment only CAMUs discussed below.[38] The Agency received no adverse comment on this approach and is promulgating it as proposed.

As discussed in the proposal, EPA believes that, if constituent concentrations in all wastes placed in a CAMU are at or below concentrations that are considered protective at the facility (i.e., are at or below cleanup levels or goals for the facility), it is not necessary to require that the CAMU meet design or operating requirements (65 FR 51108—51109, August 22, 2000). This approach is consistent with the Agency's ''contained-in'' policy. Under the 1993 CAMU rule, program implementors had considerable flexibility in developing CAMU design and operation requirements and could accommodate circumstances where wastes placed in the CAMU were at or below cleanup levels or goals for the facility. Because today's amendments establish more specific design and operating requirements for CAMUs, the exemption is necessary to retain this flexibility. EPA is limiting this provision to situations where all wastes in the CAMU are at or below site-specific cleanup levels or remedial goals. Thus, if an existing unit is used as a CAMU and that unit contains wastes with concentrations that are above cleanup levels or goals this exemption would not apply and, among other requirements, the unit would remain subject to the capping and ground water monitoring requirements established today. EPA anticipates that this section would be used when owners/operators seek a CAMU to obtain relief from RCRA LDR requirements for wastes that are no longer considered hazardous. Wastes that are no longer considered hazardous remain subject to the LDRs when, for example, a ''contained-in'' determination has been made because hazardous constituents are at concentrations below health-based levels but above applicable LDR treatment standards. EPA also anticipates that this section will be used for materials that are not addressed by the contained-in policy (e.g., CAMU-eligible sludges). See 65 FR 51108.

One commenter suggested that, even when constituent concentrations in cleanup wastes are at or below cleanup levels or goals, they may still pose a risk if the assumptions used to determine remedial goals change (e.g., if cleanup levels or goals are determined using exposure assumptions appropriate to nonresidential land use, and then the land use changes). This commenter recommended that administrative notices (e.g., deed notices) be required in situations where site-specific cleanup levels or goals assume non-residential land uses. The Agency agrees that when nonresidential exposure assumptions are used to establish cleanup levels or goals for a facility, it is important for overseeing agencies to consider the long-term implications of these decisions for facility land use. The Agency does not agree, however, that it should establish a specific requirement in this rule for administrative notice to address this issue. EPA believes the issues of determining appropriate land use and exposure assumptions and developing mechanisms to communicate, monitor, and maintain nonresidential land use assumptions should be addressed as part of overall remedy selection—i.e., during selection of the site-specific factors that will be used to inform site-specific cleanup levels or remedial goals—rather than as a part of CAMU determinations. Indeed, these questions are much closer to decisions as to appropriate cleanup levels than they are to the remediation waste management decisions more generally associated with CAMU determinations.

EPA notes that RCRA corrective action, Superfund, and other cleanup programs rely on a range of mechanisms to ensure that remedies remain protective when they are based on non-residential land uses. Mechanisms include informational requirements (e.g., deed notices), permits, state and local land use laws, environmental easements, and similar ''institutional controls.'' EPA expects that overseeing agencies will carefully consider the effectiveness of these mechanisms when supervising cleanups where non-residential land use assumptions are used. For more information on EPA's current views on use of institutional controls see Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups, EPA 530–F–00–005, September, 2000. The Agency's current guidance on incorporating considerations of reasonably anticipated future land use in remedial decision making is Land Use in the CERCLA Remedy Selection Process (OSWER Directive No. 9355.7–04, May 25, 1995). The Agency does not minimize the importance of issues raised by potential changes in land use over time or reliance on institutional controls during cleanups. However, given the wide range of mechanisms now used in RCRA, CERCLA and other programs and the fact that the issue is more appropriately considered in the overall cleanup decision making than in CAMU determinations, EPA has not included specific notification requirements for non-residential future land use assumptions in today's rule.

I. Storage and/or Treatment Only CAMUs (40 CFR 264.552(f))

EPA proposed to distinguish between CAMUs that are used for storage and/or treatment only and CAMUs in which wastes will remain after closure. CAMUs used for storage and/or treatment only would be subject to the design, operating, and closure standards for staging piles. EPA proposed that storage and/or treatment only CAMUs

[37] In the proposal, EPA used both ''remedial'' levels or goals and ''cleanup'' levels or goals. As used in the proposal, there was no substantive difference between these terms and, for clarity, the Agency uses only to ''cleanup levels or goals'' in today's action.

[38] I.e., in this case the CAMU would not have to comply with the requirements for liners at 40 CFR 264.552(e)(3)(i), caps at 40 CFR 264.552(e)(6)(iv), ground water monitoring at 40 CFR 264.552(e)(5), or the design standards at 40 CFR 264.552(f).

that operated for longer than the staging pile time limits (a maximum of two-and-one-half years) would be subject to the minimum CAMU design and ground-water monitoring and corrective action standards promulgated today. Commenters generally supported this approach, and the Agency is finalizing this provision as proposed. EPA has reorganized the regulatory language for clarity, but has made no substantive changes from the proposal.[39]

Under today's rulemaking, CAMUs that are used for storage and/or treatment only and that do not exceed the staging pile time limits are subject only to the performance criteria and design, operating, and closure standards for staging piles at 40 CFR 264.554(d)(1)(i)—(ii), 40 CFR 264.554(d)(2) and 40 CFR 264.554(e), (f), (j), and (k). They are not subject to the CAMU designation criteria at 40 CFR 264.552(c) and the CAMU design, treatment, ground-water monitoring and corrective action, and closure requirements at 40 CFR 264.552(e)(3) through (6).[40] Under the staging pile regulations, the Regional Administrator establishes standards and design requirements that facilitate reliable, effective, and protective remedies; that prevent or minimize releases; and that minimize or control cross-media impacts. The Regional Administrator sets staging pile standards and design requirements by considering factors such as the length of time the staging pile will be in operation, the volumes of wastes that will be managed in the pile, the physical and chemical characteristics of the wastes, the potential for releases, the environmental factors that may influence migration of releases, and the potential for human and environmental exposure to releases. As discussed in the proposal, the Agency believes it is appropriate to use the staging pile standards for CAMUs that are used for storage and/or treatment only, because the staging pile standards both reflect the general concepts in the CAMU criteria (i.e., by establishing the standard that staging piles are to facilitate ''reliable'' and ''protective'' remedies) and focus more directly on factors specific to short-term waste management (65 FR 51110, August 22, 2000). CAMUs used for storage and/or treatment only will also be subject to the staging piles standards at 40 CFR 264.554(e) and (f) governing management of ignitable, reactive, or incompatible wastes and the staging pile standards at 40 CFR 264.554(j) and (k) for closure. (Note that, as discussed in the proposal, the staging pile closure standards establish different requirements for staging piles located in previously contaminated areas and for staging piles located in uncontaminated areas. These apply in the same way to storage and/or treatment only CAMUs located in previously contaminated or uncontaminated areas (65 FR 51110, August 22, 2000).)

If storage and/or treatment only CAMUs exceed the time limits for operation of staging piles (that is, two years with the potential for a single 180-day extension), today's rule requires the Regional Administrator to establish time limits for operation that are no longer than necessary to achieve a timely remedy selected for the wastes. As discussed in the proposal, it is the Agency's general expectation that storage and/or treatment activities will be completed within months or years rather than decades, except in very unusual circumstances. Storage and/or treatment only CAMUs that operate for longer than two and one-half years must comply with the design and operating requirements for CAMUs in which waste will remain after closure at 40 CFR 264.552(e)(3) and the ground-water monitoring and corrective action requirements of 40 CFR 264.552(e)(5). They would not be subject, however, to the treatment standards of 40 CFR 264.552(e)(4) or the closure standards of 40 CFR 264.552(e)(6).

Some commenters expressed concern with this approach, indicating that it was common for large, multi-phased cleanups to require repeated staging of cleanup wastes over a number of years (i.e., more than two years). These commenters suggested that the Agency eliminate the time limit for storage and/or treatment only CAMUs or, alternatively, count only the days during which waste was actually in the storage and/or treatment only CAMU towards the two-year time limit. (For example, if wastes are staged for three weeks and then removed and the unit is ''empty'' for three weeks before receiving more waste for staging, only the three weeks during which waste was in the unit would apply towards the two-year time limit.)

The Agency is not persuaded that it should eliminate the time limit for storage and/or treatment only CAMUs or count only the time when waste is actually being treated or stored. The Agency believes that when storage and/or treatment only CAMUs will operate for more than two and one-half years, it is appropriate to apply the minimum national standards for CAMU design and ground-water monitoring and corrective action established today. Storage and/or treatment only CAMUs that operate for longer than two and one-half years have greater potential to release hazardous constituents to the environment (if only because they are in place for longer periods of time), and, therefore, in EPA's view should be treated in a manner similar to units designed for more permanent disposal. EPA is also not persuaded that it should count towards the two and one-half year time limit only the time that waste is actually stored and/or treated in a CAMU. Even though ''waste'' may not be stored in the pile during this period, past residuals may remain. Also, The Agency believes that the practical difficulties associated with such an approach are would be great. For example, would the permit have to specify the extent of removal necessary from a storage and/or treatment only CAMU such that the clock should stop? What type of record-keeping and inspection system would be necessary to document the days and times waste was actually being stored and/or treated in a CAMU? Determining, on a site-specific basis, the answers to these questions would almost certainly delay cleanups.

Finally, and most important, EPA is not convinced that the proposed approach (finalized today) will constrain cleanups in the way commenters suggested. Commenters appeared most concerned with application of the CAMU design and ground-water monitoring and corrective action requirements to storage and/or treatment only CAMUs operating for longer than two and one-half years. EPA notes that the minimum national standards for CAMU design apply only to new, replacement or laterally expanded units; they do not apply to existing units designated as CAMUs. Thus, existing units designated as storage and/or treatment only CAMUs would not have to be retrofitted, even if they were operated for more than two and one-half years. Furthermore, new CAMUs (including new CAMUs used for storage and/or treatment only) that are sited in areas of significant

[39] EPA revised these regulations by clearly separating the requirements for storage and/or treatment only CAMUs that meet the staging pile time limits (new paragraph (f)(1)) from the requirements for those that do not (new paragraph (f)(2)). The Agency reduced the section by eliminating the proposed paragraph (f)(1), but included the paragraph's conditions in the new paragraphs (f)(1) and (2).

[40] Although the treatment requirements in 40 CFR 264.552(e) would not apply, of course, nothing in this language would preclude the Regional Administrator from imposing additional treatment requirements using, for example, the overall CAMU or remedy decision process, or the provision allowing the Regional Administrator to impose requirements for CAMUs ''as necessary to protect human health and the environment.''

contamination are eligible for alternative design standards based on site-specific circumstances. The Agency believes that CAMUs used for long-term storage and/or treatment will often be located in areas of significant contamination (because facility owners/operators and regulators will choose to keep wastes confined to already contaminated areas, where practical) and therefore will be eligible for a determination that a liner is not needed under 40 CFR 264.552(e)(3)(ii)(B). Alternatively, CAMUs used for long-term storage and/or treatment may include operating practices that, together with location characteristics, will allow for a determination that alternate design approaches are acceptable under 40 CFR 264.552(e)(3)(ii)(A). For example, a roof constructed over a CAMU used for long-term storage and/or treatment, perhaps combined with pavement or a single liner, could prevent the migration of hazardous constituents into the ground water or surface water at least as effectively as the standard liner and leachate collection systems under certain circumstances (e.g., when waste is placed in the CAMU only intermittently).

As for concerns over ground-water monitoring and corrective action requirements, EPA understands the commenter's point, but it continues to expect that ground-water monitoring and corrective action requirements are going to be appropriate for land-based units that will be in place for many years. EPA does note, however, that the requirements for ground water monitoring and corrective action in § 264.552(e)(5) are expressed as performance standards. For example, ground water monitoring must be ''sufficient to * * * detect and characterize'' releases in ground water. Therefore, monitoring could be reduced where releases were very unlikely, as long as it met the regulatory performance standard. Similarly, corrective action requirements must be sufficient to ensure that the regulatory agency is notified of future releases to ground water and corrective action is taken as necessary to protect human health and the environment. The commenter did not explain why it considered this requirement to be unreasonable.

The Agency is sympathetic to arguments that some complex, phased cleanups may in fact take ''decades rather than years.'' Nonetheless, as discussed above, the Agency believes these cleanups are appropriately accommodated using the provisions for storage and/or treatment only CAMUs (and, where applicable, the provisions allowing alternate design approaches) promulgated today.

J. Staging Piles (40 CFR 264.554)

The Agency specifically requested comments on whether it should revise the staging pile regulations to allow treatment in staging piles, which would complement the provisions for storage and/or treatment only CAMUs. In addition, EPA requested comment on an industry group suggestion that, at a minimum, limited physical operations (that might technically meet the definition of treatment) be allowed in staging piles.

As in the past, comments on the idea of treatment in staging piles were mixed. Some commenters supported the idea of treatment in staging piles and believed that the staging pile standards would result in unit designs and operating criteria that protect against the potential risks of treatment. Commenters pointed out, for example, under 40 CFR 264.554(d)(1)(ii), staging piles must be designed to ''prevent or minimize releases of hazardous waste or hazardous constituents in to the environment'' and to ''minimize or adequately control cross-medial transfer.'' Other commenters opposed the idea of significant treatment in staging piles; they believed, among other things, that it would be misleading to the public (given the name 'staging piles') to allow treatment. They also argued that issues associated with significant treatment are more properly addressed using the CAMU designation process, which is likely to involve a higher level of government and public oversight.

After further consideration of this issue, the Agency has decided not to allow significant treatment in staging piles and to continue to require use of CAMUs (or other appropriate types of RCRA units) for significant treatment activities. EPA agrees with one commenter that issues associated with significant treatment (e.g., air emissions, use of chemical extractants) is more appropriately addressed through the CAMU designation process, where they will receive what EPA described in the proposal as ''the high degree of attention and analysis that has typically accompanied CAMU decisions.'' (65 FR 51111) At the same time, the Agency is persuaded that, given the broad definition of treatment in RCRA, an absolute ban on any treatment in staging piles might severely limit their use and could preclude legitimate staging activities for which they were designed. The Agency, therefore, is revising the staging pile regulations at 40 CFR 264.554 to explicitly allow physical operations that are intended to prepare wastes for subsequent management or treatment. As discussed in the proposal, these operations include mixing, sizing, blending, and other similar physical operations that are intended to prepare wastes for subsequent management or treatment (65 FR 51111, August 22, 2000). These types of activities are common practices during cleanups where it is necessary to first consolidate and then size or blend contaminated soils or other wastes to facilitate subsequent treatment.

Because of the broad definition of ''treatment'' under RCRA, physical activities to manage or prepare wastes for further management—such as the activities described above—could be considered treatment under certain circumstances.[41] However, the Agency is convinced that it is appropriate to allow for these types of activities in staging piles—they are legitimately part of typical staging activities at many cleanup sites; disallowing these activities could significantly reduce the usefulness of staging piles; and they generally do not raise issues beyond those that would arise merely from accumulating and storing remediation waste in piles. Today's amendment to the staging pile regulations will clarify that these types of physical activities are allowed for the purposes of managing remediation wastes in staging piles, regardless of whether they might otherwise, technically, meet the RCRA definition of ''treatment'' and provides facility owners/operators assurance that routine staging operations such as the physical mixing, blending and sizing of waste will not result in violations of the staging pile requirements. More significant treatment operations involving something other than physical treatment—that is, where the chemical character of the waste is changed through chemical or biological treatment (such as solvent-based soil washing or biotreatment)—are subject to the CAMU regulations discussed earlier in today's rulemaking. EPA has concluded that it is appropriate to continue to regulate these more aggressive approaches to treatment under the CAMU process because of the likely higher level of public interest and the fact that they do not fit within the

[41] Section 1004 of RCRA defines ''treatment'' as ''any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume* * * .''

staging pile regulation's original concept of ''staging.''

K. Placement of CAMU-Eligible Wastes in Off-Site Hazardous Waste Landfills

In response to comments on the August 2000 proposal and to a later proposal from a group of industry representatives, EPA published a supplemental proposal on November 20, 2001 (66 FR 58085). In this proposal, EPA took comment on industry's suggestion that placement of CAMU-eligible wastes be allowed in off-site hazardous waste landfills under certain circumstances. In addition, EPA also proposed to allow disposal of CAMU-eligible wastes in on-site hazardous waste landfills under the same conditions. In the supplemental proposal, EPA explained in detail why, in its view, allowing disposal of CAMU-eligible waste in hazardous waste landfills would promote more aggressive remediation and provide remediators at cleanup sites with additional options—options that might frequently be more protective than disposal in a CAMU, that would likely lead to more thorough cleanups, and that would promote opportunities for redevelopment.

In the November 2001 document, EPA stated its intention to include the new conditions it was proposing (if it chose to go forward with them) in today's final rule, scheduled for signature by December 21. Consistent with this goal and because of the relatively limited nature of the proposal (depending, as it did, on the basic structure of the August 2000 proposal), EPA provided an abbreviated comment period of fifteen days. To ensure prompt notice to commenters and an adequate time for comment, EPA provided electronic copies of the supplemental proposal to all commenters on the August 2000 proposal immediately after it was signed on November 14, 2001. No commenters expressed concern about the length of the comment period on the supplemental proposal as it applied to off-site disposal of CAMU-eligible wastes.

EPA received overwhelmingly favorable comments on the general approach in the proposal. No commenters expressed disagreement with EPA's view that allowing placement of CAMU-eligible wastes in off-site hazardous waste landfills would promote more aggressive remediation. Several commenters asked EPA to clarify implementation issues and raised questions about the workability of the approach described in the supplemental proposal, depending on how it was interpreted. In response to these commenters, EPA is finalizing the supplemental proposal at 40 CFR 264.555, generally as proposed, but it is clarifying the implementation process and adding new procedural requirements, based on comments. These revisions are designed to ensure that the off-site provision can be practically implemented and therefore that it achieves its goal of promoting aggressive remediation. The details of the requirements are discussed below.

1. Conditions for Off-Site Landfill Placement

Section § 264.555(a)(1)–(3) establishes the basic conditions that must be met for the Regional Administrator to approve placement of CAMU-eligible waste in a hazardous waste landfill unit at an off-site location under the terms of § 264.555.[42]

a. Limitation to CAMU-Eligible Wastes

In the supplemental proposal, EPA limited placement of remediation wastes in hazardous waste landfills under the terms of § 264.555 to CAMU-eligible waste, but also proposed to include the ''discretionary kickout'' provision of § 264.552(a)(2). The Agency proposed to include the kickout provision because the reasons behind it apply as much to placement of CAMU-eligible waste in hazardous waste landfills as it does to placement in CAMUs. The supplemental proposal, however, did not include the special provisions of § 264.552(a)(1)(iii) and (a)(3), which would have allowed placement of ''as-generated'' wastes and liquids under specific circumstances. EPA concluded that, in the case of ''as-generated'' wastes, a special exception would be unnecessary, because there is no current regulatory constraint on placement of non-hazardous as-generated wastes in RCRA permitted landfills (except of course in cases of waste incompatibility, or similar situations). As for liquids, EPA saw no reason why the current RCRA ban on liquids in landfills should not continue to apply to hazardous waste landfills receiving CAMU-eligible wastes. The circumstances EPA has identified where the RCRA ban on liquids might be inappropriate for CAMUs are specific to remediation.

Commenters provided no negative comments on this aspect of the proposal, and therefore EPA is finalizing it as proposed.

b. Limitation to Placement in Off-Site Landfills

In the supplemental proposal, EPA allowed disposal of CAMU-eligible wastes in on-site hazardous waste landfills, as well as off-site waste landfills. One group of commenters—who was one of the two industry groups who recommended the off-site disposal option to EPA—correctly noted that industry's original proposal did not extend to on-site hazardous waste landfills. This commenter expressed concern that it did not fully understand the implications of this additional provision, and strongly urged EPA to defer extending the conditions of today's rule to on-site landfills. Because of the compressed schedule of this supplemental rulemaking, EPA has decided to proceed at this time only with aspects of the proposal that interested parties support, and to defer final decisions on other aspects to ensure that EPA does not adopt a course of action that may have unintended consequences. Accordingly, EPA is not extending the relief in today's rule to the disposal of CAMU-eligible wastes in on-site hazardous waste landfills and has revised the language of § 264.555(a) to limit the applicability today's rule to ''landfills not located at the site from which the waste originated.''

c. Treatment Requirements

In the supplemental proposal, treatment requirements for CAMU-eligible wastes placed in permitted hazardous waste landfills would largely track the treatment requirements for CAMU-eligible wastes placed in CAMUs. That is, treatment requirements would be limited to principal hazardous constituents. Treatment would have to meet the national treatment standards of § 264.552(e)(4), with an opportunity for the Regional Administrator to adjust treatment based on specific enumerated factors.

The Regional Administrator would be able to apply the following adjustment factors without any special conditions: adjustment factor A (technical impracticability), adjustment factor C (community acceptance), adjustment factor D (short-term risk), and adjustment factor E(1) (national minimum treatment standard is substantially met and waste PHCs are of very low mobility). EPA proposed not to allow use of adjustment factor B (which

[42] EPA emphasizes that ''CAMU-eligible'' waste may of course continue to be managed off-site in any way that was allowable before today's rule. Today's rule sets alternative treatment conditions for hazardous ''CAMU-eligible'' waste placed off-site hazardous waste landfills. Furthermore (to respond to a question raised by one commenter), off-site management of non-hazardous ''CAMU-eligible'' waste is not subject to the requirements of this section, and this waste may be managed off-site (including in hazardous and non-hazardous landfills) consistent with state law.

considers cleanup levels or goals at the remediation site), because it concluded that these levels would be irrelevant to placement in off-site landfills. In addition, EPA proposed to tighten adjustment factor E(2) (which allows the Regional Administrator to consider the protection provided by the engineering design of the CAMU) to require treatment of principal hazardous constituents in all cases where this adjustment was exercised.

Comments on this aspect of the proposal were largely favorable, and EPA is finalizing the treatment requirements as proposed (see § 264.555(a)(2)).

Regarding use of adjustment factor E(2), § 264.555(a)(2)(iii) of today's rule allows the Regional Administrator to adjust the national treatment standards based on the design of the landfill in accordance with § 264.552(e)(4)(v)(E)(2).[43] This section allows the Regional Administrator to adjust treatment levels based on ''the engineering design of the CAMU and related engineering controls'' ''where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d). * * *'' But § 264.555(a)(2)(iii) of today's rule adds a treatment performance standard for CAMU-eligible wastes going to off-site landfills under this adjustment factor—the treatment would have to significantly reduce ''the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.'' Consistent with the proposal, adjustment factors (E)(3), (4), and (5) would not be allowed.

Thus, today's rule significantly tightens the conditions of adjustment factor (E) for CAMU-eligible wastes being placed in off-site hazardous waste landfills. As explained in the proposal, EPA is taking this approach to address possible concerns about potential transfer of risk to the off-site location when the Regional Administrator relies on the protection afforded by the disposal unit to adjust the treatment standards. First, adjustment factors E(3)–(5) would not be available—since either these factors do not require treatment, or they do not require that the receiving disposal unit meet subtitle C design standards. And second, today's rule requires treatment of PHCs in CAMU-eligible wastes disposed of off-site under adjustment factor E(2).

EPA notes that—as one commenter pointed out—the inclusion of ''the threat at the remediation site'' in the treatment performance standard in § 264.555(a)(2)(iii) contemplates that the Regional Administrator, in implementing this adjustment factor, would make the same kind of balancing of risks allowed in the ''environmentally appropriate'' land disposal restriction variance at § 268.44(h)(2)(ii). That is, in concluding that a particular treatment regime ''minimized threat'' under this adjustment factor, the Regional Administrator could weigh the risks associated with leaving waste in place (or of significantly delaying cleanup) against any possible risks associated with subsequent management of the waste in a permitted hazardous waste landfill.

d. Disposal Requirements

In the supplemental proposal, EPA limited hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits, not including landfills under RCRA interim status. The proposal did not specify who had to hold the permit for the landfill. For example, landfills accepting CAMU-eligible wastes might be off-site commercial units, or they might be at facilities controlled by the owner/operator of the remediation site. The proposal also required that the landfill meet the technical design and operating requirements for new landfills in 40 CFR part 264, subpart N. This requirement would ensure that the landfill met the minimum technology requirements for hazardous waste landfills (i.e., the double synthetic liner and detailed leachate collection requirements of § 264.301(c)). In addition, the landfill would be subject to the specific landfill ground-water monitoring requirements of subpart F of part 264 and the closure requirements of subpart G.

EPA received no negative comments on this aspect of the supplemental proposal and is finalizing § 264.555(a)(3) as proposed.

2. Approval Procedures

a. Approval of CAMU-Eligible Waste for Placement in a Subtitle C Landfill

Under the supplemental proposal, CAMU-eligible waste would be approved for placement in a hazardous waste landfill under procedures identical to CAMU approval procedures. Facility owner/operators wishing to send CAMU-eligible waste to a RCRA hazardous waste landfill would generally have to provide the same information as persons requesting approval of an on-site CAMU. Commenters generally supported this approach and EPA is finalizing it in § 264.555(b)–(c) largely as proposed.[44]

The supplemental proposal indicated simply that the ''Regional Administrator'' would approve CAMU-eligible waste for disposal in a landfill, without any further specification on which ''Regional Administrator.'' One commenter asked EPA to clarify whether the ''Regional Administrator'' was the regulator at the remediation site or at the receiving site; another commenter argued that the Regional Administrator approving the action under § 264.555(c) should be the person with regulatory oversight at the receiving landfill. On the other hand, several commenters assumed that EPA meant the Regional Administrator with RCRA regulatory oversight at the location of the cleanup would approve action under § 264.555(c)—that is, the Regional Administrator who would make an off-site decision was the same regulator who would likely be overseeing the cleanup (for example, if it was being conducted as part of a RCRA corrective action).

In developing the supplemental proposal, EPA did not clearly state whether the regulatory authority at the location of the cleanup site or at the receiving landfill would typically review and approve (or deny) proposals for off-site placement under § 264.555. For example, EPA stated in the preamble that ''the Regional Administrator (or the authorized state program) at the location of the hazardous waste landfill would be responsible for placement of CAMU-

[43] Note that, under § 264.555(g), the ''design of the CAMU'' in § 264.552(e)(4)(v)(E) means the design of the permitted Subtitle C landfill. Because the permitted landfill must meet the prescriptive design standards for new hazardous waste landfills, the Regional Administrator would typically base this adjustment on protection offered by a generic landfill meeting these standards. See discussion later in this section of the preamble.

[44] One commenter asked what information the ''person seeking approval'' would need to provide the Regional Administrator. Under § 264.555(b), the applicant would be required to provide information required under the general CAMU information requirement (§ 264.552(d)) relevant to an off-site determination. That is, the applicant would have to provide information ''sufficient'' for the Regional Administrator to approve CAMU-eligible waste for off-site disposal under § 264.555(c). This would include information to show the Regional Administrator that the waste is CAMU-eligible, to identify PHCs, to adjust treatment levels as appropriate (e.g., to demonstrate technical impracticability), and similar information. The applicant would not be expected to provide information not relevant to the decision (e.g., the specific design of the receiving landfill, since the landfill would be required, by regulation, to meet subtitle C design requirements, and this information would typically be enough to allow the Regional Administrator at the remediation site to make a decision).

eligible waste in the landfill.'' At the same time, however, most of the questions associated with that approval relate closely to specific circumstances, processes, and decisions at the cleanup site (including remedy decisions)—for example, the identification of principal hazardous constituents, which are based on site-specific cleanup goals or levels; technical impracticability adjustments; adjustments because of short-term risks; and similar questions. More broadly, the question of whether (and how much) waste treatment is needed is typically part of the remedial decision process. Therefore, the approval process under § 264.555(c) will inevitably be closely connected to the remedy selection decision at the cleanup site.

After reviewing comments and considering this question further, EPA concludes that the regulatory authority most appropriate for determining that CAMU-eligible waste from a particular remediation is suitable for disposal in a subtitle C landfill, as a general matter, is the regulatory authority at the remediation site. As described above, the question of how the cleanup wastes should be managed is inherently part of the remedy decision, and the information needed to make decisions will be available to the regulatory authority at the cleanup site. Furthermore, the decision on how to manage remediation waste is typically made in an iterative process at the remediation site, with the facility owner and the regulator considering a broad range of alternatives as the investigation and remedy selection proceed. In this process, the options for off-site disposal become a factor in determining which remedy is selected—including, perhaps, whether the waste is excavated in the first place.

In addition, several commenters made the point that extended regulatory review processes (on a remediation-by-remediation basis) at potential disposal sites would generally repeat review processes already conducted at the remediation site, and that such processes could, as a practical matter disrupt or significantly delay the cleanup process. For example, the decision for off-site disposal is often made only late in the process (at a point where on-site options are rejected), and then it is often made only generically, i.e., the decision is made that the waste might safely sent off-site for disposal in a hazardous waste landfill, but the specific site would not yet be identified. At the point where off-site disposal has been chosen, the facility owner, in such cleanups, might solicit bids from hazardous waste management companies with processes or landfills meeting certain criteria. It would obviously be unrealistic to expect each potential bidder to go through an extended approval process with its regulator (except in the case of very large cleanups) before it submitted a bid. At smaller sites, the time between the decision to manage wastes off-site and the actual movement of wastes might only be days. In both cases, if an extended off-site approval process began only after an off-site location had been accepted, cleanup could be significantly delayed, with no meaningful gains in environmental protection.

Thus, for the off-site provisions of today's rule to work effectively to promote aggressive cleanups at a wide range of sites, EPA believes that the regulatory authority at the cleanup site should make the basic decision as to what conditions would most appropriately apply to CAMU-eligible waste disposed of off-site at a subtitle C landfill.

For these reasons, EPA is finalizing § 264.555(a)–(c) generally as proposed, but specifying that the ''Regional Administrator'' approving CAMU-eligible waste for subtitle C landfill disposal will be the Regional Administrator (or state regulatory authority) with RCRA oversight over the site where the remediation is occurring. In this case, disposal in a hazardous waste landfill would be allowed, as long as the conditions of § 264.555 were met. Consistent with this expectation, EPA is modifying proposed § 264.555(b)—which describes the information that the person seeking approval must provide—by removing the parenthetical phrase ''(including the location of the landfill).'' As explained earlier, in many cases, remediators at the cleanup site may not know the location of the specific landfill at the time of the application, or indeed at the time eligibility for off-site disposal in a Subtitle C landfill has been approved.

One state commenter raised a concern about allowing a state director at a remediation site to determine adjusted treatment standards for CAMU-eligible waste, when that waste would be disposed of in another state. The commenter argued that the state regulator overseeing the receiving landfill should be responsible for making any adjustments to the national treatment standards. In particular, the commenter was concerned that the regulator in the generating state would not be knowledgeable about the receiving facility; that the state overseeing the receiving landfill might disagree with the treatment standards determined by the generating state; and that the receiving state would likely feel compelled to repeat the work of the generating state regulator, leading to duplicative effort.

EPA understands these concerns, but it continues to believe, for the reasons described above, that: (1) The regulator at the site of remediation is the most appropriate authority to make the *general* finding that cleanup waste from a particular site is appropriate for off-site disposal in a subtitle C landfill under today's rule, and (2) the off-site provisions in today's rule will be successful in promoting more aggressive remediation only if the basic decisions on the appropriateness of disposal in a subtitle C landfill are made at the cleanup site, with regulators at the receiving landfill playing their normal role (through the permitting process) in determining what particular wastes are appropriate for disposal at that site.

In answer to the points raised by the commenter, EPA agrees that the regulator at the receiving landfill will certainly be more knowledgeable about site conditions at that particular landfill. The Agency, however, does not believe that this fact is important to decisions on adjustments, because the design standards for the off-site landfill are specified by regulation. That is, the off-site landfill will have to meet the subtitle C design standards for new hazardous waste landfills. These are very specific standards, which not only require double liners and a leachate collection system, but specify such details as the thickness and composition of the liners; the size of the gravel (or other material) in the leachate collection layer; the minimum slope of that layer; and similar details . Thus, the regulator at the remediation site will have ample information on the engineering design of the unit to adjust a treatment standard based on the protection offered by the design of the receiving landfill (if adjustment factor E is exercised). At the same time, location-specific factors at the receiving facility (e.g., site-specific hydrology)—which is the kind of information that the regulator at the remediation site would be unlikely to know—would not be an allowable consideration in adjusting a treatment standard based on the engineering design of the landfill.

EPA acknowledges that, when wastes move from one state to another, the regulator in the receiving state may conclude that treatment levels approved by the neighboring state are unacceptable for a particular landfill, or that the receiving state may feel that it needs to review the work of the neighboring state. EPA certainly expects that, in such cases, overseeing states will be able to generally rely on the

protections built into today's rule, and the protections of the permitted landfill receiving the waste,[45] so that they can be comfortable allowing receipt of waste that meets its terms. But, the Agency also acknowledges that there is a potential for redundant reviews. Nevertheless, EPA remains convinced—for the reasons stated above—that today's rule will only be successful in promoting aggressive cleanups if the state overseeing the cleanup makes the basic judgments on whether a particular remediation waste is eligible for off-site disposal, and what level of treatment is required under today's rule, before disposal in a subtitle C landfill (regardless of where that landfill is located). Otherwise, as explained above, today's rule is not likely to achieve its intended goals.

b. Permitting and Acceptance at the Receiving Landfill

Proposed § 264.555(d) required that the Regional Administrator modify the permit for a hazardous waste landfill to allow receipt of CAMU-eligible waste under the terms of § 264.555, before it could receive such waste. In some cases, state or federal regulations would already require a permit modification at a facility, but in others—for example, where the waste met the waste acceptance criteria in the permit—they might not. But, in any case, proposed § 264.555(d) ensured that the permit was modified through a public process to allow receipt of CAMU-eligible waste under the terms of proposed rule.

The modification would follow permit modification procedures specified in § 270.42 or comparable state regulations, but at a minimum it would include public notice, opportunity for comment, and an opportunity for a hearing. (EPA assumes in most cases that states would choose the class 2 permit modification process, although class 3 modifications would meet the general performance standard as well.) This process would ensure that the local public had the opportunity to comment on whether and how CAMU-eligible wastes would be managed under the facility permit. Commenters supported this approach, and EPA is finalizing it as proposed. (Several commenters did express concern that EPA expected states to modify a facility's permit for each new remediation; today's rule would not require this. The issue is discussed in detail below.)

As part of the permit modification process at the receiving landfill, the Regional Administrator would include in the permit any requirements he or she determined were necessary or appropriate. During the permitting process, the Regional Administrator would be able to accommodate any special concerns of the local community. For example, the Regional Administrator might include special requirements in the permit to address potential risks from hazardous constituents in the waste, including principal hazardous constituents, to protect human health or the environment through the RCRA ''omnibus'' provision.[46] Further, the permit would include requirements to ensure that treatment standards for CAMU-eligible wastes imposed under § 264.555(a)(2) would apply; and, as specified in proposed § 264.555(d), the permit would also include recordkeeping requirements to demonstrate compliance with treatment standards approved for the waste. Under the current permitting requirements at § 264.13(a)(1), the facility owner/operator at the receiving landfill would be required to conduct an analysis of the waste that, ''at a minimum,'' contains ''all the information which must be known to treat, store, or dispose of the waste in accordance with this part'' (which would include information to show that treatment levels approved by the Regional Administrator were met). The plans for this analysis would be incorporated into the facility waste analysis plan (see § 264.13(b)), and the results of the analysis kept in the facility operating records in accordance with § 264.73(b)(3).

Commenters raised the question of whether a receiving land disposal facility would have to modify its permit every time it received CAMU-eligible waste from a new off-site location. Several commenters (including one state) argued that individual permit modifications would be unnecessary and counterproductive, where CAMU-eligible waste already met the acceptance criteria in a facility permit.

This was not EPA's intention in the proposal, and EPA expects that such modifications would ordinarily not be needed. Rather, EPA intends that an off-site facility would modify its permit once (with public notice, comment, and opportunity for a hearing). In fact, EPA expects that, once today's rule is effective, some commercial hazardous waste landfills will immediately seek enabling permit modifications, before they have been approached by potential customers—and EPA encourages them to do so.[47] Once an enabling permit modification has been approved, the modification would allow the facility to accept any CAMU-eligible waste that had been approved for off-site disposal by the appropriate regulatory authority at the remediation site. As part of the permitting process, the permitting authority of course could impose any additional conditions it determined were necessary, but EPA expects that complying with the terms of § 264.555, combined with the design and management standards required at the receiving facility under its RCRA permit, would provide sufficient assurance that CAMU-eligible waste would be safely managed.

One commenter argued that a permit modification at the receiving landfill should not be necessary at all. This commenter argued that permits specify the types of waste a facility may receive, and establish safe management conditions for that waste. If CAMU-eligible wastes approved for disposal under today's rule met the permit acceptance criteria, the commenter then questioned why a permit modification would be necessary at all. This commenter noted that, in many other cases, ''CAMU-eligible'' wastes currently go to hazardous waste landfills without permit modifications, because they meet the facilities' permit acceptance criteria. The commenter asked why EPA was requiring a permit modification under today's rule even where a facility's would otherwise allow acceptance of the CAMU-eligible waste without modification.

EPA appreciates the view of this commenter, but at the same time it notes that other commenters—including one state regulator—stressed the importance of the regulator and the local public at the receiving landfill having an opportunity to review and approve the fact that the landfill would receive wastes under the terms of today's rule. EPA also notes that the industry groups who recommended that these CAMU amendments include an off-site option supported an EPA requirement for a

[45] The receiving landfill, as explained below, would have to have a RCRA permit allowing it to receive the type of waste in question. RCRA permits establish detailed facility-wide requirements, including detailed waste analysis procedures, unit design, and waste management practices. These requirements, in EPA's view, will ensuring that the waste is managed protectively at the receiving facility.

[46] 46 Under the RCRA ''omnibus'' provision, ''each permit . . . shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.'' RCRA section 3005(c)(3).

[47] One commenter suggested that the one-time permit modification approach would lead to a network of approved facilities for EPA, states, and remediation waste generators to use for future projects involving off-site management of eligible wastes. EPA agrees that this result would be highly desirable and would promote more aggressive remediation.

permit modification, including public notice and an opportunity for a hearing at the off-site landfill. Therefore, EPA is retaining the proposed requirement in § 264.555(d) that the receiving facility undergo an enabling permit modification before receiving CAMU-eligible waste under today's rule. But it clarifies that there would be no need for subsequent permit modifications, as long as the CAMU-eligible waste met the waste criteria in the facility's permit.

At the same time, several commenters raised concerns that decisions on CAMU-eligible waste from any particular cleanup might be of concern to the local public and the regulatory authority at a receiving facility. Therefore, today's rule provides for an abbreviated notice procedure that must be completed before CAMU-eligible waste is placed in a permitted off-site landfill. These procedures are laid out in § 264.555(e). First, the landfill—which will already have been approved to receive CAMU-eligible waste under § 264.555(d)—would notify the local public and the RCRA permitting authority of its intent to receive off-site waste from a particular cleanup. (This notice might, for example, be submitted during the bidding process on the waste.) In this case, the public would be the persons listed on the facility's mailing list, required under 40 CFR 124.10(c)(ix). The notice would identify the location of the remediation site, the principal hazardous constituents, and the treatment requirements. Second, the public would have fifteen days to provide comments or express concerns to the regulatory agency. (Because the permit had already been modified through a public process to receive CAMU-eligible waste under this provision, commenters suggested and EPA has concluded that an abbreviated notice procedure is appropriate.) Finally, the Regional Administrator would have an additional fifteen days to object to the placement of the CAMU-eligible wastes in the landfill. The Regional Administrator would have the authority to extend the review period an additional thirty days because of public concern or insufficient information. If the Regional Administrator objects, or if he or she does not notify the owner/operator that he or she has chosen not to object, the waste could not be placed in the landfill until the objection had been resolved, or, alternatively, the permit had been appropriately modified through the procedures of § 270.42.[48]

EPA notes that, while this process requires action by the Regional Administrator within 30 days, it does not mean off-site disposal would be approved by default. Disposal could not occur without notification by the Regional Administrator that he or she does not object to the placement of the CAMU-eligible waste. EPA took this approach because it did not want the public to be at a disadvantage solely because the Agency (or an authorized state) failed to act within a specified period of time. At the same time, EPA recognizes that this approach may raise concerns with owner/operators of facilities interested in receiving CAMU-eligible wastes from off-site locations. Thus it urges these owner/operators to work closely with the appropriate regulatory authorities and the local public to look for ways to ensure that the process is expedited—consistent with the needs and interests of the regulator and the local community.

Toward this end, EPA has also included in today's rule a provision (§ 264.555(e)(iv)) that would allow the facility, the local public, and the regulatory agency to work together to identify situations where, because of minimal risk, they could agree that the limited notification procedures of § 264.555 were not necessary. For example, the facility, the regulatory agency and the community might agree that notification was not necessary if the total volume of waste from a particular remediation very minimal, or if CAMU-eligible waste met a particular level of treatment (for example, the waste was treated to the generic national standards of 90%/10XUTS, and none of the adjustment factors was used). EPA expects that these situations will be the exception. At the same time, however, EPA believes this provision will significantly improve the usefulness of today's rule, especially given the concern of one commenter that the rule should address obstacles to smaller-volume projects, for which off-site management often makes the most sense.

EPA, of course, understands that the regulatory authority and the local public may choose to limit the scope of today's regulation by requiring—through the initial permitting process at potential receiving facility—additional notice or review (e.g., a longer public comment period on notifications) before CAMU-eligible waste from a new remediation is received, or before certain categories or volumes of CAMU-eligible wastes were received from remediation sites. EPA expects that these issues would be addressed as part of the site-specific permitting process at the off-site hazardous waste facility seeking approval to receive CAMU-eligible waste from off site.

Commenters were particularly concerned that EPA might require that the receiving facility's permit be modified for each remediation. Commenters pointed out that this approach would be impractical and argued that it would likely eliminate the benefits (in aggressive remediation) that it hopes to achieve through § 264.555. The incentives for off-site disposal at hazardous waste landfills provided by today's rule, according to commenters, may often be most useful in the case of relatively small cleanups (or portions of cleanups). In such cases, the facility owner might be hoping to achieve clean closure—perhaps to allow redevelopment or to remove liability. Yet in these cases, the cost of a permit modification (even a ''minor'' modification) could well exceed the income received from a small shipment of remediation waste. Furthermore, such a process would create essentially the same practical problems that would occur if the § 264.555(c) approval process took place at the disposal site for every remediation. As one commenter put it, cleanup projects might be stopped indefinitely while one or more off-site facilities decided whether to participate in bidding on a project and then worked through the permit modification process. Thus, EPA believes it is impractical as well as unnecessary to require permit modifications with every CAMU-eligible waste shipment under today's rule.

3. Other Requirements

EPA emphasizes that the off-site portion of today's rule is narrow in scope. Specifically, the Regional Administrator may approve CAMU-eligible waste for placement in off-site hazardous waste landfills under only limited circumstances. Meanwhile, the waste would remain a RCRA hazardous waste, subject to all applicable RCRA hazardous waste requirements. For example, the manifest, recordkeeping, and reporting requirements of part 262 and part 264, subpart E would apply. In other words, the waste would require a manifest when shipped to an off-site facility, and standard RCRA waste-management requirements would apply

[48] EPA expects that permit modifications would only be necessary or appropriate as a last resort. That is, most objections are likely to be resolved short of requiring a modification to the permit modification. EPA, however, included this option because it provides a formal process, with clear requirements for public notice and typically with rights of appeal, which may be appropriate in some few cases. EPA has not specified in this rule what category of modification would be required, although the Agency expects that—if a modification process were determined to be necessary—the state would find a class 2 process to be most appropriate.

(e.g., waste analysis, storage requirements prior to placement, etc.).

In addition, when the waste is sent off-site, the rule (§ 264.555(e)) specifies that the generator of the waste (i.e., the owner/operator of the remediation site) is subject to the reporting, recordkeeping, and tracking requirements of § 268.7(a)(4). This section establishes requirements that apply ''when exceptions allow certain wastes or contaminated soil that do not meet the [land disposal restriction] treatment standards to be land disposed.'' With the initial shipment of waste, the generator will be required to send a one-time written notice to the land disposal facility providing specific information, such as the EPA waste identification numbers, the manifest number of the first shipment, and waste analysis data. EPA proposed this requirement and received no negative comment on it.

One commenter, however, suggested that § 268.7(a) be amended to include ''appropriate'' notice and certification. EPA believes that it has already, for the most part, addressed the commenter's concern by clarifying that the hazardous waste generator at the cleanup site must comply with § 268.7(a)(4), which requires a one-time written notice from the generator to the land disposal facility. The notice must indicate the hazardous waste numbers and the manifest number of the first shipment; a statement that the waste is not prohibited from land disposal; available waste analysis data; and specific information relating to the treatment of debris. EPA does recognize, however, that CAMU-eligible wastes may be treated off-site under today's rule, and that this activity might not be adequately covered by § 268.7(a)(4), which applies to waste generators. Therefore, to ensure adequate tracking and accountability when CAMU-eligible waste is treated off-site, § 264.555(f) of today's rule has been modified to require that off-site treatment facilities meet the certification requirements of § 268.7(b)(4), amended so that the treatment facility is required to certify that the treatment meets the requirements of the off-site provision of today's rule (as opposed to the requirements of the land disposal restrictions).

Finally, today's rule does not in any way restrict remediation waste management options that already exist. For example, the land disposal restriction variances of § 268.44(h) will remain available as an alternative (or complementary) approach for CAMU-eligible wastes sent for disposal. Furthermore, as described above, non-hazardous wastes will also be unaffected, because their management and disposal are generally not regulated under the federal RCRA hazardous waste program, and they will not need special approval under today's rule to allow placement in a landfill.

L. Grandfathering CAMUs (40 CFR 264.550 and 40 CFR 264.551)

EPA proposed that two types of CAMUs would remain subject to the 1993 CAMU regulations after promulgation of the CAMU amendments (i.e., after today's rulemaking): (1) CAMUs that are approved prior to the effective date of today's rulemaking and (2) CAMUs that were not approved prior to the effective date of today's rulemaking but for which substantially complete applications (or equivalents) were submitted to the Agency on or before 90 days after publication of the proposal (i.e., where substantially complete applications (or equivalents) were submitted on or before November 20, 2000). This approach is referred to as ''grandfathering.''

As discussed in the proposal, EPA continues to believe that it would be a poor use of cleanup resources to require reevaluation, in light of today's amendments, of CAMUs that are already approved or are substantially in the approval process (65 FR 51111–51112, August 22, 2000). The Agency's review of CAMUs approved under the 1993 rule showed that the CAMU decisions made under the 1993 rule would generally have been the same, or similar, to decisions that would likely be made under today's amendments. In general, commenters strongly supported the grandfathering approach, and EPA is today finalizing the grandfathering provisions as proposed.

The proposed effective date for the CAMU amendments was 90 days after publication in the **Federal Register**. Under RCRA Section 3010(b), RCRA regulations become effective six months after promulgation unless the Administrator provides for a shorter period because the ''regulated community does not need six months to come into compliance'' or for ''other good cause.'' As discussed in the proposal (65 FR 51118), EPA proposed a 90-day effective date, believing that it provided ample time for facilities to adjust to the new procedures and waste management standards in today's rule, especially given that the 90-day effective date would only affect unapproved CAMUs that do not meet the criteria for grandfathering.

A number of commenters expressed the concern that ninety days from public notice of the final CAMU amendments does not provide enough time to allow for approval of CAMUs under the 1993 rule and suggested that the Agency instead provide a 180-day effective date. Commenters appear concerned that a 90-day period would not provide enough time for EPA or authorized states to approve CAMU applications for units that were not already grandfathered by virtue of having a substantially complete application submitted by November 20, 2000. Given the scope of the grandfathering relief provided in the proposal, EPA believes this concern is unwarranted. CAMUs will be grandfathered if the application is approved within ninety days after the publication of the rule, or if the Agency received a substantially complete application (or equivalent [49]) within 90 days of the proposal of today's amendments (i.e., by November 20, 2000).[50] Therefore, facility owners/operators who submitted a ''substantially complete'' application to the appropriate regulatory agency by November 20, 2000, do not need to worry about whether their applications have been approved by the effective date of today's rule; their CAMUs—if approved—are grandfathered and will be subject to the standards that were in place when they submitted their applications (that is, to the 1993 CAMU rule standards). The 90-day effective date would have relevance only to applications that were not substantially complete by November 20, 2000, or (for applications not complete by that time) that had not been approved by the effective date.

The Agency does not see any justification for further extending the process that it laid out in the proposal. The purpose of the grandfathering provision is to avoid disruptions of CAMUs that have already been approved or that are well along in the review process. It is not to accommodate facility owners who submit new CAMU applications after the proposal of the CAMU amendments in an effort to obtain approval before the amendments become final. Therefore, although EPA understands commenters' interest in extending the effective date further, it is

[49] CERCLA decision documents and state cleanup program decision documents in which CAMUs are proposed as applicable or relevant and appropriate requirements are considered ''equivalent'' documents.

[50] As discussed in the proposal, ''substantially complete'' does not mean that the Regional Administrator must have deemed an application ''complete'' under § 270.10(c). Some commenters seemed confused on this point. For additional guidance on the meaning of substantially complete, see the proposal at 65 FR 51112 (August 22, 2000).

unpersuaded that an additional 90 days is needed or that a failure to provide that additional time will disrupt ongoing remedial activities or significantly set back ongoing reviews of CAMU applications.[51]

CAMUs that are grandfathered will remain subject to the 1993 CAMU rule for the life of the CAMU ''so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved.'' As discussed in the proposal, the Agency believes that there are two types of site-specific circumstances under which decision makers would generally determine that changes are ''within the general scope of the CAMU as approved.'' First, any change that could be made without modification of the approved CAMU conditions in a permit or other authorizing document would be considered ''within the general scope of the CAMU as approved'' and would therefore be grandfathered. Second, changes that require modification of the CAMU authorizing document but still remain within the general scope of the CAMU as originally approved may be allowed on a site-specific basis. These changes might include allowing additional placement of essentially the same wastes (or wastes with similar constituents and origin) that were originally approved for placement in a CAMU, or retaining the same basic design but enlarging a CAMU to accommodate an extra volume of waste. One commenter asked for clarification on the effect of permit changes to extend the duration of a CAMU. Changes to an authorizing document, including document renewals, to allow continued operation of a CAMU, as long as the continued operation of that duration was within the original ''general scope,'' would not affect the grandfathered status of the CAMU (e.g., where the intended life of an approved CAMU extended beyond the existing duration of the unit or facility permit, renewal of the permit to extend the CAMUs authorization would be ''within the general scope of the CAMU as approved''). See 65 FR 51112, August 22, 2000. Commenters supported the approach in the proposal, and EPA's views on these issues are unchanged.

Some commenters expressed concern that changes determined outside the scope of the CAMU as originally approved would automatically result in an entirely new CAMU approval process or cause an entire CAMU to lose its ''grandfathered'' status. This was not EPA's intention. EPA clarifies that an entirely new CAMU approval process is not needed for changes that are determined outside the scope of the originally approved CAMU, and such changes will not cause an entire CAMU to automatically lose its grandfathered status. Changes that are determined to be outside the scope of the originally approved CAMU (like other changes) would be subject to review and approval of the Regional Administrator and today's requirements would apply to them, if applicable. For example, a change to add a new type of waste to a CAMU that is considered outside the scope of the originally approved CAMU would trigger a duty to comply with today's treatment requirements with respect to that waste, but it would not require a new review, for example, of waste already disposed of in the CAMU or waste within the scope of the original approval.

EPA understands how its proposed language on grandfathering led to the commenters' concern, and therefore the Agency is making a change to that language to clarify its original intent. The proposed language (§ 264.550(b)) stated that grandfathered CAMUs are subject to the earlier CAMU standards, in § 264.551, ''so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved.'' To make it clear that a change in one feature of the CAMU (for example, the waste to be managed) would not automatically require a reapproval of the entire CAMU under the new standards, EPA has revised the final clause to read: ''CAMU waste, activities, and design will not be subject to the new standards as long as the waste, activities, and design remain within the general scope of the CAMU as approved.'' Thus, the placement of new waste in a grandfathered CAMU outside the scope of the original approval would require that the new waste meet the treatment standards of today's rule, and certainly operating and closure standards for the CAMU would be modified if necessary to address the new waste, but the entire CAMU would not have to undergo reapproval under the terms of today's rule.

M. Public Participation (40 CFR 264.552(h))

EPA proposed to expand and clarify the requirements providing for public participation in decisions to establish CAMUs by making prior public notice and an opportunity for public comment mandatory for all final CAMU determinations. EPA also proposed to expressly require the Regional Administrator to include in CAMU public notices the rationale for any proposed application of the treatment adjustment factors discussed earlier in today's rulemaking. Consistent with its overall policy to encourage full, fair, and equitable public participation throughout cleanup processes, the Agency believes that the public must be provided opportunities to participate in CAMU decision making and is finalizing the public participation requirements as proposed.

Today's public participation requirements for CAMUs expand on the public participation requirements established in the 1993 CAMU rule. This rule required the Regional Administrator to document his or her decision rationale and make the documentation available to the public, and it required that the incorporation of CAMUs into existing permits be done through the permit modification procedures (including the public participation procedures) of § 270.41 or § 270.42. The rule did not establish procedures for incorporating CAMUs into orders, or mandate that there be an opportunity for public comment before a decision outside of the permit context. Under today's rules, the Regional Administrator must provide ''public notice and reasonable opportunity for public comment before designating a CAMU.'' Thus, under today's regulations, the public will have an opportunity to be involved in all final CAMU determinations before final decisions are made, whether a CAMU is authorized under a RCRA permit or an order. Commenters generally supported the explicit requirement for public notice and opportunity for comment prior to final CAMU determinations.

As discussed in the proposal, the Agency believes that the standard of ''reasonable opportunity'' should, as a general minimum, include informing people about a prospective CAMU and providing a meaningful opportunity for people to comment to the Regional Administrator before a final agency determination is made regarding the CAMU (65 FR 51113, August 22, 2000). At the same time, by not including more detailed provisions on how public participation should be conducted, the Agency believes that the ''reasonable opportunity'' standard provides the flexibility that is necessary to ensure that CAMUs can be considered and approved within the broader context of cleanup decisions using the wide variety of administrative mechanisms that may be associated with cleanups.

[51] The Agency also notes that the signature of the final rule was delayed by several months beyond EPA's original expectations, thereby giving commenters much of the time they requested.

In many cases, the Agency expects that CAMUs will be approved as part of a larger remedy selection decision. In general, remedy decision processes already include opportunities for public review and comment. The Agency expects that CAMUs approved as part of a broader remedy selection decision would undergo public notice and comment as part of that decision. The Agency believes that placing CAMUs in the context of the broader remedies of which they are a part will be helpful to the public reviewing CAMU proposals. (Where CAMUs are approved as part of a permit modification, the existing permit modification procedures (including the public participation) of § 270.41 or § 270.42(c) would apply; however, even in these cases, EPA expects that the CAMU approval and the remedy decision could be done as a single modification.) In addition to public notice and an opportunity for comment before a final CAMU determination is made, the ''reasonable opportunity'' standard includes the idea that Regional Administrators provide sufficient information (e.g., a description of the proposed CAMU) to allow the public to consider the proposal in a meaningful way.

In addition to the requirement that Regional Administrators provide a ''reasonable opportunity'' for public comment before making a CAMU determination, today's rulemaking specifically requires Regional Administrators to include the rationale for any proposed adjustments to the CAMU treatment standards. As discussed in the proposal, the Agency is including this provision to highlight the importance of the treatment adjustment factors and because decisions about treatment, including the degree of treatment necessary at any given site, are often of great interest to the public.

In the proposal, EPA requested comment on whether to apply the public participation procedures in the Agency's RCRA Expanded Public Participation Rule (60 FR 63417, December 11, 1995, 40 CFR part 124, subpart B) to all CAMU decisions. Comments on the idea of requiring the expanded public participation requirements at all final CAMU determinations were mixed. Some commenters strongly supported applying the expanded public participation requirements to all final CAMU determinations. (The expanded public participation requirements now apply only to CAMUs approved as part of an initial permit. They do not apply to CAMUs incorporated into permits through permit modifications (see 40 CFR 124.31(a))—although these modifications do require the facility to notify the public and hold a public meeting at the time it applies for the modification (see 40 CFR 270.42(c))—or to CAMUs required through orders.) Other commenters thought application of the expanded public participation rule requirements—such as pre-application meetings—would not be appropriate for all final CAMU decisions. After considering these comments carefully, the Agency has decided not to apply the expanded public participation requirements by regulation to all CAMU determinations.[52]

EPA is taking this approach, in part, because the conditions of the expanded public participation rule mirror the specifics of the RCRA Part B permit process, and therefore may not fit well with other mechanisms that might be used to approve CAMUs. For example, the expanded public participation rule requires public notice in the local newspaper *and* by radio or television. EPA believes this level of specificity is inappropriate as a general requirement outside the context of RCRA Part B permits. The requirements for a preapplication meeting conducted by the facility owner are similarly detailed, and the meeting itself is likely to be redundant at many cleanups where public involvement is addressed through the broader remedial process. Instead, the Agency believes that the ''reasonable opportunity'' standard discussed above and the requirement that Regional Administrators include express information about any proposed adjustment to CAMU treatment requirements provide an appropriate minimum performance standard for public involvement in final CAMU determinations (i.e., they guarantee that the public will have a meaningful opportunity to be involved in all final CAMU determinations before a final decision is made) while maintaining the flexibility for regulators to tailor the specifics of the public involvement process to the particular site, the specific needs and interests of the public in the area, and the particular mechanism used.

The Agency reiterates that today's regulations represent the minimum amount of public involvement that is appropriate for final CAMU determinations. The Agency strongly encourages all CAMU decision makers to consider additional opportunities for public involvement in important cleanup decisions, such as final CAMU determinations, within the context of the broader cleanup. The Agency's current guidance on public participation during corrective action can be found in the September 1996 RCRA Public Participation Manual (see Chapter 4 in particular).

As discussed in the proposal, the Agency is continuing to review the best ways of enhancing the role of the public in RCRA cleanup decisions (including CAMU determinations), as part of its evaluation of public involvement in the overall RCRA corrective action program undertaken as part of the RCRA Cleanup Reforms. Public participation in the CAMU process will be informed by this initiative. The Agency continues to seek feedback from all stakeholders on the RCRA Cleanup reforms. Additional information is available at *www.epa.gov/epaoswer/osw/cleanup.htm* or by calling the RCRA Hotline at 1–800–424–9346 or the other numbers listed in the **ADDRESSES** section of today's rulemaking.

N. Additional Requirements ((40 CFR 264.552(i))

As discussed throughout today's rulemaking, cleanup situations will vary considerably across sites. As part of its effort to balance predictability and certainty in cleanup decision making with site-specific flexibility, EPA proposed and is today finalizing a number of minimum technical standards for CAMU design and operation, while at the same time allowing Regional Administrators to approve alternate standards on a site-specific basis. The Agency also proposed to modify the requirement from the 1993 CAMU rule to expressly allow the Regional Administrator to establish additional CAMU requirements on a site-specific basis to

[52] Under § 270.42, permit modifications to approve CAMUs are classified as Class 3 modifications. Class 3 permit modification procedures, which were developed prior to the Expanded Public Participation rule, are similar to the procedures in that rule in requiring public participation before the Agency publishes a proposal to approve a draft permit (or a proposed decision to deny), but they differ in important respects. Under the Class 3 permit modification requirements, permit applicants must notify the public at the time they request a permit modification (rather than before the application is submitted), and they must hold a public meeting and solicit comment on the modification request, before EPA proposes to issue or deny the modification request. The expanded public participation requirements for part B permits, on the other hand, require that the facility hold an informal meeting to inform community members of proposed hazardous waste management activities *before* they apply for a permit; the permitting agency must announce to the public when the permit application is submitted; and the permitting agency may require a facility to set up an information repository. The part B expanded public participation procedures do not apply to Remedial Action Plans issued under the Hazardous Waste Identification Rule for Contaminated Media (see 63 FR 65898, November 30, 1998), or to post-closure permits (40 CFR 124.31(a)).

protect human health and the environment. The Agency proposed that ''notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.'' Commenters generally supported this approach, and the Agency is today finalizing this provision as proposed.

As discussed in the proposal, the Agency believes that this new construction of the Regional Administrator's existing authority (under the 1993 CAMU rule) to impose ''additional requirements as necessary to protect human health and the environment'' is appropriate to clarify that, on a site-specific basis, Regional Administrators may impose additional requirements beyond the more detailed minimum technical and operational standards for CAMUs established today. Such additional requirements might include, for example, additional treatment of PHCs beyond the treatment standards, additional engineering or monitoring specifications, and prohibitions on the placement of specific CAMU-eligible wastes in a CAMU.

While agreeing with the general concept of allowing Regional Administrators to impose additional requirements as necessary to protect human health and the environment, one commenter expressed concern that the proposed regulatory language did not adequately emphasize the site-specific nature of decisions to impose additional requirements beyond the requirements established today, or the need for such requirements to be supported in the administrative record for a CAMU and to be consistent with the overall objectives of the CAMU regulations. The Agency is not persuaded that a change to the rule language is needed to clarify these points. The Agency agrees that, like other elements of CAMU decision making, decisions to impose additional requirements (like any other Agency decision made in approving a CAMU) must be made on a site-specific basis and supported by the administrative record. As discussed in the proposal, this requirement for the most part only confirms an obligation that EPA already has as part of the ''omnibus'' provision in RCRA permitting at 40 CFR 270.32(b)—that is, that the Regional Administrator must establish, in individual permits, ''. . . terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.'' The RCRA omnibus provision for permits does not include specific regulatory language emphasizing that the decision must be site-specific or that actions must be justified in the administrative record, yet such decisions are held to those standards (See, e.g., *In re Caribe General Electric Products*, Inc., RCRA Appeal, No. 98–3 (February 4, 2001); *In re Ash Grove Cement Co.*, RCRA Appeals Nos. 96–4 and 96–5, 1997 EPA App. LEXIS 30 (November 14, 1997). Similarly, EPA does not believe such language is needed here.

IV. Relationship To Other Regulatory Programs

Today's amendments do not change the relationship between other state and federal programs and the CAMU regulations. These amendments solely affect the way hazardous cleanup wastes are managed in corrective action management units. These rules set standards for hazardous waste management units when EPA or a state chooses to take advantage of the flexibility provided by the CAMU rule, but they do not affect, in any way, other aspects of RCRA cleanups, e.g., how cleanup levels are set or when treatment is required at RCRA corrective action facilities. Although these standards borrow, as appropriate, from approaches in current remediation programs (including RCRA corrective action for solid waste management units), they were not designed for making remedial decisions outside the CAMU context, such as in state or federal cleanup programs, where program-specific remedial decision-making processes are already in use. Today's rule leaves in place, and leaves untouched, all of EPA's current policies and regulations covering hazardous waste cleanups, including such familiar policies as the ''area of contamination'' concept, ''contained-in'' decisions, the regulatory definition of ''remediation waste,'' and the various remediation-specific LDR variances. For a discussion of these and other policies, see the May, 1996 Corrective Action ANPR (61 FR 19432), the October 1998 Memorandum, Management of Remediation Waste Under RCRA, EPA530–F–98–026, RCRA Docket No. F–2000–ACAP–S0025, and the preamble discussion to the HWIR-media rule at 63 FR 65874, 65877–65878 (November 30, 1998) (these references are in the RCRA docket;). The preamble to the 1993 CAMU rule discusses the relationship between the CAMU rule and other regulatory programs, including CERCLA (see 58 FR 8658, 8679 (February 16, 1993)).

V. How Will Today's Regulatory Changes be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing federal requirements.

B. Authorization of States for Today's Final Rule (Other than § 264.555)

Today's CAMU amendments will be primarily implemented pursuant to section 3004(u) and (v) of RCRA, which are HSWA provisions. This authority also formed the statutory basis for the original federal Corrective Action Management Unit (CAMU) regulations (see 58 FR 8658, 8677 (February 16, 1993)). Therefore, the Agency is adding

this rule to Table 1 in § 271.1(j), which identifies the federal program requirements that are promulgated pursuant to HSWA. The Agency received a number of comments regarding the statutory authority for today's amendments. They are discussed below.

Today's amendments to the CAMU regulations (except for § 264.555) are more stringent than the existing federal CAMU regulations.[53] Thus, states that have already been granted authorization for the existing 1993 CAMU rule must revise their programs so that they are not less stringent than the federal program, including today's amendments. Further, because today's amendments to the CAMU regulations are promulgated under HSWA authority, in states authorized for the 1993 CAMU rule that choose to not seek interim authorization-by-rule, EPA will implement today's amendments until these states receive interim or final authorization. EPA will also continue to implement the amended CAMU regulations consistent with applicable, more stringent state law in those states that have not received authorization for corrective action. As explained in the 1993 CAMU rule preamble (see 58 FR 8658 (February 16, 1993)), the CAMU rule is integral to the HSWA corrective action program, and where EPA implements the corrective action requirements, EPA also implements the CAMU rule consistent with applicable more stringent state law. Note that section 3009 of RCRA allows state laws or regulations to be more stringent or broader in scope than the federal regulations.

States that are authorized for corrective action but have not received authorization for the 1993 CAMU rule are not required to seek authorization for today's amended CAMU regulations because those states' authorized regulations for corrective action and Land Disposal Restrictions (LDRs) are more stringent than the federal regulations, which provide for CAMUs. Because CAMUs are used as part of a corrective action and are often integral to the implementation of corrective action at individual facilities, states are strongly encouraged to adopt and seek authorization for the CAMU regulations. After publication of today's final CAMU amendments, states may continue to receive authorization for the 1993 CAMU rule. However, EPA strongly discourages states from seeking authorization for the CAMU regulations without today's amendments because EPA will implement these amendments in those states.

One commenter argued that EPA should promulgate today's ''modified rule'' under non-HSWA authority. Specifically, the commenter believes that the amendments are better promulgated under the authority of section 3004(a) of RCRA, which provides the authority for hazardous waste management unit standards, than under the corrective action standards of RCRA sections 3004(u) and 3008(h). This commenter also argued that there is no basis on which to conclude that the CAMU rule, when applied to facilities not subject to RCRA corrective action, is promulgated pursuant to HSWA authorities.

In response, EPA first notes that the comment urges the Agency to change its approach for the CAMU rule as a whole, not just for today's amendments. However, redesignating the entire CAMU rule as non-HSWA was not at issue in the CAMU amendments proposal. The only issue the Agency discussed in the proposal was the authority for the modifications to the CAMU rule. 65 FR 51114. Any comments that are not specific to those amendments are therefore outside the scope of today's rulemaking. The Agency is thus not changing the designation of the CAMU rule to non-HSWA.

As for whether the amendments alone are appropriately considered HSWA, the Agency continues to believe that they are for several reasons. First, today's amendments simply flesh out otherwise existing requirements of the CAMU rule. Just because these provisions are now more detailed does not mean that the authority under which they are implemented must change. More specifically, even with the added detail, the standards remain very tailored to the cleanup scenario, and they were designed to further the objectives of the corrective action program. For example, the identification of principal hazardous constituents, the balancing criteria inherent in much of the rule (for example, in the adjustment factors), the way many of the conditions derive from site remedial decisions (e.g., the alternative liner standards or the treatment adjustment factor based on cleanup levels), and similar aspects of the rule are inextricably linked to the remedy decisions at corrective action sites. In fact, the standards promulgated today are integral to satisfying EPA's obligation to ensure that corrective actions both move forward expeditiously and protect human health and the environment. RCRA section 3004(u); 40 CFR 264.101. They are therefore appropriately considered promulgated pursuant to the corrective action authorities.

Second, as stated in the proposal, although the CAMU rule language was amended in the HWIR-Media rule to make it clear that CAMUs may be used at ''cleanup-only'' facilities,[54] today's amendments (like the original CAMU rule) were developed primarily with corrective action sites in mind. For example, almost all of the CAMUs identified in EPA's site background document are at RCRA corrective action facilities.

Similarly, the Agency does not believe that it would be appropriate to treat the CAMU rule as it applies to non-RCRA corrective action sites as non-HSWA while treating the rule in all other instances as HSWA. Although one commenter argued that the ''Agency took no position on whether [allowing CAMUs to be used at ''cleanup-only'' facilities] was a HSWA determination or not,'' the Agency generally believes it is best to avoid bifurcating individual rules into HSWA and RCRA requirements. In any event, this comment is also outside the scope of today's rulemaking as it pertains to any provisions other than today's amendments. As discussed above, the Agency does not believe it would make sense to implement the amendments under a different authority than the balance of the rule.

Finally, EPA notes that it has addressed the specific concerns that, it assumes, lie behind the comments that this rule should be a RCRA rule. In the approach EPA has adopted in today's rule allowing interim authorization-by-rule, states will be able to become interim-authorized for the rule before it takes effect, eliminating any possible transitional problems or dual regulation that the original base RCRA authorization process was designed to avoid. Further, EPA has eliminated from today's final rule the two aspects of the proposal that commenters identified as causing potential transition problems—the exclusion of states with problematic

[53] The following section does not apply to § 264.555 of today's rule, because it is a less stringent HSWA provision. For a discussion of this provision, see section V.E of this preamble.

[54] ''Clean-up only'' facilities are sites that are subject to RCRA permitting requirements solely because clean-up activities at the facility trigger those requirements. The HWIR-Media rule eliminated facility-wide corrective action requirements in permits issued to clean-up only facilities. The Agency notes that under the HWIR-Media amendment to the CAMU rule, the universe of facilities subject to the CAMU rule did not change. The language was necessary to preserve the status quo, since the HWIR-Media rule removed cleanup-only facilities from the universe of facilities subject to RCRA's section 3004(u) facility-wide corrective action requirement. (63 FR 65880, November 30, 1998).

audit immunity and privilege laws from eligibility for authorization-by-rule, and the termination of interim authorization if EPA has not acted on final authorization within a specific period of time. Since EPA has addressed any potential disruption resulting from classifying today's rule as a HSWA rule, the commenters' only remaining concern would be that they would become subject to the more stringent requirements of the rule before they preferred to be. Given how intimately linked the requirements in today's rule are to the HSWA requirement for protective corrrective action at RCRA facilities, and given Congress's clear direction in HSWA that corrective action requirements should be immediately effective (even in authorized states), EPA believes that it would frustrate the intent of Congress to allow years of delay in the actual implementation of this rule.[55]

C. Interim Authorization-by-Rule for States Currently Authorized for the CAMU Regulations

1. Background and List of States Eligible for Interim Authorization-by-Rule

As described above, today's amendments are promulgated under HSWA statutory authority and are more stringent than the existing CAMU regulations (except for § 264.555). Thus, in states that are authorized for the 1993 CAMU rule, there is the potential for dual implementation of the CAMU regulations if these states are not authorized for today's amendments before they become effective. This dual implementation is a result of states continuing to implement the provisions of the 1993 CAMU rule, while EPA implements today's amendments.

To avoid this potential disruption in the implementation of the RCRA cleanup program caused by the regulatory authority for CAMUs being split between states and EPA, we proposed two authorization actions that would enable states to gain interim authorization for today's final amendments. First, EPA proposed a new authorization procedure called interim authorization-by-rule. Second, EPA proposed to use this new procedure to grant interim authorization to states that have final authorization for the 1993 CAMU rule and meet other eligibility criteria. Today, EPA is promulgating the interim authorization-by-rule procedure and listing those states which are eligible for interim authorization-by-rule.

EPA has determined that states which have met the criteria promulgated today in 40 CFR 271.27 are eligible for interim authorization-by-rule. These eligible states will have interim authorization if they notify EPA that they are willing and able to implement the amended CAMU regulations under 40 CFR 271.27(a)(2). This interim authorization is granted through a process that is promulgated as a part of today's rule in 40 CFR 271.27. Currently, 28 states are authorized for the existing CAMU regulations and meet the criteria for interim authorization-by-rule. These states are also authorized for corrective action. The eligible states are: Alabama, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

2. Eligibility criteria and process for interim authorization-by-rule

Under today's interim authorization-by-rule procedure, states are eligible for interim authorization for the CAMU amendments if they have final authorization for the 1993 CAMU rule (58 FR 8658, February 16, 1993), and notify EPA within 60 days after publication of today's notice that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations until they adopt equivalent provisions. As discussed in the preamble to the proposed rule, these authorized states are currently responsible for the implementation of the CAMU rule, including reviewing applications for CAMUs from facilities and overseeing the operation of approved CAMUs. EPA continues to believe that in general, CAMUs approved under the standards in the 1993 rule could be approved under today's amended CAMU regulations. Thus, EPA has determined that these states have regulations which are substantially equivalent to the amended CAMU regulations.

Today's rule requires states that want interim authorization to notify EPA within 60 days after publication of today's notice that the state intends to and is able to use today's amendments as guidance in the implementation of their CAMU regulations until it adopts equivalent provisions. This requirement is located at 40 CFR 271.27(a)(2). During the 60-days period after today, the eligible states listed above should evaluate today's final amendments and decide whether they can and want to seek interim authorization-by-rule. If a state decides to seek interim authorization-by-rule, the state must send a letter to the Regional Administrator which informs EPA of this intention. After this 60-day period ends, EPA will publish an additional **Federal Register** notice identifying which states have submitted the notification to EPA, and thus have interim authorization for the CAMU amendments.

EPA received several comments regarding the state notification deadline. One commenter thought that the time period for notification was too short, while others believed that it was reasonable. EPA is reassured by state commenters who had no concerns regarding the deadline, which remains at 60 days after publication of today's rule. EPA has alerted states to this deadline, and EPA continues to discuss today's rule with states in order to ensure they are aware of the notification deadline. EPA also believes that this determination will be straightforward for states, and the procedural requirement is minimal.

One commenter believed that states eligible for interim authorization-by-rule should be able to submit their notifications to EPA of their ability to have interim authorization after the proposed 60-day deadline, as long as the notification is submitted before interim authorization for the CAMU rule amendments expires. EPA understands the reasons for this comment, but intends to complete the interim authorization-by-rule process by the effective date of today's final rule since the final action will be the placement of a **Federal Register** notice which informs the public what states have interim authorization for today's CAMU amendments. EPA is concerned that confusion may arise if different states qualify for interim authorization-by-rule at different times. Moreover, given the few changes from the proposal, EPA sees no reason, and the commenter provided none, why states cannot submit their notifications within 60 days. As described below, states that are authorized for the 1993 CAMU rule may also be able to apply for interim authorization using an expedited process similar to that used today. Note that this interim authorization would expire on August 30, 2004.

Eligible states may choose not to use this interim authorization-by-rule process. If they are not able to, or choose

[55] Under the RCRA authorization process, states have up to two years to amend their regulations to come into compliance with more stringent RCRA requirements. Generally, states meet this requirement. However, if they fail to do so, EPA's recourse is to begin steps to withdraw the state program's authorization to run the RCRA program. Under current regulations, state program withdrawal is a lengthy process.

not to seek interim authorization-by-rule, they can follow the process outlined in section F below for states that are authorized for corrective action, but not the 1993 CAMU rule.

In the August 22, 2000 proposed rule (65 FR 51116), EPA sought comment on restricting the eligibility of states with audit privilege and immunity laws for interim authorization-by-rule. Specifically, EPA proposed that under § 271.27(a)(2), states with audit privilege and immunity laws that raised EPA concerns about whether the state had adequate enforcement as required for the purpose of final authorization under RCRA section 3006(b) would not be eligible for interim authorization-by-rule for today's CAMU amendments.

In the August 22, 2000 proposed rule, Oregon, Nevada, and Illinois were identified as states with audit privilege and immunity laws that would not be eligible for the CAMU interim authorization-by-rule. Since publication of the proposed rule, Oregon and Nevada have taken actions which resolved EPA's concerns with their audit laws. Therefore, the audit laws in Oregon and Nevada no longer present a barrier to the authorization of federal environmental programs. Oregon and Nevada are eligible for interim authorization-by-rule for today's CAMU amendments and neither state will be ineligible for final authorization of today's CAMU amendments due to audit privilege and immunity laws.

In addition, EPA has decided interim authorization-by-rule for states with audit privilege and immunity laws that raise EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). However, because audit privilege and immunity laws, without sufficient safeguards and conditions, can undermine the enforcement authority that a state must possess as a condition of having final authorization to implement federal environmental programs, states granted interim authorization-by-rule will still be required to resolve their audit law conflicts where necessary to meet minimum federal requirements as a condition of final CAMU program authorization.

EPA bases its decision on the following rationale. First, interim authorization does not necessarily require a finding by EPA that the state program provides adequate enforcement, but rather a finding that the state program requirements are substantially equivalent to the federal program requirements. Second, even if adequacy of enforcement were considered part of equivalence, Illinois's CAMU program is substantially equivalent, if not completely equivalent, to the federal program. The judgment of substantial equivalence must be made looking at the program as a whole, and EPA does not believe that the fact that Illinois's enforcement authority may be circumscribed in the specific circumstances affected by its audit privilege law undermines the substantial equivalence of its CAMU program as a whole. This conclusion is supported by the fact that the audit privilege issues are not an aspect of Illinois's CAMU program per se but affect its hazardous waste program generally. Third, interim authorization will provide a state with the opportunity to address problems and issues associated with the state's environmental audit privilege and/or penalty immunity law. EPA will continue to work with states during this interim approval period to remedy any deficiencies in their laws or help implement today's CAMU amendments. Additionally, it is EPA's position that any subsequently enacted audit law or other law that conflicts with minimum federal authorization requirements would make a state ineligible for final authorization of the CAMU program.

The State of Illinois continues to have an audit privilege law that raises EPA concerns as to the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). While Illinois is eligible for interim authorization-by-rule of today's CAMU amendments, under the approach outlined above, final authorization of Illinois's CAMU program will not be granted until Illinois resolves its audit law conflicts to meet the minimum requirements for authorization under RCRA section 3006(b).

In addition, Illinois has another law, referred to as the ''Illinois Site Remediation Law'' that raises EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). The Illinois Site Remediation Law [56] replaces strict liability with limited liability requiring proof of causation for all remediations under the Illinois Environmental Protection and Groundwater Protection Acts, including the RCRA program. This law increases the state's burden of proof necessary to establish a violation under federally approved Illinois programs, thereby affecting the adequacy of the state's enforcement authority under these programs. EPA has notified Illinois of its concerns regarding the Illinois Site Remediation Law.[57] As a condition for final authorization of the CAMU program, and, unless circumstances regarding the Site Remediation Law change, Illinois must modify its Site Remediation Law to meet the minimum requirements for final authorization under RCRA section 3006(b). EPA will continue to work closely with Illinois officials to address authorization issues for both the Illinois Audit Law and the Illinois Site Remediation Law.

D. Expiration of Interim Authorization

In the August 22, 2000 notice, EPA proposed to extend the period of interim authorization for the CAMU amendments from January 1, 2003 (the date interim authorization expires under § 271.24(c)) to a date three years after the effective date of today's amendments. EPA has considered comments on this proposal, and has modified the date interim authorization expires for today's amendments to be the date of final authorization, provided that states submit a final application for authorization to EPA by August 30, 2004. Under the provisions in §§ 271.21(e)(2)(ii), (e)(2)(iv), and (e)(4)(ii), states have two years after July 1, 2002 to amend their CAMU regulations, and then an additional 60 days to submit a final authorization application to EPA, resulting in the August 30, 2004 deadline. This final deadline is different than the proposed approach, which would have required states to receive final authorization from EPA by January, 2005. As reflected in their comments, states were concerned that under the proposed approach, there would be no deadline for states to submit their application that would ensure EPA approval by the expiration of interim authorization.

Under the approach in today's final rule, the deadline which states must meet to retain regulatory authority for today's amendments occurs sooner than in the proposal, but is at an interim step in the authorization process, and is not dependent on EPA action. Further, interim authorization may actually extend for a longer period of time than in the proposal because it extends until final EPA action is taken on a state's authorization application. This revised deadline is now located in new § 271.27(b) and amended § 271.24(c).

[56] Illinois Environmental Protection Act, 415 ILCS 5/58.9.

[57] See January 11, 1999, letter from David Ullrich, Region V Acting Regional Administrator, to Mary Gade, Director, Illinois Environmental Protection Agency, and James Ryan, Illinois Attorney General, detailing EPA's authorization concerns with the Illinois Site Remediation Law.

The final approach continues to require a deadline for state action because of the temporary nature of interim authorization. EPA continues to believe that final authorization should be the goal.

EPA believes that this extension to the expiration of interim authorization for the CAMU amendments rule will provide states sufficient time to amend their regulations so they are equivalent to the federal CAMU regulations, and then allow them to go through the final authorization process in § 271.21. If a state does not submit its final application for today's amendments before the deadline of August 30, 2004, interim authorization will expire, and EPA would then be responsible for implementing the new CAMU amendments in these states. (EPA would not implement the provisions in the 1993 CAMU rule that were unaffected by the amendments; the authorized states would continue to implement them.) EPA believes that this potential reversion of the implementation authority to EPA will act as a strong incentive for states with interim authorization to expeditiously seek final authorization. Further, EPA does not believe that this final authorization process will be particularly difficult. See below for additional detail regarding EPA's intention to expedite the authorization of states for the CAMU rule amendments. As part of the authorization process, EPA commits to reviewing and granting approval of a final authorization application within the time frame for interim authorization, provided that states expeditiously amend their regulations to include today's final amendments.

E. Authorization for § 264.555

Section § 264.555 of today's rule—which allows placement of CAMU-eligible wastes in off-site hazardous waste landfills—is less stringent than the existing regulations. Therefore, it will become effective only in those states which are not authorized for these parts of the hazardous waste program. Further, because the issues addressed by § 264.555 have no counterpart in the existing CAMU regulations (or any other RCRA regulation), this provision will would not be substantially equivalent to those regulations. Thus, states which are authorized for the 1993 CAMU rule will not be able to gain interim authorization-by-rule for the provisions in today's notice. The final CAMU amendments rule will not include the provisions in today's notice in the interim authorization-by-rule sections in proposed §§ 271.24(c) and 271.27 (see 65 FR 51115).

However, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's notice in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization. Of course, the state could not implement the requirements in a way that was less stringent than the federal requirements in today's rule, which, in this case, would include the public participation standards of today's rule. (This is similar to the approach the Agency took in promulgation of the 1993 CAMU rule. See 58 FR 8677, February 16, 1993.)

F. Authorization of States Currently Authorized for Corrective Action, but not the Existing CAMU Rule

There are a number of States authorized for corrective action that are not authorized for the 1993 CAMU rule. This situation applies in the following twelve states or territories: Arkansas, Colorado, Guam, Kentucky, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, New Hampshire, and Ohio. In addition to these states, some states authorized for the 1993 CAMU rule may not choose to receive interim authorization-by-rule. Because CAMUs expedite clean-ups, EPA encourages all of these states to seek final authorization for the CAMU regulations, including today's amendments as soon as possible. (Alternatively, states could request and receive interim authorization under § 271.24.) EPA also believes that the authorization process for the CAMU regulations can and should be completed expeditiously.

1. State Applications for Final Authorization

As discussed in the proposal, the state authorization revision procedures in § 271.21(b) provide EPA with the discretion to consider the circumstances of individual states when determining what should be the content of a state's application for final authorization. EPA believes that states which are authorized for corrective action and are seeking authorization for the amended CAMU rule generally will not need to submit a revised Program Description (PD) and Memorandum of Agreement (MOA) to EPA, where the state program seeking authorization for the CAMU regulations is the same program that is authorized for corrective action.

The implementation of the CAMU regulations requires states to make clean-up decisions that are in effect the same types of decisions states already implement through their corrective action programs. Therefore, EPA believes that the adoption and implementation of the CAMU regulations requires the same technical and resource capability that states already have to operate the corrective action program. Generally, no changes to the MOA between the state and EPA should be needed as a result of the CAMU regulations because Agency coordination issues have been addressed during the authorization process for corrective action. However, EPA would have the discretion to request these documents or other information, if necessary.

EPA believes that states should address the CAMU regulations in a revised Attorney General's (AG) statement of authority if necessary, or through other appropriate mechanisms. The CAMU regulations create a new type of waste management unit that can be used only in certain situations after a facility application and Agency review process. Thus, states may need to establish new statutory or regulatory authority, or interpret their existing authorities to determine that they can approve and regulate these units.

2. Authorization Approach for States That Adopt the CAMU Regulations by Reference or Verbatim

Many states adopt federal regulations verbatim or incorporate them by reference into their regulations. It is likely that many states will adopt the CAMU regulations in this manner. When states adopt federal regulations using these methods, it is not difficult for EPA to determine whether the state regulations are equivalent to their federal counterparts. Because of this ease of review, and the high priority of state authorization for the CAMU regulations, the Agency believes that the authorization process for these states under § 271.21 will be quick. Thus, once EPA receives an acceptable authorization application from a state which incorporates the CAMU amendments by reference or adopts them verbatim, EPA intends to immediately proceed to publish a direct final rule which grants final authorization to that state. Under this mechanism, the rule would become effective unless EPA received an adverse comment, in which case EPA would withdraw the rule prior to the effective date. An exception to this expectation would be cases where in EPA's judgment, known issues with the existing state program greatly affect the program's prospects for authorization.

An example of such issues would be questions regarding a state's enforcement authority (e.g., audit law issues), or capability (e.g., resource issues). It should also be noted that EPA will process all state authorization applications for the CAMU regulations as quickly as possible, regardless of the method of state adoption.

VI. Effective Date

In today's final rule, EPA is retaining the proposed effective date of 90 days. Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. However, RCRA section 3010(b) provides for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause. Because today's rule ''grandfathers'' CAMUs (see discussion above in ''Grandfathering CAMUs''), a 90-day effective date would only affect any unapproved CAMUs that do not meet the criteria for grandfathering (i.e., CAMUs for which a ''substantially complete'' application had not been submitted by November 20, 2000, and which had not been approved by the effective date). Thus, at the time this rule becomes effective, all existing and approved CAMUs will, by definition, be ''in compliance'' (because they will be grandfathered), and therefore industry will have no problem in coming into compliance by the effective date. (Several commenters expressed concern that 90 days did not provide enough time for them to modify CAMU applications and become approved by the effective date. These commenters, however, did not argue that they would be out of compliance unless EPA provided for a 6 months effective date; instead, their main concern was with the scope of grandfathering relief. These comments are discussed earlier in today's preamble in the section on grandfathering.)

One commenter believed that the effective date for today's final rule should be six months after publication to allow states a longer time period to notify EPA that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations. However, as discussed above, most states supported this notification deadline.

VII. Conforming Changes (40 CFR Part 260, Subpart S, § 260.10)

Today's rule changes the title of 40 CFR part 264, subpart S from ''Corrective Action for Solid Waste Management Units'' to ''Special Provisions for Cleanup.'' The current title reflects the Agency's intention in 1993, when it was added to the CFR, to finalize the comprehensive corrective action regulations for solid waste management units proposed in September 1990. 58 FR 8658 (February 16, 1993). As discussed more fully above, in the section titled ''Releases to Ground water (§ 264.552(e)(5)),'' the Agency withdrew the majority of that proposal in October 1999. In addition, the current provisions of subpart S, as well as those finalized today, address CAMUs, temporary units, and staging piles, which are all units which may only be used for the management of cleanup wastes, and which, in some instances, may be used at sites not subject to RCRA corrective action. In addition, today's rule includes provisions applicable to cleanup wastes disposed of off-site. EPA therefore believes that this change ensures that the title of subpart S more accurately conveys the provisions that are contained within it.

The conforming changes to § 260.10 are made to implement the distinction being drawn in today's rule between CAMUs that are grandfathered and CAMUs that are subject to today's standards at § 264.552. As discussed above in the section titled ''Eligibility of Wastes for Management in CAMUs,'' EPA is modifying the definition governing the types of wastes that can be managed in a CAMU, and is changing the name of waste eligible for management in CAMUs from ''remediation waste'' to ''CAMU-eligible waste.'' This revised definition applies to new CAMUs but not to CAMUs that qualify to continue implementation under today's ''grandfathering'' provisions (see § 264.550). EPA is making two conforming changes as a result of modifying the definition of remediation waste in this fashion. The first change is to remove the existing definition of CAMU at § 260.10 and to include it directly in § 260.551(a) (the introductory paragraph to the 1993 CAMU provisions, which becomes, as a result of the regulations finalized today, the regulations applicable to grandfathered CAMUs). The second change is to modify the existing definition of CAMU at § 260.10 by changing ''remediation wastes'' to ''CAMU-eligible wastes,'' and to place the definition directly in the amended CAMU regulations at § 264.552(a).

EPA also changed the term ''remediation waste'' to ''CAMU-eligible waste'' throughout the CAMU regulatory language.

EPA received no comments on these conforming changes and is therefore finalizing them as proposed.

VIII.Analytical and Regulatory Requirements

A. Planning and Regulatory Review Under Executive Order 12866

Under the Planning and Regulatory Review Executive Order 12866 (58 FR 51735 (October 4, 1993)), an agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or -

(D) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is a ''significant regulatory action'' because of novel legal or policy issues arising in the rule. 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. The final rule is estimated to have annual incremental costs between $217,000 and $452,000, and therefore is not viewed as economically significant under the Executive Order.

EPA has prepared an economic support document for the final rule entitled Economic Analysis of the Amendments to the Corrective Action Management Unit Rule.'' This document can be found in the docket for today's final rule.

This section of the analysis discusses: (1) The economic analysis background and purpose, (2) the CAMU administrative approval costs assessment, (3) the analysis of impacts resulting from the treatment and unit design requirements, (4) the assessment of potential change in CAMU usage to result from the rule, and (5) the summation of these impacts. There were

no comments on the proposed rule specifically addressing the economic analysis methodology or results. The Agency discusses economics-related comments in the relevant sections below. For a complete discussion of the comments received on the proposed rule, please see the response to comments document in the docket for today's final rule.

This section also provides a qualitative discussion of the potential impacts of allowing the placement of CAMU-eligible wastes in off-site hazardous waste landfills. See section III.K of today's preamble for a more detailed discussion of this provision.

1. Economic Analysis Background and Purpose

A CAMU is: ''An area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility.'' (40 CFR 264.552) CAMUs may be used to consolidate hazardous wastes from various areas at the facility. While one of the chief reasons for CAMU usage is to facilitate more treatment of cleanup wastes in general (see discussion earlier in the preamble), wastes placed in CAMUs are not subject to the land disposal restriction requirements for treatment. In addition, under the 1993 CAMU Rule, CAMUs are not required to meet the existing 40 CFR part 264 and part 265 minimum design, operating, closure, and post-closure requirements for hazardous waste units.

The CAMU provisions being finalized today amend the existing CAMU rule. This economic analysis examines the impacts from these final amendments compared to the existing CAMU rule provisions. This section briefly discusses the baseline and post-regulatory scenarios in the analysis, and provides an overview of the incremental impacts assessed.

a. Framework of the Analysis

The Agency faced two important questions in developing the framework for this analysis. The first was how to address defining the universe of facilities affected by today's final rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's final rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which could potentially be reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards apply to CAMUs which are not subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require remediation at some point in the future under one of these authorities, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the current CAMU rule. In this RIA, the Agency projected the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, which translates to approximately 75 CAMUs per year over a 20 year period.

However, based on data showing actual CAMU usage over the past eight years, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. These data, discussed in more detail below, show an actual CAMU approval rate of approximately six CAMUs per year. The disparity between the 1993 RIA projections and the actual usage is likely the result of four factors. First, the 1993 RIA baseline is very different from the remedial setting which has existed in recent years. Chiefly, the RIA assumed significant excavation and treatment of wastes at sites, with heavy reliance on combustion technologies and little use of innovative treatment or remedial approaches. These alternative approaches tend to be less expensive than combustion technology, and are much more available and in use than was anticipated in the 1993 RIA. Therefore, the pervasive demand for CAMUs to lower large remedial costs did not materialize as anticipated in the 1993 RIA. Second, due to its timing, the RIA estimates do not include impacts on CAMU use which resulted from various remedial policy developments such as the stabilization initiative and the use of environmental indicators. These developments have resulted in increased stabilization of sites, and thus less excavation and treatment of wastes (in the short term). This shift created conditions which reduced the need to rely on CAMUs as much as had been originally estimated in the 1993 RIA projections. Additionally, the availability of alternatives to CAMUs, such as staging piles and areas of contamination and the Phase IV LDR soil treatment standards, has potentially decreased the use of CAMUs somewhat compared to that originally projected. Third, given the historical rate at which facilities have progressed through the various stages of corrective action to reach a final remedy decision, the Agency thinks that the CAMU usage projections from the RIA were unrealistically high. The number of final remedy decisions at corrective action sites across the nation has not reached 75 per year. Therefore, it would be impossible to have an average of 75 CAMUs approved annually. Finally, the Agency believes that CAMU use has been dampened over the past eight years due to the uncertainty surrounding the use of CAMUs which resulted from the CAMU litigation, which followed shortly after the rule's promulgation.

Therefore, the Agency employed the data on existing CAMUs in the CAMU Site Background Document. EPA collected these data from regional and state site managers as part of this rulemaking effort. This report contains information on 47 CAMUs approved to date or scheduled for approval prior to the effective date of the rule (as of spring 2001). Under the grandfathering provisions in today's final rule, these CAMUs will remain subject to the 1993 CAMU regulations (as long as they continue to operate within the general scope of the originally issued CAMU authorizing document (e.g., permit)). For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design. These data are contained in the CAMU site background document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on

historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document. As noted, this document contains information from all the CAMUs approved to date for which the Agency had good data, and therefore provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which would affect CAMU usage in the future. (**Note:** One exception is the anticipated change is the removal of the uncertainty associated with the CAMU litigation. The Agency has assessed the order-of-magnitude impacts from this change on the CAMU usage rate as a part of the analysis of the incremental impacts of today's final rule.)

EPA also used these historical data to identify the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the provisions being finalized today (post-regulatory case). As discussed in more detail below, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the proposed provisions (post-regulatory case). In such an approach, the Agency again assumes that these actual CAMU remedies selected in the past are reasonably representative of CAMU remedies which would be selected under baseline conditions in the future. The Agency believes this assumption to be sound for the same reasons stated above regarding CAMU usage. EPA thinks these remedies are the reasonable outcome of the existing CAMU regulations implemented within the context of standard remedial goals for cleanup.

b. Baseline Case Description

The baseline scenario provides a reference against which the impacts of a particular action (e.g., a regulation) are measured. For the purposes of this analysis, the baseline is defined as the 1993 CAMU rule as implemented to date. The data underlying EPA's baseline analysis are described in the CAMU Site Background Document, which is included in the docket to today's final rule. This document provides detailed information on 47 existing CAMUs approved (or scheduled for approval) as of Spring 2001. Of the 47 CAMUs, eight are storage and/or treatment only CAMUs. According to these data, approximately 70 percent of facilities using CAMUs are performing treatment of waste. As mentioned above, EPA assumes that the 47 existing CAMUs are representative of future site characteristics and CAMU usage rates.

The Agency has not attempted to adjust this baseline to account for the effects of the uncertainty surrounding the CAMU ''litigation cloud,'' which EPA believes has slowed the implementation of the CAMU rule since shortly after its promulgation. As discussed above, the 47 CAMUs implemented under the existing rule represent the CAMUs known to be fully approved. These CAMUs were approved as a part of the overall remedy at the facility, and therefore would generally be expected to follow the remedy selection criteria for long-term reliability and protectiveness recommended in EPA guidance (in addition to the CAMU requirements).

The baseline is discussed in greater detail in the Economic Analysis of the Final Amendments to the CAMU Rule.

c. Post-Regulatory Case Description

The post-regulatory scenario is modeled as the CAMU rule amended by the provisions in today's final rule. The reader is directed to the preamble discussion and rule language for an understanding of the final rule provisions. The economic analysis focuses on the impacts from the finalized information submittal requirements related to the CAMU approval process, the treatment requirements and adjustment factors, and the liner and cap requirements. Although today's final amendments to the CAMU rule would be more stringent than the existing federal CAMU regulations, EPA believes in practice that CAMUs are already generally meeting these standards under the existing rule. Additionally, a bounding analysis is included which examines the overall impact of the final provisions on the rate of CAMU usage. See the Economic Analysis of the Final Amendments to the CAMU Rule for a more detailed discussion of the post-regulatory scenario for this analysis.

d. Incremental Impacts

The analysis of today's final rule focuses on two potential impacts: (1) the incremental impacts associated with the changes to the approval process for CAMUs; and (2) the incremental impacts associated with the change in treatment, unit design, and use of storage and/or treatment only CAMUs. Additionally, the Agency has prepared a bounding analysis estimating the impacts from a change in the overall usage of CAMUs resulting from today's final amendments. The methodology and results for these two components of the analysis, and for the bounding analysis, are discussed below. EPA has also provided a qualitative discussion of the potential impacts of allowing the disposal of CAMU-eligible waste in off-site hazardous waste landfills.

2. CAMU Administrative Approval Costs Assessment

Today's final amendments to the CAMU rule formalize a number of administrative steps in the CAMU approval process. This analysis examines the incremental impacts associated with those administrative steps compared to the approval process in the baseline. The estimates are formulated through input by EPA Regional and state regulators. The regulators contacted have extensive knowledge of the approval process under the existing CAMU rule, and understand the changes to that approval process that would be brought about by the final amendments. The analysis estimates total incremental impacts ranging between $77,200 and $242,400 per year.[58]

The Agency followed three steps in assessing the incremental impacts from the CAMU approval process formalized in the final rule. First, the Agency selected four CAMU experts from the Regions and four from the states. These experts were selected based on their knowledge of CAMU implementation under the existing rule and their knowledge of the final amendments. Of the 47 CAMUs, the vast majority were approved by the regions/states from which the eight experts came. Second, the Agency obtained incremental cost/burden estimates from CAMU experts through phone contacts made separately with each expert. Experts were provided with a copy of Appendix A of the settlement agreement reached between EPA and the Petitioners (this document is included in the docket for today's final rule). The phone contacts followed a set of questions designed to cover all areas of the final rule (these questions are included in the Economic Analysis of the Final Amendments to the CAMU Rule). EPA requested that experts estimate the additional approval burden

[58] This analysis does not include any administrative costs related to disposal of CAMU-eligible wastes off-site under the conditions of today's rule. Please see ''Paperwork Reduction Act'' section below for discussion of the additional paperwork burden associated with this provision. Also, see the assessment of the total impacts from today's rule in the ''Planning and Regulatory Review'' section for a qualitative discussion of the overall impacts associated with this provision.

for both regulators and owner/operators, as each would participate variously in performing such approval steps. Third, the Agency tabulated the burden estimates made by the CAMU experts. This process provided the Agency with expert estimates of the incremental impacts for the CAMU approval process. The estimates provided by individual experts ranged from a low of four hours total to a high of 1,875 hours total per CAMU. Using the individual estimates of burden provided by the experts, EPA calculated an average total burden range. EPA estimates the range of total incremental burden, calculated as an average of the eight expert estimates, to be between 210 hours and 514 hours per permanent CAMU, and between 34 hours and 50 hours per storage and/or treatment only CAMUs.

Expert views differed significantly on the impacts. Four of the experts believed the formalization of a process associated with certain steps might potentially reduce overall burden. Such a formalized process, they believed, would result in less time spent discussing the proper approach to take at a particular stage in the approval process. Alternatively, several experts thought that the changes in process requirements were so onerous that they could potentially drive facilities away from using CAMUs.

The experts estimated additional burden associated with four areas of the final amendments: (1) Information submission associated with the determination of whether wastes were subject to LDRs at the time of disposal. This requirement is a part of the provision in the final amendments which deals with CAMU waste eligibility; (2) identification of principal hazardous constituents (PHCs); (3) treatment standards and use of adjustment factors to provide site-specific flexibility in meeting the national treatment standards. Many experts focused on adjustment factor E (§ 264.552(e)(4)(v)(E)), which would offer adjustment from the treatment standards based on the long-term protection offered by the unit, in making their burden estimates. Many experts believed this factor to be the most complicated, and therefore the most likely to require significant formalized written justification; and, (4) the liner and cap standards in the final rule.

Employing these burden estimates, the Agency calculated the cost impact attributable to these provisions. The Agency performed the following steps in estimating total burden. First, the Agency estimated the number of CAMUs approved annually. The per CAMU estimate of additional burden is multiplied by an estimate of the number of CAMUs approved per year. As discussed in the Economic Analysis of the Final Amendments to the CAMU Rule, EPA assumed this rate to be the same as that calculated for the baseline. This rate was estimated to be six CAMUs per year, or five permanent CAMUs and one storage and/or treatment only CAMU per year. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule. Second, the Agency multiplied the additional hours estimated for approval by the annual number of CAMUs approved. This calculation results in an estimate of the total incremental burden associated with the final amendment approval process. This burden estimate ranges from 1,050 hours per year to 2,570 hours per year for permanent CAMUs, and 34 hours per year to 50 hours per year for storage and/or treatment only CAMUs. Third, the Agency obtained a labor rate to apply to the estimates of additional hours. EPA used a range of hourly labor rates ($71.24/hour to $92.52/hour) from the recently approved Part B Permit ICR because the CAMU experts did not provide a breakdown of labor categories in their estimates. Fourth, the Agency multiplied the total incremental hours estimated for the CAMU approval process under the final amendments by the labor rate. This approach produced an estimate for the total incremental impacts attributable to the approval process in the rule ranging from $77,200 per year to $242,400 per year.

This range represents the annual incremental impacts estimated to result from the final amendments, assuming that six CAMUs are approved per year. If the annual approval rate changed, the annual impacts for that year would change accordingly. Dividing that range by six (the number of CAMUs approved per year) yields an estimate of the incremental impact per CAMU; this estimate ranges between approximately $12,900 and $40,400 per CAMU. This calculation assumes that all the costs for CAMU approval occurred within a single year. A bounding analysis conducted using the highest burden estimate to calculate the impacts for the approval process yields an impact of $882,500 per year, or $147,000 per CAMU.

3. Assessment of the Incremental Impacts Related to the Treatment and Unit Design Provisions, and to the Storage and/or Treatment Only CAMU Provisions

This section examines the incremental impacts attributable to the treatment and unit design provisions, and to the storage and/or treatment only CAMU provisions in today's final rule. As described in the analytical framework discussion above, this analysis examines what changes would be required to make the 47 existing baseline CAMUs consistent with the new amendments. Based on these estimated changes, the Agency determines the impacts of the final amendments. (Please see the side-by-side comparison of the existing CAMU regulations and today's final rule language which is included as an appendix in the Economic Analysis of the Final Amendments to the CAMU Rule for today's final rule.)

The Agency first examines the treatment and unit design specifications employed for existing CAMUs under the baseline. These baseline CAMU remedies were assessed in light of the treatment and unit requirements promulgated today. An assessment was made of expected differences in treatment and unit design anticipated under the final amendments, and the resulting costs for those changes were quantified.

The section next addresses the storage and/or treatment only provisions in the CAMU amendments. EPA assesses how the storage and/or treatment only CAMU provisions have been implemented in the baseline by examining the temporary CAMUs approved to date under the existing rule. These CAMUs were analyzed in light of the new storage and/or treatment only CAMU provisions in the final amendments.

a. Treatment and Unit Design Standards Implemented in the Baseline

Data on the implementation of the existing CAMU rule shows that the 39 permanent CAMUs approved to date have generally employed significant treatment of wastes (approximately 70 percent of CAMUs employed treatment of wastes prior to disposal) with disposal in protective units (i.e., generally employing liners for new units, protective caps, and ground water monitoring). EPA has detailed information on 47 CAMUs in the baseline (see the CAMU Site Background Document in the docket for today's final rule for a complete discussion of each CAMU). These data provide a reasonable datum from which to assess the incremental impacts associated with the new treatment and unit design provisions in the final amendments.

b. Treatment and Unit Design Provisions in the Post-Regulatory Case

The final amendments would establish national minimum treatment standards which all principal hazardous constituents must meet prior to placement in a CAMU, unless the Agency determines in a given case that the standards are inappropriate (see discussion of adjustment factors below). This national minimum standard, which is essentially taken from the treatment standard promulgated for hazardous soils in the Phase IV LDR Final Rule, among other things, requires treatment of wastes to 90 percent reduction from the original concentrations, capped by 10 × UTS levels. This standard would apply for all CAMU-eligible wastes.

Accompanying the national minimum treatment standard are five adjustment factors, which provide site-specific flexibility in applying these treatment standards through identification of certain conditions under which full compliance with the national standard may be adjusted. This adjustment may be employed to make treatment more or less stringent, and may be used to adjust a treatment level or method. These final treatment requirements and adjustment factors were crafted through examination of the current implementation of the CAMU rule in the baseline, and the general process involved in remedial selection in the corrective action program, as well as the treatment variances used for as-generated waste under the Land Disposal Restrictions program.

The final amendments would also establish standards for liners at all new and replacement units or lateral expansion of existing units, and caps at units where waste is left in place. The reader is directed to the relevant discussions on the final provisions in their appropriate preamble sections above (see ''Liner Standard,'' ''Cap Standard,'' and ''Adjustment Factors to the Treatment Standard'').

c. Incremental Impacts Associated with Final Treatment and Unit Design Provisions

Having examined the provisions on treatment and unit design in the final amendments, the Agency then assessed the incremental impacts from these provisions with respect to current baseline implementation of the CAMU rule. The Agency examined how the baseline requirements have been implemented to date, and assessed where changes would be required at these facilities under post-regulatory conditions. See Economic Analysis of the Final Amendments to the CAMU Rule for details on this comparison.

EPA estimated the incremental costs associated with these standards through the following steps. First, the Agency compared the data on each baseline CAMU against the provisions in the final CAMU amendments. For this assessment, EPA addressed the following questions for each CAMU remedy, where necessary: (1) Does the facility have constituents that would likely be designated as PHCs? (2) For a facility where PHCs are determined to likely be present, was treatment performed to reduce PHC concentrations? (3) Where treatment was being performed, was it meeting the final national minimum standards? (4) Was the CAMU an existing unit? and (5) What liner and cap requirements were instituted for the CAMU? Second, based on this assessment, the Agency made a determination as to whether the CAMU was consistent with the treatment and unit design provisions of the final amendments. Third, where the Agency identified inconsistency with the final national minimum standards, application of the adjustment factors was considered. Potential use of adjustment factors was only considered appropriate where site-specific factors were consistent with the circumstances described in today's preamble for the different adjustment factors. And fourth, where the adjustment factors were not applicable, the Agency identified the steps that would be necessary to render the CAMU consistent with the final provisions. Each of the above steps was performed by EPA based on a detailed knowledge of the baseline CAMU requirements, the final rule provisions, and the details of the existing CAMU being analyzed. Please see the site summaries for the 47 CAMUs which are included in the CAMU Site Background Document (included in the docket for today's final rule). Additionally, the reader is directed to the preamble discussion of the adjustment factors for elaboration on how each adjustment factor would be applied at a given facility.

EPA performed this evaluation for the 39 permanent baseline CAMUs approved to date. The Agency estimated costs in the cases where additional requirements were identified as necessary for the CAMU to reach consistency with the final provisions. Results for the 39 permanent CAMUs are shown below in Exhibit VIII–1; results for the eight storage and/or treatment only CAMUs are discussed following the exhibit.

For the 39 permanent CAMUs, EPA estimates that 26 facilities would potentially require use of one of the adjustment factors to achieve consistency with the final amendments. Note that the potential use of adjustment factors was considered where such use would be consistent with the circumstances described in today's preamble for each adjustment factor. Of the five adjustment factors provided for in the amendments, adjustment factor A for technical impracticability was estimated to be applied eight times to achieve consistency, adjustment factor B addressing consistency with site cleanup goals was estimated to be possibly needed 13 times to achieve consistency, and adjustment factor E providing adjustment from the treatment standards based on the long-term protection offered by the unit was estimated to be possibly applied 11 times to achieve consistency. (Note that the estimated frequency of use for the individual adjustment factors does not sum to the overall number of facilities using adjustment factors due to the Agency identifying different available options for adjustment factor use at several facilities.)

As shown in Exhibit VIII–1, the analysis revealed three facilities for which the unit design employed in the original CAMU decision was not consistent with the final amendments. In two cases, a final cap would be required to achieve consistency with the final provisions. EPA estimated costs for these caps based on the specific information for the given facility. These costs are shown in the exhibit, and discussed in greater detail in the background document for the economic analysis. EPA estimated costs for the cap at one facility to range from $642,000 to $1,203,000, and costs for the cap at the other facility at approximately $221,000. Additionally, one CAMU would require a liner to achieve consistency with the final provisions. EPA estimated costs for addition of a liner based on the specific information for the given facility. These costs are shown in the exhibit, and are estimated to be $225,000.

EXHIBIT VIII–1.—COMPARISONS OF BASELINE PRACTICES AND POST-REGULATORY FOR PERMANENT CAMUS

CAMU comparison: Baseline to post-regulatory	Number of CAMUs	Significance of differences	Estimated incremental impact
Treatment and Unit Design Consistent With Post-Regulatory	36	N/A	N/A.
Treatment Not Consistent With Post-Regulatory Requirements	0	N/A	N/A.
Unit Design Not Consistent With Post-Regulatory Requirements	3	Two Facilities May Have Required Additional Cap Design Features*.	Cap Costs: 1. $642,000 to $1,203,000, 2. $221,000.
		One Facility May Have Required a Liner.	Liner Costs: 3. $225,000. [Total=$1,088,000 to $1,649,000]
Treatment and Unit Design Not Consistent with Post-Regulatory Requirements.	0	N/A	N/A.

*These two CAMUs address the disposal of off-site soils contaminated with lead that resulted from smelting operations. Both facilities remain subject to long-term maintenance and periodic review.

The total estimated costs associated with ensuring that all the permanent CAMUs approved under the existing rule are consistent with the final amendments is estimated to range from approximately $1,088,000 to $1,649,000. EPA then annualized these costs over 20 years at 7 percent, divided the resulting range by the number of permanent CAMUs (39 total), and multiplied it by the number of CAMUs projected to be approved each year. This set of calculations yields the expected costs for the rule due to the treatment and unit design requirements of $140,000 to $210,000 per year. The Agency believes that these estimates reasonably cover the additional requirements to achieve such consistency with the final standards. However, EPA acknowledges the possibility that, due to the variability of site characteristics and the limitations of the available data for the given CAMUs, additional negligible costs such as minor additional treatment of small volumes of waste could be incurred at any given facility. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

Several commenters on the proposed rule believed that the amended treatment and unit design standards for permanent CAMUs are too prescriptive and stringent. According to the Agency's analysis, however, almost all of the 39 existing permanent CAMUs are meeting the treatment and design standards in the baseline. As discussed above, EPA estimates moderate incremental costs associated with these amended standards. One commenter acknowledged that the existing permanent CAMUs analyzed for the proposed rule analysis ''would generally meet the revised standards.'' However, the commenter believed that this stringent implementation of the existing CAMU rule was, at least in part, the effect of the ''litigation cloud'' resulting from the legal challenge to that rule. They provided no evidence in support of such a claim. The Agency generally believes that the types of remedies seen at the CAMUs approved to date represent the logical outcome of a responsible implementation of the 1993 CAMU rule and reflect EPA's intentions in that rule. However, the Agency agrees with the commenter's point that the clarification of EPA's intentions provided in today's final rule is preferable as a matter of public policy.

d. Incremental Impacts Associated With the Storage and/or Treatment Only CAMU Provisions

The 1993 CAMU Rule provisions did not contain standards that were specific to temporary CAMUs (which are now called storage and/or treatment only CAMUs in the final provisions). However, data indicate that eight storage and/or treatment only CAMUs were approved in the baseline, and were generally employed for short-term treatment or storage of wastes at a site. These data provide a useful datum from which to assess the potential for incremental impacts resulting from the final amendments as they address storage and/or treatment only CAMUs.

The Agency analyzed the potential incremental costs associated with achieving consistency with the final rule standards for the storage and/or treatment only CAMUs. No inconsistencies were identified for these nine CAMUs; therefore, there were no incremental costs estimated for these units. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

As stated above, EPA made these comparisons based upon the types of contaminants, the unit design standards achieved, and the general circumstances surrounding the use of CAMUs.

4. Assessment of the Incremental Change in the Number of CAMUs Approved

One potential impact anticipated to result from today's final rule is a change in the average number of CAMUs approved per year. This section presents the Agency's bounding analysis of the impacts associated with an incremental change in the number of CAMUs.

The 1993 CAMU Rule was designed to provide incentives for remediation by removing certain regulatory requirements that affect the management of hazardous remediation waste during cleanup. The rule allows facilities to manage hazardous waste in a CAMU without triggering the Land Disposal Restrictions (LDR) requirements, and to dispose of hazardous remediation waste in a CAMU. The CAMU is exempt from minimum technology requirements (MTRs), although it is subject to performance-based standards intended to protect human health and the environment. The rule established performance standards for the design, operation, and closure of CAMUs, and provided the site-specific flexibility that EPA believes is necessary to encourage remediation at cleanup sites. However, EPA was sued on the CAMU rule shortly after its promulgation. The resulting uncertainty surrounding the viability of the CAMU rule, along with other factors discussed above such as the increased use of Areas of Contamination (AOCs) and staging piles, the introduction of the Phase IV Land Disposal Restriction (LDR) soil treatment standards, and the stabilization initiative in corrective action, led to considerably less use of CAMUs than the Agency originally anticipated.

With today's final rule, the Agency intends to resolve the litigation uncertainties which have dampened CAMU usage. Such resolution could

promote the increased use of CAMUs. However, as discussed above, the Agency does not expect CAMU usage to approach the rate projected in the 1993 CAMU RIA (roughly 75 CAMUs per year). The Agency believes that the ''litigation cloud'' only accounts for part of the difference between actual CAMU usage over the past eight years and the usage estimated in the 1993 RIA. Other factors contributing to a potential change in future CAMU use include the impact of the formalized approval process, and the effect of the treatment and unit design provisions. It is very difficult to assess the significance of these factors on the individual decision at a given facility regarding whether to use a CAMU in remediation. This complexity led the Agency to prepare an order-of-magnitude analysis which seeks to establish the general direction of change in CAMU usage, and to quantify the approximate impacts from such change. These estimates focus only on the potential for changes in the number of CAMUs approved, and do not address the possible impacts from the formalized approval process or the treatment and unit design requirements of today's final rule. These impacts are presented to illustrate the potential savings which could come from such a change in CAMU usage, and should not be considered a part of EPA's estimate of the actual impacts from today's final rule.

The Agency assessed the overall direction of the expected change in CAMU use for the three time periods identified for purposes of this analysis: (1) Grandfathering Window (August 2000 through 2001); (2) Early After Promulgation (2002 for one year); and, (3) Post-Promulgation Equilibrium (2003 for four years). These time periods were designed by the Agency in order to portray the effects of the factors identified above according to logical breaks in their influence.

The Agency estimated the potential change in the number of CAMUs employed for each of the three time periods based roughly on the baseline CAMU usage figure of six CAMUs per year. Given the complexity of projecting the effect of these influences on CAMU usage in the future, these estimates are provided for illustrative purposes only. The cost savings from this change were estimated using results from the 1993 CAMU RIA (see page 3–9 of that report). This analysis, prepared in support of the CAMU rule, estimated the cost savings at a randomly selected sample of corrective action sites based on expert panel assessments of the costs for remediation with and without a CAMU. These figures were extrapolated to determine the national cost impacts for the CAMU rule. The RIA presents an annual average cost savings per CAMU of $0.5 million to $0.8 million per facility in 1992 dollars (changing the figures to 2001 dollars yields an annual cost savings per CAMU ranging from $0.6 million to $0.9 million).

This range was employed for purposes of this analysis to estimate order-of-magnitude cost impacts resulting from the changes in CAMU usage due to today's final rule. The annual cost savings per CAMU figure presented in the 1993 RIA provides the only readily available data from which to quantify the impacts of a shift from remediation without a CAMU to use of a CAMU. Although, the Agency believes that this cost savings estimate could significantly overestimate actual savings, due to the assumptions employed in the 1993 RIA regarding excavation and combustion of cleanup wastes.

Within each of the three time periods examined, a facility could either shift from not using a CAMU (baseline) to using a CAMU (post-regulatory), or using a CAMU (baseline) to not using a CAMU (post-regulation). In the case where a facility did not use a CAMU, there is a range of possible alternatives which could be considered. For purposes of this analysis, the Agency bracketed this range with leaving waste untouched on one hand, or performing full remediation without a CAMU on the other hand. As stated above, EPA employed the cost savings estimate from the 1993 RIA to model the cost savings for the case of a shift from performing full remediation without a CAMU (baseline) to using a CAMU (post-regulatory). EPA did not possess data on either the possibility of a shift from leaving waste in place (baseline) to using a CAMU in remediation (post-regulatory), or the cost impacts associated with such a shift. Finally, EPA does not believe it is reasonable to assume that facilities will shift away from CAMU use as a result of today's final rule; the anticipated costs from today's rule are not significant enough to result in such shifts. However, in the Post-Promulgation Equilibrium time period, EPA modeled the case of a shift from CAMU use (baseline) to full remediation without a CAMU (post-regulatory). While the Agency does not expect such a change, it is modeled below for illustrative purposes. The impacts from the changes in CAMU usage for the three time periods are assessed below according to these categories of change identified and discussed above (see Exhibit VIII–2 below).

EXHIBIT VIII–2.—ASSESSMENT OF THE POTENTIAL CHANGE IN CAMU USAGE RESULTING FROM THE FINAL RULE

Categories of potential change in CAMU usage	Scope of the assessment (August 2000 through approximately 2006)		
	Grandfathering window (August 2000 to Jan. 2002: approximately 1½ years)[1]	Early after promulgation (Jan. 2002 to Jan. 2003: 1 year)[2]	Post-promulgation equilibrium (Jan. 2003 through approximately 2006)[3]
Baseline: Full remediation (no CAMU). Post-Reg: CAMU	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (annual savings of $0.6 to $0.9 million per facility).
Baseline: Leave wastes untouched (no CAMU). Post-Reg: CAMU	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).
Baseline: CAMU Post-Reg: Full remediation (no CAMU)	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (annual cost of $0.6 to $0.9 million per facility).
Baseline: CAMU Post-Reg: Leave wastes untouched (no CAMU).	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).

[1] Publication of the proposed amendments (August 2000) to the anticipated effective date of Final rule (March–April 2002), which is 90 days after promulgation of the Final rule (December 2001).

[2] The effective date of Final rule to one year after effective date of Final rule.
[3] One year after effective date of Final rule for roughly 5 years of ''equilibrium.''

For greater details on the approach to estimating these impacts, please refer to the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule. These impacts are presented in the exhibit above.

a. Grandfathering Window

For this time period, no additional costs or savings are estimated. The data collected in the revision of the CAMU Site Background Document showed no increase in CAMU usage during this period.

b. Early After Promulgation

As the exhibit above shows, EPA believes that the factors influencing potential changes in CAMU usage during this period are too uncertain to provide an assessment of the potential impacts for this time period. Beside the factors identified above, there may be a reduction in CAMU usage resulting from the anticipated increase in CAMUs within the grandfathering time window. Please see the background document for greater discussion on this issue.

c. Post Promulgation Equilibrium

For this time period, the cost savings associated with a potential increase or decrease in CAMU usage of 5 CAMUs per year are estimated as:

$$5 \text{ CAMUs per year} \times \frac{\$0.6 - \$0.9 \text{ million per year}}{\text{per CAMU}} = \$3.0 - \$4.5 \text{ million per year}$$

This estimate, ranging from a positive cost of $4.5 million per year to a savings of $4.5 million per year, is a rough figure based upon the projected change in CAMU usage for this period. Again, while it is possible that the facilities which shift to or from CAMU usage under this scenario would be those which left waste untouched, cost figures on this shift were not available. Therefore, no estimate of impacts associated with such a shift is provided.

The main competing influences in this time period are the removal of the uncertainty surrounding the litigation of the CAMU rule, and the potential dampening effect of the formalized approval process and treatment/unit design standards.

Several commenters stated that the ''onerous'' approval process and the ''excessively stringent'' treatment standards established in the amendments would result in decreased use of CAMUs. In fact, some commenters believed that the amendments would result in facilities choosing to cap-in-place rather than selecting more environmentally protective options. EPA's analysis of the approval process and treatment requirements suggests that these provisions will result in minimal to modest cost increases over the existing rule to facilities employing a CAMU.[59]

For illustrative purposes only, EPA estimated the total annual impacts of the rule including the estimates just calculated for the potential changes in CAMU usage, along with the estimates developed for the approval process and for the treatment and unit design standards. The range of estimates for this bounding analysis are shown by year for the scope of the analysis in Exhibit VIII–3 below. The Agency developed an upper bound estimate by adding the high-end cost associated with a potential change in CAMU usage, $4.5 million per year, to the high-end cost for the approval process, $242,000 per year, and the high-end cost for the treatment and unit design standards, $210,000 per year. This summation yields an upper bound cost for the rule of $5.0 million per year. EPA developed a lower bound estimate by adding the low-end impact associated with a potential change in CAMU usage, $4.5 million per year in savings, to the low-end of the cost for the approval process, $77,000 per year, and the low-end cost for the treatment and unit design standards, $140,000 per year. This summation yields a savings for the rule of approximately $4.3 million. Therefore, the bounding analysis provides a range from approximately $4.3 million in savings to $5.0 million in costs.

EXHIBIT VIII–3.—TOTAL IMPACTS FOR THE RULE INCLUDING CHANGES IN THE NUMBER OF CAMUS PER YEAR A BOUNDING ANALYSIS: OVER THE SCOPE OF ANALYSIS

[In millions of dollars]

Bounding analysis estimates	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
Impacts from CAMU usage changes (Illustrative in Nature).	No Change Estimated.	Too Uncertain to Estimate.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost

The question may be raised as to how this cost savings for increased CAMU usage in the above bounding analysis compares with the $1 to $2 billion annual savings in the 1993 CAMU RIA. The 1993 RIA baseline represented facilities performing remediation under the corrective action requirements, generally excavating wastes and treating in compliance with the land disposal restriction (LDR) requirements via combustion technologies. Given the resulting high costs for such baseline remedial approaches, the relief provided by the original CAMU regulation was presumed to be widely applied in the post-regulatory case. Therefore, significant CAMU usage was estimated. The baseline for today's final rule is described by the historical data EPA obtained on those facilities which have

[59] Additionally, one of the Agency's chief motives in entering into the settlement agreement was the resolution of the CAMU legal challenge which may have deterred the use of CAMUs in cleanup decisions. However, as discussed above, the Agency is unclear as to the long-term result of the amendments in effecting CAMU usage.

approved CAMUs over the past eight years. The projections made above regarding the potential change in CAMU usage resulting from today's final provisions are based roughly on these baseline CAMU usage figures. Therefore, the increase in CAMU usage projected in the post-regulatory case in the above bounding analysis for today's final rule is relatively low.

The difference in projected CAMU usage from the 1993 RIA and the actual usage seen in the CAMU Site Background Document is believed to be attributable to four factors. These four factors were discussed above under the analytical framework. The ''litigation cloud'' effect is just one of the factors posited to account for this difference. Therefore, the potential resolution of this litigation uncertainty through today's final rule is not anticipated to result in the significant CAMU usage estimated in the 1993 RIA. Furthermore, the increased CAMU usage estimated in the above bounding analysis is not intended to serve as an update to the 1993 RIA projections. Rather, due to the complexity involved in estimating CAMU usage in the post-regulatory case for today's final rule, the above estimates are made for illustrative purposes only, and do not represent a definitive statement of the expected savings from the rule.

5. Assessment of the Total Impacts for the Final Amendments to the CAMU Rule

This section presents a brief assessment of the total impacts of the Final Amendments to the CAMU Rule. The Agency presents the total impacts estimated for the formalized CAMU approval process and for the treatment/unit design standards, and storage and/or treatment only provisions for CAMUs below in Exhibit VIII–4; the estimates for the bounding analysis discussed above are not included in the exhibit. In addition, EPA qualitatively discusses the potential impacts of § 264.555, which allows CAMU-eligible waste to be disposed of off-site in hazardous waste landfills, without meeting the land disposal restrictions. Please see the Economic Analysis of the Final Amendments to the CAMU Rule for a full discussion of these impacts.

EXHIBIT VIII–4.—TOTAL ANNUAL IMPACTS ESTIMATED OVER THE SCOPE OF ANALYSIS, ASSUMING CONSTANT RATE OF 6 CAMUS PER YEAR

[In thousands of dollars]

Impacts assessed for CAMU amendments	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
1. CAMU Approval Process Impacts	No Costs Incurred	$77–$242	$77–$242	$77–$242	$77–$242	$77–$242
2. Impacts from Treatment and Unit Design Requirements.	No Costs Incurred	$140–$210	$140–$210	$140–$210	$140–$210	[1]$140–$210
Total impacts	No Costs Incurred	$217–$452	$217–$452	$217–$452	$217–$452	$217–$452

[1] This cost was calculated from a capital cost, annualized over 20 years. Therefore, it would continue for 15 more years.

The total impacts associated with the final rule are estimated as the sum of the incremental approval costs and the incremental treatment/unit design costs. The analysis provides estimates of the impacts from the rule from the grandfathering window to five years following the effective date of the rule (2001 to 2006). As discussed above, the impacts for the treatment and unit design standards are annualized figures associated with two facilities which required additional unit design criteria be met to achieve consistency with the final amendments. The cost impacts estimated for the potential change in the number of CAMUs are considered in the bounding analysis, which are discussed above. The total impacts are determined to range from $217,000 per year to $452,000 per year.

EPA also qualitatively examined the potential impact of allowing CAMU-eligible wastes to be disposed of off-site, under certain conditions, without meeting the land disposal restrictions. Despite the existence of various alternatives to full Subtitle C management of cleanup wastes under the baseline requirements (e.g., treatability variances), facilities are still likely to reduce the scope of their remedial efforts (or not conduct cleanup at all) because of Subtitle C requirements. Under the baseline conditions, facilities that send hazardous remediation waste off-site for disposal would typically incur significant costs to meet the requirements of the land disposal restrictions. Under today's rule, however, these facilities have the option of treating CAMU-eligible waste to the national minimum treatment standards (or the adjusted standards) and sending the waste off-site for disposal in a hazardous waste landfill. In this case, facilities may have enough of an incentive to clean up that they will increase their remedial efforts over what they would have pursued under baseline conditions. For these facilities, increasing the amount of cleanup may actually increase costs. These costs, however, would be borne voluntarily and therefore reflect (in the facility owner's view) an overall gain for the facility.

Thus, EPA believes that the off-site provision of today's rule will result in an overall reduction of costs to facilities through a reduction in treatment requirements when cleanup waste is sent off-site for disposal in hazardous waste landfills.

B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

This section of the preamble addresses the potential impacts incurred by small entities as a result of the final CAMU amendments. For the proposed rule, EPA analyzed the potential impacts on small entities for the 39 CAMUs approved at that point in time. EPA received no comments on the proposed analysis. As discussed earlier, EPA has updated the number of existing CAMUs through reviews performed by the states and Regions. This analysis, therefore, updates the analysis performed for the proposed rule by assessing the potential impacts to small entities for the nine newly identified CAMUs, and by making other minor adjustments to the CAMUs identified in the proposed rule analysis. There is no change, however, to the conclusion reached in the proposed rule analysis, that this action will not have a significant economic impact on a substantial number of small entities.

1. Methodology to Assess Small Entity Impacts

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 the final amendments to the rule on small entities, small entity is defined as: (1) A small business that meets the RFA default definitions for small business (based on SBA size standards *www.sbaonline.sba.gov/size*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that there are three facilities employing CAMUs which are small entities, and that these facilities would incur impacts ranging from no impact to 0.01 to 0.32 percent of net sales if they had to apply for their CAMU under the amended standards. Additionally, there are five facilities for which EPA could not obtain the data to determine size status, but which EPA had the data to assess impacts. For these five facilities, the impacts ranged from 0.01 to 0.07 percent of net sales. The Agency was unable to obtain data for an additional two facilities. However, these facilities are not expected to incur significant impacts as a result of today's rule. The Agency reached this determination based on the analysis which is described below.

a. Framework for the Analysis

The Agency faced two important questions in developing the framework for analyzing small entity impacts. The first was how to define the universe of facilities affected by today's rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which can be potentially reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used in the future. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards would apply only to CAMUs which do not remain subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require cleanup at some point in the future, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the existing CAMU rule. In this RIA, the Agency made a projection of the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, or approximately 75 CAMUs per year over a 20 year period. The identities of these facilities, which would have been required for assessing the small entity impacts associated with the rule, were not determined; no impacts assessment was performed for the 1993 CAMU rule.

However, based on data depicting the actual CAMU usage rate over the past eight years at six CAMUs per year, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. (Some reasons for this disparity between the 1993 RIA projections and the actual usage are discussed above). Therefore, the Agency considered using the data on actual CAMU approval for this analysis. This report contains information on 47 CAMUs approved under the existing rule for which the Agency had good quality data. For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design; the data are contained in the CAMU Site Background Document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document; this document contains information from all the CAMUs to date for which the Agency had good data. Therefore, it provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which affect CAMU usage in the future.

Use of these historical data also mitigated the problems associated with determining the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the final provisions (post-regulatory case). As discussed in more detail above, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the final provisions (post-regulatory case). In such an approach, the Agency again assumes that these historical data are reasonably representative of future CAMU remedies under baseline conditions. The Agency believes this presupposition to be sound for the same reasons stated above regarding CAMU; there were no comments received on the proposed rule regarding this approach.

Therefore, the analysis of the small entity impacts anticipated to result from today's final rule rests on an assessment of facilities which have existing CAMUs, not an analysis of facilities which will actually be impacted in the future by this rule. As stated above, the Agency believes that this rule will not significantly affect the nature of CAMU usage related to the types of facilities employing CAMUs in the future. Thus, the Agency believes the analysis of future small entity impacts based on historical CAMU usage is reasonable.

b. Methodological Approach for SBREFA Analysis

This analysis employs the data on the existing CAMUs from the CAMU Site Background Document to assess the potential for impacts on small entities resulting from the final rule. The Agency performed two screening analyses using these data. Screening analyses are the tools the Agency uses to assess the potential for the rule to result in a significant impact on a substantial number of small entities, and thus the need for development of a Small Business Advocacy Review Panel. First, the Agency examined those facilities which employed CAMUs in the baseline to determine whether any of these facilities were small entities, and if so whether they incurred a significant impact as a result of the final rule. Second, for those facilities for which the size status could not be determined, the Agency assumed small entity status, and performed a significant impact screen using the Sales Test (i.e., assessing the ratio of incremental costs to net sales for a facility). As there are no small organizations or small governmental jurisdictions which currently have CAMUs, these entities are not anticipated to incur any impacts resulting from the rule. The results from each screening analysis are discussed below.

c. Examination of Existing CAMUs for Small Entity Status

EPA collected data on the employee size and net sales for the 47 facilities employing CAMUs in the baseline (the sources from which these data were obtained are listed in the background document). Using these data, EPA determined, according to the SBA size standards (see *www.sbaonline.sba.gov/size/section04b.htm),* whether any of the 47 facilities were small entities. Of the facilities for which data existed to determine size status, only three were identified as small entities. The impact incurred on these three small entities was under 0.01 percent of net sales. This finding suggests that it is very unlikely that these facilities would be significantly impacted by the rule. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

d. Significant Impact Screen of Facilities for Which Size Was Undetermined

The Agency examined the seven facilities for which data concerning size status were not available. Using the Standard Industrial Classification (SIC) Code for a given facility, the Agency was able to obtain data for five of these facilities on the estimated receipts for small entities within the SIC code and the number of small entities within the SIC code (these data were obtained from *www.sba.gov/advo/stats/int_data.html).* (The latest available industry Census data is from 1997, prior to the establishment of the North American Industry Classification Code System (NAICS) codes.) The estimated receipts for these entities were employed as a surrogate for net sales. From these data, the average estimated receipts per small firm within the SIC code was determined. This figure, the average estimated receipts per small firm, was then assumed to be representative of the receipts for the facility in question. The Sales Test ratio (i.e., the ratio of the average estimated receipts per firm by SIC code to the annual incremental costs of the final rule incurred by the facility) was then calculated.

For the five facilities for which data existed to calculate the Sales Test ratio, this ratio ranged between 0.01 percent and 0.07 percent. The Agency believes this range of percentages reasonably validates a conclusion of no significant impacts for these facilities. However, there were two facilities for which the data required to make this calculation were not available. Based on the annual incremental costs projected for these two facilities as a result of the final rule, it seems very unlikely that these facilities, if they were small entities, would incur significant impacts. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

2. The Impacts Estimated on Small Entities

Based on the two screening analyses described above, the Agency has concluded that today's final rule would not have a significant impact on a substantial number of small entities. (In addition, no small entity impacts are expected from the provision allowing off-site disposal of CAMU-eligible waste (40 CFR 264.555), as facilities use this provision only when it is to their advantage; in fact, EPA expects that this provision will be particularly useful to small entities.)

C. Paperwork Reduction Act

The information collection requirements in this final rule will be 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. 1573.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460, by e-mail 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.* The requirements are not effective until OMB approves them.

The U.S. Environmental Protection Agency (EPA) is amending the regulations for CAMUs under RCRA. EPA originally established regulations applicable to CAMUs at 40 CFR part 264, subpart S (58 FR 8658, Feb. 16, 1993). EPA is amending these regulations to, among other things, more specifically define the eligibility of wastes to be managed in CAMUs, establish treatment requirements for wastes managed in CAMUs, and set technical standards for CAMUs. With regard to paperwork requirements, the rule adds language identifying specific types of information that facilities must submit in order to gain CAMU approval at § 264.552(d)(1)–(3) and requires that CAMU-authorizing documents require notification for ground water releases as necessary to protect human health and the environment at § 264.552(e)(5).

The general requirement for information submission, at § 264.552(d), requires the owner or operator to submit sufficient information to enable the Regional Administrator to designate a CAMU. EPA is modifying the existing information requirement under § 264.552(d) to include submission of the specific information listed under final § 264.552(d)(1)–(3)). The modifications are additions to the existing general requirement, and add three specific information submission requirements (unless not reasonably available) to directly address the final amendments pertaining to CAMU eligibility: (1) The origin of the waste and how it was subsequently managed (§ 264.552(d)(1)); (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release to the environment (§ 264.552(d)(2)); and (3) whether the waste was subject to the land disposal requirements of Part 268 at the time of disposal and/or release to the environment (§ 264.552(d)(3)). Additionally, EPA is requiring certain facilities to notify EPA of releases to ground water. EPA will use this information to monitor releases and make determinations of when the releases might cause danger to human health or the environment. Facility owners or operators may use these data

to keep track of releases and prevent them from reaching unacceptable levels.

EPA is amending the requirements for designating a CAMU under the authority of sections 1006, 2002(a), CFR, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. In particular, under sections 2002 and 3007 of RCRA, EPA is requiring the information collection amendments to the CAMU rule described above because they are needed for the Agency to effectively designate and track the operation of CAMUs.

In addition, the rule requires persons seeking approval to send CAMU-eligible wastes off-site (without meeting land disposal restriction requirements) to submit enough information to allow the Regional Administrator to provide that approval (see 40 CFR 264.555).

EPA estimates the total annual respondent burden and cost for the final new paperwork requirements to be approximately 1,354 hours and $123,958. The bottom line respondent burden over the three-year period covered by this ICR is 4,107 hours, at a total cost of approximately $371,874. The Agency burden or cost associated with this final rule is estimated to be approximately 189 hours and $7,860 per year. The bottom line Agency burden over the three-year period covered by this ICR is 567 hours, at a total cost of approximately $23,580.[60]

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the final amended CAMU rule. If such a claim were asserted, EPA must treat the information in accordance with the regulations cited above. EPA also will make sure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Unfunded Mandates Reform Act

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendments final today establish approval process changes and treatment/unit design requirements which are overall already in use in the baseline. Therefore, the incremental impacts, as discussed in this analysis, are not estimated to be significant. See the above analysis for an overview of the impacts estimated for the final amendments. Thus, the CAMU Final Amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

Finally, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Under today's final rule, small governments will not implement the CAMU rule and are not generally expected to use CAMUs based on current patterns of CAMU usage seen in historical data. In addition, the CAMU rule makes no distinction between small governments and any potential regulated party.

E. National Technology Transfer and Advancement Act

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

The final rulemaking involves technical standards (e.g., use of the TCLP or other tests to assess compliance with treatment requirements). The Agency did not identify any potentially applicable voluntary consensus standards during its efforts to develop appropriate standards (e.g., during its discussions with Agency personnel and

[60] Subsequent to conducting the Information Collection Request Analysis, EPA updated the number of CAMUs used for ''permanent'' disposal and the number used for ''storage and/or treatment'' only. The ICR estimates that 31 of the 39 CAMUs in the CAMU Site Background Document were for permanent disposal; the correct number is 30 of 39. EPA will make the necessary recalculations to the ICR in the context of the final rule. EPA believes that the change in estimated burden as a result of such recalculations will be inconsequential.

stakeholders who are experts in the areas addressed by this rulemaking). EPA also did not receive comments identifying potentially available voluntary consensus standards.

F. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

Today's final rule does not have tribal implications because Indian tribal governments do not implement the CAMU rule. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under 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 final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe that this rule presents disproportionate or additional risks to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from on-site management of hazardous cleanup wastes—present a disproportionate risk to children. The final rule, among other things, sets minimum CAMU treatment and design standards designed to help ensure the protectiveness of CAMUs. EPA's analysis of these requirements shows that CAMUs are already meeting the minimum standards in this rule. As amended by the final rule, the CAMU rule would continue to require that a decision concerning overall protectiveness of any specific CAMU be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. The Agency is committed to ensuring that these site-specific assessments include an assessment of risks to children where appropriate. Therefore, the Agency believes that these amendments do not present disproportionate or additional risks to children at facilities employing a CAMU.

H. Federalism (Executive Order 13132)

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.''

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. First, any direct effects on the states will not be substantial, because, as described more fully above, the Agency expects the increased analytical costs for oversight agencies (i.e., EPA or authorized states) associated with the rule to be insignificant. In addition, although the final amendments would limit the discretion available to oversight agencies under the current CAMU rule, the Agency's record demonstrates that the CAMU decisions expected under the amendments are generally the same as those reached under the current regulatory framework. In addition, EPA does not believe the final rule would have a substantial direct effect on states as regulated parties, since based on past patterns of CAMU usage, state governments are not generally expected to use CAMUs.

As for the EPA-state relationship and distribution of power and responsibilities, today's rule includes state authorization provisions that would allow the large majority of states currently authorized for the CAMU provisions to become interim authorized for the amendments at the same time those amendments become effective. Thus, for those states, there will be no period in which the amendments are in effect federally, but not as a matter of state law. Even for those CAMU-authorized states that do not become interim authorized under this procedure, the Agency does not believe that any impact of the rule would be substantial. Although the Agency would implement the amendments in such states until they become authorized, EPA does not expect that this will generally result in changes to the state's individual CAMU decisions under state law, since, as described above, state CAMU decisions will likely be consistent with today's amendments. Thus, Executive Order 13132 does not apply to this rule.

The Agency notes, in addition, that prior to entering into the CAMU settlement agreement, EPA did discuss with the states potential impacts on states from amendments to the CAMU rule. During these discussions, individual states expressed concerns about potential disruption caused by the authorization process that would be required in states that are already authorized for the 1993 CAMU rule, the reduced discretion that would be available under any amendments to the CAMU rule, and the potentially more elaborate process that would be involved in making CAMU decisions.

EPA recognizes that these are valid concerns, and addressed them in the proposal and today's final rule. For example, EPA has included a provision that grandfather existing CAMUs and those that are substantially in the approval process. The rule also includes an approach to authorization that is intended to reduce disruption for states with authorized CAMU programs, and to expedite authorization for states that have corrective action programs but are not yet authorized for CAMU. In addition, EPA recognizes that increased process would be introduced by this rule, but, as is described in the background section of today's preamble, has tried to find a reasonable balance by

adding sufficient detail to achieve the proposal's goals while preserving site-specific flexibility that provides incentives to cleanup. Finally, the rule is designed to incorporate the CAMU designation process into the existing decision-making process that is typically used by states and EPA for cleanups, including that used for making CAMU determinations. For example, EPA designed the principal hazardous constituent process, and certain final adjustment factors to reference the overall cleanup decision-making process within which the CAMU decision is made.

I. Environmental Justice (Executive Order 12898)

On February 11, 1994, the President issued Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' and an accompanying memorandum to federal department and agency heads. The Order establishes a policy to help ensure that all communities, including minority communities and low-income communities, live in a safe and healthful environment. As noted in the presidential memorandum, it is designed to focus federal attention on the human health and environmental conditions in minority communities and low-income communities to realize the goal of achieving environmental justice. The Order also is intended to foster nondiscrimination in federal programs that substantially affect human health or the environment, and to give minority communities and low-income communities greater opportunities for public participation in, and access to public information on, matters relating to human health and the environment. In general, to the greatest extent practicable and permitted by law, the Order directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Today's final rule is intended to amend the existing CAMU rule through, among other things, establishing a formalized process for approval of CAMUs, as well as setting national minimum treatment and unit design standards for CAMUs. The treatment and unit design standards formalize the existing expectations that site decisions be made within the overall decision making process in a manner protective of human health and the environment. The Agency's analysis shows that CAMUs are already meeting these minimum standards. Therefore, the Agency believes that these amendments, although formalizing such requirements, would not appreciably affect the risks at facilities where CAMUs are employed. This rule does not specifically address the overall remedial decision making process within which CAMUs are approved. Thus, EPA believes that this rule will not have any disproportionately high and adverse human health or environmental effects on minority populations or low-income populations. The Agency continues its commitment to ensuring that environmental justice concerns are addressed within remedial decisions in corrective action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 90 days following publication.

K. Energy Effects (Executive Order 13211)

Today's final rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Parts 260, 264, and 271

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Dated: December 21, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 264 and 271 are amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended:

a. By removing the definition of ''Corrective action management unit (CAMU).''

b. By revising the definition of ''Remediation waste.''

The revision reads as follows:

§ 260.10 Definitions.

* * * * *

Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

4. The title for Part 264 Subpart S, ''Corrective Action for Solid Waste Management Units,'' is revised to read ''Special Provisions for Cleanup.''

5. Section 264.550 is added to Subpart S to read as follows:

§ 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of § 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the requirements in § 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in § 264.552, so long as the waste,

activities, and design remain within the general scope of the CAMU as approved.

6. Section 264.552 is redesignated as § 264.551 and newly designated § 264.551 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 264.551 Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

* * * * *

7. A new § 264.552 is added to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) *CAMU-eligible waste means:*

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) of this section are not ''CAMU-Eligible Wastes'' where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Regional Administrator exercises the discretion in paragraph (a)(2) of this section to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Regional Administrator may prohibit, where appropriate, the placement of waste in a CAMU where the Regional Administrator has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268 of this chapter, or applicable unit design requirements of this part, or applicable unit design requirements of part 265 of this chapter, or that non-compliance with other applicable requirements of this chapter likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Regional Administrator may designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113 of this chapter; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subpart F, G, and H requirements and the unit-specific requirements of this part 264 or part 265 of this chapter that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Regional Administrator shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f) of this section. The Regional Administrator shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will

remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of part 268 of this chapter were in effect for the waste listing or characteristic.

(e) The Regional Administrator shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g) of this section, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in paragraph (f) of this section, into which wastes are placed must be designed in accordance with the following:

(i) Unless the Regional Administrator approves alternate requirements under paragraph (e)(3)(ii) of this section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1x10–7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Regional Administrator may approve alternate requirements if:

(A) The Regional Administrator finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (e)(3)(i) of this section; or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with paragraph (f) of this section, CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268 of this chapter, and that the Regional Administrator determines contain principal hazardous constituents must be treated to the standards specified in paragraph (e)(4)(iii) of this section.

(i) Principal hazardous constituents are those constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Regional Administrator will designate as principal hazardous constituents:

(*1*) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(*2*) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are ''principal hazardous constituents,'' the Regional Administrator must consider all constituents which, absent this section, would be subject to the treatment requirements in 40 CFR part 268.

(iii) Waste that the Regional Administrator determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section:

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in § 268.48 Table UTS of this chapter.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with § 268.45 of this chapter, or by methods or to levels established under paragraphs (e)(4)(iv)(A) through (D) or paragraph (e)(4)(v) of this section, whichever the Regional Administrator determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Regional Administrator may specify a leaching test other than the TCLP (SW846 Method 1311, 40 CFR 260.11(11)) to measure treatment effectiveness, provided the Regional Administrator determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Regional Administrator may adjust the treatment level or method in paragraph (e)(4)(iv) of this section to a higher or lower level, based on one or more of the following

factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in paragraph (e)(4)(iv) of this section;

(B) The levels or methods in paragraph (e)(4)(iv) of this section would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in paragraph (e)(4)(iv) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in paragraph (e)(4)(iv) of this section;

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(*1*) Where the treatment standards in paragraph (e)(4)(iv) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(*2*) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*3*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*4*) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(*5*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Regional Administrator may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in paragraph (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in paragraph (f) of this section, closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Regional Administrator for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under paragraph (e) of this section, the Regional Administrator shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in paragraph (e)(6)(iv)(B) of this section:

(*1*) Provide long-term minimization of migration of liquids through the closed unit;

(*2*) Function with minimum maintenance;

(*3*) Promote drainage and minimize erosion or abrasion of the cover;

(*4*) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(*5*) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Regional Administrator may determine that modifications to paragraph (e)(6)(iv)(A) of this section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of this section, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f),

and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Regional Administrator, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f), and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, ground water monitoring requirements at paragraph (e)(5) of this section or, for treatment and/or storage-only CAMUs, the design standards at paragraph (f) of this section.

(h) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under paragraph (e)(4)(v) of this section to the treatment standards in paragraph (e)(4)(iv) of this section.

(i) Notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Regional Administrator according to the procedures for Agency-initiated permit modifications under § 270.41 of this chapter, or according to the permit modification procedures of § 270.42 of this chapter.

(k) The designation of a CAMU does not change EPA's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

8. Section 264.554 is amended by adding (a)(1) and adding and reserving (a) (2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(a) * * *

(1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(2) [Reserved]

* * * * *

9. Section 264.555 is added to Subpart S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA 40 CFR part 268, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under § 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(*1*); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(E)(*2*), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N of this part, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, ''permit'' does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Regional Administrator with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with paragraph (a) of this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 40 CFR 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with paragraph (d) of this section until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Regional Administrator responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 40 CFR 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Regional Administrator within 15 days of notification.

(3) The Regional Administrator may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Regional Administrator may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Regional Administrator has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Regional Administrator objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 40 CFR 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of § 270.42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of paragraph (d) of this section, the Regional Administrator may modify, reduce, or eliminate the notification requirements of this paragraph as they apply to specific categories of CAMU-eligible waste, based on miminal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 40 CFR 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of § 268.7(b)(4), except that the certification must be with respect to the treatment requirements of paragraph (a)(2) of this section.

(g) For the purposes of this section only, the ''design of the CAMU'' in 40 CFR 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

10. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9605, 6912(2), and 6926.

11. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
* * *	* * *	*	*
January 22, 2002	Corrective Action Management Unit Standards Amendments	[FR pages numbers]	April 22, 2002.
* * *	* * *	*	*

12. Section 271.24 is amended by revising paragraph (c) to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

* * * * *

(c) Interim authorization pursuant to this section expires on January 1, 2003, except that interim authorization for the revised Corrective Action Management Unit rule (except 40 CFR 264.555) promulgated on January 22, 2002 and cited in Table 1 in §271.1 expires on August 30, 2004 if the State has not submitted an application for final authorization.

13. A new § 271.27 is added to Subpart A to read as follows:

§ 271.27 Interim authorization-by-rule for the revised Corrective Action Management Unit rule.

(a) States shall be deemed to have interim authorization pursuant to section 3006(g) of RCRA for the revised Corrective Action Management Unit rule if:

(1) The State has been granted final authorization pursuant to section 3006(b) of RCRA for the regulation entitled ''Corrective Action Management Units and Temporary Units,'' February 16, 1993 and cited in Table 1 in §271.1; and

(2) The State notifies the Regional Administrator by March 25, 2002 that the State intends to and is able to use the revised Corrective Action Management Unit Standards rule as guidance.

(b) Interim authorization pursuant to this section expires on August 30, 2004 if the State has not submitted an application for final authorization.

[FR Doc. 02–4 Filed 1–18–02; 8:45 am]

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Federal Register

Tuesday,

January 22, 2002

Part III

Environmental Protection Agency

40 CFR Parts 260, 264, and 271

Amendments to the Corrective Action Management Unit Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, and 271

[FRL–7124–3]

RIN 2050–AE77

Amendments to the Corrective Action Management Unit Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') is today promulgating amendments to the regulations governing Corrective Action Management Units. Corrective Action Management Units, or ''CAMUs,'' are special units created under the Resource Conservation and Recovery Act (RCRA) to facilitate treatment, storage, and disposal of hazardous wastes managed for implementing cleanup, and to remove the disincentives to cleanup that the application of RCRA to these wastes can sometimes impose. The original CAMU regulations were promulgated on February 16, 1993.

In today's action, EPA is amending the 1993 CAMU rule in six ways. First, EPA is establishing a specific definition, distinct from the definition of remediation waste, to govern the types of wastes that are eligible for placement in CAMUs. Second, the Agency is establishing more detailed minimum design and operating standards for CAMUs in which waste will remain after closure, with opportunities for Regional Administrators to approve alternate design standards under certain circumstances. Third, the Agency is establishing treatment requirements for wastes that are placed in CAMUs, including minimum treatment standards, with opportunities to adjust treatment requirements under certain circumstances. Fourth, EPA is establishing more specific information requirements for CAMU applications and is explicitly requiring that the public be given notice and a reasonable opportunity for public comment before final CAMU determinations are made. Fifth, the Agency is establishing new requirements for CAMUs that will be used only for treatment and storage. Sixth, today's rulemaking ''grandfathers'' certain types of existing CAMUs and allows them to continue to operate under the 1993 rule.

Today's rulemaking amends the regulations for ''staging piles'' to expressly allow for mixing, blending, and other similar physical operations intended to prepare wastes for subsequent management or treatment. It also adds a new provision allowing off-site placement of hazardous CAMU-eligible waste in hazardous waste landfills, if they are treated to meet CAMU treatment standards (somewhat modified).

Finally, today's rule grants interim authorization for these CAMU amendments to states that are authorized for the 1993 CAMU rule, and it expedites state authorization for the CAMU rule for states that are authorized for the RCRA corrective action program but not the 1993 CAMU rule.

Today's amendments were proposed on August 22, 2000, referred to throughout this rulemaking as ''the proposal.'' EPA also proposed a supplemental proposal on November 20, 2001, referred to as ''the supplemental proposal.''

DATES: This final rule is effective April 22, 2002.

ADDRESSES: The official record for this rulemaking under docket number F–2002–ACAF–FFFFF is located at the RCRA Docket Information Center (RID), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. It is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The Final Rule, index, and some supporting materials are also available electronically. See the Supplementary Information section below for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (hearing impaired) (800) 553–7672. In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of today's action, contact Tricia Buzzell, U.S. Environmental Protection Agency (5303W), Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8632, or e-mail *buzzell.tricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Copies of today's Final Rule are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu.* Printed copies of the final rule and related documents can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

The index and some of the supporting materials are available on the Internet at *www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/camu.*

Outline

The contents of today's preamble are listed in the following outline.

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K. Energy Effects (Executive Order 13211)

I. Authority

These regulations are promulgated under the authority of sections 1006, 2002(a), 3004, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Since the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act of 1976 (RCRA), EPA has recognized that the comprehensive regulatory framework that generally governs identification, generation, transportation, treatment, storage, and disposal of hazardous wastes can present serious disincentives to management of hazardous wastes during cleanups. As discussed in the proposal[1] and in numerous other Agency documents and rulemakings,[2] these disincentives arise for three primary reasons.

First, the broad objectives of the hazardous waste program—to prevent releases through a comprehensive set of management requirements, to minimize generation of hazardous waste, and to promote legitimate reuse and recycling—are not, in general, the same as the Agency's objectives during cleanup. During cleanup, the Agency is faced primarily with remediating a release that has already occurred. In this context the Agency may, in fact, desire to maximize the amount of waste generated (i.e., maximize the amount of waste managed for implementing cleanup).

Generators of hazardous waste, for the most part, do not have a choice about whether they trigger application of the RCRA hazardous waste regulations (once the waste is generated). If a hazardous waste is generated, RCRA applies. The application of the RCRA hazardous waste regulations, however, discourages its generation in the first

[1] All references to ''the proposal'' are to the proposal of today's amendments, 65 FR 51080, August 22, 2000.

[2] For a fuller discussion of this issue, see the preamble discussions accompanying the Land Disposal Restrictions (LDR) Phase IV rule, 63 FR 28556, 28603–28604 (May 26, 1998); Clarification of the LDR Treatment Variance Standard (the ''environmentally inappropriate'' variance), § 268.44(h), 62 FR 64504, 64505–64506 (December 5, 1997); and the HWIR-Media rule, 63 FR 65874, 65876–65878 (November 30, 1998), and sources cited therein.

place and encourages generators to reuse materials, to reduce waste, and to use fewer hazardous constituents in production processes. These outcomes are desirable and consistent with the broad objectives of RCRA. Conversely, in a cleanup situation, the waste already exists, but site owners/operators often have legal options that allow them to minimize or avoid application of the RCRA regulations, which thus discourage cleanup or the amount of wastes cleaned up. In large part, these legal options involve capping waste in place, or in some cases not engaging in cleanup at all. In general, these types of approaches are less desirable than remedies that involve excavation of some, or all, cleanup waste for more aggressive treatment and/or off-site disposal.

Second, the RCRA regulations have been conservatively designed and uniformly applied to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. The land disposal restriction (LDR) treatment standards for most hazardous wastes, for example, are established at levels achieved by the best demonstrated available technology for treating the waste in question. Likewise, the minimum national design and operation standards for hazardous waste land disposal units were developed to be protective in a range of disposal scenarios. Cleanups, on the other hand, are fundamentally site-specific and essentially risk-based. During cleanup, the Agency generally has the site- and waste-specific information it needs to develop protective management requirements for the particular site and waste in question; therefore, there is less need for generic management approaches to ensure protectiveness in a range of scenarios.

Finally, in addition to the differences in the context for regulating hazardous wastes from ongoing industrial operations versus cleanup described above, there are often (but not always) significant physical and chemical differences between wastes generated by industrial processes (or ''as-generated'' wastes) and cleanup wastes. These physical and chemical differences further support the need for different approaches for wastes managed for implementing cleanup.

In practice, application of the RCRA regulations developed for as-generated wastes to wastes managed for implementing cleanup often presents remediation project managers with only two choices: (1) pursue the legal option of capping or treating cleanup wastes in place, thereby avoiding application of many RCRA requirements, or (2) excavate cleanup wastes and, in accordance with RCRA requirements, treat them to the fullest extent possible given available technology and place them in a permitted hazardous waste landfill. Often neither of these options represents the best remedial approach. And the desire to avoid costs associated with the second option creates an incentive to select the first.

While recognition of this problem came relatively early, EPA and stakeholder groups have grappled for more than ten years with the policy challenges associated with solving the problem. Developing approaches to regulating cleanup wastes differently from as-generated wastes presents a number of challenges. For example, how does the Agency develop approaches tailored to cleanup wastes while at the same time leaving in place the basic features of the RCRA program as they apply to as-generated wastes? How does the Agency create a management structure for cleanup wastes that minimizes disincentives for cleanup without creating incentives to mismanage as-generated wastes? How do EPA and the states ensure that cleanup wastes are managed safely while providing for the site-specific flexibility that effective cleanups demand?

In an effort to deal with these questions, the Agency has developed over the years numerous policies, regulations, and guidance documents addressing the application of the RCRA Subtitle C regulations for as-generated wastes to wastes managed for implementing cleanup.[3] As part of its efforts to address these issues, the Agency promulgated the original CAMU rule in 1993. (February 16, 1993, 58 FR 8658) The 1993 CAMU rule created a special type of hazardous waste management unit—a Corrective Action Management Unit, or CAMU—to be used only for on-site treatment, storage, and disposal of hazardous wastes managed for implementing cleanup. Consolidation or placement of cleanup wastes into a CAMU is not considered land disposal and, therefore, does not trigger RCRA LDR requirements. 40 CFR 264.552(a)(1). Similarly, consolidation or placement of cleanup waste into a CAMU does not create a unit subject to RCRA's minimum technology requirements. 40 CFR 264.552(a)(2). Instead of applying RCRA LDRs, minimum technology requirements, and other hazardous waste requirements, overseeing agencies had considerable flexibility under the 1993 CAMU rule to tailor design, operating, closure and post-closure, and waste treatment requirements to site- and waste-specific conditions. This approach allowed a significantly broader range of cleanup options at individual sites and has led, at individual sites, to prompter and more aggressive cleanup.

Many stakeholders supported the 1993 CAMU rule. In implementation, the Agency believes the 1993 CAMU rule has resulted in appropriate, protective, site-specific remedies. (See the CAMU Site Background Document in the docket for today's rule.) Not all stakeholders, however, supported the 1993 CAMU rule. As discussed in the proposal, the 1993 CAMU rule was legally challenged after promulgation. (*Environmental Defense Fund* v. *EPA,* No. 93–1316 (D.C. Cir. filed May 14, 1993.) Among other things, the Petitioners were concerned with provisions in the 1993 CAMU rule providing that land disposal restrictions, minimum technology requirements, and other Part 264 and 265 unit requirements did not apply to CAMUs. After an extended stay of the challenge, during which EPA and stakeholders pursued a number of other approaches to addressing RCRA regulation of hazardous remediation wastes, the Agency entered into settlement discussions and reached a settlement agreement on February 11, 2000. Today's amendments to the 1993 CAMU rule are the result of this settlement process.

In developing today's amendments and in negotiating the CAMU settlement, the Agency's primary purpose was to allow continued use of CAMUs so as to remove the disincentives to cleanup that result from applying RCRA regulations for as-generated hazardous wastes to cleanup wastes. As the Agency stated in the proposal:

> The Agency recognizes the benefits of including minimum standards in a rule of this nature, i.e., such standards can make the process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse. However, the Agency did not want to include more detailed standards if they would result in potentially limiting the usefulness of the

[3] These include, the ''area of contamination'' policy; the ''contained-in'' policy; the ''Phase IV LDR'' treatment standards for contaminated soil; and, the provisions for ''Remedial Action Plans'' or RAPs. Descriptions of many of these and other relevant policies and regulations, including references, are included in the October, 1998 memorandum, ''Management of Remediation Waste Under RCRA,'' EPA 530–F–98–026. These regulations, policies, and guidance documents are not changed by today's rulemaking.

rule, thereby delaying or inhibiting cleanups. (65 FR 51084.)

It was the Agency's conclusion at the time of proposal that the proposed amendments achieved an appropriate balance, realizing the benefits of increased regulatory detail without reinstating the disincentive to cleanup the CAMU rule was originally designed to address. As discussed in the proposal, the Agency's analyses showed that the vast majority of CAMUs approved under the 1993 rule could be approved with few or no changes under the proposed amendments. The Agency requested comment on these conclusions.

The Agency received mixed comments on the proposed CAMU amendments. Many commenters, including the Petitioners from the 1993 CAMU litigation, strongly supported the proposal as remedying ''major legal and policy deficiencies with [the 1993 CAMU rule], principally by providing for baseline standards rather than unconstrained discretion.'' Some commenters opposed the CAMU amendments, believing they were not needed to protect human health or the environment and disagreeing with the Agency's conclusion that they would not reinstate disincentives to cleanup. On balance, however, even most commenters who thought that amendments to the 1993 CAMU rule were not necessary, expressed the view that, if the Agency was convinced that amendments to the 1993 CAMU rule were needed, the proposed approach was reasonable.

After considering these comments, the Agency has decided to finalize the CAMU amendments largely as proposed. The Agency agrees with commenters who pointed out (as EPA did at proposal) that the 1993 CAMU rule has had a positive effect on cleanups and has promoted more aggressive remediation at individual sites. But the Agency continues to believe that the benefits that derive from the more specific regulatory standards of this rule will not be gained at the cost of reinstating the regulatory disincentive to cleanup that the CAMU was intended to address. This result, in EPA's view, argues in favor of promulgating today's amendments. Although many commenters expressed concern that today's rule would recreate disincentives, they provided general arguments rather than specific evidence. Furthermore, no commenter disputed the Agency's conclusion that the areas in which the Agency provides flexibility from the minimum standards cover the full variety of situations where the minimum standards might operate to discourage aggressive remediation. Similarly, comments submitted on the effects of increased CAMU processing costs (monetary and temporal) for CAMU approval expected to result from today's amendments did not convince the Agency either that such costs alone would likely outweigh the benefits to facilities of obtaining a CAMU, thereby reversing the benefits realized from the 1993 rule. The Agency is therefore promulgating the proposed amendments with only minor changes from the proposal (see discussion of specific changes below).[4]

III. Section-by-Section Analysis

A. Grandfathering CAMUs (40 CFR 264.551)

EPA proposed that CAMUs approved prior to the effective date of the final CAMU amendments (i.e., the effective date of this rulemaking) and CAMUs for which substantially complete applications (or equivalents) were submitted to the Agency on or before ninety (90) days after publication of the proposal (i.e., November 20, 2000), would generally continue to operate under the 1993 CAMU regulations and would not be subject to the CAMU amendments finalized today. This approach is referred to as ''grandfathering.'' Commenters generally supported the grandfathering provisions and, in today's rulemaking, EPA is finalizing these provisions as proposed. Issues associated with grandfathering are discussed in section L, at the end of the section-by-section analysis.

B. Eligibility of Wastes for Management in CAMUs (40 CFR 264.552(a))

EPA's approach to defining the types of wastes that may be placed in CAMUs is an important element in its effort to strike a balance between encouraging aggressive remediation and maintaining RCRA's incentives to avoid releases and minimize wastes in the first instance. EPA's intention in the 1993 CAMU rule and in today's action is to clearly limit the wastes that may be placed in CAMUs to wastes that are managed as a result of cleanup, except under specifically described and limited circumstances.

Under the 1993 CAMU rule, the term ''remediation waste'' defined the types of wastes that may be placed in a CAMU. ''Remediation waste'' is defined at 40 CFR 264.10 as ''all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.'' [5] The definition of remediation waste is also used in regulations pertaining to Remedial Action Plans (see part 270, subpart H), staging piles (see 40 CFR 264.554), and site-specific LDR treatment variances under the ''environmentally inappropriate'' variance provisions (see 40 CFR 268.44(h)(2)(ii)).

Working from the definition of ''remediation waste,'' EPA proposed a number of changes to define more specifically the types of remediation waste that may be placed in CAMUs. First, the Agency proposed to establish a separate subcategory of waste, within the broader category of remediation waste, to govern the types of wastes that may be placed in a CAMU. EPA proposed to call this subcategory of waste ''CAMU-eligible waste.'' Second, EPA proposed to include in the definition of CAMU-eligible waste clarifying language to better distinguish between as-generated and cleanup wastes. Third, EPA proposed, with some exceptions, to explicitly prohibit waste in containers and other non-land-based units from being placed in CAMUs. Fourth, the Agency proposed to allow nonhazardous, as-generated wastes to be placed in a CAMU if such placement would facilitate treatment or the performance of the CAMU. The Agency also proposed to ban placement of liquids in CAMUs except under certain circumstances and to allow the Regional Administrator, under certain circumstances, to ''kick out'' or disallow placement in a CAMU of wastes that would otherwise be CAMU-eligible.

Commenters generally supported EPA's overall proposed approach to more specifically defining the types of remediation waste that may be placed in

[4] In finalizing today's amendments, the Agency has published the entire text of the CAMU rule as it will appear in the CFR. EPA took this approach for the sake of clarity. However, it is important to note that the CAMU regulatory provisions on which the Agency did not seek comment in the proposal (i.e., those which, at proposal, were simply repeated from the 1993 rule) are not modified by today's amendments. In addition, to further aid the reader, the Agency has placed a ''redline/strikeout'' version of the CAMU regulations in the docket for today's rulemaking. This document indicates exactly where changes to the 1993 rule are being finalized.

[5] As discussed in the proposal, the remediation waste definition promulgated with the 1993 CAMU regulations was modified by the Agency in the Hazardous Waste Identification Rule for Contaminated Media (HWIR-Media). See, 63 FR 65874, November 30, 1998. The remediation waste definition quoted above is the definition as modified by the HWIR-Media rule. The Agency is today promulgating an editorial change to the remediation waste definition, as discussed later in this section of the preamble.

CAMUs, and today the Agency is finalizing its approach largely as proposed. In response to comments, however, the Agency is making two changes to the CAMU-eligible waste definition in today's final rulemaking. First, the Agency is making an editorial change to the definition of CAMU-eligible waste (and a conforming change to the related definition of ''remediation waste'') to make clear that these definitions include both hazardous and nonhazardous wastes (including hazardous and nonhazardous environmental media and debris), when such materials are managed for implementing cleanup. Second, the Agency is expanding the definition of CAMU-eligible wastes to include intact and substantially intact tanks. With this change, both containers and tanks excavated during cleanup (and materials they may hold) are generally CAMU eligible. The details of the Agency's approach to defining wastes eligible for management in CAMUs, including the two changes made in response to comments, are discussed below.

1. Definitions of ''Remediation Waste'' and ''CAMU-Eligible Waste''

EPA proposed: (1) To establish a separate subcategory of waste to more specifically define the types of remediation wastes that can be placed in CAMUs, (2) to call the subcategory of waste ''CAMU-eligible waste,'' and (3) to promulgate the definition of CAMU-eligible waste in the CAMU regulations at 40 CFR 264.552(a)(1) rather than in the general definitions section at 40 CFR 260.10. To complement the new definition of CAMU-eligible waste, EPA proposed to revise the definition of Corrective Action Management Unit to refer to ''CAMU-eligible waste'' rather than ''remediation waste.'' Also, to make clear that the changes to the definition would not apply beyond the CAMU rule, the Agency proposed to move the definition of CAMU from the general definitions section at 40 CFR 260.10 to the CAMU regulations at 40 CFR 264.552(a) and, for grandfathered CAMUs, at 40 CFR 264.551(a).

EPA proposed to define CAMU-eligible waste as ''[a]ll solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris that contain listed hazardous waste or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup. As-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.'' The first sentence of the proposed definition reiterated the definition of remediation waste. The second sentence added language from the preamble to the 1993 CAMU rule to more explicitly prohibit management of as-generated wastes in CAMUs.

EPA did not receive adverse comments on the proposal to promulgate the definition of CAMU-eligible waste in the CAMU regulations, on the proposed conforming change to the definition of CAMU, or on the proposal to move the definition of CAMU from the general definitions section to the CAMU regulations. The Agency is promulgating those provisions as proposed.

Commenters also generally supported establishing a separate definition for CAMU-eligible waste; however, in evaluating the new definition, a number of commenters expressed concern that the definition could be read to preclude placement of nonhazardous cleanup wastes (or environmental media and debris that contain solid but not hazardous wastes) in a CAMU. The Agency believes this misreading—which it understands but never intended—could unnecessarily delay approvals of CAMUs and delay cleanups, so it is taking today's opportunity to make editorial changes necessary to clarify the definition of CAMU-eligible waste and the related definition of remediation waste, as discussed below.

The current definition of remediation waste is ''All solid and hazardous waste, and all media (including groundwater, surface water, soils, and sediments) and debris *that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic* and are managed for implementing cleanup'' (emphasis added). EPA included the phrase ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic'' to make clear that media brought under regulation through the ''contained-in'' policy were eligible for management in a CAMU. Under the Agency's longstanding contained-in policy, EPA requires that contaminated environmental media, although not hazardous wastes themselves, be managed as if they were hazardous waste as long as they contain hazardous waste or exhibit a characteristic of hazardous waste.[6] Commenters expressed concern that, because it is not clear which portions of the definition of remediation waste are modified by the phrase ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic,'' the definition could be read to limit media and debris placed in a CAMU to those containing listed waste or exhibiting a characteristic, and not to include contaminated environmental media or debris that contain solid (but not hazardous) waste.

Commenters additionally raised concerns that the definition of ''CAMU-eligible waste''—which is based on the definition of remediation waste—could similarly be read to exclude nonhazardous wastes managed for implementing cleanup. This reading would preclude management of nonhazardous remediation wastes in CAMUs.[7] Clearly, this reading does not reflect the Agency's intent as expressed in the preamble to the proposal or in earlier Agency discussions of remediation waste, and therefore the Agency is making editorial changes to the definition of CAMU-eligible waste.

As discussed in detail in the 1993 CAMU rule, ''the definition of remediation waste includes nonhazardous solid waste . . . [although] management of such wastes would not require the designation of a CAMU . . . since [RCRA] Subtitle C requirements would not apply to management of [nonhazardous solid waste]'' (58 FR 8664, February 16, 1993). The Agency also addressed this issue in the 1998 HWIR-Media rulemaking, where it indicated that ''remediation waste'' includes ''both hazardous and nonhazardous solid wastes managed as a result of cleanup'' (63 FR 65881, November 30, 1988). Nonetheless, to prevent any potential confusion over this issue, the Agency is revising the wording of the definition of CAMU-eligible waste to remove the

[6] The contained-in policy is described in the October 1998 memorandum, ''Management of Remediation Waste Under RCRA,'' EPA A530-F–98–026, which is included in the docket for today's rulemaking.

[7] The confusion is caused by the restrictive clauses in the definitions of CAMU-eligible and remediation waste. In the case of remediation waste, the definition is: ''Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.'' Some commenters feared that the restrictive clauses ''that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic . . .'' would be read to limit media and debris placed in a CAMU to those containing listed wastes or exhibiting a characteristic. This interpretation would mean that nonhazardous media and debris could not be managed in a CAMU. In an alternative reading, commenters feared that the restrictive clauses could be read to modify ''all solid and hazardous wastes, and all media . . .,'' that is, to require that solid or hazardous waste ''contain listed hazardous wastes'' or ''exhibit a hazardous characteristic'' in order to be covered by the definitions. While EPA believes that most readers understood what it intended in the definition, the Agency agrees that the wording is confusing and has, therefore, made the editorial changes discussed in today's rulemaking.

phrase ''that contain listed hazardous wastes or that themselves exhibit a characteristic.'' The definition of CAMU-eligible waste promulgated today, in pertinent part, reads: ''CAMU-Eligible Waste means: (i) all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.''

EPA emphasizes that this editorial change does not reflect a change in the Agency's approach toward implementing the definition of CAMU-eligible waste. Rather, it reflects the Agency's conclusion, based on comments, that the proposed definition created a potential for confusion which could hinder implementation of the CAMU amendments. EPA further emphasizes that the exclusion of nonhazardous ''as-generated'' waste from the definition of CAMU-eligible waste is not affected by this change. As discussed later in today's rulemaking, nonhazardous as-generated waste is generally not within the definition of CAMU-eligible waste and can be placed in CAMUs only under certain limited circumstances.

EPA is also taking this opportunity to make the same change to the definition of remediation waste. The revised definition of remediation waste reads: ''Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.'' EPA is making this change to avoid confusion that might result from using different wording in the definitions of remediation and CAMU-eligible waste. The Agency notes that it is making these changes solely for clarity and consistency and that they will have no substantive effect on either definition.

The Agency also received a number of comments on the inclusion of the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste. These comments are discussed in the section ''As-Generated versus Cleanup Wastes,'' below.

2. As-Generated versus Cleanup Wastes

The 1993 CAMU rule limited wastes placed in CAMUs to ''remediation waste,'' i.e., to wastes, environmental media, and debris that ''are managed for implementing cleanup.'' The preamble to the 1993 rule explained what was generally meant by this definition: ''(t)oday's definition of remediation waste excludes ''new'' or as-generated wastes (either hazardous or nonhazardous) that are generated from ongoing industrial operations at a facility'' (58 FR 8658 and 8664, February 16, 1993). While the Agency believes the 1993 CAMU rule language is clear, it also understands the concerns of critics of the rule, who argued that the regulations could benefit from additional language creating a ''firewall'' between industrial process waste and cleanup waste by specifically prohibiting placement of as-generated wastes in CAMUs. In response to these concerns, the Agency proposed to add the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes'' to the new definition of CAMU-eligible waste. Commenters supported adding this express exclusion, and the Agency is finalizing this part of the definition of CAMU-eligible waste as proposed.

As discussed in the proposal, including the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes'' in the definition of CAMU-eligible waste does not change the way the Agency currently distinguishes between as-generated and cleanup wastes (65 FR 51085 and 51086, August 22, 2000). It is simply a way to reflect more explicitly the original intent of the 1993 definition.

''As-generated'' continues to have the same meaning that it did in 1993. For example, hazardous wastes generated by an industrial process (e.g., an electroplating operation at a metals-finishing facility), managed in an operating hazardous waste surface impoundment or landfill, are considered as-generated wastes. As such, these wastes must be managed, treated, and disposed of in compliance with applicable RCRA hazardous waste requirements.

EPA has also not changed the meaning of ''from ongoing industrial operations.'' EPA is including this phrase in the definition of CAMU-eligible wastes solely to aid program implementers in distinguishing between wastes that are managed as a result of routine hazardous waste management activities at a facility, and wastes that are managed for implementing cleanup. Wastes from ongoing industrial operations include wastes produced during commercial operations as well as any wastes that are produced during management of such wastes. For example, hazardous sludges that, in accordance with 40 CFR 268.4, must be removed at least annually from operating hazardous waste surface impoundments are considered wastes from ongoing industrial operations. They are not considered wastes ''managed for implementing cleanup'' and thus are not CAMU-eligible (65 FR 51085, August 22, 2000). However, as discussed in the proposal, soil that becomes contaminated by releases (including leachate) from operating hazardous waste units would be CAMU-eligible when managed for implementing cleanup (65 FR 51085, August 22, 2000).

Similarly, soil or other materials contaminated by product spills or releases from ongoing industrial processes are not considered as-generated wastes and, as such, are CAMU-eligible when managed for implementing cleanup. Note, however, that EPA fully expects—and requires—facility owners/operators to avoid spills and unintended releases of any sort. Also, facility owners and operators should note that today's rulemaking provides that soils and other materials contaminated by spills or releases—although generally within the meaning of CAMU-eligible—might be disallowed from management in a CAMU under the discretionary kickout provision. The discretionary kickout provision is discussed later in today's rulemaking.

EPA specifically requested comment on whether including the sentence ''[a]s-generated wastes (either hazardous or nonhazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes' in the definition of CAMU-eligible waste might have unintended consequences, for example, by eliminating actual or potential practices where as-generated waste is appropriately placed in a CAMU as a legitimate part of cleanup. In response to this request, one commenter expressed the concern that the phrase ''generated from ongoing industrial operations'' suggests a temporal condition that could be interpreted to mean that only historical wastes are CAMU-eligible. For example, this reading might preclude placement of materials contaminated by spills from ongoing industrial processes in a CAMU. As explained above, the Agency appreciates this concern and takes this opportunity to state explicitly that CAMU-eligible waste is not limited to historical waste or contamination. The Agency does not consider cleanup of contaminated soils or similar materials to be an ongoing industrial process—even if the contamination itself derives from ongoing industrial processes. Thus, material contaminated by spills from industrial processes would not be ''as-generated'' wastes from these processes. When managed for

implementing cleanup, these materials are CAMU eligible.

Another commenter expressed a similar concern that the phrase ''from ongoing industrial operations'' could be read to preclude management of historical wastes in a CAMU simply because the industrial process that caused the wastes to be generated in the first instance continues to operate. Many industrial facilities have industrial operations that have been ongoing for a number of years. As this commenter pointed out, management strategies for wastes generated by these ongoing industrial operations typically have changed over time, in part to respond to new regulatory requirements. For example, wastes currently generated by an ongoing industrial operation might be sent off site for RCRA Subtitle C disposal; these are clearly as-generated waste. At the same time, wastes previously generated by this same industrial operation might remain on site in solid waste management units that are now subject to RCRA corrective action requirements. If these solid waste management units require cleanup, wastes removed from them during cleanup (and materials contaminated by releases from them) would be CAMU eligible. This is because removal of the wastes would be a remedial activity, rather than part of an ongoing industrial process.

3. Wastes Managed During Closure

In the proposal, the Agency clarified the circumstances under which wastes associated with closure of land-based hazardous waste treatment, storage or disposal units are ''managed for implementing cleanup'' and, therefore, when they are eligible for placement in a CAMU. This distinction is based primarily on a distinction between ''permanent'' and ''non-permanent'' land-based units.

Closure with waste in place is an option for permanent land-based units, e.g., landfills, surface impoundments, and land treatment units. Given the availability of the closure with waste-in-place option, EPA considers closure by removal to be ''cleanup'' for such permanent land disposal units. Therefore, wastes removed from closed or closing permanent land-based units are considered wastes ''managed for implementing cleanup'' and are CAMU eligible (65 FR 51086, August 22, 2000). As discussed in the proposal, ''closed or closing'' means units that have received their final volume of wastes (65 FR 51086, August 22, 2000).[8]

Conversely, non-permanent units, e.g., container and tank storage units and waste piles, are not intended as the final resting place for wastes. Rather, removal of waste from these units in general is part of the normal course of operations. Therefore, EPA believes that, typically, it is inappropriate to consider waste removed from non-permanent units to be CAMU-eligible, because removal is part of the operating life cycle of the unit (65 FR 51086, August 22, 2000).[9]

Many commenters were concerned with EPA's position that wastes associated with closure of waste piles and other non-permanent units are generally not ''managed for implementing cleanup'' and would not be CAMU-eligible. In particular, commenters disagreed with EPA's view that waste piles and other units are ''non-permanent'' units. Commenters pointed out that regulations at 40 CFR 264.197 and 40 CFR 265.197 (for tank systems) and 40 CFR 264.258 and 40 CFR 265.258 (for waste piles) require that when these units do not comply with secondary containment and liner requirements, respectively, facility owners/operators must prepare contingent plans to close these units as if they were hazardous waste landfills. Also, for both tank systems and wastes piles, landfill closure is required if, after a reasonable effort is made to meet the clean-closure performance standard, an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated.[10]

EPA agrees that a clarification is warranted. The Agency recognizes that waste piles and tank systems (or, more likely, environmental media contaminated by releases from these units) may be closed as landfills if it is not practicable to remove or decontaminate all contaminated material during an attempt to achieve clean closure. The Agency does not believe, however, that these circumstances justify a change to the interpretation that, as a general matter, wastes removed from these typically non-permanent units are not ''managed for implementing cleanup'' and therefore are not CAMU-eligible.

As explained earlier as well as in the proposal, the Agency does not typically consider waste removed from closing non-permanent land-based units (such as waste piles) to be ''managed for implementing cleanup,'' because removal of wastes from waste piles and other non-permanent land-based units is a normal part of unit operation. (65 FR 51086, August 22, 2000.) These units are not intended as the final resting place for wastes, and the existence of a regulatory option allowing contamination to remain in the unexpected circumstance where clean closure is not practicable does not alter this general conclusion. However, the Agency does agree that when these units are closed as landfills in situations where clean closure is not practicable, they are the final resting place for the remaining wastes, and any waste thereafter removed from them would be ''managed for implementing cleanup'' and would therefore be CAMU eligible.[11] Also, as discussed earlier in

[8] As discussed in the proposal, the Agency believes the ability to place such wastes in CAMUs will promote its objective of encouraging the removal and/or treatment of wastes during closure of RCRA units (65 FR 51086).

[9] As discussed in the proposal, ''typically'' is intended to indicate the Agency's ability, for example, at abandoned facilities, to place waste found in old piles or similar units in a CAMU, because once they are abandoned, management of wastes they contain is for implementing cleanups. Note also that there is a distinction between removal of waste from a closed or closing unit for placement in a CAMU and incorporation of a unit into a CAMU. EPA's position that wastes removed from non-permanent land-based units are generally not CAMU-eligible does not preclude incorporation of such units into a CAMU under appropriate circumstances. 40 CFR 552(b). As with any other regulated unit that is incorporated into a CAMU, the Subpart F, G and H requirements and the unit-specific requirements of 40 CFR Part 264 or 265 that applied to the regulated unit will continue to apply to that portion of the CAMU (i.e., the portion encompassing the former regulated unit) after incorporation into the CAMU. See, 40 CFR 264.552(b). Under § 264.110 or § 265.110, however, the Regional Administrator may defer any of these standards to the site's corrective action requirements, if certain conditions are met (most importantly, the regulated unit is situated among solid waste management units (or areas of concern), a release has occurred, and the regulated unit and the solid waste management units or areas of concern are likely to have contributed to the release).

[10] The regulations for tank systems at 40 CFR 264.197 and 40 CFR 265.197 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated soils, and structures and equipment contaminated with waste. If an owner/operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required, the owner/operator must close the tank system as a landfill. The regulations for waste piles at 40 CFR 264.258 and 40 CFR 265.258 require owners/operators to remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required, the owner/operator finds that not all contaminated subsoils can be practicably removed or decontaminated, the owner/operator must close the waste pile as a landfill.

[11] Guidance on the clean closure standard is available in the 1998 guidance memorandum Risk-Based Clean Closure. See Elizabeth Cotsworth to

today's rulemaking, environmental media, such as soil, ground-water, and debris contaminated by hazardous waste placed in waste piles or other non-permanent land-based units generally are CAMU eligible. Therefore, if contamination resulting from the release of waste from a waste pile or tank system is cleaned up, either during closure or otherwise, the contaminated material would generally be CAMU-eligible.[12]

One commenter also requested the Agency's view on whether miscellaneous units approved under the 40 CFR part 264, subpart X provisions are considered permanent or non-permanent land-based units, and therefore whether wastes from these units might be ''managed for implementing cleanup.'' Given the diversity of units that may be approved under the subpart X provisions, the Agency cannot offer a generic answer. In general, the Agency expects the determination of whether wastes from a subpart X miscellaneous unit are ''managed for implementing cleanup'' will be made on a unit-specific basis, considering the purpose of the unit (e.g., is it intended for permanent disposal or will wastes be removed at closure?), the design and operating standards applied to the unit at the time the unit was permitted, and its similarity to conventional units. The Agency notes that many subpart X units (e.g., drum crushers or vitrification plants) are not land-based units and are more analogous to hazardous waste tanks or incinerators. Wastes managed in such units generally would not be CAMU eligible. If a subpart X unit were intended to be a final disposal site for wastes (for example, as indicated in the unit closure plan), it would likely be considered a permanent land-based unit.

Finally, the Agency reiterates the guidance offered in the proposal on abandoned units. The Agency interprets today's rule to provide that waste removed from abandoned land-based units, whether the units were intended to be permanent or non-permanent, is waste ''managed for implementing cleanup'' and is CAMU eligible (see, 65 FR 51086, August 22, 2000).

RCRA Senior Policy Advisors, Risk-Based Clean Closure, March 16, 1998.

[12] Also, as discussed earlier in today's rulemaking, environmental media, such as soil, ground water, and debris contaminated by hazardous waste managed in waste piles or other non-permanent land-based units will generally be CAMU-eligible. Therefore, if waste that has been released from a waste pile or tank system is cleaned up, either during closure or otherwise, such waste will generally be CAMU-eligible.

4. Wastes in Intact or Substantially Intact Containers, Tanks, or Other Non-Land-Based Units (40 CFR 264.552(a)(1)(ii))

The Agency proposed to prohibit management in a CAMU of wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units, even if those wastes would otherwise be within the meaning of CAMU-eligible (i.e., wastes managed for implementing cleanup). ''Other non-land-based units'' include intact or substantially intact non-land-based units that are not ''containers'' or ''tanks,'' but were designed to contain wastes (e.g., containment buildings under part 264, subpart DD, and part 265, subpart DD). The Agency also proposed two exceptions to this general prohibition. First, the Agency proposed to allow management in a CAMU of wastes that are first placed in tanks, containers, or other non-land-based units as part of cleanup. Second, the Agency proposed to allow management in a CAMU of containers (even if they are substantially intact) that are excavated during the course of cleanup.

The Agency did not receive any adverse comment on its general exclusion of wastes in intact or substantially intact containers, tanks, or other non-land-based units, or on the proposed exemption for wastes first placed in tanks, containers or other non-land-based units as a part of cleanup. The Agency is finalizing these provisions as proposed.

Most commenters also supported the proposed exemption to allow placement in a CAMU of intact or substantially intact containers excavated during cleanup. One commenter opposed this approach. After evaluating these comments, the Agency has decided to promulgate the exemption for intact or substantially intact containers as proposed, as discussed below.

a. Intact and Substantially Intact Containers Excavated during Cleanup Are CAMU–Eligible

In developing the proposed exemption allowing placement in a CAMU of intact and substantially intact containers excavated during cleanup, EPA reflected the concerns of many stakeholders that excluding buried containers might create a disincentive to their excavation and would raise practical implementation issues. While off-site management may be chosen for these containers in many cases, in other cases (for example, where the waste in intact containers differs little from other remediation waste at the site, or where off-site management is difficult to arrange for), it may be sensible for the Regional Administrator to consider on-site treatment and disposal options chosen as part of the CAMU process. As explained in the preamble to the proposal, buried containers will typically be much more difficult to assess and manage than those found above ground and could complicate, and potentially slow cleanup, as well as possibly create an incentive not to excavate the container in the first place (65 FR 51087, August 22, 2000). For these reasons, the Agency proposed to allow intact and substantially intact containers (and the wastes they may contain) excavated during cleanup to be placed in CAMUs. (Interpretations of ''intact,'' ''substantially intact,'' and ''excavated during cleanup'' are discussed below.)

Most commenters supported this approach. One commenter opposed the approach, arguing generally that, if a container (or tank—see discussion below) is excavated and it is intact, there is no reason that the waste it contains should not be subject to normal RCRA Subtitle C requirements and the waste should not be disposed of in a CAMU. Focusing on tanks only, however, the commenter argued that requiring RCRA Subtitle C management would not create an incentive to leave buried tanks unexcavated on site (potentially to leak); presumably, therefore, the commenter would also disagree with EPA that excluding buried containers from CAMU eligibility might also act as a disincentive to excavation. The commenter was also not persuaded by EPA's concerns for practical issues of implementation, arguing that if a container is still intact after excavation, it should be managed under normal RCRA Subtitle C requirements.

As discussed in the proposal, the Agency agrees that, as a matter of practice, site-specific remedy decisions will often include off-site management under the RCRA Subtitle C requirements for intact containers (and the wastes they may hold) excavated during cleanup (65 FR 51087, August 22, 2000). EPA's analysis of CAMUs approved under the 1993 CAMU rule shows no evidence that waste in intact containers has been placed in CAMUs (65 FR 51086–51087, August 22, 2000 and CAMU Site Background Document). The Agency, however, does not agree that it should categorically exclude placement of intact containers in CAMUs.

First, EPA continues to believe that a blanket requirement excluding ''substantially intact'' excavated containers from placement in a CAMU could act as a disincentive for

excavation of the containers in the first place. Buried containers are similar to other buried wastes in that facility owners/operators will often be under no obligation to excavate them; if removal automatically triggers RCRA Subtitle C land disposal restrictions, minimum technology requirements, and similar obligations—because placement in a CAMU is not allowed—the RCRA Subtitle C disincentives for excavation might be considerable. EPA is concerned therefore, that prohibiting placement of these wastes in a CAMU—regardless of the site-specific circumstances—could discourage aggressive cleanups.

EPA also believes the commenter underestimates the practical difficulties that could arise. As explained in the preamble to the proposal, buried containers ''will typically be much more difficult to assess and manage than those found above ground'' (65 FR 51087, August 22, 2000). For example, buried containers are more likely to be damaged or deteriorating than containers stored above-ground (for example, because of the burial process and conditions), and therefore questions as to whether a container is or is not ''substantially intact'' are much more likely to arise. EPA believes that attempts to resolve such questions at a specific site might lead to fruitless argument, would unnecessarily distract from the focus on the most effective remedial strategies at the site, and therefore might delay cleanup. Furthermore, as the commenter acknowledges, removal of ''intact'' containers may be dangerous, or it may be technically challenging. In such cases, as another commenter observed, the most prudent approach might be to remove the container's contents and place them in a CAMU before excavation of the container is attempted. Prohibiting placement of wastes in ''intact'' containers in CAMUs could discourage this practice.

More generally, it will typically be easy for remediators to identify and plan for intact containers that are on the surface before a cleanup begins, while buried containers will often not be discovered until an excavation is on-going. At that point, it will be potentially much more disruptive to cleanups if operations have to stop for a judgment on intactness and to arrange for off-site disposal. Yet this process may be unnecessary (for example, where only a few containers are involved and they contain the same waste that is being placed in the CAMU).

For these reasons, EPA is finalizing the inclusion of intact and substantially intact buried containers among CAMU-eligible wastes, as proposed. By allowing intact and substantially intact containers (and the wastes they may hold) that are excavated during cleanup to be placed in CAMUs, the Agency believes it will reduce the likelihood that the CAMU amendments would create disincentives to excavation of buried containers and their contents. As discussed in the proposal, the Agency is less concerned that these disincentives will be created for intact or substantially intact above-ground containers, tanks or other non-land-based units, because these units are much easier to assess and manage in accordance with RCRA Subtitle C requirements for as-generated wastes (65 FR 51087, August 22, 2000). For these reasons, the Agency is finalizing the provisions allowing intact or substantially intact containers excavated during cleanup to be placed in CAMUs as proposed.

b. Extension of Approach to Buried Containers to Include Buried Tanks

EPA specifically requested comment on whether the proposed exemption for buried containers that are excavated during the course of cleanup should also apply to buried tanks (65 FR 51087, August 22, 2000). The Agency received similar comments on the issue of allowing placement in a CAMU of tanks excavated during cleanup as it did on the exemption for containers excavated during cleanup: most commenters supported CAMU eligibility for intact and substantially intact tanks excavated during cleanup; one commenter opposed CAMU eligibility, arguing that—if substantially intact—tanks (and the wastes they may hold) are more appropriately managed under the RCRA Subtitle C requirements for as-generated wastes.

After evaluating these comments, the Agency is persuaded by the view of commenters that intact and substantially intact tanks excavated during cleanup should be addressed in the same way as intact and substantially intact containers excavated during cleanup.[13] The Agency has reached this conclusion based primarily on three considerations. First, as with buried containers, facility owners/operators will often have the option of leaving buried tanks in place during a cleanup action. Therefore, as commenters pointed out, the disincentives to excavation (or aggressive remediation) that application of RCRA Subtitle C requirements for as-generated wastes can impose on cleanup will apply to both buried tanks and buried containers. As discussed throughout the proposal and today's rulemaking, the primary purpose of CAMUs is to remove these disincentives. Second, the same practical difficulties that apply to excluding buried containers from CAMU-eligibility (discussed above) apply equally to buried tanks. Third, as discussed in the proposal, it could be difficult in burial situations to always distinguish between tanks and containers—a point seconded by one set of commenters. In the regulation of as-generated wastes, regulators and facility owners/operators sometimes engage in lengthy discussions over whether a particular storage unit is a ''tank'' or a ''container'; these discussions could be considerably more complicated in the case of excavated ''units'' containing wastes, particularly if the original function or use of the unit is not clear (e.g., at the time it was being used, was the unit ''portable''—making it a ''container'' under § 260.10—or ''stationary''—making it a ''tank''). Thus, extending the container approach to tanks furthers EPA's objective of eliminating from the cleanup context distinctions that serve a useful purpose for management of as-generated hazardous waste, but that, in a cleanup context, distract from the overall objective of achieving cleanups without adding significant value.

Furthermore, as discussed in the proposal, any material found in tanks (or containers) after excavation must meet the new CAMU treatment requirements, ensuring that any principal hazardous constituents are adequately treated so as to ensure protection of human health and the environment (65 FR 51087, August 22, 2000). The CAMU treatment requirements are discussed later in today's rulemaking.

c. Interpretations of ''Intact or Substantially Intact,'' ''Found During Cleanup'' and ''Excavated During Cleanup''

Today's exemption from the prohibition on placement of containers in CAMUs applies to ''intact or substantially intact'' tanks and containers that are ''excavated during cleanup.'' ''Intact'' and ''substantially intact'' continue to have the meanings

[13] Note that products and waste in operating underground storage tank systems would not be CAMU-eligible under today's approach. This is because operating underground storage tank systems are considered part of on-going industrial operations at a facility. They are addressed by today's proposal in the same way as operating waste piles and other non-permanent land-based units. That is, waste removed from such systems is generally not considered waste managed for implementing cleanup and is not CAMU-eligible. Environmental media and debris contaminated by releases from such systems is, if excavated, considered managed for implementing cleanup and is CAMU-eligible.

discussed in the proposal. That is, intact or substantially intact containers, tanks, and other non-land-based units can be removed without likelihood of a significant release. Minor imperfections should not prevent a unit from being considered ''intact'' (65 FR 51087, August 22, 2000). Commenters who addressed this issue supported this approach.

One commenter asked for clarification of the distinction between the phrases ''found during cleanup'' and ''excavated during cleanup.'' As discussed in the proposal, ''found during cleanup'' refers to wastes being addressed in the context of cleanup, as opposed to as-generated wastes that may also be stored at a site undergoing cleanup. It is the phrase ''excavated during cleanup,'' not the phrase ''found during cleanup,'' that defines whether waste in a tank, container, or similar unit is CAMU eligible. Waste ''found during cleanup'' might include waste in intact and substantially intact containers, tanks, or similar units that are above ground (e.g., in an old warehouse) as well as wastes that are buried. Wastes in the above ground units would not be CAMU eligible. Only the wastes in intact and substantially intact containers, tanks, or similar units that were buried and are ''excavated during cleanup'' are CAMU eligible. ''Excavated'' is intended to have its normal meaning of ''unearthed'' or ''dug up.''

d. Placement of ''Historic Wastes'' in CAMUs

In the proposal (65 FR 51087), the Agency also discussed the CAMU-eligibility of historic wastes left onsite in units that arguably could meet the definition of either a land-based unit or a ''tank.'' Under today's rulemaking, as under the proposal, historic wastes would be CAMU-eligible if they are found in a land-based unit and managed for implementing cleanup. In the proposal, EPA identified wastes at manufactured coal gas production facilities as an example of ''historic'' wastes (although the Agency also noted that these wastes would not be hazardous under the TCLP). These facilities often have old ''gas holders'' that contain historic coal gas manufacturing wastes. In most cases, such units would be considered land-based units under RCRA (e.g., old building foundations, which are analogous to concrete vaults), and the wastes would be CAMU-eligible. EPA is also aware that some facilities have old units that have not been used in decades that would arguably meet the definition of a tank, and therefore would potentially not be CAMU-eligible. If such a unit were a tank and it was buried, then it and the waste it contained would be CAMU-eligible. If the ''historic'' tank were not buried, the rule requires that the Regional Administrator determine whether it is intact or substantially intact to decide whether the waste is CAMU-eligible. In some cases, given the age, construction, and size of such units, the Agency believes that it would be reasonable to assume that the units are not substantially intact. As a result, waste removed from the units would be CAMU-eligible (65 FR 51087, August 22, 2000). In other cases, historic units would be considered land-based units under RCRA (e.g., old building foundations), and the waste would not be excluded from CAMU eligibility. Commenters supported this approach.

5. Limited Use of Nonhazardous ''As-Generated'' Waste in CAMUs (40 CFR 264.552(a)(1)(iii))

EPA believes that, as a general matter, it is not appropriate to manage as-generated waste in CAMUs. This longstanding position was discussed in the preamble to the 1993 CAMU regulations (58 FR 8658 and 8664, February 16, 1993), in the proposal to this rulemaking (65 FR 51085 and 51086, August 22, 2000) and in the section on ''as-generated vs. cleanup wastes'' above. At the same time, the Agency acknowledges that there are accepted practices where nonhazardous as-generated wastes are used in cleanup remedies. The new language on as-generated waste added to the CAMU-eligible waste definition, however, would expressly prohibit these practices in CAMUs. EPA proposed, therefore, that Regional Administrators might allow placement of nonhazardous as-generated cleanup waste in a CAMU when such waste is being used to facilitate treatment or the performance of the CAMU. Commenters supported this approach, and the Agency is finalizing this provision as proposed.

As discussed in the proposal, the Agency is aware of two common practices that use nonhazardous as-generated wastes to facilitate treatment of cleanup wastes or the performance of waste disposal units. The first practice is to use fly ash or cement kiln dust (CKD) or similar materials as stabilization agents to reduce leaching of metals from metal-bearing wastes. The second practice is to use similar agents, such as coal combustion wastes, to provide increased structural stability for wastes, such as sludges, that do not have sufficient strength to bear their own weight or the additional weight of a cap without risk of failure. Such practices facilitate treatment or the performance of the CAMU and are within the meaning of today's exemption for placement of nonhazardous as-generated wastes.

EPA requested comment on whether Regional Administrators should also have the discretion to allow placement of hazardous as-generated waste in a CAMU if such placement would facilitate treatment or the performance of the CAMU (65 FR 51086, August 22, 2000). Most commenters did not address this issue. One commenter did suggest, however, that Regional Administrators should have the discretion to allow such placement. The commenter offered, as a hypothetical example, the situation where the corrosive properties of an otherwise hazardous waste might be useful in stabilizing other materials. EPA carefully evaluated this comment. At this time, the Agency is not persuaded to allow placement of hazardous as-generated waste in CAMUs. The Agency is concerned that such an approach might weaken the distinction between wastes generated from ongoing industrial operations and wastes managed for implementing cleanup and does not believe the appropriateness of such a provision has been demonstrated by one hypothetical example. At the same time, EPA acknowledges that there may be individual cases where placement of as-generated hazardous waste in a CAMU could safely facilitate a remedy. If experience shows that the absolute prohibition on placement of as-generated hazardous waste in CAMUs is counterproductive, the Agency may revisit the issue in the future.

Although EPA is not allowing placement of hazardous as-generated waste in CAMUs, the Agency—as commenters pointed out—has sought to encourage the use of materials such as cement kiln dust and coal combustion wastes to facilitate treatment or performance of disposal units, and it would consider these to be legitimate uses of such secondary materials. Their use in a CAMU would be allowed.

C. Discretionary Kickout (40 CFR 264.552(a)(2))

The RCRA Subtitle C regulations ensure that hazardous wastes are handled according to stringent national standards. As discussed in the 1993 CAMU rule and in the proposal to today's rulemaking, these requirements, when applied to existing contamination problems, can provide a strong incentive for leaving wastes in place or for selecting remedial approaches that minimize regulation under RCRA Subtitle C. In the 1993 CAMU rule and

in these amendments, EPA's primary purpose is to provide appropriate opportunities to tailor the RCRA Subtitle C standards to provide better incentives to manage hazardous wastes during cleanup. At the same time, EPA does not want the CAMU regulations to reward facility owners for non-compliance with applicable RCRA Subtitle C requirements for as-generated wastes.

All facility owners/operators are legally obligated to make themselves aware of and comply with applicable RCRA Subtitle C requirements. To ensure that the CAMU rules do not create any incentive to mismanage as-generated wastes (e.g., to create a remediation waste eligible for management in a CAMU), or do not reward past non-compliance, EPA proposed that a Regional Administrator might disallow the management of CAMU-eligible waste in a CAMU where he or she has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of 40 CFR part 268, or applicable 40 CFR part 264 or part 265 unit design requirements, or that noncompliance with other applicable RCRA requirements likely contributed to the release of the waste. This is referred to as the ''discretionary kickout'' provision.

EPA received numerous comments on the discretionary kickout provision. Some commenters strongly supported the provision and thought it should be expanded. Other commenters questioned the need for the provision at all and expressed concern over how the provision might be implemented. As discussed below, EPA was not persuaded that the scope of the discretionary kickout provision should be expanded or reduced. The Agency continues to believe that the discretionary kickout provision strikes a reasonable balance between facilitating cleanups through CAMUs and ensuring that facility owners are not rewarded for improper waste management. EPA, therefore, is finalizing the discretionary kickout provision as proposed, and as discussed below.

As mentioned above, several commenters strongly supported the discretionary kickout provision and thought it should be expanded. One group of commenters suggested that the discretionary kickout should generally be applied to wastes previously managed in violation of major RCRA requirements and ideally should be made mandatory at least with respect to the non-complying owner/operator and affiliated parties. Similarly, other commenters argued that the discretionary kickout provision should be expanded to give Regional Administrators the discretion to exclude CAMU-eligible wastes from management in a CAMU under circumstances other than those outlined in the proposal in order to support more stringent state requirements and state risk-based cleanup evaluations.

The Agency carefully evaluated these comments. As discussed in the proposal, EPA wants to be sure that the CAMU regulations do not create incentives for noncompliance, whether the noncompliance is intentional to take advantage of the CAMU rule requirements or is the result of careless management practices (65 FR 51088, August 22, 2000). The Agency also believes that it will generally be most appropriate to apply the discretionary kickout to owners/operators (or affiliated parties) who are responsible for acts of noncompliance rather than subsequent owners/operators or government agencies conducting the cleanup.[14]

The Agency is not, however, persuaded that the discretionary kickout provision should be made mandatory with respect to such owner/operators. The circumstances where noncompliance may have led to a release will be varied, and EPA believes it would be a mistake to automatically eliminate the possibility of a CAMU in such cases, even where the entity conducting the cleanup is responsible for the original noncompliance. In many cases, CAMUs may allow remedial alternatives that all parties agree are most appropriate for a site—for example, they might facilitate a treatment alternative where, without a CAMU, the most likely alternative might be capping in place without treatment. In other cases, a compromise remedial alternative established through a CAMU might allow a protective remedy to move forward promptly, avoiding years of contention and litigation. Finally, EPA believes that making the discretionary kickout mandatory would inevitably move discussions about CAMUs away from the question of what type of remedy is most appropriate for a site and toward questions surrounding the exact set of circumstances of past waste disposal and management, whether specific management practices did or did not involve a violation, and whether a release occurred as a result of past management before or after the present owner held the property. In other words, it might undercut the objectives of developing protective remedies and avoiding wasteful disputes over ancillary issues. In such cases, action on a CAMU (and more broadly on a cleanup) might be put on hold until all these issues were resolved.

EPA remains convinced that the discretionary kickout provision will be an important tool, especially where violations are clear, or there are indications of intentional noncompliance. However, for the reasons discussed above, the Agency has determined that making the discretionary kickout mandatory—and thereby removing any discretion from overseeing agencies—would be counterproductive by increasing the transaction costs associated with CAMUs, resulting in the potential delay of cleanups, and, in some cases, precluding the most effective remedy for a site. Instead, the Agency continues to believe that the Regional Administrator should have the flexibility to consider both the significance of the violation at issue and other site-specific factors (see discussion of site-specific factors, below) when making a determination as to whether to exercise the discretionary kickout provision.

The Agency is also not persuaded that the language of the discretionary kickout provision needs to be changed in order to accommodate more stringent state approaches. Under RCRA section 3009, states are not restricted from establishing state regulations that are more stringent than the federal RCRA Subtitle C regulations. This would include state provisions to restrict additional wastes from being placed in CAMUs and provisions to establish additional circumstances under which wastes that would otherwise be CAMU-eligible may not be placed in a CAMU.

Other commenters questioned the need for the discretionary kickout provision and expressed concern over its implementation. One group of commenters expressed the view that the discretionary kickout provision could have untoward effects on cleanups, and that other mechanisms and incentives exist that would adequately promote compliance with RCRA Subtitle C standards (e.g., enforcement action against the violations). This group also suggested that if the discretionary kickout provision is retained: (1) It should be limited in all cases to situations where noncompliance ''likely contributed to the release of the waste'' and, in the case of LDR requirements, it should be limited to instances of

[14] Indeed, as discussed in the proposal, EPA generally would not exercise its discretion to disallow placement of CAMU-eligible wastes in a CAMU when the entity applying for the CAMU is not the same as or affiliated with the entity that mishandled the waste (65 FR 51089, August 22, 2000).

noncompliance with the prohibition against actual land disposal without required treatment (i.e., not to the other related requirements of 40 CFR part 268); (2) the Agency should designate additional illustrative factors that Regional Administrators should consider when deciding whether to exercise the kickout, including ''(i) whether the violation was a substantial factor that likely contributed to the release of the waste, (ii) the impact or likely impact of the release in comparison to other releases that may have contributed to the need for cleanup, and (iii) whether the violation was intentional;'' and (3) the Agency should establish a fair and responsible process to ensure that discretionary kickout decisions are properly made by overseeing agencies.

The Agency understands that most facility owners/operators are conscientious and are making their best efforts to understand and comply with applicable environmental requirements; however, the Agency is not persuaded that the discretionary kickout provision should be eliminated on that basis. EPA agrees that other mechanisms—e.g., enforcement mechanisms—also promote compliance, but the Agency continues to believe that the discretionary kickout provision is important to ensure that facilities do not benefit inappropriately from non-compliance. As discussed above, the Agency continues to believe that the discretionary kickout provision represents a reasonable balance between facilitating cleanups with CAMUs and maintaining incentives for waste minimization and proper waste management in the first instance. The discretionary kickout provision will play an important role in maintaining that balance because it provides a significant incentive to owners/operators to manage as-generated hazardous waste properly. A facility owner/operator who understands that the Regional Administrator may deny, at his or her discretion, placement of otherwise CAMU-eligible waste in a CAMU based on relevant noncompliance may focus more closely on safe management of the waste in the first place.

The Agency is also not persuaded that the discretionary kickout provision should be changed to limit its application, in the case of LDRs and design standards, to situations where the noncompliance ''specifically contributed to the release of the wastes.'' As discussed in the proposal, the Agency singled out LDRs and unit design requirements in the discretionary kickout provision because they are fundamental RCRA Subtitle C requirements aimed at preventing or minimizing releases of hazardous waste (65 FR 51088, August 22, 2000). They are also provisions from which CAMUs may provide relief. EPA appreciates that commenters would prefer for the Agency to place less importance on violations of these key requirements, but commenters failed to address EPA's underlying assumption—that substantive violations of LDRs and unit design standards are the kinds of RCRA violations that are likely to lead to environmental contamination—and therefore the Agency is unpersuaded by their argument that the rule should not single out these requirements as a basis for the Regional Administrator to exercise the discretionary kickout.

EPA believes that it has already at least partially addressed the commenter's concern that the discretionary kickout provision would be exercised for non-germane violations of the land disposal restrictions or minimum technology requirements. The discretionary kickout provision, as written, focuses on the substantive requirements of the LDRs and unit design standards. The Agency notes that it specifically highlighted in the proposal that ''unit design requirements'' refers to substantive design standards, such as the tank design standards under 40 CFR 264.192 or the design requirements for waste piles under 40 CFR 264.251 and that maintenance requirements, such as the requirements that owners/operators inspect tanks under 40 CFR 264.195, are not ''unit design requirements'' and thus would be addressed under the phrase ''or that non-compliance with the other applicable RCRA requirements likely contributed to the release of the waste.'' (65 FR 51088, August 22, 2000) Similarly, the element of the discretionary kickout provision related to the LDR requirements is limited, as proposed, to noncompliance with applicable ''land disposal *treatment* standards'' (emphasis added). The Agency believes that this clearly refers to land disposal without required treatment. Therefore, EPA has already focused the discretionary kickout provision on the aspects of LDR requirements and unit design standards that are most likely to be related to environmental releases.

The Agency does believe that it is reasonable to expect the Regional Administrator to consider a number of factors when making decisions about whether and how to apply the discretionary kickout provision. As discussed in the proposal, the Agency emphasizes that it does not intend to exercise its discretionary kickout authority in every instance of noncompliance with LDR treatment requirements or substantive unit design requirements. The Agency expects the Regional Administrator to consider, as appropriate, the significance of the violation at issue, whether it was intentional,[15] facility owner/operator has a history of violations, the extent to which it likely contributed to the release of the waste, and the likely management approach for waste excluded from placement in a CAMU, among other factors, when applying the discretionary kickout provision.

The Agency also agrees that a fair and responsible process should be used to make decisions about applying the discretionary kickout provision; however, the Agency does not agree that it is necessary to include a specific process in today's rulemaking. Decisions to apply the discretionary kickout provision will be made in the context of CAMU approvals, using the CAMU approval process, which relies on existing administrative procedures (e.g., permitting procedures) augmented by CAMU-specific requirements (i.e., public notice and opportunity for comment, as discussed later in today's rulemaking) to review and make decisions about CAMU applications. Therefore, decisions about application of the discretionary kickout provision are subject to review in accordance with available administrative and judicial review procedures.

D. Information Submission (40 CFR 264.552(d))

To implement the more specific requirements for identifying wastes eligible for management in a CAMU (discussed above), EPA also proposed to define more specifically the types of information that owners/operators must submit to enable the Regional Administrator to designate a CAMU. For wastes proposed for placement in a CAMU, the Agency proposed that owners/operators must submit information, unless not reasonably available, on (1) the origin of the waste and how it was subsequently managed

[15] This is not to say, of course, that an intent to violate RCRA has to be present where the kickout is exercised. As EPA stated in the preamble to the proposed rule, ''EPA does not want the CAMU to create any incentives for non-compliance, whether intentional to take advantage of alternate requirements in the CAMU rule, or as result of careless management practices (which could, by example, thereby encourage others to ignore applicable requirements.'' 65 FR 51088. EPA does believe, however, that intent may be an issue appropriate for the RA to take into account when deciding whether to exercise the kickout (for example, in a situation where the facility intentionally mismanaged waste to take advantage of the flexibility in the CAMU rule).

(including a description of the timing and circumstances surrounding the disposal and/or release), (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release, and (3) whether the waste was subject to the land disposal requirements of 40 CFR part 268 at the time of disposal and/or release.

In addition to general comments on the information requirements, the Agency specifically requested comment on an alternative approach to information on LDRs. Specifically, the Agency asked whether it should require facility owners/operators to submit information on whether ''the disposal and/or release of the waste occurred before or after the LDR requirements of part 268 of this chapter were in effect for the associated listing'' rather than whether wastes were ''subject to the land disposal restriction requirements.''

The Agency is promulgating the information requirement on waste origin and management, the information requirement on whether wastes were listed or identified as hazardous at the time of disposal and/or release, and the standard that information be provided ''unless not reasonably available'' as proposed. EPA received considerable comment on the ''reasonably available'' standard. These comments are discussed later in this section. EPA did not receive comments specifically on the other two terms. After evaluating comments received on the issue, the Agency has chosen to finalize its alternative approach to the information requirement on LDR requirements, as discussed below.

The Agency believes that requiring facility owner/operators to submit factual information on the dates of waste disposal and/or release relative to the effective dates of LDR requirements will be more efficient than expecting owners/operators to make determinations of whether wastes were ''subject to'' LDR requirements. Determinations of whether wastes are ''subject to'' LDR requirements can be complex (for example, as one commenter pointed out, the question might arise as to whether a waste was ''prohibited'' or ''restricted'' under the land disposal restrictions, and it was not clear how a facility owner should answer the ''subject to'' question based on the answer). In contrast, facility owners/operators can easily compare the timing of waste disposal/release to the effective dates for LDR requirements (these effective dates are published by the Agency in 40 CFR part 268, Appendix VII—Effective Dates of Surface Disposal Wastes Regulated in the LDRs) and, using this information, the Agency can make any necessary judgments about whether wastes were subject to LDR requirements at the time of disposal or release. Commenters who addressed this issue supported the alternate approach to providing information on LDRs.

In finalizing the alternate approach to information on LDRs, EPA is making a minor clarifying change to the language discussed in the proposal. The alternative language for 40 CFR 264.552(d)(2) discussed in the proposal would have required facility owners/operators to provide information on whether ''the disposal and/or release of the waste occurred before or after the land disposal restriction requirements of part 268 of this chapter were in effect for the *associated listing*'' (emphasis added). By referring explicitly to ''the associated listing,'' this language does not address information requirements for characteristic wastes (although, obviously, for characteristic waste, EPA would expect information on the timing of the disposal and/or release compared to the effective date of the LDRs for the associated characteristic). To address this imprecision, EPA has revised the language of the final regulation so that it clearly covers both listed and characteristic wastes. Under the new language, facility owners/operators must submit information (unless not reasonably available) on whether ''the disposal and/or release * * * occurred before or after the land disposal restrictions * * * were in effect for the *waste listing or characteristic*'' (emphasis added).

The specific information now required under 40 CFR 264.552(d)(1) though (3) covers the circumstances surrounding the origin and subsequent management of wastes proposed for placement in CAMUs. The information required (unless not reasonably available) under 40 CFR 264.552(d)(1) covers waste origins and past management because that is the information the Agency needs to distinguish between as-generated and cleanup wastes and, thus, to make decisions about CAMU eligibility. The Regional Administrator would use this information for the purposes of deciding whether the waste is CAMU-eligible, including whether such waste is one for which kickout should be considered. The information required (unless not reasonably available) under 40 CFR 264.552(d)(2) and (3) speaks to whether wastes proposed for placement in a CAMU were subject to RCRA Subtitle C requirements and whether one key requirement—the land disposal restrictions—was in effect at the time of release or disposal. The Agency will use this information to make decisions about whether, because of previous mismanagement, the discretionary kickout provision should be considered.

The Agency emphasizes that the purpose of the new information submission requirements is to give Regional Administrators and the public information necessary for these specific decisions. Given the importance of restricting CAMUs to management of legitimately CAMU-eligible waste and the need for overseeing agencies to properly exercise the discretionary kickout provision, this information is important. At the same time, the Agency expects that information collection will be focused on what is needed to allow informed decisions to be made and will avoid the collection of unnecessary information. This is consistent with the Agency's general guidance on collection of information in cleanup situations. (See, e.g., 61 FR 19944, May 1, 1996, where EPA observed that ''poorly focused investigations can become a drain on time and resources and, in some cases, unnecessarily delay remedial actions'' and encouraged program implementers and facility owners/operators to use a variety of mechanisms to focus site investigation activities.)

EPA emphasizes that, in general, facility owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) prior to requesting approval of a CAMU. Where a CAMU is proposed for a RCRA treatment, storage or disposal facility, information on the origin and historical management of wastes, and on the sources and causes of contamination, will routinely be available in permit applications, RCRA Facility Assessments, and RCRA Facility Investigations. This information can also be found in similar documents prepared under other cleanup programs (e.g., preliminary assessments and site investigations under the federal Superfund program or remedial assessments under state programs). Other cleanup documents, such as remedial work plans, engineering reports, and analyses of remedial alternatives, also typically include information about the waste origin and historical management. Therefore, EPA does not believe that providing this information will be burdensome or will require a special exercise in information development. Commenters agreed.

As discussed in the proposal, if information meeting the requirements of 40 CFR 264.552(d)(1) through (3) has been submitted to the Agency in the past and it remains timely and accurate, owners/operators can simply identify

the information in this past submittal. EPA generally would not expect owners/operators to resubmit information that has been provided previously (65 FR 51089, August 22, 2000). Where information required under 40 CFR 264.552(e)(1) through (3) is not reasonably available, facility owners/operators can fulfill these requirements by informing EPA of the extent of their knowledge about waste origin and history. (See discussion of the ''reasonably available'' standard, below.) As discussed in the proposal, EPA recognizes that there will be situations where information on the origins of contamination or the past management of waste will simply not be reasonably available. For example, there will be situations where contamination cannot be linked with specific waste management activities historically associated with a facility (e.g., characteristically hazardous soil not associated with any hazardous waste management unit). In such cases, facility owners/operators must provide what they know. If the information required by 40 CFR 264.552(d)(1) through (3) is not reasonably available, they are not required to submit it (see discussion at 65 FR 51090, August 22, 2000).

Also as discussed in the proposal, when information submitted in response to the requirements of 40 CFR 264.552(d)(1) through (3) is already in the Agency's possession, or information brought to the Regional Administrator's attention by citizens raises significant concerns about waste eligibility or past waste management practices, the Agency expects the Regional Administrator should, where appropriate, seek additional, reasonably available, information regarding waste history beyond that initially submitted pursuant to § 264.552(d), in order to make properly informed decisions about CAMU eligibility and the use of the discretionary kickout provision (65 FR 51090, August 22, 2000). Facility owners/operators and overseeing agencies often engage in a series of back-and-forth discussions, information exchanges, and requests for additional information throughout the CAMU-application process. While sometimes necessary, these exchanges, of course, should be focused on the information needed for the decision at hand (e.g., for decisions about whether waste is CAMU eligible) and should avoid the collection of information not necessary to inform or support the decision in question.

1. ''Unless Not Reasonably Available'' Standard

As explained above, the information specified in 40 CFR 264.552(1) through (3) is required ''unless not reasonably available.'' Under this standard facility owners/operators must make a good faith effort to gather and provide information meeting the requirements. Also as explained above, the Agency believes that most owners/operators will already have the information required by 40 CFR 264.552(d)(1) through (3) as part of their general facility records or in site investigation reports, cleanup work plans, and other documents. In instances where this is not the case, the Agency expects that facility owners/operators will be able to gather the information from existing site- and waste-specific records. As discussed in the 1998 Phase IV LDR rule establishing treatment standards for contaminated soil, such site- and waste-specific records generally include manifests; vouchers; bills of lading; sales and inventory records; sampling and analysis reports; accident, spill investigation, and inspection reports; enforcement orders; and permits (63 FR 28619, May 26, 1998). Relevant information might also be obtained by talking with current and, in some cases, former employees, particularly where written documentation is absent.

The Agency received a number of comments on the ''reasonably available'' standard. In particular, some commenters were concerned with EPA's reference, in the proposal, to discussions with former employees (65 FR 51090, August 22, 2000). These commenters were concerned that the Agency might expect all facility owners/operators to interview former employees as part of a good faith effort to meet the ''reasonably available'' standard and that this expectation was not, in fact, reasonable. The Agency does not expect facility owners/operators to have to interview former employees in order to meet the ''reasonably available'' standard, except in unusual circumstances. The Agency also agrees with commenters that, in general, it is not reasonable to expect facility owners/operators routinely to contact former employees who might have knowledge relevant to meeting the new information submission requirements, solely to meet these requirements. Rather, the Agency expects that contacting former employees will likely not be necessary, because, as discussed above, facility owners/operators will already have information sufficient to meet the 40 CFR 264.552(d)(1) through (3) requirements. Where that is not the case, contact with former employees themselves would be subject to the same ''reasonably available'' standard. As discussed above, if the information required by 40 CFR 264.552(1) through (3) is not reasonably available, facility owners/operators do not have to provide it. At the same time, the Agency rejects the notion that it is categorically ''not reasonable'' to contact former employees. For example, it might be reasonable in a particular case for a facility owner/operator to contact a former plant environmental manager with a known address (or one that can be readily located) if that person had information about waste origin or past management that was not readily available through other means.

In response to one commenter, EPA also clarifies that, when the Agency asks for additional information under § 264.552(1)–(3), beyond what was submitted in a facility's initial CAMU application, the request would be limited to information that is ''reasonably available.'' In other words, EPA's authority would be limited to the same standard that pertains to information in the original submission.

2. Application of New CAMU Information Submission Requirements to P- and U-Listed Wastes

In the proposal, the Agency clarified application of the new, more specific information requirements in 40 CFR 264.552(d) to commercial chemical products. Because there is often the potential for confusion around commercial chemical products and because, as discussed above, EPA is promulgating the alternate approach to information on LDRs, the Agency discusses the issue again here. For commercial chemical products, 40 CFR 264.552(d)(2) requires that facility owners state whether the listing associated with the commercial chemical product was in effect at the time the commercial chemical product was disposed of or released. EPA has changed the language from the proposal (as discussed above), so the discussion of previous language dealing with commercial chemical products in the proposal preamble (65 FR 51090) is no longer relevant. Under the approach to 40 CFR 264.552(d)(3) promulgated today, for commercial chemical products facility owners/operators must indicate whether the disposal or release took place before or after the effective date of the prohibition for the relevant P or U listing.[16]

[16] As explained in the proposal, commercial chemical products are not ''wastes'' until they are

Continued

3. Interpretation of General CAMU Information Submission Performance Standard

The more specific information requirements promulgated today do not eliminate the general information submission performance standard established in the 1993 CAMU rule. Under the general performance standard, owners/operators must provide information sufficient to enable Regional Administrators to designate CAMUs ''in accordance with the criteria in 40 CFR 264.552.'' As discussed in the proposal, despite the Agency's use of the term ''criteria'' to refer to the requirements in 40 CFR 264.552(c) in the preamble to the 1993 CAMU rule (58 FR 8671, February 16, 1993), EPA interprets the general information performance standard to require information relating to all aspects of implementation of the CAMU regulations (65 FR 51090, August 22, 2000). This includes, for example, implementation factors that are not specifically referenced in 40 CFR 264.552(c), such as information relating to the inclusion of a regulated unit in a CAMU under 40 CFR 264.552(b).

E. Liquids in CAMUs (40 CFR 264.552(a)(3))

EPA proposed a general prohibition against the placement of liquids in CAMUs, with an exception allowing placement of liquids when they facilitate the remedy selected for the waste being managed in the CAMU. As discussed in the proposal, EPA believes that the general basis for prohibiting the placement of liquids in landfills—that liquids fundamentally increase the risk of future releases from the landfill—also applies to CAMUs. The Agency does not believe that, in general, placement of liquids enhances the performance of long-term disposal units (65 FR 51091, August 22, 2000). Commenters generally supported this approach, and the Agency is promulgating these provisions as proposed.

EPA is promulgating four provisions related to the placement of liquids in CAMUs. First, at 40 CFR 264.552(a)(3)(i), the Agency prohibits the placement of bulk or non-containerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU except where placement of such wastes facilitates the remedy selected for the waste. Second, at 40 CFR 264.552(a)(3)(ii), EPA prohibits placement of containers holding free liquids in CAMUs, unless such placement facilitates the remedy selected for the waste.

Third, at 40 CFR 264.552(a)(3)(iii), EPA prohibits placement of any liquid that is not a hazardous waste in a CAMU unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to 40 CFR 264.314(f). Under this demonstration, the Regional Administrator must determine that the only reasonable alternative to placement in a CAMU is placement in a landfill or unlined surface impoundment that contains (or may be reasonably anticipated to contain) hazardous waste and that placement in a CAMU will not present a risk of contamination of any underground source of drinking water, as defined in 40 CFR 144.3. Fourth, EPA specifies that the absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with 40 CFR 264.314(c) and that sorbents used to treat free liquids in CAMUs must meet the requirements of 40 CFR 264.314(e).

These changes essentially extend the prohibitions currently in place on placement of liquids in hazardous waste landfills to CAMUs, with the exception that placement of liquids in CAMUs is allowed if it facilitates the remedy for the waste being managed in a CAMU. As discussed in the proposal, the Agency took this approach for two reasons. First, the general basis for prohibiting placement of liquids in hazardous waste landfills—that liquids fundamentally increase the risk of future releases from the landfill—generally applies to CAMUs. Therefore, the prohibitions on placement of liquids in hazardous waste landfills should apply equally to CAMUs. Second, unlike hazardous waste landfills, which are used for permanent disposal, CAMUs are used to implement a range of remedies, including treatment remedies (65 FR 51091, August 22, 2000). In some cases, remedies may involve placement of liquid CAMU-eligible waste for treatment or other management in a CAMU (e.g., dewatering of CAMU-eligible wastes containing liquids or placement of hazardous ground water in CAMU for infiltration); in other cases, placement of liquids in a CAMU may promote the remedy for non-liquid CAMU-eligible wastes (e.g., when liquids are used for soil washing or to promote certain types of bioremediation). To ensure that these legitimate remedial practices could continue, EPA proposed (and is today finalizing) an exemption to the general prohibition on placement of liquids in CAMUs when such placement facilitates the remedy.

Commenters supported the general prohibition on placement of liquids in CAMUs and the exemption for placement of liquids when such placement would facilitate the remedy, and the Agency is finalizing these provisions as proposed.

In the proposal (65 FR 51091), EPA specifically identified the use of water or leachate for dust suppression while a CAMU is under construction or operating as a reasonable cleanup waste management approach, allowable as facilitating ''the remedy selected for the waste.'' One commenter expressed concern that the regulatory standard, in fact, would not cover this situation. The commenter requested that EPA amend the proposed language so that it allowed placement of liquids where they facilitate ''the performance of the CAMU'' as well as ''the remedy selected for the waste.'' EPA appreciates the commenter's concern, but it does not believe a regulatory change is necessary. In EPA's view, if placement of a liquid facilitates the performance of a CAMU used to manage the waste as part of a cleanup remedy, then clearly it also facilities the remedy selected for the waste.

EPA also recognizes that it may have confused the issue by identifying dust suppression as a use of liquids that would not be subject to the liquids prohibition, because it would facilitate the performance of the remedy. In fact, EPA would not consider use of non-hazardous liquids for dust suppression or similar purposes to be subject to the prohibition in the first place. EPA has long maintained that use of nonhazardous liquids in landfills for dust suppression, watering vegetative caps, and similar purposes is not prohibited by the statutory or regulatory prohibition of liquids in landfills. Because the standard promulgated today simply repeats the statutory prohibition on nonhazardous liquid (with the added condition that placement of liquids would be allowed if it ''facilitates the remedy for the waste''), it similarly

discarded or intended to be discarded by being abandoned (or used as fuels or in a manner constituting disposal when these are not their normal manner of use). 40 CFR 261.33. Therefore the associated LDR requirement would not apply to the product as it was spilled, even if it was spilled after the effective date of the LDR prohibition. Thus, the spill would not constitute a land ban violation triggering consideration of the discretionary kickout provision. For the sake of consistency, however, EPA concludes that it will be easier for facility owners/operators to indicate (if the information is reasonably available) whether a release of a commercial chemical product occurred before or after the date of the land disposal prohibition for the relevant P or U listing.

allows application of nonhazardous liquid wastes for such uses.[17]

F. Design Standards for CAMUs

Today EPA is finalizing, essentially as proposed, three amendments to the design standards for CAMUs in which wastes will remain in place after closure. First, owners/operators must meet minimum liner requirements for new, replacement, or laterally expanded CAMUs. Second, owners/operators must meet minimum design criteria for CAMU caps. Third, owners/operators must notify and take corrective action, as necessary to protect human health and the environment, for any releases from CAMUs to ground water. Today's amendments also establish opportunities for owners/operators to propose, and Regional Administrators to approve, alternate liner and cap designs to accommodate site- and waste-specific circumstances.

EPA proposed these additional design standards as reasonable for CAMUs in which wastes will remain in place after closure and are appropriately consistent with current standards for the design, operation, and closure of other units used for long-term disposal. Given the site-specific nature of cleanups and the need to maintain the incentives for remediation that the CAMU rule provides, the Agency also proposed to allow alternate liner and cap designs, under certain circumstances (65 FR 51091–51095, August 22, 2000).

Comments on the proposal to make the CAMU design standards more specific were mixed. Some commenters supported the new design standards. A number of commenters opposed the Agency's decision to develop minimum national design standards for CAMUs. These commenters suggested that the new minimum national design standards would slow future cleanups using CAMUs or would lead owners/operators to cap cleanup wastes in place rather than pursue more aggressive remediation. Some commenters suggested that EPA abandon the minimum design standards for CAMUs altogether, or express the standards as guidance rather than in regulation. Others suggested that standards for CAMU design should be modeled after the risk reduction goals of the National Contingency Plan or otherwise based on a risk management finding.

As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability in CAMU design and operation and flexibility to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum national design standards are a key element of this balance.

The Agency is not persuaded that minimum national design standards will significantly affect the kinds of remedies selected at cleanup sites (since CAMUs approved to date generally meet these standards). Furthermore, EPA does not have evidence (and commenters did not provide specific evidence) that today's rule would increase the likelihood that facility owners/operators would cap wastes in place rather than pursuing more aggressive remedial approaches. As discussed in the proposal, the majority of new, replacement or laterally expanded CAMUs approved under the 1993 CAMU rule already include liners and capping requirements that would comply with the standards promulgated today. Where liners or caps were not used, there were legitimate reasons related to the cleanup for that decision, and the design generally would have been allowed under today's rule. (65 FR 51092, August 22, 2000; Corrective Action Management Unit (CAMU) Site Background Document, 2001). Nor did commenters provide evidence that today's rule would significantly slow approval of CAMUs. EPA designed the processes in today's rule to mirror those actually used today in CAMU approval, and therefore it does not believe today's rule would significantly add to existing processes. For these reasons, EPA sees no reason why specifying minimum standards, generally consistent with practice to date, would slow down or deter cleanups. Instead, these standards will provide for important predictability in CAMU decision-making and for transparency to the public.

The Agency also does not agree that minimum national design standards should be replaced by a risk-reduction performance goal. While EPA agrees that site-specific factors (including site-specific factors related to risk) are of central importance in cleanup and CAMU determinations, the Agency is not persuaded that a performance standard based solely on risk would ensure the minimum baseline of protection or provide the predictability in CAMU design and operation that the Agency and many stakeholders desire. As discussed above, site- and waste-specific factors are appropriately accommodated in the opportunities for owners/operators to propose and the Regional Administrator to approve alternate CAMU design standards. Commenters provided no specific examples of where a legitimate cleanup would not be accommodated by this approach.

On balance, most commenters who addressed the minimum design standards for CAMUs, including commenters who opposed or questioned the need for such standards, recognized that EPA had to balance a range of concerns in developing the CAMU amendments. Overall, these commenters thought that, if EPA was persuaded that the design standards for CAMUs should be more specific, the approach of establishing minimum national design standards for CAMUs with opportunities for Regional Administrators to approve alternate standards, and the specific standards and approaches proposed, were reasonable. The Agency appreciates this support, and is finalizing the minimum design standards as discussed below.

1. Liner Standard

In the 1993 CAMU rule, the fourth general decision criterion for designation of CAMUs (40 CFR 264.552(c)(4)) specifies that ''areas within the CAMU where wastes remain in place after closure of the CAMU shall be managed and contained so as to minimize further releases to the extent practicable.'' As discussed in the proposal, EPA intended this standard, in conjunction with the closure and post-closure provisions for CAMUs in 40 CFR 264.552(e), to ensure that long-term controls adequate to protect human health and the environment are imposed for CAMUs in which wastes will remain for long-term disposal (65 FR 51091, August 22, 2000).

In practice, pursuant to the 1993 CAMU rule, Regional Administrators have required liners on a site-specific basis for most new, replacement, or laterally expanded CAMUs. The 1993 CAMU rule, however, does not have explicit minimum liner requirements for CAMUs in which wastes will remain after closure. Some stakeholders expressed the concern that the 1993

[17] See, e.g., the April 30, 1986 guidance, ''Restrictions on Placement on Nonhazardous Liquids in Hazardous Waste Landfills'' OSWER Directive 9487.01–1A(85), in which EPA states, ''uses of nonhazardous liquids that are necessary to meet other regulatory or safety requirements, including EPA-approved corrective actions are not considered to be subject to the restrictions under RCRA section 3004(c)(3). . . . For this reason, uses such as the following should not be subject to the restrictions under section 3004(c)(3): dust suppression, fire fighting, intermittent watering of vegetative cover, moistening of a clay cap to prevent cracking or offgassing, washing of landfill equipment, and herbicide or pesticide treatment to control certain organisms that could break a cap or liner. In addition, EPA believes that the use of liquids for approved corrective action purposes (e.g., landfill washing or soil flushing to reduce hazardous waste concentrations) does not require an owner or operator to apply for an exemption under section 3004(c)(3).''

CAMU rule standard, while implemented appropriately in practice to date, was too open-ended and would benefit from increased detail to better ensure that liners are designed adequately and used where appropriate. This approach would also make CAMU design more predictable for the public. In response to these concerns, EPA proposed and is today finalizing a minimum national liner standard for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. To ensure the flexibility needed for cleanups, the Agency also proposed and is today finalizing opportunities for owners/operators to propose and Regional Administrators to approve alternate liner standards. Comments on the standards are addressed in the standard-specific sections, below.

a. Standard Liner Design (40 CFR 264.552(e)(3)(i))

Today's minimum national CAMU liner standard at 40 CFR 264.552(e)(3)(i) is modeled after the uniform design standard for municipal solid waste landfills currently in place at 40 CFR 258.40(a)(2). Under today's CAMU standard, all new, replacement, or laterally expanded CAMUs in which wastes will remain after closure must be constructed with a composite liner and a leachate collection system (unless the Regional Administrator approves an alternate site-specific standard). Today's standard requires a composite liner consisting of two components: (1) An upper flexible membrane liner with a minimum thickness of 30-mil, and (2) a lower component consisting of at least two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$cm/sec. The rule requires the upper flexible membrane liner component to be installed in direct and uniform contact with the compacted soil component. Flexible membrane liners consisting of high density polyethylene must be at least 60-mil thick. The leachate collection system must be constructed to maintain less than a 30-cm depth of leachate over the liner. Commenters who addressed the specific minimum national liner design requirements generally supported the requirements as reasonable, and the Agency is finalizing these provisions as proposed.

The Agency believes that these standards are appropriate minimum national standards for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure, because they will, among other things, be protective across a wide range of waste and site conditions. They also reflect what has generally been EPA and state practice at CAMUs to date. (See CAMU Site Background Document.) Indeed, commenters who addressed the specific liner and leachate collection standards proposed generally agreed that the RCRA Subtitle D standards were appropriate for CAMUs. In addition, by using the standards for municipal solid waste landfills as a guide, the Agency avoids the implementation issues associated with promulgation of a new standard. Guidance on application of the standards for municipal solid waste landfills is already available. See, for example, Solid Waste Disposal Facility Criteria, 56 FR 50978, October 9, 1991 and EPA's 1993 guidance, Solid Waste Disposal Facility Criteria: Technical Manual (EPA 530–R–93–017, November 1993), available on the Internet at *www.epa.gov/epaoswer/non-hw/muncpl/landfill/tecnman/intro.pdf.*

The new minimum national design standards (and alternate standards, discussed below) apply only to new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. As discussed in the proposal, the terms ''new,'' ''replacement,'' or ''laterally expanded'' should be interpreted consistently with guidance EPA has developed for ''new,'' ''replacement,'' and ''laterally expanded'' landfills and surface impoundments in the context of the liner and leak detection requirements of RCRA section 3004(o) (65 FR 51092, August 22, 2000). Unlike hazardous waste landfills and surface impoundments addressed by section 3004(o), however, as discussed above, ''existing'' and ''new'' CAMUs are not defined by a specific date. For CAMUs, ''new'' has its common meaning. That is, a CAMU built as part of a remedial action would be ''new.'' An existing unit that a Regional Administrator designates as a CAMU is not ''new'' and would not be subject to the design standards promulgated today. Over the years, EPA has issued guidance on application of the terms ''new,'' ''replacement,'' and ''laterally expanded.'' The Agency has placed key elements of this guidance in the docket for today's rulemaking.

One commenter expressed the concern that the proposal did not adequately describe ''existing'' units. Citing a 1985 EPA memorandum on application of the section 3004(o) standards,[18] the commenter argued that relying on this interpretation of ''existing'' would eliminate virtually all nonhazardous solid waste management units at corrective action facilities.

The guidance cited was not placed in the docket for the proposal and does not define the Agency's approach for determining which units are ''existing'' for purposes of today's CAMU design standards. RCRA section 3004(o) established minimum liner and leachate detection standards for hazardous waste landfills and surface impoundments built after November 8, 1984, the effective date of HSWA. Therefore, EPA guidance at the time defined ''new'' in relation to the specific effective date of the section 3004(o) requirements—i.e., units built after that effective date were considered ''new.'' In referencing guidance on the terms ''new,'' ''replacement,'' and ''laterally expanded'' in the proposal, the Agency was referring to its general principles for application of these terms, not to its determinations of specific effective dates of section 3004(o) requirements for specific types of units. To respond directly, EPA clarifies that, for the purposes of the CAMU design standards promulgated today, solid waste management units that are in existence at the time of a remedial action are not considered ''new'' units if they are designated as a CAMU.

b. Alternate Liner Designs (40 CFR 264.552(e)(3)(ii))

EPA proposed two provisions that would allow Regional Administrators to approve alternate liner designs for new, replacement, or laterally expanded CAMUs in which wastes will remain after closure. Under certain circumstances, such designs may include alternatives that do not include a liner or leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(A), owners/operators may propose and Regional Administrators may approve alternate liner and leachate collection system designs based on a finding that alternate design and operating practices, together with location characteristics, will prevent migration of hazardous constituents into ground or surface water at least as effectively as the standard liner and leachate collection system. As discussed in the proposal, this standard is patterned on the statutory alternate liner standard for hazardous waste land disposal units at RCRA section (o)(2), promulgated by EPA at 40 CFR 264.301(d) (65 FR 51092, August 22, 2000). This allows for alternate liner and leachate collection

[18] The guidance document cited by the commenter is Applicability of the HSWA Minimum Technology Requirements Respecting Liners and Leachate Collection Systems, April 1, 1985, available in the RCRA permit policy compendium as document 9480.1985(01).

system designs for hazardous waste landfills provided the alternate design, in conjunction with location characteristics, will achieve technical performance equal to the standard liner and leachate collection system design. As discussed in the proposal (65 FR 51092), EPA expects this provision would provide flexibility for designs that take into account local factors, including state design protocols and availability of construction materials.

Several commenters addressed the proposal to include ''location characteristics'' as a consideration in determining whether an alternate liner design would prevent migration as effectively as the standard liner and leachate collection system. Commenters who addressed this issue agreed that allowing Regional Administrators to consider location characteristics when approving alternate liner designs is appropriate. Commenters suggested that location characteristics that might influence technical performance of alternate liner and leachate collection system designs could include climate, geology, hydrology, and soil chemistry at a site. The Agency agrees that these considerations are among the location characteristics that might be considered.

Commenters also suggested that the chemical and physical characteristics of specific wastes that will remain in a CAMU after closure should be considered ''location characteristics'' that may influence the technical performance of alternate liner and leachate collection designs. The Agency does not agree with this view. At the same time, it is reasonable for Regional Administrators to consider the physical and chemical characteristics of waste, such as a waste form's potential for leaching hazardous constituents, in comparing whether an alternate liner system will prevent migration as effectively as the standard liner and leachate collection system.

Under 40 CFR 264.552(e)(3)(ii)(B) owners/operators may propose and Regional Administrators may approve alternate approaches to liner and leachate collection systems for new, replacement, and laterally expanded CAMUs in which wastes will remain after closure, where a CAMU is ''to be established in an area with significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.'' Commenters generally support this approach, and EPA is finalizing these provisions as proposed.

As discussed in the proposal, EPA believes that it may be appropriate to approve CAMU designs that do not include a liner or leachate collection system under certain circumstances (65 FR 51093, August 22, 2000). For example, at some highly contaminated facilities, CAMUs may be located in areas of significant contamination is pervasive throughout the subsurface. At such facilities, remedial approaches may involve long-term ground water pump-and-treat systems, or subsurface soil contamination may be expected to remain in place as a source of ground water contamination. At these types of facilities, a liner and leachate collection system to reduce migration of hazardous constituents into an already significantly contaminated subsurface likely would not meaningfully increase protection of human health or the environment and would not be the best use of cleanup resources. When approving alternate designs that do not include a liner or leachate collection system, the Regional Administrator must find that potential migration of hazardous constituents from the CAMU will be consistent with the remedial goals for the facility (for example, not cause cleanup goals to be exceeded at locations where potential receptors would be located) (see 65 FR 51093).

The Agency also believes that the alternate approaches to liners and leachate collection systems allowed under 40 CFR 264.552(e)(3)(ii)(B) will be helpful when CAMUs are used for land treatment. As discussed in the proposal, land treatment generally does not involve the use of liners because it typically requires that rainwater or introduced liquids percolate through the waste and the underlying soil column (65 FR 51093, August 22, 2000). Also, as discussed in the proposal, EPA expects that many CAMUs used for land treatment will be existing units (see discussion above) and will not be subject to the minimum liner standards established today. In situations where an existing unit is not used, the Agency believes that land treatment CAMUs will be established in areas of significant contamination and thus will be accommodated by this provision allowing approval of CAMUs without liners or leachate collection systems. The Agency specifically requested comment on whether its proposed approach to alternate liners and leachate collection systems adequately addressed land treatment. Commenters who addressed this issue believed that land treatment was adequately accommodated.

2. Cap Standard

Under the 1993 CAMU rule at 40 CFR 264.552(e)(4)(ii)(B), owners/operators are required to cap CAMUs in which waste will remain in place after closure. Similar to the 1993 approach to liner and leachate collection systems (discussed above), the 1993 CAMU rule did not have explicit minimum cap design criteria for CAMUs. Some stakeholders expressed the concern that the 1993 CAMU rule standard was too open-ended and would benefit from increased detail to better ensure that caps are properly designed. In response to these concerns, EPA proposed and is today finalizing a minimum national cap design standard for CAMUs in which wastes will remain after closure. To maintain the flexibility necessary to encourage cleanups, the Agency also proposed, and is today finalizing, opportunities for owners/operators to propose and Regional Administrators to approve alternate cap standards.

The proposed cap standard for CAMUs would have required caps for all CAMUs where waste remained in place after closure. However, the Agency also specifically requested comment on situations where treatment of waste in a CAMU would reduce concentrations of hazardous constituents to health-based levels or below. The Agency expressed the concern that, although ''waste'' may remain in such units after closure, capping would not be needed to protect humans or the environment, because constituent concentrations would already be at or below health-based levels. Therefore, requiring capping would be an unnecessary and inappropriate use of cleanup resources. EPA offered specific alternative regulatory language to address this issue in the proposal; under the alternate language, caps would be required only where waste remained in place at the closed CAMU ''above remedial levels or goals applicable to the site'' (65 FR 51094, August 22, 2000.)

Commenters who addressed this issue agreed that caps would not be appropriate where concentrations of hazardous constituents are at or below health-based levels. In response to these comments, the Agency is modifying the standard for CAMU caps as discussed in the proposal. The final standard now reads, in pertinent part: ''At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU with constituent concentrations above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to

meet the following performance criteria * * * '' As discussed later in today's rulemaking, this approach is consistent with the Agency's approach to situations where concentrations of hazardous constituents are at or below health-based levels when wastes are first placed in a CAMU. (See discussion of 40 CFR 264.552(g).)

a. Standard Cap Design (40 CFR 264.552(e)(6)(iv))

Today's minimum national cap design standard for CAMUs in which wastes will remain after closure is modeled after the cap design standards for hazardous waste landfills at 40 CFR 264.310(a). Under today's rule, unless Regional Administrators approve alternate site-specific standards, CAMU caps must be designed and constructed to meet five performance criteria. First, the cap must provide long-term minimization of migration of liquids through the closed CAMU. Second, the cap must function with minimum maintenance. Third, the cap must promote drainage and minimize erosion or abrasion of the cover. Fourth, the cap must accommodate settling and subsidence so that the integrity of the cover is maintained. Fifth, the cap must have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. As discussed earlier in this preamble (see section III.F, above), comments on the overarching concept of minimum national design standards for CAMUs were mixed. However, as with the standards for liners discussed above, commenters who specifically addressed the proposed minimum national standards for CAMU caps generally supported the proposed standards as reasonable. With the change discussed above, the Agency is finalizing the cap standard as proposed.

As discussed in the proposal, although the performance criteria for CAMU caps are modeled after the criteria for hazardous waste landfills, the Agency believes that CAMU caps will not generally be constructed like the caps required under RCRA Subtitle C for hazardous waste landfills (65 FR 51094, August 22, 2000). This is because the standard for permeability of the cap is set in relationship to the liner—the cap must be of equal or lower permeability than the liner. The minimum national standards for CAMU liners promulgated today apply only to new, replacement, or laterally expanded CAMUs and are modeled after the liner standards for municipal disposal facilities regulated under Subtitle D, not the standards for hazardous waste landfills regulated under Subtitle C. Given the range of liner approaches that may be taken for CAMUs under today's regulations (e.g., existing units where the new minimum national liner standards do not apply; new, replacement, or laterally expanded CAMUs with Subtitle D type liners; new, replacement, or laterally expanded CAMUs with alternate liner designs), the Agency expects a similar range of approaches to the design and construction of CAMU caps.

Also as discussed in the proposal, the minimum permeability standard for CAMU caps may be met in a variety of ways including with systems that are designed to use the water uptake capability of vegetation (65 FR 51094, August 22, 2000). As a result, it will not always be necessary for the construction materials of the cap to match the construction materials of the liner (if a liner is present) to meet the permeability standard. For more discussion on the range of cap designs that might meet the minimum permeability standard, see the preamble discussion to the July 1997 revised standards for municipal solid waste landfills (62 FR 40710, July 29, 1997).

b. Alternate Cap Designs (40 CFR 264.552(e)(6)(iv)(B))

EPA proposed and is today finalizing a provision allowing Regional Administrators to approve alternate cap designs. Under this provision, owners/operators may propose and Regional Administrators may approve alternate cap designs when such designs facilitate treatment or the performance of the CAMU. As discussed in the proposal, this provision might be used, for example, to promote continued biotreatment of wastes remaining in CAMUs after closure by allowing infiltration of rainwater through the cap into the wastes (65 FR 51094, August 22, 2000). Alternative designs might also be appropriate for caps that rely on evapotranspiration through plants to prevent infiltration of liquids. Commenters who addressed this issue generally supported the Agency's approach to alternate cap standards, and the Agency is finalizing these provisions as proposed.

3. Releases to Ground Water (40 CFR 264.552(e)(5)(iii))

The 1993 CAMU rule included at 40 CFR 264.552(e)(5) a provision for monitoring existing releases to ground water and identifying any new releases from wastes remaining in CAMUs after closure. The 1993 rule, however, did not include provisions that specifically require owners/operators to notify Regional Administrators of releases to ground water from CAMUs or to take corrective action for such releases. As discussed in the proposal, EPA expected that such requirements would be imposed on a site-specific basis under the general CAMU designation criteria at 40 CFR 264.552(c)(2) and other authorities (65 FR 51095, August 22, 2000). However, because protection from future releases is a critical aspect of CAMUs (or any hazardous waste management unit), the Agency proposed and is today finalizing an express requirement for ''notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water'' from CAMUs. Commenters who addressed the issue generally supported this approach.

As discussed in the proposal, the new requirement for notification and corrective action as necessary to protect human health and the environment does not change the more general performance standards for CAMUs. Consistent with the Agency's policies on ground water remediation,[19] the Agency believes that decisions about the details of ground water monitoring programs, including monitoring and reporting (i.e., ''notification'') frequencies for CAMUs and, if necessary, decisions about corrective action for releases to ground water from CAMUs, should be made in the context of overall site remedial approaches (65 FR 51095, August 22, 2000). For example, as discussed in the proposal, monitoring and reporting frequencies are typically established on a site-specific basis in sampling and analysis plans that reflect site-specific conditions. These conditions may include the extent of existing contamination, distance to nearest ground water well, ground water flow rates, and statistical sampling protocols.

The Agency expects that notification requirements, will similarly be determined on a site-specific basis in the context of these types of site-specific plans. Like the standard for ground water monitoring established in the 1993 CAMU rule, the standard for notification and corrective action for releases to ground water established today—''as necessary to protect human health and the environment''—is a performance standard. The Agency expects that more detailed

[19] See, e.g., Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities, Advance Notice of Proposed Rulemaking at 61 FR 19432, 19461 (May 1, 1996) and Presumptive Response Strategy and Ex Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites, EPA 540/R–96/023, October, 1996.

specifications or performance goals for ground water monitoring, notification, and corrective action will be included in CAMU permits or orders based on site-specific information and conditions.

G. Treatment Requirements (40 CFR 264.552(e)(4))

Today's rulemaking establishes a new framework for treatment of wastes placed in CAMUs. Under this new framework, ''principal hazardous constituents,'' or ''PHCs,'' must meet either minimum national treatment standards adapted from the LDR Phase IV soil treatment standards or, in specific circumstances, site-specific treatment standards based on defined adjustment factors. In the 1993 CAMU rule, EPA did not establish specific minimum treatment requirements. Instead, the Agency emphasized the importance of treatment in a performance standard, requiring that CAMUs ''enable the use, when appropriate, of treatment technologies * * * to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility or volume of wastes that will remain in place after closure.'' The new framework for treatment of wastes placed in CAMUs and the specific treatment standards and adjustment factors established today address concerns that the 1993 CAMU rule did not contain explicit requirements for treatment (or treatment standards) and that this deficiency might, in some cases, result in insufficient treatment of higher-risk wastes.[20] As EPA explained in the proposal (65 FR 51084), the Agency believes that minimum national standards will have significant benefits. Such standards can make the CAMU process more consistent nationally, and the results more predictable, as well as more explicit for the public. Such standards can also make implementation of the rule less vulnerable to mistakes or abuse.

Treatment requirements for CAMU-eligible wastes and, more generally, the application of RCRA LDR treatment standards to wastes managed during cleanups are, perhaps, the most difficult issues addressed by the CAMU amendments. The Agency's position on these issues was clearly articulated in the proposal and, because these are important and longstanding issues, bears repeating:

> In developing today's treatment requirements, EPA considered what approaches to treatment would be appropriate in the context of the primary purpose of the CAMU rule, i.e., in the context of reducing disincentives to cleanup. During cleanup it is not always straightforward, possible, or reasonable to require owners/operators to excavate or remove contaminated material, because of the costs and practical issues associated with potential application of the RCRA requirements for as-generated wastes to excavated material and because there is often a legal option to leave material in place. This is particularly an issue with respect to application of the LDR treatment standards for as-generated wastes to wastes managed for implementing cleanup. Part of the benefit of the LDR treatment standards for as-generated wastes is that they create an incentive to generate less waste. At cleanup sites, contamination has already occurred, i.e., ''wastes'' have already been generated, and the incentive to generate less waste tends to work against the goal of cleanup, which is often to maximize the amount of waste managed in order to more aggressively manage and, where appropriate, remove the threats it poses. For a fuller discussion of this issue, see the May 26, 1998, LDR Phase IV rule establishing the soil treatment standards, at 63 FR 28556, 28603. All of the Agency's attempts to address these issues have been designed to promote more aggressive cleanups, that is, to promote cleanups that rely more heavily on excavation and management and include an appropriate degree of treatment. EPA believes that, in general, these types of cleanup result in more permanent remedies. (65 FR 51095, August 22, 2000).

Comments on EPA's proposal to establish treatment requirements, and specific treatment standards and adjustment factors for wastes placed in CAMUs were mixed. As with the CAMU design and operating standards discussed above, some commenters supported the proposed establishment of a baseline treatment requirement for wastes placed in CAMUs. Other commenters opposed the new treatment requirements, arguing that they would slow future cleanups or recreate disincentives to excavating and managing wastes and contaminated materials during cleanup. Some commenters suggested that EPA eliminate the treatment requirements altogether or, if treatment must be required, provide that treatment requirements be developed on a site-specific basis considering site risks.

The Agency does not agree that proposed CAMU treatment standards should be eliminated. As discussed throughout the proposal and today's rulemaking, EPA is attempting in these amendments to strike a reasonable balance between predictability for CAMU operation and the flexibility necessary to use CAMUs over a range of site- and waste-specific conditions. EPA believes that appropriate minimum treatment requirements for wastes that are placed in CAMUs are an important element of this balance.

The Agency does not believe that today's treatment requirements will deter cleanups. As discussed in the proposal, EPA evaluated CAMUs approved under the 1993 rule against today's treatment requirements and concluded that existing CAMU remedies involving treatment would still require treatment under today's requirements and that, similarly, existing CAMU remedies that do not involve treatment would not require treatment under today's requirements (65 FR 51096, August 22, 2000 and CAMU Background Document). Likewise, the amount of treatment required in specific instances is not expected to change. Nothing in the comments on the proposal (nor in the Agency's update of its analysis for today's rule) counters these conclusions. As explained earlier, EPA also believes these standards will have significant benefits in terms of consistency, predictability and reduction in the likelihood of mistakes or abuse.

While the Agency agrees that site-specific factors, including site-specific factors related to risk, are appropriate (under certain circumstances) to consider in adjusting treatment requirements, the Agency is not persuaded that a risk-reduction standard alone would provide the predictability in decision making about treatment of wastes placed in CAMUs that the Agency and many stakeholders desire. It is EPA's conclusion, based on its evaluation of CAMUs approved under the current risk-based CAMU standards (and the lack of comments on that evaluation), that site- and waste-specific factors, including factors related to risk, are appropriately accommodated in the treatment standard adjustments, as discussed later in today's rulemaking. The Agency also notes that, while some commenters supported a completely risk-based approach, most supported the proposed treatment requirements as reasonable.

For these reasons, EPA is promulgating the treatment requirements essentially as proposed and as discussed below.[21]

[20] As discussed in the proposal, the Agency does not believe the 1993 CAMU rule has resulted in insufficient treatment in practice. Treatment has been used at more than 70% of CAMUs approved under the 1993 rule. EPA continues to believe that CAMU remedies that require treatment under the 1993 rule would likewise require treatment under today's rulemaking; similarly, EPA believes that CAMU remedies that, under the 1993 rule do not require treatment where treatment was not required under the 1993 rule would properly not require treatment under today's rulemaking (65 FR 51096, August 22, 2000).

[21] EPA suggests that readers interested in more specific insight into how EPA intends to apply the treatment conditions of today's rule may wish to

Continued

1. Identification of ''Principal Hazardous Constituents'' (PHCs) (40 CFR 264.552(e)(4)(i) and (ii))

The Agency proposed that the treatment standards established today would apply only to ''principal hazardous constituents,'' or ''PHCs.'' Commenters supported this approach, and the Agency is finalizing the PHC approach with one clarifying change. As discussed below, the Agency is amending the proposed regulatory language defining PHCs based on ground water risks to emphasize that the general performance standards for PHCs apply to the selection of these PHCs as well.

Under today's rulemaking, PHCs are defined as those constituents that ''pose a risk to human health or the environment that is substantially higher than the cleanup levels or goals at the site.'' The Regional Administrator selects PHCs from those constituents that would otherwise be subject to treatment under the RCRA LDR treatment standards for as-generated waste. As proposed, EPA is requiring that ''in general, the Regional Administrator will designate as principal hazardous constituents: carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.''

Today's rule also requires that: ''The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.'' Note that, in response to comment and to be consistent with the description of designation of ''other constituents'' as PHCs (below), the Agency has added the phrase ''when risks to human health and the environment are substantially higher than the cleanup levels or goals for the site.''

Finally, as proposed, the Agency is requiring that ''The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.''

Each of the PHC criteria are discussed more completely in the sections below.

a. Approach to Identifying PHCs

During the site characterization efforts associated with cleanup, owners/operators and overseeing agencies typically identify which wastes are hazardous, which materials warrant remediation or removal, and which constituents will be used to set site cleanup levels. This process results in the identification of what are generally known as the ''risk drivers'' at a site. As discussed in the proposal, EPA continues to expect that the site characterization and evaluation processes that lead to remedy selection and (in some cases) to the decision to consider use of a CAMU will reliably identify PHCs. The Agency emphasizes that it views identification of PHCs as a normal part of well-designed cleanup processes, not a separate analysis. Commenters who addressed this issue agreed that the site characterization typically carried out during well-designed cleanups would generally provide the information necessary to support a PHC determination and that, therefore, a separate analysis should not be needed.

As discussed in the proposal, the designation of PHCs is made in relation to site cleanup levels or goals—that is, PHCs are those constituents that pose a risk to human health and the environment substantially higher than cleanup levels identified as protective of human health and the environment for the site (65 FR 51097, August 22, 2000). EPA took this approach based on a view that it is appropriate to designate PHCs in the context of the cleanup levels or goals set for a site, because in situations where PHCs are designated, the CAMU will generally be a permanent disposal unit.[22] Site cleanup levels or goals typically take into account such factors as reasonably anticipated land use (e.g., residential, industrial, or agricultural) and exposure pathways of concern. Therefore, the Agency believes it is appropriate to designate PHCs in the context of these factors, because the PHC concept is meant to distinguish higher-level risks relative to the risk-reduction goals for a particular site. The Agency did not propose generic national concentrations for PHC determinations, since generic concentrations would almost certainly not reflect remedial activities at individual sites.

As discussed in the proposal, in making determinations of whether PHCs are present in CAMU-eligible wastes, overseeing agencies and owners/operators cannot use pre-treatment of the waste to avoid a PHC determination that would otherwise be made. That is, PHC determinations and the related application of today's treatment standards and adjustment factors should be made based on constituent concentrations in CAMU-eligible waste as the waste is initially managed, not after pre-treatment or other activity intended to reduce constituent concentrations to below PHC levels.

In determining whether PHCs are present, based on risks from ingestion and inhalation, the Regional Administrator to will assume that an individual is directly exposed to the constituents in the CAMU-eligible waste, consistent with the exposure assumptions used to develop site-specific cleanup levels or goals, and to consider reasonably anticipated land use (which could be residential or non-residential). Fate and transport will only be considered for assessing the migration of constituents from waste into ground water or air, for the purpose of determining the risk posed by direct exposure to the ground water or inhalation. Some commenters questioned this approach, recommending that PHC determinations reflect plausible exposures that take into account the protection from exposure provided by a CAMU; these commenters argued that, where the engineering design of a CAMU makes direct contact implausible, EPA should not assume that the exposure might occur. EPA is not persuaded that designation of PHCs should reflect protection from exposure afforded by the engineering of a CAMU, at least when ingestion and inhalation are of concern (see discussion of waste-to-ground water pathway below). As discussed in the proposal, one of the reasons for specifying treatment requirements for CAMUs and for using the PHC approach is to protect against the potential for direct exposure to higher risk constituents in the event a CAMU fails (65 FR 51098, August 22, 2000). (Commenters did not challenge the possibility of such a failure occurring.) Therefore, in PHC determinations, fate and transport can be used only for assessing the potential migration of constituents from CAMU-

consult EPA's Corrective Action Management Unit (CAMU) Site Background Document (October 2001), which is available in the docket to today's rule.

[22] When CAMUs are not intended to be a permanent feature, the Agency believes they will generally be implemented through the provisions for storage and/or treatment only CAMUs, discussed in section I of today's preamble. In this case, the treatment standards would not apply to wastes within the CAMU, since their removal would be required at closure.

eligible waste into ground water or air for the purpose of determining the risk posed by direct exposure to the constituents in ground water or by inhalation at points where receptors are located.

Finally, as discussed in the proposal, the Regional Administrator does not have to wait to make site-specific PHC determinations until activities associated with development and approval of site-specific cleanup levels or goals have been completed. In many cases, it will be possible and appropriate for Regional Administrators to designate site-specific PHCs based on standard cleanup values (see discussion of the use of standard tables, later in today's rulemaking) and/or information available at the time CAMU determinations are made. The Agency believes that, as a general rule, if there is enough information at a site to make a CAMU determination, there will be enough information to identify PHCs in wastes proposed for management in the CAMU.

b. Constituents from Which PHCs Are Drawn (40 CFR 264.552(e)(4)(ii))

The set of constituents from which Regional Administrators might designate PHCs is the set of constituents that, absent a CAMU, would be subject to the LDR treatment requirements. That is, for listed wastes, the ''regulated hazardous constituents'' for the relevant listing found in 40 CFR 268.40, Treatment Standards for Hazardous Wastes); for characteristic hazardous waste, all ''underlying hazardous constituents'' (40 CFR 268.2(c), § 268.40(e)); and for contaminated soil, ''constituents subject to treatment'' (40 CFR 268.49(d)). As discussed in the proposal, the Agency believes that it is appropriate to limit PHCs to constituents that would otherwise be subject to the LDRs, because one of the primary objectives of the CAMU rule is to provide relief from application of the LDR requirements to wastes managed for implementing cleanup (65 FR 51096, August 22, 2000). Commenters supported this approach.

c. Carcinogenic and Non-Carcinogenic PHCs

Under today's rule, the Regional Administrator will generally identify carcinogenic constituents as PHCs when they pose a direct risk from inhalation or ingestion that is at or above a 10^{-3} risk level. As discussed in the proposal, the Agency believes that risks at or above 10^{-3} will generally be ''substantially higher than the cleanup levels or goals at the site'' given that EPA (and most state cleanup programs) generally sets site-specific cleanup levels or goals for carcinogenic constituents within the risk range of 10^{-4} to 10^{-6}, with 10^{-6} used as a point of departure.[23]

In the rare cases where site cleanup levels or goals are established at the upper end of the risk range (i.e., at 10^{-4} risk levels), constituents with concentrations at or above the 10^{-3} risk level should generally be identified as PHCs, because, in general, a level of risk an order of magnitude above the upper end of the risk range would typically be considered a risk substantially higher than site cleanup levels or goals. The Regional Administrator would look closely at concentrations above but near the 10^{-3} risk level in light of assumptions that underlie the risk estimate (e.g., waste characteristics and site conditions) prior to determining whether the particular constituents were principal hazardous constituents. For example, if a constituent posed risks close to a 10^{-3} level, based on conservative default assumptions (e.g., promulgated state default tables or generic assumptions used to determine bioavailability), and the underlying assumptions were not applicable at the site in question, the Regional Administrator could determine that the constituents should not be designated as principal hazardous waste constituents.

Today's rulemaking also provides that the Regional Administrator will generally designate non-carcinogenic constituents as PHCs when they pose a risk from inhalation or ingestion that is greater than or equal to ten times the hazard quotient[24] for the constituent (i.e., an order of magnitude or greater over the reference dose). Hazard quotients are used as a measure of unacceptable exposure to constituents that produce toxic endpoints other than cancer. As discussed in the proposal, the Agency believes that risks ten times the hazard quotient or greater will generally be ''substantially higher than the cleanup levels or goals for the site,'' given that EPA typically sets cleanup goals for individual non-carcinogens at a hazard quotient of one or less. (65 FR 51098, August 22, 2000).

Commenters supported this approach.

Carcinogenic and non-carcinogenic constituents may be identified as PHCs either through a site-specific risk assessment or by a comparison of site concentrations to standard values. As discussed in the proposal, many state (and federal) cleanup programs publish standard tables with cleanup levels based on risks from inhalation or ingestion under various exposure scenarios (65 FR 51097, August 22, 2000). The Regional Administrator may use these tables, where appropriate, to assist in making PHC determinations by extrapolating 10^{-3} risk levels from the standard 10^{-6} table values. While commenters generally agreed with the Agency that such tables could be useful in designating PHCs, some commenters were concerned that the Agency intended the Regional Administrator to require use of standard tables (and, therefore, standard exposure assumptions and assumptions about other factors) to the exclusion of more site-specific approaches. The Agency emphasizes that it is not requiring the use of standard tables to identify PHCs and that either standard tables or site-specific approaches may be used. The Agency recognizes that, in many cases, standard tables are developed using conservative exposure and other assumptions and that these assumptions may not match actual site-specific conditions. As discussed earlier in today's rulemaking, the Agency expects PHCs to be identified as a normal part of the site characterization and evaluation activities associated with well-designed cleanups.

Today's rule, like the proposal, requires that the Regional Administrator ''generally'' identify hazardous constituents as PHCs if constituent concentrations exceed the specified risk levels for carcinogens and non-carcinogens discussed above. However, as discussed in the proposal, there may be site-specific situations where these risk levels are not appropriate for determining PHCs (65 FR 51097, August 22, 2000). The Agency emphasizes that PHC determinations are made on a site-specific basis in the context of site cleanup levels or goals. In situations where the Regional Administrator decides not to identify constituents that meet the above descriptions as PHCs, the Agency expects them to document and explain the decision in the supporting materials associated with the CAMU determination.

[23] For a full discussion of the use of the risk range in setting site-specific cleanup levels or goals in the RCRA corrective action program, see the Corrective Action ANPR (61 FR 19432, 19450, May 1, 1996).

[24] The hazard quotient is the estimated site-specific exposure (dose) over a specified period divided by the reference dose for the constituent in question over similar exposure conditions. A reference dose is an estimate of a daily exposure to the general population of humans, including sensitive sub-populations, that is not likely to have an appreciable risk of adverse effects during a lifetime. The magnitude of an adverse effect is not always related directly to the magnitude of the hazard quotient. The Agency's Integrated Risk Information System (IRIS) database has a more detailed description of reference doses and hazard quotients, see *www.epa.gov/iris*.

d. PHCs Identified Based on the Waste-to-Ground Water Pathway (40 CFR 264.552(e)(4)(i)(B))

In addition to designating PHCs based on carcinogenic and non-carcinogenic risks to humans from direct exposure through inhalation and ingestion, Regional Administrators will, where appropriate, designate PHCs based on the risk posed by the potential migration of constituents from wastes to ground water. As discussed in the proposal, the Agency expects that in making such determinations Regional Administrators will consider site-specific factors that could affect constituent migration. These site-specific factors could include factors such as the location of the CAMU, the nature of the wastes placed in the CAMU (e.g., mobility), how the waste placed in the CAMU will be managed (e.g., the type of CAMU that will be used and potential rates of liquid percolation into and out of the unit), factors that affect transport of constituents to ground water, and beneficial uses of ground water. As discussed in the proposal, in situations where constituents in soil pose a significant potential threat through the ground water pathway (e.g., based on fate and transport modeling) and the soil is excavated for disposal in a CAMU, the Regional Administrator should strongly consider whether to designate such constituents as PHCs if they are not otherwise designated as PHCs under the approach for direct human exposure to carcinogens and non-carcinogens discussed above (65 FR 51098, August 22, 2000).

The approach to designating PHCs based on risks from the waste-to-ground-water pathway is different from the approach taken to designating PHCs based on direct exposure through ingestion. It does not specify a generally appropriate risk level that would typically define PHCs, and it allows for consideration of additional factors that potentially affect exposure. As discussed in the proposal, EPA believes that this approach is appropriate because, among other things, of the highly site-specific nature of the waste-to-ground-water pathway (65 FR 51098, August 22, 2000). Commenters supported this conclusion.

While commenters who addressed the issue generally supported EPA's proposed approach to identification of PHCs based on the waste-to-ground-water pathway, some commenters expressed concern about the specific regulatory language. Commenters argued that, because the regulatory language describing identification of PHCs based on the waste-to-ground-water pathway did not include the overall PHC standard of ''risks substantially higher than site cleanup levels or goals,'' the provision could be read as standardless. The Agency believes that the overreaching standard for identifying PHCs at 40 CFR 264.552(e)(4)(i) is clear; PHCs are constituents that, on a site-specific basis, ''pose a risk substantially higher than the cleanup levels or goals for the site.'' However, to eliminate any potential confusion over the PHC standard as it applies to the waste-to-ground-water pathway, the Agency has modified from the proposal the regulatory language describing the waste-to-ground-water pathway to reiterate the overall standard for identification of PHCs. The new language reads, ''The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health or the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than the cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.'' This revised regulatory language is consistent with the comparable regulatory language addressing the designation of PHCs based on other risks (see 40 CFR 264.552(e)(4)(i)(C) and discussion below).

e. Designation of Other PHCs (40 CFR 264.552(e)(4)(i)(C))

As discussed above, EPA is today establishing a general framework for site-specific identification of PHCs that emphasizes risks to humans from direct ingestion and inhalation and highlights the waste-to-ground-water pathway. The Agency believes that this framework will result in the identification of constituents that pose risks ''substantially higher'' than the cleanup levels or goals for a site. The Agency also believes that this approach will screen out constituents posing lower risks, and CAMU-eligible wastes with lower concentrations of higher-risk constituents. However, there may be other types of site-specific circumstances where constituents pose risks that are ''substantially higher than the cleanup levels or goals for the site,'' for example, based on risk scenarios not otherwise addressed in the other PHC determinations.

The Regional Administrator might, on a site-specific basis, for example, designate PHCs based on ecological concerns, potential risks posed by dermal contact, or constituent mobility. PHCs might be designated at risk levels higher or lower than the standard risk levels discussed for carcinogens and non-carcinogens above. For example, the Regional Administrator could determine that a highly mobile constituent posing a risk of 10^{-4} is a principal hazardous constituent at a site where protection of ground water is an especially significant issue. To emphasize that PHCs may be designated based on all appropriate site-specific considerations, EPA proposed and is today finalizing a provision that ''the Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals for the site.''

Some commenters expressed concern that, by emphasizing the Regional Administrator's ability to designate PHCs based on risks other than those posed by direct exposure to humans through inhalation or ingestion or from the waste-to-ground-water pathway, the Agency would render moot the general guidelines for establishing PHCs. The Agency disagrees that this result will occur. As discussed throughout today's rulemaking, during cleanups overseeing agencies encounter a diversity of site-specific conditions. While EPA believes that considering risks posed by direct exposure to humans through inhalation and ingestion as well as risks posed by migration of contamination from wastes to ground water will most often result in appropriate identification of PHCs (because these are the issues that typically drive cleanup decisions), the Agency cannot rule out identification of PHCs based on other site-specific risk factors. As with other PHC designations, these designations would be made only when constituents pose risks that are ''substantially higher than the cleanup levels or goals for the site.'' The Agency would expect PHCs based on factors other than direct exposure to humans through ingestion or inhalation or risks from the waste-to-ground-water pathway would be considered where such factors were among the risk drivers for cleanup at a site, and contaminants were identified at levels substantially higher than cleanup goals.. On the other hand, the Agency does not expect that PHCs will be designated based on ecological risks unless ecological risk concerns are among the drivers for site cleanup levels or goals.

f. Relationship of PHCs to ''Principal Threats'' Guidance

In the proposal, the Agency discussed its approach to principal hazardous constituents and to treatment requirements in relation to the Agency's general and longstanding preference for treatment of higher-risk wastes during cleanup (65 FR 51098, August 22, 2000). The Agency observed that the PHC concept is consistent with the ''principal threats'' approach used in the CERCLA and RCRA corrective action programs to express the Agency's general preference for treatment of higher-risk wastes. Commenters were concerned that this presentation of the PHC approach as consistent with the ''principal threats'' approach could be misleading. These commenters noted that the principal threats approach is often used to inform choices between various remedial approaches and to determine which wastes are likely to need active management, while the PHC approach is meant to identify higher-risk constituents in CAMU-eligible wastes that would, absent the CAMU regulations, be subject to RCRA LDR treatment standards. Furthermore, these commenters noted that the PHC concept applies after a decision has been made to excavate and manage cleanup wastes.

The Agency agrees that the PHC approach and the ''principal threats'' concept apply at different points in cleanup processes and are used for different purposes. EPA's statements on this matter were only meant to observe that, like the ''principal threats'' concept, the PHC approach focuses on the higher-risk subset of wastes under consideration. For a fuller discussion of the application of the ''principal threats'' concept during RCRA corrective action, see Corrective Action ANPR (61 FR 19432, 19448 (May 1, 1996)). Also see ''A Guide to Principal Threats and Low Level Threat Waste,'' OSWER Directive 9380.3–06FS, November 1991.

2. Treatment Standards (40 CFR 264.552(e)(4)(iii))

Under today's new framework for treatment of wastes placed in CAMUs, principal hazardous constituents must be treated to achieve minimum national treatment standards or, in certain circumstances, site-specific treatment standards developed through application of a number of adjustment factors. As discussed in the proposal, the Agency believes that this approach—minimum national standards with appropriate opportunities for site-specific adjustments—represents a reasonable balance by setting specific treatment standards while preserving the flexibility needed to address a range of site- and waste-specific circumstances. The Agency also believes that the CAMU treatment standards and specified adjustment factors will provide a valuable benchmark against which the public can review treatment options under consideration. Details of the minimum national treatment standards and application of the adjustment factors are discussed below.

a. Minimum National Treatment Standards (40 CFR 264.552(e)(4)(iv))

(1) Standard of 90% Capped by 10XUTS

EPA proposed and is today finalizing a minimum national treatment standard of ninety (90) percent reduction in concentrations of PHCs unless such treatment would result in concentrations that are less than ten (10) times the relevant Universal Treatment Standard (UTS), in which case treatment would be capped at ten times the universal treatment standard. This standard was established for hazardous contaminated soil in the LDR Phase IV rule and is commonly referred to as ''90% capped by 10xUTS.'' For details on implementation of this standard, see the description in the LDR Phase IV rule, 40 CFR 268.49, 63 FR 28556, 28605 (May 26, 1998). Universal treatment standards are identified in 40 CFR 268.48, Universal Treatment Standards Table.

Today's treatment standard applies to both soil and non-soil wastes, including sludges and debris. Debris subject to today's treatment standards (i.e., CAMU-eligible debris that contain PHCs) must be treated using the current LDR treatment standards for hazardous debris at 40 CFR 264.45 or the CAMU treatment standards, whichever the Regional Administrator deems appropriate. Consistent with the approach it took for hazardous contaminated soils in the Phase IV rule, EPA is also requiring that wastes subject to today's treatment standards (i.e., CAMU-eligible waste that contains PHCs) that exhibit the hazardous characteristics of ignitability, corrosivity, or reactivity must be treated to eliminate such characteristics.

As discussed in the proposal, the Agency believes the 90% capped by 10xUTS treatment standard is appropriate and will generally result in meaningful treatment (65 FR 51100, August 22, 2000). Reducing concentrations of PHCs by 90% is a substantial reduction and, in cases where treatment is capped at 10xUTS, this is a relatively small increment over constituent concentrations established at the limits of the performance of available technology (i.e., the UTS levels that are established based on a Best Demonstrated Available Technology standard). The Agency continues to believe that the 90% capped by 10xUTS treatment standard is generally achievable in soils using technologies other than combustion. Because soil contaminated with hazardous waste is generally more difficult to treat than hazardous waste alone, the Agency believes that today's treatment standards can likewise be achieved in non-soil CAMU-eligible wastes using technologies other than combustion. For a fuller discussion of the achievability of the soil treatment standards, see the LDR Phase IV rule at 63 FR 28556, 28603 (May 26, 1998). As discussed in the proposal, in situations where today's treatment standards cannot be achieved using non-combustion technologies, the Agency has established an adjustment factor allowing Regional Administrators to adjust treatment standards based on a finding that the minimum national treatment standard is technically impracticable. The ''technical impracticability'' adjustment factor is discussed later in today's rulemaking.

Some commenters generally supported treatment standards, but opposed the 90% capped by 10xUTS standard as excessively stringent. They argued that this standard would likely limit the usefulness of CAMUs and therefore provide a significant disincentive to cleanups. The Agency does not believe that the 90% capped by 10xUTS standard is excessively stringent. As discussed in the proposal, the Agency's goal in designing today's treatment standards was that the treatment standards should provide a meaningful level of treatment and be achievable, but should not be so onerous as to discourage cleanup (65 FR 51100, August 22, 2000). The Agency also sought to ensure that today's treatment standards would not require treatment to levels significantly below those that are necessary to protect human health and the environment. The Agency continues to believe that the 90% capped by 10xUTS treatment standard, with opportunities to adjust treatment standards on a site-specific basis using the adjustment factors, meets these goals.[25] Given the fact that

[25] The Agency notes that, as part of comments opposing the 90% capped by 10xUTS treatment standard, one commenter observed that while ''the proposed regulations do allow for alternate treatment standards * * * departures from specific standard requirements are very often difficult to

Continued

treatment applies only to principal hazardous constituents, the general achievability of the numerical standards, the availability of adjustment factors, and EPA's analysis that treatment in CAMUs under the previous standards meet those of today's rule, EPA is not persuaded that the minimum national treatment standard promulgated today will reinstate disincentives to cleanups.

Today's treatment standard apply to PHCs in CAMU-eligible wastes when such wastes will be placed in a CAMU for permanent disposal. EPA is not requiring that treatment standards be met prior to placement. Treatment may occur either before or after wastes are placed in a CAMU—as is appropriate given that CAMUs will often be used to facilitate remedies involving treatment. Commenters who addressed the issue supported this approach. In addition, EPA is not requiring treatment when wastes are placed in CAMUs used for storage and/or treatment only. Requirements for CAMUs that will be used for storage and/or treatment only are discussed later in today's rulemaking.

(2) Use of TCLP and Alternative Leach Tests

EPA proposed that the Toxicity Characteristic Leaching Procedure (TCLP) be used to determine compliance with the CAMU 90%/10xUTS treatment standard under § 264.552(e)(4)(iv)(B) and (C) for metals. As noted in the proposal, the TCLP has been used as a broadly applicable leach test for assessing the potential mobility of both organic and inorganic constituents under plausible, reasonable worst-case management conditions for solid waste. The TCLP has performed reliably in many applications, with a few exceptions, and the Agency continues to believe that it is an appropriate evaluative test for waste classification and treatment compliance. This is particularly so when industrial wastes might plausibly be co-disposed under conditions similar to those typically present in municipal solid waste landfills, and also particularly when wastes are tested and managed without regulatory oversight. Thus, the TCLP is a reasonable and appropriate test for both identifying and evaluating the treatment of wastes, and today's rule establishes the TCLP as the default test for determining compliance with the CAMU treatment requirements. Today's rule also provides Regional Administrators with the flexibility to use alternatives to the TCLP for CAMU compliance, in some cases.

EPA noted in the CAMU proposal (65 FR 51101) that hazardous remediation waste will not often be co-disposed of with municipal solid waste in CAMUs. (No commenters on the proposal disputed this conclusion.) Since the TCLP reflects some key leaching conditions likely to be present in municipal solid waste landfills, but not necessarily in CAMUs, EPA, suggested that it may not always be the most appropriate predictor of waste leaching behavior in CAMUs. In addition, the Agency stated that the circumstances associated with disposal at a CAMU site will be well defined and known (although conditions at CAMUs will vary from site to site, depending on the wastes disposed of there and any previous uses of the site). Thus, leaching tests that more closely reflect individual site conditions might, in some instances, be better suited than the TCLP to estimate the behavior of waste disposed of in a CAMU. EPA sought public comment in the proposal on the appropriateness of using leach tests other than the TCLP for determining compliance with the CAMU treatment standards for metals, when warranted by site conditions.

For the most part, commenters on this issue expressed skepticism about the universal relevance of the TCLP test for cleanups, and generally supported the use of alternatives to the TCLP when warranted by site conditions. Several commenters broadly supported the use of alternative tests, while others specifically pointed to the Synthetic Precipitation Leaching Procedure or SPLP (which simulates acid rain conditions, rather than conditions in a municipal solid waste landfill). One commenter, for example, argued that the TCLP, by virtue of its design, does not appropriately simulate leachability of metals under circumstances in which metal-bearing wastes are not co-disposed with municipal wastes. On the other hand, another commenter stated that EPA should retain the TCLP as the standard test, but, where the TCLP may not be appropriate for ''unusual wastes,'' the Regional Administrator should be allowed to require the use of supplemental tests.

After reevaluating this issue in consideration of these comments, EPA concludes that the leaching conditions represented in the TCLP may not be present at many remediation sites, and that the TCLP will, therefore, not always be the most reliable test for predicting site-specific leaching behavior for waste disposed of at these sites. (See CAMU Site Background Document).[26] The TCLP anticipates general municipal solid waste landfill conditions (as reasonable, plausible worst-case management for waste), and is not tailored to reflect conditions of other waste management unit types or specific sites. It may, to some degree, either over- or under-predict leaching potential of some waste constituents at any particular site. For example, in the Agency's recent experience with monofilling of treated K088 waste (spent aluminum pot liners), the TCLP under-predicted arsenic leaching (see 62 FR 41005, July 31, 1997, and 62 FR 63458, December 1, 1997). On the other hand, some soils are less acidic than the TCLP (particularly in the western United States), and do not have the levels of acetic acid found in municipal solid waste landfills, and the TCLP might therefore over-predict leaching of some metals from these contaminated soils.[27] Because of these types of concerns, the Agency relied on other leach tests when waste was not being disposed of in municipal solid waste landfills in its recent rulemakings on inorganic chemicals and chlorinated aliphatics manufacturing wastes (see 65 FR 55695, September 14, 2000, and 65 FR 67100, November 8, 2000). EPA therefore concludes that, where a regulatory agency can specify a disposal site for remediation waste (such as a CAMU), and conditions at the specific cleanup site differ from those simulated by the TCLP, tests other than the TCLP that are tailored to reflect conditions at the site may be better suited to assess the likely leaching behavior of waste disposed of at that site (including in a CAMU).

Section 264.552(e)(4)(iv)(F) of today's final rule, therefore, provides the Regional Administrator the flexibility to specify alternative leach tests to determine compliance with the CAMU treatment requirements for metals (except where metals removal technologies are used, and compliance is based on total concentrations). Under today's rule, the Regional Administrator must find that an available alternative to the TCLP would ''more accurately

support and defend, even when they are entirely appropriate.'' The Agency reiterates that it sees the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors as equally available.

[26] For additional information on this issue, see Evanko and Dzombak, 1997, Remediation of Metals-Contaminated Soils and Groundwater, Technology Evaluation Report TE–97–01, Groundwater Remediation Technologies Analysis Center, Pittsburgh, PA.

[27] Particularly metal salts that are more soluble under acidic conditions, or which are soluble in acetate (both TCLP conditions), such as lead or mercury. On the other hand, some eastern U.S. soils are moderately acidic (pH 4.5–5.5) or highly acidic (pH 3.5–4.5), and most soils are buffered to stable pH values (Brady and Weil, 1999).

reflect the conditions at the site that affect leaching.'' Thus, the tests must better reflect site conditions, based on available site-specific information. Site-specific use of alternatives to the TCLP would most often be appropriate in cases where disposal conditions are known and differ from municipal solid waste landfill conditions, the waste will not be co-disposed with municipal solid waste (where the TCLP would more likely be appropriate), and there is an appropriate alternative test that more accurately reflects the individual site conditions. Where important factors affecting leaching are similar to municipal solid waste landfill conditions, the TCLP will likely be most appropriate even if there is no municipal solid waste co-disposed with the CAMU wastes. This may occur when acidic chemicals (particularly organic acids, such as phenols and cresols) are found in CAMU remediation wastes. The flexibility in today's rules, allowing the Regional Administrator to specify alternatives to the TCLP, could mean that either more or less treatment will be needed to meet the standard compared with evaluating treatment with the TCLP.

In determining that an alternative test was likely to better predict waste behavior at a selected disposal site, the Regional Administrator would be expected to consider site- and waste-specific factors affecting metals leaching. These might include disposal site and waste pH, anticipated rainfall infiltration of the site, characteristics of other waste co-disposed at the site, and the anticipated long-term structural integrity and porosity of wastes stabilized using cement or other pozzolonic treatment materials. Appropriate use of alternative tests might include testing over a range of pH values known to occur at the site, or adjusting liquid/solid ratios either in the test or mathematically after testing to estimate metals leaching rates and annual mass that would be leached. In the K088 monofilling case cited above, for example, performing a leaching test in the highly alkaline range (pH > 11) might well have identified the high leaching potential of arsenic from the treated waste under the actual site conditions at the disposal facility (leachate pH of 13), before high arsenic levels were detected in the landfill leachate. EPA emphasizes that these findings are site-specific.

Today's rule requires that an alternative leach test be ''appropriate for use.'' Leach testing is currently an active research area.[28] While some alternatives to the TCLP exist today, other testing approaches may be developed into test protocols in the future. Ideally, an appropriate alternative leach test will have a defined test protocol that has been subjected to a peer review.[29] Tests that have been incorporated into EPA technical guidance, or used routinely by other federal agencies, or published by third-party technical accreditation organizations (such as ASTM or ANSI) may be appropriate. Of tests currently available, a plausible alternative for some sites may be the Synthetic Precipitation Leaching Procedure (SPLP; SW–846 Method 1312).[30] Other tests that rely on multiple pH values and that vary other test conditions to better reflect a range of possible site conditions are under development or have been adopted by European countries, including the Netherlands.[31] However, even for established tests, the relevance of the test to the particular site circumstances must be considered in selecting and using an alternative test at that site.

One commenter recommended that EPA discuss other leaching tests that could be applied to remediation wastes, and explicitly identify and recommend alternative types of leaching tests, or specify criteria for selection of leaching tests based on site-specific application criteria (e.g., waste type, environmental setting). This commenter urged EPA to develop a leaching test, or a series of leaching tests, that reflect site specific conditions. EPA has addressed this comment in the preceding paragraph, by identifying site and waste conditions that may affect metals leaching. EPA, however, is not at this time prepared to recommend a specific set of tests, given the evolving state of the science. EPA has been conducting a broad review of leach testing, including funding of research on waste leaching and leach testing, and will continue to monitor and participate in developments in this area and provide appropriate guidance as new information and testing approaches are developed and evaluated.

Another commenter appears to suggest that non-TCLP tests be used as supplemental to the TCLP for evaluating unusual wastes, rather than as an alternative to the TCLP. While this commenter clearly supports the use of TCLP as the default test for evaluating the effectiveness of treatment, it is unclear what conditions it believes warrant departure from the TCLP, except for the opinion that such departures would be ''unusual.'' [32] The Agency disagrees that non-TCLP tests should only supplement the TCLP. Assuming that this is an accurate reading of this comment, the Agency disagrees that non-TCLP tests should only supplement the TCLP (that is, be used in addition to the TCLP), when the question is determining compliance with CAMU treatment requirements. Rather, the Agency believes that, in a situation (such as remediation) in which adequate administrative controls and knowledge of site and waste conditions supports it, the test most likely to be accurate for the particular waste under the identified conditions should be used. Because conditions vary from site-to-site, there is no one established test that will always be most accurate.

That being said, however, EPA notes that it is retaining the TCLP as the default test because some CAMU sites may have conditions similar to those simulated by the test (due to either the nature of the site contamination or where there is naturally acidic soil), and because the TCLP is well known and widely used for determining compliance with treatment requirements. The Agency has considerable experience with the TCLP in evaluating waste treatment over a number of years (which it does not have with possible alternative tests), and the Agency believes implementation and administration of CAMU remediations

[28] See, for example, van der Sloot, et al., 1997, *Harmonization of Leaching/Extraction Tests;* Garrabants and Kosson, 2000, *Use of a chelating agent to determine the metal availability for leaching from soils and wastes,* Waste Management 20, 155–165; Sanchez et al., 2000, *Environmental assessment of a cement-based solidified soil contaminated with lead,* Chemical Engineering Science 55, 113–128; Kosson, D.S., van der Sloot, H.A., Sanchez, F., and Garrabants, A.C. 2002, *An Integrated Framework for Evaluating Leaching in Waste Management and Utilization of Secondary Materials,* submitted for publication in Environmental Engineering Science, on 12/13/2001; and Sanchez, F., Kosson, D.S., Mattus, C.H., and Morris, M.I., 2001, *Use of a New Leach Testing Framework for Evaluating Alternative Treatment Processes for Mercury-Contaminated Mixed Waste (Hazardous and Radioactive*), Vanderbilt University Department of Civil and Environmental Engineering, December 14, 2001.

[29] See the *EPA Peer Review Handbook,* EPA document number EPA 100–B–00–001, December 2000, or a review of similar rigor.

[30] EPA has used and recommended use of the SPLP in some instances where municipal solid waste co-disposal is not occurring or is not plausible because it addresses one concern about the TCLP in these situations, the pH of the leaching solution.

[31] See Dutch Availability Test, NEN 7341; NEN 7349; and ongoing work of the CEN (European Committee for Standardization) working group CEN/TC292/WG2.

[32] The Agency is not clear as to what ''unusual'' wastes are of concern to the commenter. Any metal-bearing waste treated with solidification/stabilization treatment may generate a high pH, so these wastes are not unusual and are, in fact, common.

will be facilitated by establishing a default test, rather than requiring that a test be selected and supported in every CAMU decision.

Several commenters asked EPA to clarify that the Regional Administrator should define the testing approach for determining acceptable treatment at the onset of CAMU consideration, and that the approach should not be revised after treatment technologies have been selected or the CAMU approved. EPA expects that the Regional Administrator will approve specific leaching tests at the onset of CAMU designation, as part of the overall approach for determining acceptable treatment. At the same time, EPA cannot categorically say the testing approaches would never be changed after approval of the CAMU. For example, a change in testing approach might be warranted if the waste treatment method were changed, or if new site information unknown at the time of approval indicated that site conditions were somewhat different from what was originally believed. Commenters can be assured, however, that any changes to testing methods or other CAMU conditions would have to go through the appropriate procedural steps. In the case of permits, for example, EPA could only modify the permit only under certain defined circumstances, unless the change was requested by the permittee. See 40 CFR 270.41 and 270.42.

In allowing the Regional Administrator to approve alternatives to the TCLP, today's rule of course assumes of course that the Regional Administrator knows exactly how and where the CAMU-eligible waste will be disposed of—that is, the waste will be disposed of in a CAMU that he or she has approved. But, today's rule also includes an option that would allow the disposal of CAMU-eligible wastes in off-site hazardous waste landfills.[33] EPA expects that the TCLP would be used in these cases to measure compliance with treatment requirements, because the regulatory authority at the remediation site would not know the details of how the disposal site is managed or the local conditions at the site (indeed, in many cases, the regulator may not know which disposal site will eventually receive the waste—but only that the landfill must meet design standards for RCRA subtitle C landfills). Therefore, EPA believes that it will be generally unlikely that the Regional Administrator will be able to approve an alternative to the TCLP to measure treatment compliance before off-site disposal. Nevertheless, EPA recognizes that there may be limited circumstances where the Regional Administrator knows, with complete assurance, where the waste is going and also knows the specific conditions at the receiving site. (For example, this might conceivably occur where the disposal sites were in the same state under the oversight of the same regulator.) In this case, EPA believes that it might be reasonable for the Regional Administrator to accept (or require) alternative tests to the TCLP to demonstrate treatment compliance. Therefore, EPA has not precluded this possibility by regulation, although it believes that the TCLP will almost always be the appropriate test for off-site disposal.[34]

The Agency reiterates that today's rule changes retain the TCLP as the presumptive test for evaluating compliance with the CAMU treatment requirements. Alternatives to the TCLP may be used only as determined to be appropriate (based on an assessment of waste and site conditions) by the Regional Administrator. The Agency believes that, given the degree of regulatory supervision of CAMU site remediations, it is possible to appropriately implement the use of alternatives to the TCLP for determining CAMU treatment compliance, on a site-specific basis. EPA continues to find the TCLP to be an appropriate test for situations where regulatory agencies do not supervise waste testing and disposal, and where disposal in a municipal landfill (or a unit resembling a municipal landfill) is a plausible waste management or mismanagement scenario. The Agency emphasizes that the proposal, and today's rule, deal only with the use of the TCLP in determining compliance with the CAMU treatment requirements. Neither the proposal nor today's rule have any effect on existing requirements regarding use of the TCLP to determine whether a waste is hazardous or has been adequately treated under the LDR program.

(3) Assessment of 90% Reduction

As discussed in the proposal, EPA expects that the facility owner/operator will rely on normal waste and soil characterization techniques and procedures for representative sampling to determine 90% reduction in constituent concentrations. (65 FR 51101, August 22, 2000.) The Agency has recently issued draft guidance for public comment, in the context of the Phase IV Land Disposal Restrictions rule, on establishing and validating the 90% reduction levels for contaminated soil (see 66 FR 52198, October 18, 2001). EPA recommends the use of this guidance (when finalized) in assessing whether the 90% reduction standard for CAMU wastes has been achieved. In general, if the CAMU-eligible hazardous waste has a treatment standard that is measured by total constituent concentrations (i.e., organics and cyanide), then the 90% reduction would be measured using total constituent concentrations. If the treatment standard for the waste is measured using the TCLP or an approved alternative leach test (i.e., for metals), then the 90% reduction would also be measured using the TCLP or the proposed alternative leach tests. If wastes contaminated with metal constituents were treated using a technology which removed, rather than stabilized metals, the 90% reduction would be measured using total constituent concentrations.

b. Site-specific Treatment Standards based on Adjustment Factors (40 CFR 264.552(e)(4)(v))

EPA proposed and is today finalizing five factors that outline circumstances under which Regional Administrators may adjust the minimum national treatment standards on a site-specific basis: technical impracticability, consistency with site cleanup standard, community views, short-term risks, and protection offered by engineering controls under specified circumstances. When one or more of the adjustment factors are applied, EPA is requiring that the resulting site-specific treatment standard be ''protective of human health and the environment,'' as discussed below.

As discussed in the proposal, in developing the adjustment factors, the Agency identified circumstances both where it might be appropriate to require less treatment than would be required by the minimum national treatment standards (i.e., less treatment than 90% reduction in concentrations of PHCs capped by 10xUTS) and where it might be appropriate to require more treatment than would be required by the minimum national treatment standards.[35] When one or more

[33] For further discussion of this provision, see section K of today's preamble.

[34] In particular, the regulator at the remediation site is unlikely to know conditions of co-disposal at the off-site landfill, which is often a critical factor in determining whether an alternative to the TCLP is acceptable.

[35] Of course, Regional Administrators do not need the adjustment factors to require more treatment than would be required by the minimum national treatment standards, since such treatment could be required, where necessary to protect human health or the environment, using the provision allowing for additional CAMU requirements when necessary to protect human health or the environment. See 40 CFR 264.552(i), discussed later in today's rulemaking. Agencies overseeing cleanups may also

adjustment factors are applied, the result is a site-specific treatment standard. Today's rule requires that such site-specific treatment standards be protective of human health and the environment. The Agency discussed the application of the ''protective of human health and the environment'' standard in the proposal through a specific example, which it repeats here:

> An example of how this [protection of human health and the environment standard] would be implemented is a site where there are two technologies that are available to treat the CAMU waste. Technology A, although it would technically meet the proposed generic standards, presented an unacceptable risk to site workers (e.g., because of risks of explosion). Technology B, on the other hand, did not present that risk, but could only achieve a 75% reduction in PHC concentrations. In this case, because the factors associated with adjustment factor D (''short-term risks,'' discussed below) were present, the Regional Administrator could consider an alternative standard; such standard could only be imposed where the alternate level (75% reduction) was protective. EPA expects that the Regional Administrator would undertake this assessment of protectiveness of the alternate standard as part of the overall remedy decision process. In judging protectiveness of the alternate standard, the Agency would expect the Regional Administrator to consider, as appropriate, the characteristics of the waste, including such factors as concentrations and mobility, how the wastes will be managed (e.g., the type of unit), and site characteristics, such as depth to groundwater and factors that affect fate and transport to potential receptors. Note, as discussed below under adjustment factor E, that protection offered by the engineering of the unit as the initial basis for considering an alternate standard is limited to a specific set of circumstances. 65 FR 51101 and 51102, August 22, 2000.

Commenters generally supported the approach of allowing adjustment of the minimum national treatment standards to accommodate certain site-specific conditions and, in general, supported the specific adjustment factors established today. EPA is finalizing the adjustment factors as proposed.

One commenter expressed the concern that the Agency might use the adjustment factors to change treatment requirements in the middle of a cleanup. The Agency clarifies that it expects decisions about treatment standards (including application of the adjustment factors) to be made as a part of CAMU determinations and, as a general matter, apply for the life of the CAMU. After a CAMU has been approved, any changes made to treatment (or other) requirements would be in response to an evolution of understanding of site-specific conditions that might occur during an iterative cleanup process. The existence of adjustment factors does not make such changes any more or less likely than they were under the 1993 CAMU rule. Furthermore, any changes would be subject to appropriate procedural safeguards—for example, the permit modification process if a CAMU were incorporated into a permit, or, in the case of orders, procedures for amending orders.

(1) Adjustment Factor A: Technical Impracticability (40 CFR 264.552(e)(4)(v)(A))

Using the technical impracticability adjustment factor, the Regional Administrator may adjust the minimum national treatment standards on a site-specific basis when it is not technically practicable to achieve these standards because of factors related to technologies or cost.

As discussed in the proposal, in some cases a facility owner/operator may find that it is not technically practicable to achieve the minimum national treatment standards, or to conduct meaningful treatment at all, because of factors relating to the performance capability or cost of technology. Factors related to the technical performance capabilities of technology and cost are routinely discussed in the remedy decision process in the federal CERCLA and RCRA corrective action cleanup programs and as part of remedy selection in state cleanup programs. As explained in the preamble to the proposal, the Agency intends that the technical impracticability adjustment factor will include the general concepts of ''technically infeasible'' and ''inordinately costly,'' as those terms are used in the federal CERCLA program (65 FR 51102, 51103, August 22, 2000). As explained in the preamble to the CERCLA National Contingency Plan, technical impracticability should be based on ''engineering feasibility and reliability, with cost generally not a major factor unless compliance would be inordinately costly'' (55 FR 8666, 8748 (March 8, 1990)). These concepts are also described in the RCRA corrective action ANPR at 61 FR 19432 (May 1, 1990) and in the Role of Cost in the Superfund Remedy Selection Process, Publication 9200.3–23FS, September 1996.

Factors relating to the performance of technology and cost are also addressed in the RCRA LDR treatment standard requirements in the provisions for variances. As discussed in the proposal, the Agency intends for the technical impracticability adjustment factor to encompass the concepts contained in the current ''unachieveable'' LDR treatment variance at § 268.44(h)(1) and the ''technically inappropriate'' variance at § 268.44(h)(2)(i) (65 FR 51102, August 22, 2000). Under the ''unachieveable'' LDR treatment variance, a new treatment standard can be developed when it is not physically possible to meet the otherwise applicable treatment standard. The Agency believes this concept is equally appropriate for adjusting treatment standards for PHCs placed in CAMUs, because imposition of a treatment standard that is impossible to meet would likely result in a containment remedy that would not involve any treatment at all. See 53 FR 31138, 31199 (August 17, 1988) for a discussion of the ''unachieveable'' variance. Under the ''technically inappropriate'' variance, the Regional Administrator may approve a site-specific treatment standard if treatment to the otherwise applicable standard is not appropriate, even though such treatment is technically possible. For example, the Agency has repeatedly expressed the view that it is technically inappropriate to require combustion of large amounts of mildly contaminated environmental media. See, 53 FR 31138, 31199 (August 17, 1988) and 62 FR 64504 (December 5, 1997) for a discussion of the technically inappropriate variance.

EPA received no adverse comments on the technical impracticability adjustment factor and is today finalizing this factor as proposed.

(2) Adjustment Factor B: Consistency with Site Cleanup Levels (40 CFR 264.552(e)(4)(v)(B))

Under the ''consistency with site cleanup levels'' adjustment factor, the Regional Administrator may adjust the minimum national treatment standards, on a site-specific basis, to require more or less treatment of principal hazardous constituents when treatment to the minimum national treatment standards would result in concentrations of PHCs that are significantly above or below the cleanup levels for the site. In the proposal, the language in adjustment factor B did not specify that it would be used to adjust treatment requirements only for principal hazardous constituents, although this was clearly the Agency's intent (i.e., because the treatment standards in today's rule apply only to principal hazardous constituents). EPA has modified the final rule accordingly.

As discussed in the proposal, EPA intends that in considering whether to apply this adjustment factor, Regional

require additional treatment when selecting cleanup remedies.

Administrators will compare concentrations of PHCs that would be attained through treatment to the minimum national standards (i.e., 90% reduction in PHCs capped by 10 x UTS) to site cleanup levels that assume there is direct exposure of a receptor to the PHC (i.e., site cleanup levels based on direct exposure) (65 FR 51103, August 22, 2000). Site cleanup levels based on direct exposure could be drawn from default standards established under state or federal law, where appropriate, or from a more site-specific analysis and/or a site-specific risk assessment. Site cleanup levels are typically established in consideration of a number of factors that influence the risk potential of a site, including fate and transport considerations (e.g., migration of contamination from soil to ground water); distinctions between residential, industrial and other types of land use; and the locations of potential receptors. In some cases, these factors are standardized (e.g., when standard assumptions of exposure correspond with standard land use assumptions). In other cases, these factors are populated with site-specific data, for example, as might occur during a site-specific risk assessment. Consideration of the protection from exposure provided by the engineering of a CAMU cannot be included in the evaluation. This is because, as discussed earlier in today's rulemaking, the treatment requirements are designed, in part, to minimize the risks of adverse effects on humans or the environment in the unlikely event that the containment provided by a CAMU should fail.

In the proposal, EPA solicited comment on whether it should expressly state in adjustment factor B that site cleanup levels used for comparison had to be based on assumptions of ''direct exposure'' to the principal hazardous constituents (65 FR 51103). EPA explained that it assumed that state cleanup programs routinely used direct exposure scenarios in setting cleanup levels, and therefore it was not necessary to explicitly make use of a direct exposure scenario a condition in adjustment factor B language. One group of commenters stated that they disagreed with EPA's assumption that cleanup programs typically base site goals or levels on ''direct exposure,'' arguing instead that cleanup programs did not assume direct exposure without considering actual or likely exposure scenarios at a site. The commenters, therefore, recommended that EPA not specifically require direct exposure assumptions in adjustment factor B. On the other hand, these commenters also asked EPA to clarify in the preamble to the final rule that adjustment factor B should be interpreted consistently with the Agency's interpretation of the § 268.44(h)(3) variance—which allows land disposal restriction variances for contaminated soil where LDR standards ''would result in concentrations of hazardous constituents that are below * * * the concentrations necessary to minimize short- and long-term threats to human health and the environment'' and which further specifies that determinations that threats have been minimized may ''not consider post-land disposal controls'' (§ 268.44(h)(3)(ii)).

EPA believes that commenters may have misunderstood what EPA meant by ''direct exposure'' in the preamble, because the Agency certainly agrees that cleanup programs do and should consider ''actual or likely exposure'' in setting cleanup levels. As stated in the preamble to the proposal, EPA agrees that ''site-specific cleanup standards are typically derived after consideration of factors that influence the risk potential at the site, including fate and transport considerations (e.g., in setting levels in soils that are protective of ground water), distinctions between residential, industrial and other types of land use, and location of potential receptors'' (65 FR 51103). Again, cleanup levels based on these assumptions would certainly be appropriate under adjustment factor B. EPA also reaffirms—as it clearly stated in the CAMU proposal (65 FR 51103)—that it interprets adjustment factor B in a manner consistent with its interpretation of the § 268.44(h)(3) variance. In particular, as the Agency stated in the preamble to the regulation, ''Consistent concentrations that achieve [levels based on the Agency's risk range for cleanup levels or goals] should be calculated based on a reasonable maximum exposure scenario—that is, based on an analysis of both current and reasonably expected future land uses, with exposure parameters chosen based on a reasonable assessment of the maximum exposure that might occur.'' (See 63 FR 28606–28608, May 26, 1998). EPA does note, however, that this land disposal restriction variance explicitly provides that, in setting ''minimize threat'' levels, the Agency cannot consider ''post-land-disposal'' controls (§ 268.44(h)(3)(ii)), and in the preamble to the Phase IV rule EPA cautions that site-specific determinations under this variance ''cannot be based on the potential safety of land disposal units, or engineered structures such as liners, caps, slurry walls or any other practice occurring after land disposal'' (63 FR 28607). Similarly, as EPA explained in the preamble to the CAMU proposal, levels established under adjustment factor B could not reflect the ''protection offered by the CAMU itself'' (65 FR 51103).

Given that the commenters are mistaken in their concern that EPA intended to disallow consideration of actual or likely exposure scenarios in this adjustment factor, and given that no other commenters argued that cleanup programs do not routinely use ''direct'' exposure assumptions in setting cleanup levels or goals, the Agency continues to believe that adding the phrase ''direct exposure'' to this adjustment factor is unnecessary. As discussed above, EPA does reemphasize, however, that, in determining whether adjustment was appropriate under this adjustment factor—as in the LDR variance at § 268.44(h)(3)—EPA or the state would not consider protection offered by the disposal unit or engineering controls as a basis for adjusting treatment levels. As explained later in this preamble, protection offered by the CAMU as a basis for departing from the 90%/10×UTS standard is appropriately considered under adjustment factor E.

(3) Adjustment Factor C: Community Views (40 CFR 264.552(e)(4)(v)(C))

Under the community views adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards based on the views of the affected community on the treatment levels or treatment methods. As discussed in the proposal, at some sites, communities express concerns about factors such as the long-term reliability of remedies, worker safety, cross-media transfer of pollutants, and interference with their day-to-day lives (e.g., from traffic, odors, or noisy technologies) (65 FR 51103, August 22, 2000). EPA expects that such community concerns could provide the impetus to either reduce or increase treatment requirements.

EPA believes it is reasonable to include community views as an explicit criterion to justify adjustment of treatment requirements, because, in the Agency's experience, treatment is often an area of specific concern to the public. For example, many communities are very concerned about the use of combustion technologies. Consideration of community views is supported by the requirement (discussed later in today's rulemaking) that the public be provided notice and an opportunity for public comment on all CAMU determinations

before such determinations are made final.

Commenters who addressed this issue supported the community views adjustment factor, and the Agency is finalizing this provision as proposed.

(4) Adjustment Factor D: Short-Term Risks (40 CFR 264.552(e)(4)(v)(D))

Under the short-term-risk adjustment factor, the Regional Administrator may require more or less treatment than would be required under the minimum national treatment standards if the technology necessary to achieve the minimum national treatment standards would cause unacceptable short-term risks to workers or the public. Unacceptable short-term risks might be presented by a technology necessary to achieve treatment standards, or by the analysis necessary to determine whether treatment standards have been achieved. As discussed in the proposal, short-term risks associated with remedies and proposed treatment technologies are routinely considered during the remedy-selection process under the federal CERCLA program and the RCRA corrective action program (65 FR 51104, August 22, 2000). Commenters who addressed this issue supported consideration of short-term risks in adjusting treatment requirements, and the Agency is finalizing the short-term risk adjustment factor as proposed.

(5) Adjustment Factor E: Engineering Design and Controls (40 CFR 264.552(e)(4)(v)(E))

EPA proposed and is today finalizing an opportunity for Regional Administrators to adjust the minimum national treatment standards on a site-specific basis to require less treatment than would otherwise be required because of the protection offered by the engineering design of a CAMU. Under this provision, Regional Administrators may adjust the minimum national treatment standard based on the long-term protection offered by the engineering design of the CAMU and related engineering controls in five sets of circumstances: first, when the minimum national treatment standards are substantially met and PHCs are of very low mobility; second, when cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes land disposal units at 40 CFR 264.301(c) and (d); third, when the Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the liner and leachate collection requirements for new hazardous waste land disposal units at 40 CFR 264.301(c) and (d); fourth, when cost-effective treatment has been used and PHCs in the treated wastes are of very low mobility; and fifth, when the Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii), or the CAMU provides substantially equivalent or greater protection. Each of these site-specific circumstances is described more completely below.

As discussed in the proposal, the Agency means the phrase ''engineering design of the CAMU and related engineering controls'' to include the design of the unit itself (*e.g.*, presence and type of liner, leachate collection, and cap) and any associated engineering systems such as slurry walls, systems that produce inward hydraulic gradients in the vicinity of the unit, French drains, associated pump and treat systems, and ground water monitoring systems (65 FR 51105, August 22, 2000). Along with an assessment of the protection offered by the engineering design and related engineering controls for a CAMU, the Agency expects that the Regional Administrator's determination regarding a site-specific treatment standard would consider whether wastes placed in the CAMU pose any potential for unacceptable releases over the long term. This consideration should examine factors such as the concentrations and mobility of the PHCs in the CAMU-eligible waste, the waste matrix (soil or other), the site environment (e.g., fate and transport considerations), and how wastes might be affected by potential liquid infiltration into the CAMU.

Commenters generally supported the standards of proposed adjustment factor E. One commenter argued that EPA's proposed approach was too complicated, and that EPA should allow a broader risk-based approach. As discussed earlier, EPA does not believe the risk-based approach would provide the level of consistent protection, or of predictability for the public, that EPA's seeks in today's rule. Other commenters stressed the importance of adjustment factor E in ensuring that today's rule would not discourage aggressive remediation. As indicated in EPA's study of past CAMU decisions (included in the docket), many currently approved CAMUs would be allowed today only with consideration of adjustment factor E. EPA, therefore, agrees with these commenters on the likely importance of this adjustment factor in promoting effective cleanups

The specific subfactors available under adjustment factor E are discussed below. See also the if/then options illustrated in the chart presented in the following section of this preamble, section G.2.b(6). EPA has modified the proposed regulatory language for adjustment factor E for the sake of clarity (addressing commenters' concern with the complexity of this adjustment factor), but has not changed the substantive standards of this factor.[36]

The minimum national treatment standards are substantially met and PHCs in the waste or residuals are of very low mobility (40 CFR 264.552(e)(4)(v)(E)(1)). Adjustment factor E(1) allows Regional Administrators to adjust the minimum national treatment standards to require less treatment than would otherwise be required, based on the long-term protection offered by the engineering design of the CAMU and related engineering controls when: (1) the minimum national treatment standards are ''substantially met,'' and (2) PHCs are of ''very low mobility.'' EPA proposed this provision to address concerns that, where constituents in the waste are of low mobility and where the minimum national treatment standards are substantially met, it may not be reasonable to impose strict compliance with the minimum standards given (1) the level of protection provided by substantial compliance, and (2) the added protection offered by the engineering design of a CAMU and related engineering controls.

As discussed in the proposal, the term ''substantially met'' for purposes of adjustment factor E is meant to reflect situations where a treatment technology may result in concentrations of PHCs that meet the minimum national treatment standards for the most part, but do not precisely attain the minimum national treatment standards for all of the PHCs. In the proposal, the Agency gave two examples of application of the ''substantially met'' standard, which it repeats here:

> For example, the most appropriate technology at a site for wastes containing organic contaminants that have low migration potential (*e.g.*, certain polyaromatic hydrocarbons) might be biodegradation. This technology might come close to, but not achieve, 10 X UTS for the contaminants with low migration potential. Given that the contaminants have a low

[36] The regulatory language of today's rule breaks out the individual provisions of proposed § 264.555(e)(4)(v)(E)(2)(i)-(iii) into four different subfactors, but the regulatory language and substantive conditions remain identical.

migration potential, the Regional Administrator could assess site-specific factors that affect mobility, including the geologic setting, precipitation, and evaporation, and make the determination that an alternate treatment standard based on this technology would provide long-term protection of human health and the environment. In another example, the treatment standards would be substantially met where the overwhelming majority of constituents have been treated to meet the treatment standards, but a very few immobile constituents do not meet the standards. 65 FR 51106, August 22, 2000.

The term ''very low mobility'' reflects the concept that certain constituents (including constituents that may present significant risks in the event of direct exposure) have very little ability to migrate from waste to receptors through media such as air, soil, or water . As discussed in the proposal, the ability of a constituent to migrate is a function of the physical and chemical properties of the constituent and of site-specific conditions such as the waste matrix, the site environment (e.g., fate and transport considerations), conditions associated with the disposa unit, and how wastes might be affected by potential liquid infiltration into a CAMU (65 FR 51105, August 22, 2000.) In the proposal, the Agency gave two examples of the application of the very low mobility standard, which it repeats here for guidance:

One example of immobile constituents are certain metals, such as lead, that have a strong affinity for organic matter and can, under proper site conditions (which are typically strongly affected by pH conditions), demonstrate very low mobility. Another common example of immobile constituents is polyaromatic hydrocarbons (PAHs), such as benzo(a)anthracene and benzo(a)pyrene. PAHs can reliably be considered non-mobile constituents (with the notable exception of when the PAHs are concentrated to the extent that they are in a free-phase—i.e., as non-aqueous phase liquids (NAPLs)—when they are dissolved in a mobile substrate, such as oil). PAHs can be present as a direct result of historical industrial processes, or may be found as a residuum of formerly more complex mixtures of organic contamination that have been exposed to breakdown processes in the environment, or as a result of applying biological treatment technologies to the wastes. At some sites, such as petroleum refineries, PAHs can be found in high concentrations in old refinery wastes and contaminated soils, PAHs tend not to be found in significant concentrations in ground water, because of their low mobility and tendency to adhere to organic matter in soils and sludges. 65 FR 51106, August 22, 2000.

Cost-effective treatment has been used and the CAMU meets the liner and leachate collection requirements for new hazardous wastes landfills at 40 CFR 264.301(c) and (d). (40 CFR 264.552(e)(4)(v)(E)(2). Under adjustment factor E(2), the Regional Administrator may adjust the minimum national treatment based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, this adjustment factor reflects the Agency's concerns about the uncertainties of long-term containment; thus, when the national treatment standards have not been substantially met, this adjustment factor would require more robust engineering controls to reduce the potential for and consequences of unit failure. It would also require cost-effective treatment. (If cost-effective treatment was not reasonably available, adjustment of the treatment standards would still be possible, as provided by adjustment factor E(3)).

As discussed in the proposal, the concept of ''cost-effective'' treatment for the purpose of adjustment factor E means that the additional cost associated with increased treatment is proportionate to the increase in protection that the treatment would provide. EPA expects that assessments of cost-effectiveness will be made based on a reasonable review of the costs and the increased protection provided by treatment and on the best professional judgment of the Regional Administrator (65 FR 51106, August 22, 2000). Commenters on ''cost-effectiveness'' supported EPA's proposed approach.

This adjustment factor requires a more rigorous approach to engineering design and related controls than the minimum national design standards for CAMUs in that it requires compliance with the liner and leachate collection requirements for new hazardous waste land disposal units at 40 CFR 264.301(c) and (d). As discussed in the proposal, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time (65 FR 51107, August 22, 2000). Because the engineering design and related engineering controls required by this provision are very robust, the Agency is not limiting this adjustment factor to PHCs of very low mobility.

As discussed in the proposal, the Agency does not expect that CAMUs typically will be constructed to meet the liner and leachate collection standards for new hazardous waste landfills (65 FR 51107, August 22, 2000). Where they are designed to meet these standards, however, adjustment factor E(2) would allow treatment levels to be adjusted based on the protection offered by the unit design.

The Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills at 40 CFR 264.301(c) and (d). (40 CFR 264.552(e)(4)(v)(E)(3)). Under adjustment factor E(3), the Regional Administrators may also adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment is not reasonably available, and (2) the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills. As discussed in the proposal, today's rulemaking reflects the general presumption that PHCs will be treated if cost-effective treatment is reasonably available (65 FR 51106, August 22, 2000). The Agency recognizes, however, that cost-effective treatment is not always reasonably available. In such cases, today's rule would allow the Regional Administrator to adjust the minimum national treatment standard based on the engineering design of the CAMU and related engineering controls, even where treatment is not used (that is, under this adjustment factor, when the CAMU meets the liner and leachate collection requirements for new hazardous waste landfills, and, under adjustment factor E(5) (discussed below), when the CAMU meets the liner standards for new CAMUs promulgated today and PHCs in the waste are of very low mobility).

As discussed in the proposal, the Agency expects that reviews to determine whether potentially appropriate cost-effective treatment technologies are ''reasonable available'' will be carried out consistently with the types of technology evaluations that are commonly associated with remedy selection under federal and many state cleanup programs (65 FR 51106, 51107, August 22, 2000). These reviews consider the availability and timing of goods and services associated with implementing a technology and issues associated with administrative feasibility as well as technical capability, feasibility, and reliability of the technology. Thus, while an individual technology might appear, in theory, to be cost-effective and capable of meeting a treatment standard, it

might not be ''reasonably available'' because of practical and implementation issues. Because of the range of site- and waste-specific factors that inform the types of treatment technologies that might be appropriate, the level of effort involved in reviews for reasonable availability should be determined on a site-specific basis.

Under this adjustment factor, the potential increase in risk to human health and the environment that corresponds to reduced or no treatment (because cost-effective treatment is not available) is balanced by the requirement to meet the liner and leachate collection system design standards for new hazardous waste landfills. As discussed above, the liner and leachate collection requirements for new hazardous waste landfills are well established and understood, and units constructed to meet the liner and leachate collection requirements for new hazardous waste landfills generally offer a high degree of protection over time.

Cost-effective treatment has been used and PHCs in the treated waste are of very low mobility. (40 CFR 264.552(e)(4)(v)(E)(4). Under adjustment factor E(4), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) cost-effective treatment has been used, and (2) PHCs are of very low mobility. As discussed in the proposal, this adjustment factor is meant to accommodate circumstances where cost-effective treatment is available and will be used for PHCs, but the treatment will not meet or substantially meet the minimum national treatment standards. The Agency believes that it is reasonable for the Regional Administrator to make adjustments to the minimum national treatment standards when the engineering design of CAMUs and related engineering controls offer adequate protection and PHCs have been treated using cost-effective treatment and are unlikely to reach a receptor because they are of very low mobility. In these circumstances, the Agency believes that, even if unexpected failure of a CAMU were to occur, the constituents would not migrate far (and therefore would not be likely to reach receptors). The concepts of ''cost-effective treatment'' and ''very low mobility'' are discussed above.

The Regional Administrator determines that cost-effective treatment is not reasonably available, PHCs in the wastes are of very low mobility, and the CAMU meets or exceeds the liner and leachate collection system standards for new, replacement, or laterally expanded CAMUs in 40 CFR 264.552(e)(3)(i) and (ii) or the CAMU provides substantially equivalent or greater protection. (40 CFR 264.552(e)(4)(v)(E)(5)). Under adjustment factor E(5), Regional Administrators may adjust the minimum national treatment standards based on the long-term protection offered by the engineering design of a CAMU and related engineering controls when: (1) Cost-effective treatment is not available, (2) PHCs in the wastes are of very low mobility, and (3) the CAMU meets the design and operation standards for new, replacement or laterally expanded CAMUs promulgated today (including alternative standards). As discussed in the preamble to the proposal, this adjustment factor requires less rigorous engineering design standards than adjustment factor (E)(2) because it is limited to situations where PHCs are of very low mobility (65 FR 5107, August 22, 2000).

In situations where PHCs are of very low mobility, the Agency believes that the possibility of an increase in risk to human health or the environment resulting from reduced treatment (because cost-effective treatment is not available and therefore treatment does not take place) is balanced by the requirement that a CAMU be designed to meet the minimum standards for new, replacement, or laterally expanded CAMUs established today (or alternative standards) at 40 CFR 264.552(e)(3)or that the ''CAMU provides substantially equivalent protection.'' The liner standards at 40 CFR 264.552(e)(3) are based on the standards for municipal solid waste landfills and are discussed earlier in today's preamble. As discussed in the proposal, the concept of a CAMU providing ''substantially equivalent protection'' to the liner standards under 40 CFR 264.552(e)(3) allows for consideration of the entire CAMU unit and location characteristics (65 FR 51107, August 22, 2000).

In the proposal, the Agency gave two examples of when it might find that a CAMU provides ''substantially equivalent protection.'' These examples are repeated here for guidance:

> If an existing unit without a liner were to be potentially used for a CAMU under the conditions of this adjustment factor, the Regional Administrator could examine the protectiveness offered by the CAMU components (e.g., cap, ground water monitoring, ancillary engineering features), as well as mobility of constituents in the waste within the unit (which will be very low), and geology associated with the unit, in assessing equivalent protection. In another example, soils contaminated with PAHs, with no cost-effective method of treatment reasonably available, are proposed to be disposed in an existing unit with a liner that does not meet the § 264.552(e)(3) standards. Given the very low mobility of these constituents and the calculated infiltration rate of rainwater into the unit, it might be calculated that only very low concentrations of constituents would potentially migrate from the unit, that any migration would be for a very short distance, and that the CAMU would provide substantially equivalent protection to the liner standard under § 264.552(e)(3). 65 FR 51107–51108, August 22, 2000.

(6) If / Then Chart Illustrating Application of Adjustment Factor E

Application of adjustment factor E relies on a number of site-specific determinations made in specific combinations. To assist program implementors in properly applying this adjustment factor, the Agency has prepared the following ''if/then'' chart, which was also included in the proposal, as guidance.

If	And If	And If	Then
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	Cost-effective treatment has *not* been used.	RA has *not* determined that cost-effective treatment is not reasonably available.	RA may *not* consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.''
Treatment standards in § 264.552(e)(4)(iv) are *not* substantially met.	The PHCs in the waste or residuals are of very low mobility.	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*1*)

If	And If	And If	Then
Cost-effective treatment has been used.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d).	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*2*)
The Regional Administrator determines that cost-effective treatment is not reasonably available.	The CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d).	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*3*)
Cost-effective treatment has been used.	The PHCs in the treated waste are of very low mobility.	.....	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*4*)
The Regional Administrator determined that cost-effective treatment is not reasonably available.	The PHCs in the waste are of very low mobility.	Either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraph (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.	RA may consider adjusting based upon the ''long term protection offered by the engineering design of the CAMU and related controls.'' § 264.552(e)(4)(v)(E)(*5*)

c. Relationship Between Minimum National Treatment Standards and Adjustment Factors

Commenters expressed a range of views about the relationship between the minimum national treatment standards and site-specific treatment standards developed through application of the adjustment factors. Some commenters expressed the view that ideally the minimum national treatment standards should be adjusted only in exceptional circumstances. Other commenters thought that EPA should clarify that facility owners/operators could choose either the minimum national treatment standards or site-specific treatment standards.

EPA expects program implementors, in making treatment determinations, to start from the minimum national treatment standard and then to consider whether, based on site-specific circumstances, any of the adjustment factors apply. The minimum national treatment standards may be adjusted only in accordance with the adjustment factors. The Agency, as a general matter, has a preference neither for nor against application of the factors. EPA recognizes that the minimum national treatment standards will often be the preferable approach; at the same time as discussed in the proposal, the adjustment factors reflect circumstances where, in EPA's view, adjustment of the minimum national treatment standards might be appropriate because they represent circumstances where failure to adjust treatment could result in discouraging aggressive cleanup (65 FR 51101, August 22, 2000). Therefore, as discussed above, the Agency believes it is appropriate to have neither a preference for nor against application of the factors.

d. Treatment in CAMUs Within a Reasonable Time (40 CFR 264.552(e)(4)(vi))

EPA proposed and is today finalizing provisions that allow treatment of PHCs to the minimum national treatment standards (or site-specific treatment standards based on application of the adjustment factors) to occur either before placement of wastes in CAMUs or within a reasonable time after placement of waste in a CAMU. This is different from the approach taken in the LDR requirements, where treatment generally is required prior to placement. As discussed in the proposal, the Agency believes it is appropriate to allow treatment requirements to be met either before or after placement of wastes in a CAMU so that CAMUs can be used to facilitate treatment remedies (65 FR 51108, August 22, 2000). As discussed throughout today's rulemaking, promoting aggressive remedial approaches that involve excavation and treatment of contaminated wastes and materials (i.e., removing disincentives to cleanup) is the primary purpose of the CAMU rule. The Agency received no adverse comment on this provision.

As discussed in the proposal, determinations of what is a ''reasonable time'' for treatment should be made on a site-specific basis in the context of the remedy selected for the waste (65 FR 51108, August 22, 2000). As a general rule, EPA expects that treatment technologies, such as biotreatment, that are implemented after wastes are placed in a CAMU will achieve treatment standards within months or years, not decades, except in very unusual circumstances. (Today's rulemaking also establishes specific provisions for storage and/or treatment only CAMUs, from which wastes will be removed at closure. Storage and/or treatment only CAMUs are described in detail later in today's rulemaking.)

d. Assessing Compliance With Treatment Standards (40 CFR 264.552(e)(4)(vii))

The Agency proposed and is today finalizing provisions to allow, on a site-specific basis, for the analysis of a subset of PHCs to determine whether treatment standards are achieved rather than requiring analysis of all PHCs present. As discussed in the proposal, the Agency believes that in many cases it will not be necessary to require analysis of all PHCs being treated to accurately assess whether treatment standards are being achieved for all constituents. The Agency received no adverse comment on this provision.

Analyzing a subset of constituents to assess performance of treatment is a common practice in cleanup and generally involves consideration of factors such as the difficulty of treatment and grouping of constituents with similar properties. Today's rule

requires that Regional Administrators consider those factors when making site-specific determinations about analysis of a subset of PHCs. As discussed in the proposal, EPA also expects the Regional Administrator to consider the ability to analyze the constituents when selecting the subset of PHCs to be evaluated (65 FR 51088, August 22, 2000). The Agency gave an example of application of this concept in the proposal, which it repeats here as guidance:

> A general strategy is to analyze, within a group of constituents with similar treatment properties, the most difficult constituents to treat, following the reasoning that treatment of the most difficult to treat constituents will result in treatment of the other constituents as well. For example, when wastes containing mixtures of organic molecules are subjected to bioremediation, certain compounds tend to be more recalcitrant and take longer to treat. It might be reasonable to focus analysis on measurement of the compounds that are most resistant to bioremediation, to assess whether the treatment standards had been met. 65 FR 51108, August 22, 2000.

H. Constituents at or Below Site Cleanup Levels or Goals (40 CFR 264.552(g))

EPA proposed that, where all wastes placed in a CAMU have constituent concentrations at or below cleanup [37] levels or goals applicable to the site, the CAMU would not have to meet the requirements for liners and leachate collection systems, caps, or ground water monitoring requirements discussed earlier in today's rulemaking or the design requirements for storage and/or treatment only CAMUs discussed below.[38] The Agency received no adverse comment on this approach and is promulgating it as proposed.

As discussed in the proposal, EPA believes that, if constituent concentrations in all wastes placed in a CAMU are at or below concentrations that are considered protective at the facility (i.e., are at or below cleanup levels or goals for the facility), it is not necessary to require that the CAMU meet design or operating requirements (65 FR 51108—51109, August 22, 2000). This approach is consistent with the Agency's ''contained-in'' policy. Under the 1993 CAMU rule, program implementors had considerable flexibility in developing CAMU design and operation requirements and could accommodate circumstances where wastes placed in the CAMU were at or below cleanup levels or goals for the facility. Because today's amendments establish more specific design and operating requirements for CAMUs, the exemption is necessary to retain this flexibility. EPA is limiting this provision to situations where all wastes in the CAMU are at or below site-specific cleanup levels or remedial goals. Thus, if an existing unit is used as a CAMU and that unit contains wastes with concentrations that are above cleanup levels or goals this exemption would not apply and, among other requirements, the unit would remain subject to the capping and ground water monitoring requirements established today. EPA anticipates that this section would be used when owners/operators seek a CAMU to obtain relief from RCRA LDR requirements for wastes that are no longer considered hazardous. Wastes that are no longer considered hazardous remain subject to the LDRs when, for example, a ''contained-in'' determination has been made because hazardous constituents are at concentrations below health-based levels but above applicable LDR treatment standards. EPA also anticipates that this section will be used for materials that are not addressed by the contained-in policy (e.g., CAMU-eligible sludges). See 65 FR 51108.

One commenter suggested that, even when constituent concentrations in cleanup wastes are at or below cleanup levels or goals, they may still pose a risk if the assumptions used to determine remedial goals change (e.g., if cleanup levels or goals are determined using exposure assumptions appropriate to nonresidential land use, and then the land use changes). This commenter recommended that administrative notices (e.g., deed notices) be required in situations where site-specific cleanup levels or goals assume non-residential land uses. The Agency agrees that when nonresidential exposure assumptions are used to establish cleanup levels or goals for a facility, it is important for overseeing agencies to consider the long-term implications of these decisions for facility land use. The Agency does not agree, however, that it should establish a specific requirement in this rule for administrative notice to address this issue. EPA believes the issues of determining appropriate land use and exposure assumptions and developing mechanisms to communicate, monitor, and maintain nonresidential land use assumptions should be addressed as part of overall remedy selection—i.e., during selection of the site-specific factors that will be used to inform site-specific cleanup levels or remedial goals—rather than as a part of CAMU determinations. Indeed, these questions are much closer to decisions as to appropriate cleanup levels than they are to the remediation waste management decisions more generally associated with CAMU determinations.

EPA notes that RCRA corrective action, Superfund, and other cleanup programs rely on a range of mechanisms to ensure that remedies remain protective when they are based on non-residential land uses. Mechanisms include informational requirements (e.g., deed notices), permits, state and local land use laws, environmental easements, and similar ''institutional controls.'' EPA expects that overseeing agencies will carefully consider the effectiveness of these mechanisms when supervising cleanups where non-residential land use assumptions are used. For more information on EPA's current views on use of institutional controls see Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups, EPA 530–F–00–005, September, 2000. The Agency's current guidance on incorporating considerations of reasonably anticipated future land use in remedial decision making is Land Use in the CERCLA Remedy Selection Process (OSWER Directive No. 9355.7–04, May 25, 1995). The Agency does not minimize the importance of issues raised by potential changes in land use over time or reliance on institutional controls during cleanups. However, given the wide range of mechanisms now used in RCRA, CERCLA and other programs and the fact that the issue is more appropriately considered in the overall cleanup decision making than in CAMU determinations, EPA has not included specific notification requirements for non-residential future land use assumptions in today's rule.

I. Storage and/or Treatment Only CAMUs (40 CFR 264.552(f))

EPA proposed to distinguish between CAMUs that are used for storage and/or treatment only and CAMUs in which wastes will remain after closure. CAMUs used for storage and/or treatment only would be subject to the design, operating, and closure standards for staging piles. EPA proposed that storage and/or treatment only CAMUs

[37] In the proposal, EPA used both ''remedial'' levels or goals and ''cleanup'' levels or goals. As used in the proposal, there was no substantive difference between these terms and, for clarity, the Agency uses only to ''cleanup levels or goals'' in today's action.

[38] I.e., in this case the CAMU would not have to comply with the requirements for liners at 40 CFR 264.552(e)(3)(i), caps at 40 CFR 264.552(e)(6)(iv), ground water monitoring at 40 CFR 264.552(e)(5), or the design standards at 40 CFR 264.552(f).

that operated for longer than the staging pile time limits (a maximum of two-and-one-half years) would be subject to the minimum CAMU design and ground-water monitoring and corrective action standards promulgated today. Commenters generally supported this approach, and the Agency is finalizing this provision as proposed. EPA has reorganized the regulatory language for clarity, but has made no substantive changes from the proposal.[39]

Under today's rulemaking, CAMUs that are used for storage and/or treatment only and that do not exceed the staging pile time limits are subject only to the performance criteria and design, operating, and closure standards for staging piles at 40 CFR 264.554(d)(1)(i)—(ii), 40 CFR 264.554(d)(2) and 40 CFR 264.554(e), (f), (j), and (k). They are not subject to the CAMU designation criteria at 40 CFR 264.552(c) and the CAMU design, treatment, ground-water monitoring and corrective action, and closure requirements at 40 CFR 264.552(e)(3) through (6).[40] Under the staging pile regulations, the Regional Administrator establishes standards and design requirements that facilitate reliable, effective, and protective remedies; that prevent or minimize releases; and that minimize or control cross-media impacts. The Regional Administrator sets staging pile standards and design requirements by considering factors such as the length of time the staging pile will be in operation, the volumes of wastes that will be managed in the pile, the physical and chemical characteristics of the wastes, the potential for releases, the environmental factors that may influence migration of releases, and the potential for human and environmental exposure to releases. As discussed in the proposal, the Agency believes it is appropriate to use the staging pile standards for CAMUs that are used for storage and/or treatment only, because the staging pile standards both reflect the general concepts in the CAMU criteria (i.e., by establishing the standard that staging piles are to facilitate ''reliable'' and ''protective'' remedies) and focus more directly on factors specific to short-term waste management (65 FR 51110, August 22, 2000). CAMUs used for storage and/or treatment only will also be subject to the staging piles standards at 40 CFR 264.554(e) and (f) governing management of ignitable, reactive, or incompatible wastes and the staging pile standards at 40 CFR 264.554(j) and (k) for closure. (Note that, as discussed in the proposal, the staging pile closure standards establish different requirements for staging piles located in previously contaminated areas and for staging piles located in uncontaminated areas. These apply in the same way to storage and/or treatment only CAMUs located in previously contaminated or uncontaminated areas (65 FR 51110, August 22, 2000).)

If storage and/or treatment only CAMUs exceed the time limits for operation of staging piles (that is, two years with the potential for a single 180-day extension), today's rule requires the Regional Administrator to establish time limits for operation that are no longer than necessary to achieve a timely remedy selected for the wastes. As discussed in the proposal, it is the Agency's general expectation that storage and/or treatment activities will be completed within months or years rather than decades, except in very unusual circumstances. Storage and/or treatment only CAMUs that operate for longer than two and one-half years must comply with the design and operating requirements for CAMUs in which waste will remain after closure at 40 CFR 264.552(e)(3) and the ground-water monitoring and corrective action requirements of 40 CFR 264.552(e)(5). They would not be subject, however, to the treatment standards of 40 CFR 264.552(e)(4) or the closure standards of 40 CFR 264.552(e)(6).

Some commenters expressed concern with this approach, indicating that it was common for large, multi-phased cleanups to require repeated staging of cleanup wastes over a number of years (i.e., more than two years). These commenters suggested that the Agency eliminate the time limit for storage and/or treatment only CAMUs or, alternatively, count only the days during which waste was actually in the storage and/or treatment only CAMU towards the two-year time limit. (For example, if wastes are staged for three weeks and then removed and the unit is ''empty'' for three weeks before receiving more waste for staging, only the three weeks during which waste was in the unit would apply towards the two-year time limit.)

The Agency is not persuaded that it should eliminate the time limit for storage and/or treatment only CAMUs or count only the time when waste is actually being treated or stored. The Agency believes that when storage and/or treatment only CAMUs will operate for more than two and one-half years, it is appropriate to apply the minimum national standards for CAMU design and ground-water monitoring and corrective action established today. Storage and/or treatment only CAMUs that operate for longer than two and one-half years have greater potential to release hazardous constituents to the environment (if only because they are in place for longer periods of time), and, therefore, in EPA's view should be treated in a manner similar to units designed for more permanent disposal. EPA is also not persuaded that it should count towards the two and one-half year time limit only the time that waste is actually stored and/or treated in a CAMU. Even though ''waste'' may not be stored in the pile during this period, past residuals may remain. Also, The Agency believes that the practical difficulties associated with such an approach are would be great. For example, would the permit have to specify the extent of removal necessary from a storage and/or treatment only CAMU such that the clock should stop? What type of record-keeping and inspection system would be necessary to document the days and times waste was actually being stored and/or treated in a CAMU? Determining, on a site-specific basis, the answers to these questions would almost certainly delay cleanups.

Finally, and most important, EPA is not convinced that the proposed approach (finalized today) will constrain cleanups in the way commenters suggested. Commenters appeared most concerned with application of the CAMU design and ground-water monitoring and corrective action requirements to storage and/or treatment only CAMUs operating for longer than two and one-half years. EPA notes that the minimum national standards for CAMU design apply only to new, replacement or laterally expanded units; they do not apply to existing units designated as CAMUs. Thus, existing units designated as storage and/or treatment only CAMUs would not have to be retrofitted, even if they were operated for more than two and one-half years. Furthermore, new CAMUs (including new CAMUs used for storage and/or treatment only) that are sited in areas of significant

[39] EPA revised these regulations by clearly separating the requirements for storage and/or treatment only CAMUs that meet the staging pile time limits (new paragraph (f)(1)) from the requirements for those that do not (new paragraph (f)(2)). The Agency reduced the section by eliminating the proposed paragraph (f)(1), but included the paragraph's conditions in the new paragraphs (f)(1) and (2).

[40] Although the treatment requirements in 40 CFR 264.552(e) would not apply, of course, nothing in this language would preclude the Regional Administrator from imposing additional treatment requirements using, for example, the overall CAMU or remedy decision process, or the provision allowing the Regional Administrator to impose requirements for CAMUs ''as necessary to protect human health and the environment.''

contamination are eligible for alternative design standards based on site-specific circumstances. The Agency believes that CAMUs used for long-term storage and/or treatment will often be located in areas of significant contamination (because facility owners/operators and regulators will choose to keep wastes confined to already contaminated areas, where practical) and therefore will be eligible for a determination that a liner is not needed under 40 CFR 264.552(e)(3)(ii)(B). Alternatively, CAMUs used for long-term storage and/or treatment may include operating practices that, together with location characteristics, will allow for a determination that alternate design approaches are acceptable under 40 CFR 264.552(e)(3)(ii)(A). For example, a roof constructed over a CAMU used for long-term storage and/or treatment, perhaps combined with pavement or a single liner, could prevent the migration of hazardous constituents into the ground water or surface water at least as effectively as the standard liner and leachate collection systems under certain circumstances (e.g., when waste is placed in the CAMU only intermittently).

As for concerns over ground-water monitoring and corrective action requirements, EPA understands the commenter's point, but it continues to expect that ground-water monitoring and corrective action requirements are going to be appropriate for land-based units that will be in place for many years. EPA does note, however, that the requirements for ground water monitoring and corrective action in § 264.552(e)(5) are expressed as performance standards. For example, ground water monitoring must be ''sufficient to * * * detect and characterize'' releases in ground water. Therefore, monitoring could be reduced where releases were very unlikely, as long as it met the regulatory performance standard. Similarly, corrective action requirements must be sufficient to ensure that the regulatory agency is notified of future releases to ground water and corrective action is taken as necessary to protect human health and the environment. The commenter did not explain why it considered this requirement to be unreasonable.

The Agency is sympathetic to arguments that some complex, phased cleanups may in fact take ''decades rather than years.'' Nonetheless, as discussed above, the Agency believes these cleanups are appropriately accommodated using the provisions for storage and/or treatment only CAMUs (and, where applicable, the provisions allowing alternate design approaches) promulgated today.

J. Staging Piles (40 CFR 264.554)

The Agency specifically requested comments on whether it should revise the staging pile regulations to allow treatment in staging piles, which would complement the provisions for storage and/or treatment only CAMUs. In addition, EPA requested comment on an industry group suggestion that, at a minimum, limited physical operations (that might technically meet the definition of treatment) be allowed in staging piles.

As in the past, comments on the idea of treatment in staging piles were mixed. Some commenters supported the idea of treatment in staging piles and believed that the staging pile standards would result in unit designs and operating criteria that protect against the potential risks of treatment. Commenters pointed out, for example, under 40 CFR 264.554(d)(1)(ii), staging piles must be designed to ''prevent or minimize releases of hazardous waste or hazardous constituents in to the environment'' and to ''minimize or adequately control cross-medial transfer.'' Other commenters opposed the idea of significant treatment in staging piles; they believed, among other things, that it would be misleading to the public (given the name 'staging piles') to allow treatment. They also argued that issues associated with significant treatment are more properly addressed using the CAMU designation process, which is likely to involve a higher level of government and public oversight.

After further consideration of this issue, the Agency has decided not to allow significant treatment in staging piles and to continue to require use of CAMUs (or other appropriate types of RCRA units) for significant treatment activities. EPA agrees with one commenter that issues associated with significant treatment (e.g., air emissions, use of chemical extractants) is more appropriately addressed through the CAMU designation process, where they will receive what EPA described in the proposal as ''the high degree of attention and analysis that has typically accompanied CAMU decisions.'' (65 FR 51111) At the same time, the Agency is persuaded that, given the broad definition of treatment in RCRA, an absolute ban on any treatment in staging piles might severely limit their use and could preclude legitimate staging activities for which they were designed. The Agency, therefore, is revising the staging pile regulations at 40 CFR 264.554 to explicitly allow physical operations that are intended to prepare wastes for subsequent management or treatment. As discussed in the proposal, these operations include mixing, sizing, blending, and other similar physical operations that are intended to prepare wastes for subsequent management or treatment (65 FR 51111, August 22, 2000). These types of activities are common practices during cleanups where it is necessary to first consolidate and then size or blend contaminated soils or other wastes to facilitate subsequent treatment.

Because of the broad definition of ''treatment'' under RCRA, physical activities to manage or prepare wastes for further management—such as the activities described above—could be considered treatment under certain circumstances.[41] However, the Agency is convinced that it is appropriate to allow for these types of activities in staging piles—they are legitimately part of typical staging activities at many cleanup sites; disallowing these activities could significantly reduce the usefulness of staging piles; and they generally do not raise issues beyond those that would arise merely from accumulating and storing remediation waste in piles. Today's amendment to the staging pile regulations will clarify that these types of physical activities are allowed for the purposes of managing remediation wastes in staging piles, regardless of whether they might otherwise, technically, meet the RCRA definition of ''treatment'' and provides facility owners/operators assurance that routine staging operations such as the physical mixing, blending and sizing of waste will not result in violations of the staging pile requirements. More significant treatment operations involving something other than physical treatment—that is, where the chemical character of the waste is changed through chemical or biological treatment (such as solvent-based soil washing or biotreatment)—are subject to the CAMU regulations discussed earlier in today's rulemaking. EPA has concluded that it is appropriate to continue to regulate these more aggressive approaches to treatment under the CAMU process because of the likely higher level of public interest and the fact that they do not fit within the

[41] Section 1004 of RCRA defines ''treatment'' as ''any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume* * * .''

staging pile regulation's original concept of ''staging.''

K. Placement of CAMU-Eligible Wastes in Off-Site Hazardous Waste Landfills

In response to comments on the August 2000 proposal and to a later proposal from a group of industry representatives, EPA published a supplemental proposal on November 20, 2001 (66 FR 58085). In this proposal, EPA took comment on industry's suggestion that placement of CAMU-eligible wastes be allowed in off-site hazardous waste landfills under certain circumstances. In addition, EPA also proposed to allow disposal of CAMU-eligible wastes in on-site hazardous waste landfills under the same conditions. In the supplemental proposal, EPA explained in detail why, in its view, allowing disposal of CAMU-eligible waste in hazardous waste landfills would promote more aggressive remediation and provide remediators at cleanup sites with additional options—options that might frequently be more protective than disposal in a CAMU, that would likely lead to more thorough cleanups, and that would promote opportunities for redevelopment.

In the November 2001 document, EPA stated its intention to include the new conditions it was proposing (if it chose to go forward with them) in today's final rule, scheduled for signature by December 21. Consistent with this goal and because of the relatively limited nature of the proposal (depending, as it did, on the basic structure of the August 2000 proposal), EPA provided an abbreviated comment period of fifteen days. To ensure prompt notice to commenters and an adequate time for comment, EPA provided electronic copies of the supplemental proposal to all commenters on the August 2000 proposal immediately after it was signed on November 14, 2001. No commenters expressed concern about the length of the comment period on the supplemental proposal as it applied to off-site disposal of CAMU-eligible wastes.

EPA received overwhelmingly favorable comments on the general approach in the proposal. No commenters expressed disagreement with EPA's view that allowing placement of CAMU-eligible wastes in off-site hazardous waste landfills would promote more aggressive remediation. Several commenters asked EPA to clarify implementation issues and raised questions about the workability of the approach described in the supplemental proposal, depending on how it was interpreted. In response to these commenters, EPA is finalizing the supplemental proposal at 40 CFR 264.555, generally as proposed, but it is clarifying the implementation process and adding new procedural requirements, based on comments. These revisions are designed to ensure that the off-site provision can be practically implemented and therefore that it achieves its goal of promoting aggressive remediation. The details of the requirements are discussed below.

1. Conditions for Off-Site Landfill Placement

Section § 264.555(a)(1)–(3) establishes the basic conditions that must be met for the Regional Administrator to approve placement of CAMU-eligible waste in a hazardous waste landfill unit at an off-site location under the terms of § 264.555.[42]

a. Limitation to CAMU-Eligible Wastes

In the supplemental proposal, EPA limited placement of remediation wastes in hazardous waste landfills under the terms of § 264.555 to CAMU-eligible waste, but also proposed to include the ''discretionary kickout'' provision of § 264.552(a)(2). The Agency proposed to include the kickout provision because the reasons behind it apply as much to placement of CAMU-eligible waste in hazardous waste landfills as it does to placement in CAMUs. The supplemental proposal, however, did not include the special provisions of § 264.552(a)(1)(iii) and (a)(3), which would have allowed placement of ''as-generated'' wastes and liquids under specific circumstances. EPA concluded that, in the case of ''as-generated'' wastes, a special exception would be unnecessary, because there is no current regulatory constraint on placement of non-hazardous as-generated wastes in RCRA permitted landfills (except of course in cases of waste incompatibility, or similar situations). As for liquids, EPA saw no reason why the current RCRA ban on liquids in landfills should not continue to apply to hazardous waste landfills receiving CAMU-eligible wastes. The circumstances EPA has identified where the RCRA ban on liquids might be inappropriate for CAMUs are specific to remediation.

Commenters provided no negative comments on this aspect of the proposal, and therefore EPA is finalizing it as proposed.

b. Limitation to Placement in Off-Site Landfills

In the supplemental proposal, EPA allowed disposal of CAMU-eligible wastes in on-site hazardous waste landfills, as well as off-site waste landfills. One group of commenters—who was one of the two industry groups who recommended the off-site disposal option to EPA—correctly noted that industry's original proposal did not extend to on-site hazardous waste landfills. This commenter expressed concern that it did not fully understand the implications of this additional provision, and strongly urged EPA to defer extending the conditions of today's rule to on-site landfills. Because of the compressed schedule of this supplemental rulemaking, EPA has decided to proceed at this time only with aspects of the proposal that interested parties support, and to defer final decisions on other aspects to ensure that EPA does not adopt a course of action that may have unintended consequences. Accordingly, EPA is not extending the relief in today's rule to the disposal of CAMU-eligible wastes in on-site hazardous waste landfills and has revised the language of § 264.555(a) to limit the applicability today's rule to ''landfills not located at the site from which the waste originated.''

c. Treatment Requirements

In the supplemental proposal, treatment requirements for CAMU-eligible wastes placed in permitted hazardous waste landfills would largely track the treatment requirements for CAMU-eligible wastes placed in CAMUs. That is, treatment requirements would be limited to principal hazardous constituents. Treatment would have to meet the national treatment standards of § 264.552(e)(4), with an opportunity for the Regional Administrator to adjust treatment based on specific enumerated factors.

The Regional Administrator would be able to apply the following adjustment factors without any special conditions: adjustment factor A (technical impracticability), adjustment factor C (community acceptance), adjustment factor D (short-term risk), and adjustment factor E(1) (national minimum treatment standard is substantially met and waste PHCs are of very low mobility). EPA proposed not to allow use of adjustment factor B (which

[42] EPA emphasizes that ''CAMU-eligible'' waste may of course continue to be managed off-site in any way that was allowable before today's rule. Today's rule sets alternative treatment conditions for hazardous ''CAMU-eligible'' waste placed off-site hazardous waste landfills. Furthermore (to respond to a question raised by one commenter), off-site management of non-hazardous ''CAMU-eligible'' waste is not subject to the requirements of this section, and this waste may be managed off-site (including in hazardous and non-hazardous landfills) consistent with state law.

considers cleanup levels or goals at the remediation site), because it concluded that these levels would be irrelevant to placement in off-site landfills. In addition, EPA proposed to tighten adjustment factor E(2) (which allows the Regional Administrator to consider the protection provided by the engineering design of the CAMU) to require treatment of principal hazardous constituents in all cases where this adjustment was exercised.

Comments on this aspect of the proposal were largely favorable, and EPA is finalizing the treatment requirements as proposed (see § 264.555(a)(2)).

Regarding use of adjustment factor E(2), § 264.555(a)(2)(iii) of today's rule allows the Regional Administrator to adjust the national treatment standards based on the design of the landfill in accordance with § 264.552(e)(4)(v)(E)(2).[43] This section allows the Regional Administrator to adjust treatment levels based on ''the engineering design of the CAMU and related engineering controls'' ''where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d). * * *'' But § 264.555(a)(2)(iii) of today's rule adds a treatment performance standard for CAMU-eligible wastes going to off-site landfills under this adjustment factor—the treatment would have to significantly reduce ''the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.'' Consistent with the proposal, adjustment factors (E)(3), (4), and (5) would not be allowed.

Thus, today's rule significantly tightens the conditions of adjustment factor (E) for CAMU-eligible wastes being placed in off-site hazardous waste landfills. As explained in the proposal, EPA is taking this approach to address possible concerns about potential transfer of risk to the off-site location when the Regional Administrator relies on the protection afforded by the disposal unit to adjust the treatment standards. First, adjustment factors E(3)–(5) would not be available—since either these factors do not require treatment, or they do not require that the receiving disposal unit meet subtitle C design standards. And second, today's rule requires treatment of PHCs in CAMU-eligible wastes disposed of off-site under adjustment factor E(2).

EPA notes that—as one commenter pointed out—the inclusion of ''the threat at the remediation site'' in the treatment performance standard in § 264.555(a)(2)(iii) contemplates that the Regional Administrator, in implementing this adjustment factor, would make the same kind of balancing of risks allowed in the ''environmentally appropriate'' land disposal restriction variance at § 268.44(h)(2)(ii). That is, in concluding that a particular treatment regime ''minimized threat'' under this adjustment factor, the Regional Administrator could weigh the risks associated with leaving waste in place (or of significantly delaying cleanup) against any possible risks associated with subsequent management of the waste in a permitted hazardous waste landfill.

d. Disposal Requirements

In the supplemental proposal, EPA limited hazardous waste landfills receiving CAMU-eligible wastes to those with RCRA permits, not including landfills under RCRA interim status. The proposal did not specify who had to hold the permit for the landfill. For example, landfills accepting CAMU-eligible wastes might be off-site commercial units, or they might be at facilities controlled by the owner/operator of the remediation site. The proposal also required that the landfill meet the technical design and operating requirements for new landfills in 40 CFR part 264, subpart N. This requirement would ensure that the landfill met the minimum technology requirements for hazardous waste landfills (i.e., the double synthetic liner and detailed leachate collection requirements of § 264.301(c)). In addition, the landfill would be subject to the specific landfill ground-water monitoring requirements of subpart F of part 264 and the closure requirements of subpart G.

EPA received no negative comments on this aspect of the supplemental proposal and is finalizing § 264.555(a)(3) as proposed.

2. Approval Procedures

a. Approval of CAMU-Eligible Waste for Placement in a Subtitle C Landfill

Under the supplemental proposal, CAMU-eligible waste would be approved for placement in a hazardous waste landfill under procedures identical to CAMU approval procedures. Facility owner/operators wishing to send CAMU-eligible waste to a RCRA hazardous waste landfill would generally have to provide the same information as persons requesting approval of an on-site CAMU. Commenters generally supported this approach and EPA is finalizing it in § 264.555(b)–(c) largely as proposed.[44]

The supplemental proposal indicated simply that the ''Regional Administrator'' would approve CAMU-eligible waste for disposal in a landfill, without any further specification on which ''Regional Administrator.'' One commenter asked EPA to clarify whether the ''Regional Administrator'' was the regulator at the remediation site or at the receiving site; another commenter argued that the Regional Administrator approving the action under § 264.555(c) should be the person with regulatory oversight at the receiving landfill. On the other hand, several commenters assumed that EPA meant the Regional Administrator with RCRA regulatory oversight at the location of the cleanup would approve action under § 264.555(c)—that is, the Regional Administrator who would make an off-site decision was the same regulator who would likely be overseeing the cleanup (for example, if it was being conducted as part of a RCRA corrective action).

In developing the supplemental proposal, EPA did not clearly state whether the regulatory authority at the location of the cleanup site or at the receiving landfill would typically review and approve (or deny) proposals for off-site placement under § 264.555. For example, EPA stated in the preamble that ''the Regional Administrator (or the authorized state program) at the location of the hazardous waste landfill would be responsible for placement of CAMU-

[43] Note that, under § 264.555(g), the ''design of the CAMU'' in § 264.552(e)(4)(v)(E) means the design of the permitted Subtitle C landfill. Because the permitted landfill must meet the prescriptive design standards for new hazardous waste landfills, the Regional Administrator would typically base this adjustment on protection offered by a generic landfill meeting these standards. See discussion later in this section of the preamble.

[44] One commenter asked what information the ''person seeking approval'' would need to provide the Regional Administrator. Under § 264.555(b), the applicant would be required to provide information required under the general CAMU information requirement (§ 264.552(d)) relevant to an off-site determination. That is, the applicant would have to provide information ''sufficient'' for the Regional Administrator to approve CAMU-eligible waste for off-site disposal under § 264.555(c). This would include information to show the Regional Administrator that the waste is CAMU-eligible, to identify PHCs, to adjust treatment levels as appropriate (e.g., to demonstrate technical impracticability), and similar information. The applicant would not be expected to provide information not relevant to the decision (e.g., the specific design of the receiving landfill, since the landfill would be required, by regulation, to meet subtitle C design requirements, and this information would typically be enough to allow the Regional Administrator at the remediation site to make a decision).

eligible waste in the landfill.'' At the same time, however, most of the questions associated with that approval relate closely to specific circumstances, processes, and decisions at the cleanup site (including remedy decisions)—for example, the identification of principal hazardous constituents, which are based on site-specific cleanup goals or levels; technical impracticability adjustments; adjustments because of short-term risks; and similar questions. More broadly, the question of whether (and how much) waste treatment is needed is typically part of the remedial decision process. Therefore, the approval process under § 264.555(c) will inevitably be closely connected to the remedy selection decision at the cleanup site.

After reviewing comments and considering this question further, EPA concludes that the regulatory authority most appropriate for determining that CAMU-eligible waste from a particular remediation is suitable for disposal in a subtitle C landfill, as a general matter, is the regulatory authority at the remediation site. As described above, the question of how the cleanup wastes should be managed is inherently part of the remedy decision, and the information needed to make decisions will be available to the regulatory authority at the cleanup site. Furthermore, the decision on how to manage remediation waste is typically made in an iterative process at the remediation site, with the facility owner and the regulator considering a broad range of alternatives as the investigation and remedy selection proceed. In this process, the options for off-site disposal become a factor in determining which remedy is selected—including, perhaps, whether the waste is excavated in the first place.

In addition, several commenters made the point that extended regulatory review processes (on a remediation-by-remediation basis) at potential disposal sites would generally repeat review processes already conducted at the remediation site, and that such processes could, as a practical matter disrupt or significantly delay the cleanup process. For example, the decision for off-site disposal is often made only late in the process (at a point where on-site options are rejected), and then it is often made only generically, i.e., the decision is made that the waste might safely sent off-site for disposal in a hazardous waste landfill, but the specific site would not yet be identified. At the point where off-site disposal has been chosen, the facility owner, in such cleanups, might solicit bids from hazardous waste management companies with processes or landfills meeting certain criteria. It would obviously be unrealistic to expect each potential bidder to go through an extended approval process with its regulator (except in the case of very large cleanups) before it submitted a bid. At smaller sites, the time between the decision to manage wastes off-site and the actual movement of wastes might only be days. In both cases, if an extended off-site approval process began only after an off-site location had been accepted, cleanup could be significantly delayed, with no meaningful gains in environmental protection.

Thus, for the off-site provisions of today's rule to work effectively to promote aggressive cleanups at a wide range of sites, EPA believes that the regulatory authority at the cleanup site should make the basic decision as to what conditions would most appropriately apply to CAMU-eligible waste disposed of off-site at a subtitle C landfill.

For these reasons, EPA is finalizing § 264.555(a)–(c) generally as proposed, but specifying that the ''Regional Administrator'' approving CAMU-eligible waste for subtitle C landfill disposal will be the Regional Administrator (or state regulatory authority) with RCRA oversight over the site where the remediation is occurring. In this case, disposal in a hazardous waste landfill would be allowed, as long as the conditions of § 264.555 were met. Consistent with this expectation, EPA is modifying proposed § 264.555(b)—which describes the information that the person seeking approval must provide—by removing the parenthetical phrase ''(including the location of the landfill).'' As explained earlier, in many cases, remediators at the cleanup site may not know the location of the specific landfill at the time of the application, or indeed at the time eligibility for off-site disposal in a Subtitle C landfill has been approved.

One state commenter raised a concern about allowing a state director at a remediation site to determine adjusted treatment standards for CAMU-eligible waste, when that waste would be disposed of in another state. The commenter argued that the state regulator overseeing the receiving landfill should be responsible for making any adjustments to the national treatment standards. In particular, the commenter was concerned that the regulator in the generating state would not be knowledgeable about the receiving facility; that the state overseeing the receiving landfill might disagree with the treatment standards determined by the generating state; and that the receiving state would likely feel compelled to repeat the work of the generating state regulator, leading to duplicative effort.

EPA understands these concerns, but it continues to believe, for the reasons described above, that: (1) The regulator at the site of remediation is the most appropriate authority to make the *general* finding that cleanup waste from a particular site is appropriate for off-site disposal in a subtitle C landfill under today's rule, and (2) the off-site provisions in today's rule will be successful in promoting more aggressive remediation only if the basic decisions on the appropriateness of disposal in a subtitle C landfill are made at the cleanup site, with regulators at the receiving landfill playing their normal role (through the permitting process) in determining what particular wastes are appropriate for disposal at that site.

In answer to the points raised by the commenter, EPA agrees that the regulator at the receiving landfill will certainly be more knowledgeable about site conditions at that particular landfill. The Agency, however, does not believe that this fact is important to decisions on adjustments, because the design standards for the off-site landfill are specified by regulation. That is, the off-site landfill will have to meet the subtitle C design standards for new hazardous waste landfills. These are very specific standards, which not only require double liners and a leachate collection system, but specify such details as the thickness and composition of the liners; the size of the gravel (or other material) in the leachate collection layer; the minimum slope of that layer; and similar details . Thus, the regulator at the remediation site will have ample information on the engineering design of the unit to adjust a treatment standard based on the protection offered by the design of the receiving landfill (if adjustment factor E is exercised). At the same time, location-specific factors at the receiving facility (e.g., site-specific hydrology)—which is the kind of information that the regulator at the remediation site would be unlikely to know—would not be an allowable consideration in adjusting a treatment standard based on the engineering design of the landfill.

EPA acknowledges that, when wastes move from one state to another, the regulator in the receiving state may conclude that treatment levels approved by the neighboring state are unacceptable for a particular landfill, or that the receiving state may feel that it needs to review the work of the neighboring state. EPA certainly expects that, in such cases, overseeing states will be able to generally rely on the

protections built into today's rule, and the protections of the permitted landfill receiving the waste,[45] so that they can be comfortable allowing receipt of waste that meets its terms. But, the Agency also acknowledges that there is a potential for redundant reviews. Nevertheless, EPA remains convinced—for the reasons stated above—that today's rule will only be successful in promoting aggressive cleanups if the state overseeing the cleanup makes the basic judgments on whether a particular remediation waste is eligible for off-site disposal, and what level of treatment is required under today's rule, before disposal in a subtitle C landfill (regardless of where that landfill is located). Otherwise, as explained above, today's rule is not likely to achieve its intended goals.

b. Permitting and Acceptance at the Receiving Landfill

Proposed § 264.555(d) required that the Regional Administrator modify the permit for a hazardous waste landfill to allow receipt of CAMU-eligible waste under the terms of § 264.555, before it could receive such waste. In some cases, state or federal regulations would already require a permit modification at a facility, but in others—for example, where the waste met the waste acceptance criteria in the permit—they might not. But, in any case, proposed § 264.555(d) ensured that the permit was modified through a public process to allow receipt of CAMU-eligible waste under the terms of proposed rule.

The modification would follow permit modification procedures specified in § 270.42 or comparable state regulations, but at a minimum it would include public notice, opportunity for comment, and an opportunity for a hearing. (EPA assumes in most cases that states would choose the class 2 permit modification process, although class 3 modifications would meet the general performance standard as well.) This process would ensure that the local public had the opportunity to comment on whether and how CAMU-eligible wastes would be managed under the facility permit. Commenters supported this approach, and EPA is finalizing it as proposed. (Several commenters did express concern that EPA expected states to modify a facility's permit for each new remediation; today's rule would not require this. The issue is discussed in detail below.)

As part of the permit modification process at the receiving landfill, the Regional Administrator would include in the permit any requirements he or she determined were necessary or appropriate. During the permitting process, the Regional Administrator would be able to accommodate any special concerns of the local community. For example, the Regional Administrator might include special requirements in the permit to address potential risks from hazardous constituents in the waste, including principal hazardous constituents, to protect human health or the environment through the RCRA ''omnibus'' provision.[46] Further, the permit would include requirements to ensure that treatment standards for CAMU-eligible wastes imposed under § 264.555(a)(2) would apply; and, as specified in proposed § 264.555(d), the permit would also include recordkeeping requirements to demonstrate compliance with treatment standards approved for the waste. Under the current permitting requirements at § 264.13(a)(1), the facility owner/operator at the receiving landfill would be required to conduct an analysis of the waste that, ''at a minimum,'' contains ''all the information which must be known to treat, store, or dispose of the waste in accordance with this part'' (which would include information to show that treatment levels approved by the Regional Administrator were met). The plans for this analysis would be incorporated into the facility waste analysis plan (see § 264.13(b)), and the results of the analysis kept in the facility operating records in accordance with § 264.73(b)(3).

Commenters raised the question of whether a receiving land disposal facility would have to modify its permit every time it received CAMU-eligible waste from a new off-site location. Several commenters (including one state) argued that individual permit modifications would be unnecessary and counterproductive, where CAMU-eligible waste already met the acceptance criteria in a facility permit.

This was not EPA's intention in the proposal, and EPA expects that such modifications would ordinarily not be needed. Rather, EPA intends that an off-site facility would modify its permit once (with public notice, comment, and opportunity for a hearing). In fact, EPA expects that, once today's rule is effective, some commercial hazardous waste landfills will immediately seek enabling permit modifications, before they have been approached by potential customers—and EPA encourages them to do so.[47] Once an enabling permit modification has been approved, the modification would allow the facility to accept any CAMU-eligible waste that had been approved for off-site disposal by the appropriate regulatory authority at the remediation site. As part of the permitting process, the permitting authority of course could impose any additional conditions it determined were necessary, but EPA expects that complying with the terms of § 264.555, combined with the design and management standards required at the receiving facility under its RCRA permit, would provide sufficient assurance that CAMU-eligible waste would be safely managed.

One commenter argued that a permit modification at the receiving landfill should not be necessary at all. This commenter argued that permits specify the types of waste a facility may receive, and establish safe management conditions for that waste. If CAMU-eligible wastes approved for disposal under today's rule met the permit acceptance criteria, the commenter then questioned why a permit modification would be necessary at all. This commenter noted that, in many other cases, ''CAMU-eligible'' wastes currently go to hazardous waste landfills without permit modifications, because they meet the facilities' permit acceptance criteria. The commenter asked why EPA was requiring a permit modification under today's rule even where a facility's would otherwise allow acceptance of the CAMU-eligible waste without modification.

EPA appreciates the view of this commenter, but at the same time it notes that other commenters—including one state regulator—stressed the importance of the regulator and the local public at the receiving landfill having an opportunity to review and approve the fact that the landfill would receive wastes under the terms of today's rule. EPA also notes that the industry groups who recommended that these CAMU amendments include an off-site option supported an EPA requirement for a

[45] The receiving landfill, as explained below, would have to have a RCRA permit allowing it to receive the type of waste in question. RCRA permits establish detailed facility-wide requirements, including detailed waste analysis procedures, unit design, and waste management practices. These requirements, in EPA's view, will ensuring that the waste is managed protectively at the receiving facility.

[46] 46 Under the RCRA ''omnibus'' provision, ''each permit . . . shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.'' RCRA section 3005(c)(3).

[47] One commenter suggested that the one-time permit modification approach would lead to a network of approved facilities for EPA, states, and remediation waste generators to use for future projects involving off-site management of eligible wastes. EPA agrees that this result would be highly desirable and would promote more aggressive remediation.

permit modification, including public notice and an opportunity for a hearing at the off-site landfill. Therefore, EPA is retaining the proposed requirement in § 264.555(d) that the receiving facility undergo an enabling permit modification before receiving CAMU-eligible waste under today's rule. But it clarifies that there would be no need for subsequent permit modifications, as long as the CAMU-eligible waste met the waste criteria in the facility's permit.

At the same time, several commenters raised concerns that decisions on CAMU-eligible waste from any particular cleanup might be of concern to the local public and the regulatory authority at a receiving facility. Therefore, today's rule provides for an abbreviated notice procedure that must be completed before CAMU-eligible waste is placed in a permitted off-site landfill. These procedures are laid out in § 264.555(e). First, the landfill—which will already have been approved to receive CAMU-eligible waste under § 264.555(d)—would notify the local public and the RCRA permitting authority of its intent to receive off-site waste from a particular cleanup. (This notice might, for example, be submitted during the bidding process on the waste.) In this case, the public would be the persons listed on the facility's mailing list, required under 40 CFR 124.10(c)(ix). The notice would identify the location of the remediation site, the principal hazardous constituents, and the treatment requirements. Second, the public would have fifteen days to provide comments or express concerns to the regulatory agency. (Because the permit had already been modified through a public process to receive CAMU-eligible waste under this provision, commenters suggested and EPA has concluded that an abbreviated notice procedure is appropriate.) Finally, the Regional Administrator would have an additional fifteen days to object to the placement of the CAMU-eligible wastes in the landfill. The Regional Administrator would have the authority to extend the review period an additional thirty days because of public concern or insufficient information. If the Regional Administrator objects, or if he or she does not notify the owner/operator that he or she has chosen not to object, the waste could not be placed in the landfill until the objection had been resolved, or, alternatively, the permit had been appropriately modified through the procedures of § 270.42.[48]

EPA notes that, while this process requires action by the Regional Administrator within 30 days, it does not mean off-site disposal would be approved by default. Disposal could not occur without notification by the Regional Administrator that he or she does not object to the placement of the CAMU-eligible waste. EPA took this approach because it did not want the public to be at a disadvantage solely because the Agency (or an authorized state) failed to act within a specified period of time. At the same time, EPA recognizes that this approach may raise concerns with owner/operators of facilities interested in receiving CAMU-eligible wastes from off-site locations. Thus it urges these owner/operators to work closely with the appropriate regulatory authorities and the local public to look for ways to ensure that the process is expedited—consistent with the needs and interests of the regulator and the local community.

Toward this end, EPA has also included in today's rule a provision (§ 264.555(e)(iv)) that would allow the facility, the local public, and the regulatory agency to work together to identify situations where, because of minimal risk, they could agree that the limited notification procedures of § 264.555 were not necessary. For example, the facility, the regulatory agency and the community might agree that notification was not necessary if the total volume of waste from a particular remediation very minimal, or if CAMU-eligible waste met a particular level of treatment (for example, the waste was treated to the generic national standards of 90%/10XUTS, and none of the adjustment factors was used). EPA expects that these situations will be the exception. At the same time, however, EPA believes this provision will significantly improve the usefulness of today's rule, especially given the concern of one commenter that the rule should address obstacles to smaller-volume projects, for which off-site management often makes the most sense.

EPA, of course, understands that the regulatory authority and the local public may choose to limit the scope of today's regulation by requiring—through the initial permitting process at potential receiving facility—additional notice or review (e.g., a longer public comment period on notifications) before CAMU-eligible waste from a new remediation is received, or before certain categories or volumes of CAMU-eligible wastes were received from remediation sites. EPA expects that these issues would be addressed as part of the site-specific permitting process at the off-site hazardous waste facility seeking approval to receive CAMU-eligible waste from off site.

Commenters were particularly concerned that EPA might require that the receiving facility's permit be modified for each remediation. Commenters pointed out that this approach would be impractical and argued that it would likely eliminate the benefits (in aggressive remediation) that it hopes to achieve through § 264.555. The incentives for off-site disposal at hazardous waste landfills provided by today's rule, according to commenters, may often be most useful in the case of relatively small cleanups (or portions of cleanups). In such cases, the facility owner might be hoping to achieve clean closure—perhaps to allow redevelopment or to remove liability. Yet in these cases, the cost of a permit modification (even a ''minor'' modification) could well exceed the income received from a small shipment of remediation waste. Furthermore, such a process would create essentially the same practical problems that would occur if the § 264.555(c) approval process took place at the disposal site for every remediation. As one commenter put it, cleanup projects might be stopped indefinitely while one or more off-site facilities decided whether to participate in bidding on a project and then worked through the permit modification process. Thus, EPA believes it is impractical as well as unnecessary to require permit modifications with every CAMU-eligible waste shipment under today's rule.

3. Other Requirements

EPA emphasizes that the off-site portion of today's rule is narrow in scope. Specifically, the Regional Administrator may approve CAMU-eligible waste for placement in off-site hazardous waste landfills under only limited circumstances. Meanwhile, the waste would remain a RCRA hazardous waste, subject to all applicable RCRA hazardous waste requirements. For example, the manifest, recordkeeping, and reporting requirements of part 262 and part 264, subpart E would apply. In other words, the waste would require a manifest when shipped to an off-site facility, and standard RCRA waste-management requirements would apply

[48] EPA expects that permit modifications would only be necessary or appropriate as a last resort. That is, most objections are likely to be resolved short of requiring a modification to the permit modification. EPA, however, included this option because it provides a formal process, with clear requirements for public notice and typically with rights of appeal, which may be appropriate in some few cases. EPA has not specified in this rule what category of modification would be required, although the Agency expects that—if a modification process were determined to be necessary—the state would find a class 2 process to be most appropriate.

(e.g., waste analysis, storage requirements prior to placement, etc.).

In addition, when the waste is sent off-site, the rule (§ 264.555(e)) specifies that the generator of the waste (i.e., the owner/operator of the remediation site) is subject to the reporting, recordkeeping, and tracking requirements of § 268.7(a)(4). This section establishes requirements that apply ''when exceptions allow certain wastes or contaminated soil that do not meet the [land disposal restriction] treatment standards to be land disposed.'' With the initial shipment of waste, the generator will be required to send a one-time written notice to the land disposal facility providing specific information, such as the EPA waste identification numbers, the manifest number of the first shipment, and waste analysis data. EPA proposed this requirement and received no negative comment on it.

One commenter, however, suggested that § 268.7(a) be amended to include ''appropriate'' notice and certification. EPA believes that it has already, for the most part, addressed the commenter's concern by clarifying that the hazardous waste generator at the cleanup site must comply with § 268.7(a)(4), which requires a one-time written notice from the generator to the land disposal facility. The notice must indicate the hazardous waste numbers and the manifest number of the first shipment; a statement that the waste is not prohibited from land disposal; available waste analysis data; and specific information relating to the treatment of debris. EPA does recognize, however, that CAMU-eligible wastes may be treated off-site under today's rule, and that this activity might not be adequately covered by § 268.7(a)(4), which applies to waste generators. Therefore, to ensure adequate tracking and accountability when CAMU-eligible waste is treated off-site, § 264.555(f) of today's rule has been modified to require that off-site treatment facilities meet the certification requirements of § 268.7(b)(4), amended so that the treatment facility is required to certify that the treatment meets the requirements of the off-site provision of today's rule (as opposed to the requirements of the land disposal restrictions).

Finally, today's rule does not in any way restrict remediation waste management options that already exist. For example, the land disposal restriction variances of § 268.44(h) will remain available as an alternative (or complementary) approach for CAMU-eligible wastes sent for disposal. Furthermore, as described above, non-hazardous wastes will also be unaffected, because their management and disposal are generally not regulated under the federal RCRA hazardous waste program, and they will not need special approval under today's rule to allow placement in a landfill.

L. Grandfathering CAMUs (40 CFR 264.550 and 40 CFR 264.551)

EPA proposed that two types of CAMUs would remain subject to the 1993 CAMU regulations after promulgation of the CAMU amendments (i.e., after today's rulemaking): (1) CAMUs that are approved prior to the effective date of today's rulemaking and (2) CAMUs that were not approved prior to the effective date of today's rulemaking but for which substantially complete applications (or equivalents) were submitted to the Agency on or before 90 days after publication of the proposal (i.e., where substantially complete applications (or equivalents) were submitted on or before November 20, 2000). This approach is referred to as ''grandfathering.''

As discussed in the proposal, EPA continues to believe that it would be a poor use of cleanup resources to require reevaluation, in light of today's amendments, of CAMUs that are already approved or are substantially in the approval process (65 FR 51111–51112, August 22, 2000). The Agency's review of CAMUs approved under the 1993 rule showed that the CAMU decisions made under the 1993 rule would generally have been the same, or similar, to decisions that would likely be made under today's amendments. In general, commenters strongly supported the grandfathering approach, and EPA is today finalizing the grandfathering provisions as proposed.

The proposed effective date for the CAMU amendments was 90 days after publication in the **Federal Register**. Under RCRA Section 3010(b), RCRA regulations become effective six months after promulgation unless the Administrator provides for a shorter period because the ''regulated community does not need six months to come into compliance'' or for ''other good cause.'' As discussed in the proposal (65 FR 51118), EPA proposed a 90-day effective date, believing that it provided ample time for facilities to adjust to the new procedures and waste management standards in today's rule, especially given that the 90-day effective date would only affect unapproved CAMUs that do not meet the criteria for grandfathering.

A number of commenters expressed the concern that ninety days from public notice of the final CAMU amendments does not provide enough time to allow for approval of CAMUs under the 1993 rule and suggested that the Agency instead provide a 180-day effective date. Commenters appear concerned that a 90-day period would not provide enough time for EPA or authorized states to approve CAMU applications for units that were not already grandfathered by virtue of having a substantially complete application submitted by November 20, 2000. Given the scope of the grandfathering relief provided in the proposal, EPA believes this concern is unwarranted. CAMUs will be grandfathered if the application is approved within ninety days after the publication of the rule, or if the Agency received a substantially complete application (or equivalent [49]) within 90 days of the proposal of today's amendments (i.e., by November 20, 2000).[50] Therefore, facility owners/operators who submitted a ''substantially complete'' application to the appropriate regulatory agency by November 20, 2000, do not need to worry about whether their applications have been approved by the effective date of today's rule; their CAMUs—if approved—are grandfathered and will be subject to the standards that were in place when they submitted their applications (that is, to the 1993 CAMU rule standards). The 90-day effective date would have relevance only to applications that were not substantially complete by November 20, 2000, or (for applications not complete by that time) that had not been approved by the effective date.

The Agency does not see any justification for further extending the process that it laid out in the proposal. The purpose of the grandfathering provision is to avoid disruptions of CAMUs that have already been approved or that are well along in the review process. It is not to accommodate facility owners who submit new CAMU applications after the proposal of the CAMU amendments in an effort to obtain approval before the amendments become final. Therefore, although EPA understands commenters' interest in extending the effective date further, it is

[49] CERCLA decision documents and state cleanup program decision documents in which CAMUs are proposed as applicable or relevant and appropriate requirements are considered ''equivalent'' documents.

[50] As discussed in the proposal, ''substantially complete'' does not mean that the Regional Administrator must have deemed an application ''complete'' under § 270.10(c). Some commenters seemed confused on this point. For additional guidance on the meaning of substantially complete, see the proposal at 65 FR 51112 (August 22, 2000).

unpersuaded that an additional 90 days is needed or that a failure to provide that additional time will disrupt ongoing remedial activities or significantly set back ongoing reviews of CAMU applications.[51]

CAMUs that are grandfathered will remain subject to the 1993 CAMU rule for the life of the CAMU ''so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved.'' As discussed in the proposal, the Agency believes that there are two types of site-specific circumstances under which decision makers would generally determine that changes are ''within the general scope of the CAMU as approved.'' First, any change that could be made without modification of the approved CAMU conditions in a permit or other authorizing document would be considered ''within the general scope of the CAMU as approved'' and would therefore be grandfathered. Second, changes that require modification of the CAMU authorizing document but still remain within the general scope of the CAMU as originally approved may be allowed on a site-specific basis. These changes might include allowing additional placement of essentially the same wastes (or wastes with similar constituents and origin) that were originally approved for placement in a CAMU, or retaining the same basic design but enlarging a CAMU to accommodate an extra volume of waste. One commenter asked for clarification on the effect of permit changes to extend the duration of a CAMU. Changes to an authorizing document, including document renewals, to allow continued operation of a CAMU, as long as the continued operation of that duration was within the original ''general scope,'' would not affect the grandfathered status of the CAMU (e.g., where the intended life of an approved CAMU extended beyond the existing duration of the unit or facility permit, renewal of the permit to extend the CAMUs authorization would be ''within the general scope of the CAMU as approved''). See 65 FR 51112, August 22, 2000. Commenters supported the approach in the proposal, and EPA's views on these issues are unchanged.

Some commenters expressed concern that changes determined outside the scope of the CAMU as originally approved would automatically result in an entirely new CAMU approval process or cause an entire CAMU to lose its ''grandfathered'' status. This was not EPA's intention. EPA clarifies that an entirely new CAMU approval process is not needed for changes that are determined outside the scope of the originally approved CAMU, and such changes will not cause an entire CAMU to automatically lose its grandfathered status. Changes that are determined to be outside the scope of the originally approved CAMU (like other changes) would be subject to review and approval of the Regional Administrator and today's requirements would apply to them, if applicable. For example, a change to add a new type of waste to a CAMU that is considered outside the scope of the originally approved CAMU would trigger a duty to comply with today's treatment requirements with respect to that waste, but it would not require a new review, for example, of waste already disposed of in the CAMU or waste within the scope of the original approval.

EPA understands how its proposed language on grandfathering led to the commenters' concern, and therefore the Agency is making a change to that language to clarify its original intent. The proposed language (§ 264.550(b)) stated that grandfathered CAMUs are subject to the earlier CAMU standards, in § 264.551, ''so long as the waste, waste management activities, and design of the CAMU remain within the general scope of the CAMU as approved.'' To make it clear that a change in one feature of the CAMU (for example, the waste to be managed) would not automatically require a reapproval of the entire CAMU under the new standards, EPA has revised the final clause to read: ''CAMU waste, activities, and design will not be subject to the new standards as long as the waste, activities, and design remain within the general scope of the CAMU as approved.'' Thus, the placement of new waste in a grandfathered CAMU outside the scope of the original approval would require that the new waste meet the treatment standards of today's rule, and certainly operating and closure standards for the CAMU would be modified if necessary to address the new waste, but the entire CAMU would not have to undergo reapproval under the terms of today's rule.

M. Public Participation (40 CFR 264.552(h))

EPA proposed to expand and clarify the requirements providing for public participation in decisions to establish CAMUs by making prior public notice and an opportunity for public comment mandatory for all final CAMU determinations. EPA also proposed to expressly require the Regional Administrator to include in CAMU public notices the rationale for any proposed application of the treatment adjustment factors discussed earlier in today's rulemaking. Consistent with its overall policy to encourage full, fair, and equitable public participation throughout cleanup processes, the Agency believes that the public must be provided opportunities to participate in CAMU decision making and is finalizing the public participation requirements as proposed.

Today's public participation requirements for CAMUs expand on the public participation requirements established in the 1993 CAMU rule. This rule required the Regional Administrator to document his or her decision rationale and make the documentation available to the public, and it required that the incorporation of CAMUs into existing permits be done through the permit modification procedures (including the public participation procedures) of § 270.41 or § 270.42. The rule did not establish procedures for incorporating CAMUs into orders, or mandate that there be an opportunity for public comment before a decision outside of the permit context. Under today's rules, the Regional Administrator must provide ''public notice and reasonable opportunity for public comment before designating a CAMU.'' Thus, under today's regulations, the public will have an opportunity to be involved in all final CAMU determinations before final decisions are made, whether a CAMU is authorized under a RCRA permit or an order. Commenters generally supported the explicit requirement for public notice and opportunity for comment prior to final CAMU determinations.

As discussed in the proposal, the Agency believes that the standard of ''reasonable opportunity'' should, as a general minimum, include informing people about a prospective CAMU and providing a meaningful opportunity for people to comment to the Regional Administrator before a final agency determination is made regarding the CAMU (65 FR 51113, August 22, 2000). At the same time, by not including more detailed provisions on how public participation should be conducted, the Agency believes that the ''reasonable opportunity'' standard provides the flexibility that is necessary to ensure that CAMUs can be considered and approved within the broader context of cleanup decisions using the wide variety of administrative mechanisms that may be associated with cleanups.

[51] The Agency also notes that the signature of the final rule was delayed by several months beyond EPA's original expectations, thereby giving commenters much of the time they requested.

In many cases, the Agency expects that CAMUs will be approved as part of a larger remedy selection decision. In general, remedy decision processes already include opportunities for public review and comment. The Agency expects that CAMUs approved as part of a broader remedy selection decision would undergo public notice and comment as part of that decision. The Agency believes that placing CAMUs in the context of the broader remedies of which they are a part will be helpful to the public reviewing CAMU proposals. (Where CAMUs are approved as part of a permit modification, the existing permit modification procedures (including the public participation) of § 270.41 or § 270.42(c) would apply; however, even in these cases, EPA expects that the CAMU approval and the remedy decision could be done as a single modification.) In addition to public notice and an opportunity for comment before a final CAMU determination is made, the ''reasonable opportunity'' standard includes the idea that Regional Administrators provide sufficient information (e.g., a description of the proposed CAMU) to allow the public to consider the proposal in a meaningful way.

In addition to the requirement that Regional Administrators provide a ''reasonable opportunity'' for public comment before making a CAMU determination, today's rulemaking specifically requires Regional Administrators to include the rationale for any proposed adjustments to the CAMU treatment standards. As discussed in the proposal, the Agency is including this provision to highlight the importance of the treatment adjustment factors and because decisions about treatment, including the degree of treatment necessary at any given site, are often of great interest to the public.

In the proposal, EPA requested comment on whether to apply the public participation procedures in the Agency's RCRA Expanded Public Participation Rule (60 FR 63417, December 11, 1995, 40 CFR part 124, subpart B) to all CAMU decisions. Comments on the idea of requiring the expanded public participation requirements at all final CAMU determinations were mixed. Some commenters strongly supported applying the expanded public participation requirements to all final CAMU determinations. (The expanded public participation requirements now apply only to CAMUs approved as part of an initial permit. They do not apply to CAMUs incorporated into permits through permit modifications (see 40 CFR 124.31(a))—although these modifications do require the facility to notify the public and hold a public meeting at the time it applies for the modification (see 40 CFR 270.42(c))—or to CAMUs required through orders.) Other commenters thought application of the expanded public participation rule requirements—such as pre-application meetings—would not be appropriate for all final CAMU decisions. After considering these comments carefully, the Agency has decided not to apply the expanded public participation requirements by regulation to all CAMU determinations.[52]

EPA is taking this approach, in part, because the conditions of the expanded public participation rule mirror the specifics of the RCRA Part B permit process, and therefore may not fit well with other mechanisms that might be used to approve CAMUs. For example, the expanded public participation rule requires public notice in the local newspaper *and* by radio or television. EPA believes this level of specificity is inappropriate as a general requirement outside the context of RCRA Part B permits. The requirements for a preapplication meeting conducted by the facility owner are similarly detailed, and the meeting itself is likely to be redundant at many cleanups where public involvement is addressed through the broader remedial process. Instead, the Agency believes that the ''reasonable opportunity'' standard discussed above and the requirement that Regional Administrators include express information about any proposed adjustment to CAMU treatment requirements provide an appropriate minimum performance standard for public involvement in final CAMU determinations (i.e., they guarantee that the public will have a meaningful opportunity to be involved in all final CAMU determinations before a final decision is made) while maintaining the flexibility for regulators to tailor the specifics of the public involvement process to the particular site, the specific needs and interests of the public in the area, and the particular mechanism used.

The Agency reiterates that today's regulations represent the minimum amount of public involvement that is appropriate for final CAMU determinations. The Agency strongly encourages all CAMU decision makers to consider additional opportunities for public involvement in important cleanup decisions, such as final CAMU determinations, within the context of the broader cleanup. The Agency's current guidance on public participation during corrective action can be found in the September 1996 RCRA Public Participation Manual (see Chapter 4 in particular).

As discussed in the proposal, the Agency is continuing to review the best ways of enhancing the role of the public in RCRA cleanup decisions (including CAMU determinations), as part of its evaluation of public involvement in the overall RCRA corrective action program undertaken as part of the RCRA Cleanup Reforms. Public participation in the CAMU process will be informed by this initiative. The Agency continues to seek feedback from all stakeholders on the RCRA Cleanup reforms. Additional information is available at *www.epa.gov/epaoswer/osw/cleanup.htm* or by calling the RCRA Hotline at 1–800–424–9346 or the other numbers listed in the **ADDRESSES** section of today's rulemaking.

N. Additional Requirements ((40 CFR 264.552(i))

As discussed throughout today's rulemaking, cleanup situations will vary considerably across sites. As part of its effort to balance predictability and certainty in cleanup decision making with site-specific flexibility, EPA proposed and is today finalizing a number of minimum technical standards for CAMU design and operation, while at the same time allowing Regional Administrators to approve alternate standards on a site-specific basis. The Agency also proposed to modify the requirement from the 1993 CAMU rule to expressly allow the Regional Administrator to establish additional CAMU requirements on a site-specific basis to

[52] Under § 270.42, permit modifications to approve CAMUs are classified as Class 3 modifications. Class 3 permit modification procedures, which were developed prior to the Expanded Public Participation rule, are similar to the procedures in that rule in requiring public participation before the Agency publishes a proposal to approve a draft permit (or a proposed decision to deny), but they differ in important respects. Under the Class 3 permit modification requirements, permit applicants must notify the public at the time they request a permit modification (rather than before the application is submitted), and they must hold a public meeting and solicit comment on the modification request, before EPA proposes to issue or deny the modification request. The expanded public participation requirements for part B permits, on the other hand, require that the facility hold an informal meeting to inform community members of proposed hazardous waste management activities *before* they apply for a permit; the permitting agency must announce to the public when the permit application is submitted; and the permitting agency may require a facility to set up an information repository. The part B expanded public participation procedures do not apply to Remedial Action Plans issued under the Hazardous Waste Identification Rule for Contaminated Media (see 63 FR 65898, November 30, 1998), or to post-closure permits (40 CFR 124.31(a)).

protect human health and the environment. The Agency proposed that ''notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.'' Commenters generally supported this approach, and the Agency is today finalizing this provision as proposed.

As discussed in the proposal, the Agency believes that this new construction of the Regional Administrator's existing authority (under the 1993 CAMU rule) to impose ''additional requirements as necessary to protect human health and the environment'' is appropriate to clarify that, on a site-specific basis, Regional Administrators may impose additional requirements beyond the more detailed minimum technical and operational standards for CAMUs established today. Such additional requirements might include, for example, additional treatment of PHCs beyond the treatment standards, additional engineering or monitoring specifications, and prohibitions on the placement of specific CAMU-eligible wastes in a CAMU.

While agreeing with the general concept of allowing Regional Administrators to impose additional requirements as necessary to protect human health and the environment, one commenter expressed concern that the proposed regulatory language did not adequately emphasize the site-specific nature of decisions to impose additional requirements beyond the requirements established today, or the need for such requirements to be supported in the administrative record for a CAMU and to be consistent with the overall objectives of the CAMU regulations. The Agency is not persuaded that a change to the rule language is needed to clarify these points. The Agency agrees that, like other elements of CAMU decision making, decisions to impose additional requirements (like any other Agency decision made in approving a CAMU) must be made on a site-specific basis and supported by the administrative record. As discussed in the proposal, this requirement for the most part only confirms an obligation that EPA already has as part of the ''omnibus'' provision in RCRA permitting at 40 CFR 270.32(b)—that is, that the Regional Administrator must establish, in individual permits, ''. . . terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.'' The RCRA omnibus provision for permits does not include specific regulatory language emphasizing that the decision must be site-specific or that actions must be justified in the administrative record, yet such decisions are held to those standards (See, e.g., *In re Caribe General Electric Products*, Inc., RCRA Appeal, No. 98–3 (February 4, 2001); *In re Ash Grove Cement Co.*, RCRA Appeals Nos. 96–4 and 96–5, 1997 EPA App. LEXIS 30 (November 14, 1997). Similarly, EPA does not believe such language is needed here.

IV. Relationship To Other Regulatory Programs

Today's amendments do not change the relationship between other state and federal programs and the CAMU regulations. These amendments solely affect the way hazardous cleanup wastes are managed in corrective action management units. These rules set standards for hazardous waste management units when EPA or a state chooses to take advantage of the flexibility provided by the CAMU rule, but they do not affect, in any way, other aspects of RCRA cleanups, e.g., how cleanup levels are set or when treatment is required at RCRA corrective action facilities. Although these standards borrow, as appropriate, from approaches in current remediation programs (including RCRA corrective action for solid waste management units), they were not designed for making remedial decisions outside the CAMU context, such as in state or federal cleanup programs, where program-specific remedial decision-making processes are already in use. Today's rule leaves in place, and leaves untouched, all of EPA's current policies and regulations covering hazardous waste cleanups, including such familiar policies as the ''area of contamination'' concept, ''contained-in'' decisions, the regulatory definition of ''remediation waste,'' and the various remediation-specific LDR variances. For a discussion of these and other policies, see the May, 1996 Corrective Action ANPR (61 FR 19432), the October 1998 Memorandum, Management of Remediation Waste Under RCRA, EPA530–F–98–026, RCRA Docket No. F–2000–ACAP–S0025, and the preamble discussion to the HWIR-media rule at 63 FR 65874, 65877–65878 (November 30, 1998) (these references are in the RCRA docket;). The preamble to the 1993 CAMU rule discusses the relationship between the CAMU rule and other regulatory programs, including CERCLA (see 58 FR 8658, 8679 (February 16, 1993)).

V. How Will Today's Regulatory Changes be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs when EPA promulgates federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program. See also § 271.1(i). Therefore, authorized states are not required to adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing federal requirements.

B. Authorization of States for Today's Final Rule (Other than § 264.555)

Today's CAMU amendments will be primarily implemented pursuant to section 3004(u) and (v) of RCRA, which are HSWA provisions. This authority also formed the statutory basis for the original federal Corrective Action Management Unit (CAMU) regulations (see 58 FR 8658, 8677 (February 16, 1993)). Therefore, the Agency is adding

this rule to Table 1 in § 271.1(j), which identifies the federal program requirements that are promulgated pursuant to HSWA. The Agency received a number of comments regarding the statutory authority for today's amendments. They are discussed below.

Today's amendments to the CAMU regulations (except for § 264.555) are more stringent than the existing federal CAMU regulations.[53] Thus, states that have already been granted authorization for the existing 1993 CAMU rule must revise their programs so that they are not less stringent than the federal program, including today's amendments. Further, because today's amendments to the CAMU regulations are promulgated under HSWA authority, in states authorized for the 1993 CAMU rule that choose to not seek interim authorization-by-rule, EPA will implement today's amendments until these states receive interim or final authorization. EPA will also continue to implement the amended CAMU regulations consistent with applicable, more stringent state law in those states that have not received authorization for corrective action. As explained in the 1993 CAMU rule preamble (see 58 FR 8658 (February 16, 1993)), the CAMU rule is integral to the HSWA corrective action program, and where EPA implements the corrective action requirements, EPA also implements the CAMU rule consistent with applicable more stringent state law. Note that section 3009 of RCRA allows state laws or regulations to be more stringent or broader in scope than the federal regulations.

States that are authorized for corrective action but have not received authorization for the 1993 CAMU rule are not required to seek authorization for today's amended CAMU regulations because those states' authorized regulations for corrective action and Land Disposal Restrictions (LDRs) are more stringent than the federal regulations, which provide for CAMUs. Because CAMUs are used as part of a corrective action and are often integral to the implementation of corrective action at individual facilities, states are strongly encouraged to adopt and seek authorization for the CAMU regulations. After publication of today's final CAMU amendments, states may continue to receive authorization for the 1993 CAMU rule. However, EPA strongly discourages states from seeking authorization for the CAMU regulations without today's amendments because EPA will implement these amendments in those states.

One commenter argued that EPA should promulgate today's ''modified rule'' under non-HSWA authority. Specifically, the commenter believes that the amendments are better promulgated under the authority of section 3004(a) of RCRA, which provides the authority for hazardous waste management unit standards, than under the corrective action standards of RCRA sections 3004(u) and 3008(h). This commenter also argued that there is no basis on which to conclude that the CAMU rule, when applied to facilities not subject to RCRA corrective action, is promulgated pursuant to HSWA authorities.

In response, EPA first notes that the comment urges the Agency to change its approach for the CAMU rule as a whole, not just for today's amendments. However, redesignating the entire CAMU rule as non-HSWA was not at issue in the CAMU amendments proposal. The only issue the Agency discussed in the proposal was the authority for the modifications to the CAMU rule. 65 FR 51114. Any comments that are not specific to those amendments are therefore outside the scope of today's rulemaking. The Agency is thus not changing the designation of the CAMU rule to non-HSWA.

As for whether the amendments alone are appropriately considered HSWA, the Agency continues to believe that they are for several reasons. First, today's amendments simply flesh out otherwise existing requirements of the CAMU rule. Just because these provisions are now more detailed does not mean that the authority under which they are implemented must change. More specifically, even with the added detail, the standards remain very tailored to the cleanup scenario, and they were designed to further the objectives of the corrective action program. For example, the identification of principal hazardous constituents, the balancing criteria inherent in much of the rule (for example, in the adjustment factors), the way many of the conditions derive from site remedial decisions (e.g., the alternative liner standards or the treatment adjustment factor based on cleanup levels), and similar aspects of the rule are inextricably linked to the remedy decisions at corrective action sites. In fact, the standards promulgated today are integral to satisfying EPA's obligation to ensure that corrective actions both move forward expeditiously and protect human health and the environment. RCRA section 3004(u); 40 CFR 264.101. They are therefore appropriately considered promulgated pursuant to the corrective action authorities.

Second, as stated in the proposal, although the CAMU rule language was amended in the HWIR-Media rule to make it clear that CAMUs may be used at ''cleanup-only'' facilities,[54] today's amendments (like the original CAMU rule) were developed primarily with corrective action sites in mind. For example, almost all of the CAMUs identified in EPA's site background document are at RCRA corrective action facilities.

Similarly, the Agency does not believe that it would be appropriate to treat the CAMU rule as it applies to non-RCRA corrective action sites as non-HSWA while treating the rule in all other instances as HSWA. Although one commenter argued that the ''Agency took no position on whether [allowing CAMUs to be used at ''cleanup-only'' facilities] was a HSWA determination or not,'' the Agency generally believes it is best to avoid bifurcating individual rules into HSWA and RCRA requirements. In any event, this comment is also outside the scope of today's rulemaking as it pertains to any provisions other than today's amendments. As discussed above, the Agency does not believe it would make sense to implement the amendments under a different authority than the balance of the rule.

Finally, EPA notes that it has addressed the specific concerns that, it assumes, lie behind the comments that this rule should be a RCRA rule. In the approach EPA has adopted in today's rule allowing interim authorization-by-rule, states will be able to become interim-authorized for the rule before it takes effect, eliminating any possible transitional problems or dual regulation that the original base RCRA authorization process was designed to avoid. Further, EPA has eliminated from today's final rule the two aspects of the proposal that commenters identified as causing potential transition problems—the exclusion of states with problematic

[53] The following section does not apply to § 264.555 of today's rule, because it is a less stringent HSWA provision. For a discussion of this provision, see section V.E of this preamble.

[54] ''Clean-up only'' facilities are sites that are subject to RCRA permitting requirements solely because clean-up activities at the facility trigger those requirements. The HWIR-Media rule eliminated facility-wide corrective action requirements in permits issued to clean-up only facilities. The Agency notes that under the HWIR-Media amendment to the CAMU rule, the universe of facilities subject to the CAMU rule did not change. The language was necessary to preserve the status quo, since the HWIR-Media rule removed cleanup-only facilities from the universe of facilities subject to RCRA's section 3004(u) facility-wide corrective action requirement. (63 FR 65880, November 30, 1998).

audit immunity and privilege laws from eligibility for authorization-by-rule, and the termination of interim authorization if EPA has not acted on final authorization within a specific period of time. Since EPA has addressed any potential disruption resulting from classifying today's rule as a HSWA rule, the commenters' only remaining concern would be that they would become subject to the more stringent requirements of the rule before they preferred to be. Given how intimately linked the requirements in today's rule are to the HSWA requirement for protective corrrective action at RCRA facilities, and given Congress's clear direction in HSWA that corrective action requirements should be immediately effective (even in authorized states), EPA believes that it would frustrate the intent of Congress to allow years of delay in the actual implementation of this rule.[55]

C. Interim Authorization-by-Rule for States Currently Authorized for the CAMU Regulations

1. Background and List of States Eligible for Interim Authorization-by-Rule

As described above, today's amendments are promulgated under HSWA statutory authority and are more stringent than the existing CAMU regulations (except for § 264.555). Thus, in states that are authorized for the 1993 CAMU rule, there is the potential for dual implementation of the CAMU regulations if these states are not authorized for today's amendments before they become effective. This dual implementation is a result of states continuing to implement the provisions of the 1993 CAMU rule, while EPA implements today's amendments.

To avoid this potential disruption in the implementation of the RCRA cleanup program caused by the regulatory authority for CAMUs being split between states and EPA, we proposed two authorization actions that would enable states to gain interim authorization for today's final amendments. First, EPA proposed a new authorization procedure called interim authorization-by-rule. Second, EPA proposed to use this new procedure to grant interim authorization to states that have final authorization for the 1993 CAMU rule and meet other eligibility criteria. Today, EPA is promulgating the interim authorization-by-rule procedure and listing those states which are eligible for interim authorization-by-rule.

EPA has determined that states which have met the criteria promulgated today in 40 CFR 271.27 are eligible for interim authorization-by-rule. These eligible states will have interim authorization if they notify EPA that they are willing and able to implement the amended CAMU regulations under 40 CFR 271.27(a)(2). This interim authorization is granted through a process that is promulgated as a part of today's rule in 40 CFR 271.27. Currently, 28 states are authorized for the existing CAMU regulations and meet the criteria for interim authorization-by-rule. These states are also authorized for corrective action. The eligible states are: Alabama, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

2. Eligibility criteria and process for interim authorization-by-rule

Under today's interim authorization-by-rule procedure, states are eligible for interim authorization for the CAMU amendments if they have final authorization for the 1993 CAMU rule (58 FR 8658, February 16, 1993), and notify EPA within 60 days after publication of today's notice that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations until they adopt equivalent provisions. As discussed in the preamble to the proposed rule, these authorized states are currently responsible for the implementation of the CAMU rule, including reviewing applications for CAMUs from facilities and overseeing the operation of approved CAMUs. EPA continues to believe that in general, CAMUs approved under the standards in the 1993 rule could be approved under today's amended CAMU regulations. Thus, EPA has determined that these states have regulations which are substantially equivalent to the amended CAMU regulations.

Today's rule requires states that want interim authorization to notify EPA within 60 days after publication of today's notice that the state intends to and is able to use today's amendments as guidance in the implementation of their CAMU regulations until it adopts equivalent provisions. This requirement is located at 40 CFR 271.27(a)(2). During the 60-days period after today, the eligible states listed above should evaluate today's final amendments and decide whether they can and want to seek interim authorization-by-rule. If a state decides to seek interim authorization-by-rule, the state must send a letter to the Regional Administrator which informs EPA of this intention. After this 60-day period ends, EPA will publish an additional **Federal Register** notice identifying which states have submitted the notification to EPA, and thus have interim authorization for the CAMU amendments.

EPA received several comments regarding the state notification deadline. One commenter thought that the time period for notification was too short, while others believed that it was reasonable. EPA is reassured by state commenters who had no concerns regarding the deadline, which remains at 60 days after publication of today's rule. EPA has alerted states to this deadline, and EPA continues to discuss today's rule with states in order to ensure they are aware of the notification deadline. EPA also believes that this determination will be straightforward for states, and the procedural requirement is minimal.

One commenter believed that states eligible for interim authorization-by-rule should be able to submit their notifications to EPA of their ability to have interim authorization after the proposed 60-day deadline, as long as the notification is submitted before interim authorization for the CAMU rule amendments expires. EPA understands the reasons for this comment, but intends to complete the interim authorization-by-rule process by the effective date of today's final rule since the final action will be the placement of a **Federal Register** notice which informs the public what states have interim authorization for today's CAMU amendments. EPA is concerned that confusion may arise if different states qualify for interim authorization-by-rule at different times. Moreover, given the few changes from the proposal, EPA sees no reason, and the commenter provided none, why states cannot submit their notifications within 60 days. As described below, states that are authorized for the 1993 CAMU rule may also be able to apply for interim authorization using an expedited process similar to that used today. Note that this interim authorization would expire on August 30, 2004.

Eligible states may choose not to use this interim authorization-by-rule process. If they are not able to, or choose

[55] Under the RCRA authorization process, states have up to two years to amend their regulations to come into compliance with more stringent RCRA requirements. Generally, states meet this requirement. However, if they fail to do so, EPA's recourse is to begin steps to withdraw the state program's authorization to run the RCRA program. Under current regulations, state program withdrawal is a lengthy process.

not to seek interim authorization-by-rule, they can follow the process outlined in section F below for states that are authorized for corrective action, but not the 1993 CAMU rule.

In the August 22, 2000 proposed rule (65 FR 51116), EPA sought comment on restricting the eligibility of states with audit privilege and immunity laws for interim authorization-by-rule. Specifically, EPA proposed that under § 271.27(a)(2), states with audit privilege and immunity laws that raised EPA concerns about whether the state had adequate enforcement as required for the purpose of final authorization under RCRA section 3006(b) would not be eligible for interim authorization-by-rule for today's CAMU amendments.

In the August 22, 2000 proposed rule, Oregon, Nevada, and Illinois were identified as states with audit privilege and immunity laws that would not be eligible for the CAMU interim authorization-by-rule. Since publication of the proposed rule, Oregon and Nevada have taken actions which resolved EPA's concerns with their audit laws. Therefore, the audit laws in Oregon and Nevada no longer present a barrier to the authorization of federal environmental programs. Oregon and Nevada are eligible for interim authorization-by-rule for today's CAMU amendments and neither state will be ineligible for final authorization of today's CAMU amendments due to audit privilege and immunity laws.

In addition, EPA has decided interim authorization-by-rule for states with audit privilege and immunity laws that raise EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). However, because audit privilege and immunity laws, without sufficient safeguards and conditions, can undermine the enforcement authority that a state must possess as a condition of having final authorization to implement federal environmental programs, states granted interim authorization-by-rule will still be required to resolve their audit law conflicts where necessary to meet minimum federal requirements as a condition of final CAMU program authorization.

EPA bases its decision on the following rationale. First, interim authorization does not necessarily require a finding by EPA that the state program provides adequate enforcement, but rather a finding that the state program requirements are substantially equivalent to the federal program requirements. Second, even if adequacy of enforcement were considered part of equivalence, Illinois's CAMU program is substantially equivalent, if not completely equivalent, to the federal program. The judgment of substantial equivalence must be made looking at the program as a whole, and EPA does not believe that the fact that Illinois's enforcement authority may be circumscribed in the specific circumstances affected by its audit privilege law undermines the substantial equivalence of its CAMU program as a whole. This conclusion is supported by the fact that the audit privilege issues are not an aspect of Illinois's CAMU program per se but affect its hazardous waste program generally. Third, interim authorization will provide a state with the opportunity to address problems and issues associated with the state's environmental audit privilege and/or penalty immunity law. EPA will continue to work with states during this interim approval period to remedy any deficiencies in their laws or help implement today's CAMU amendments. Additionally, it is EPA's position that any subsequently enacted audit law or other law that conflicts with minimum federal authorization requirements would make a state ineligible for final authorization of the CAMU program.

The State of Illinois continues to have an audit privilege law that raises EPA concerns as to the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). While Illinois is eligible for interim authorization-by-rule of today's CAMU amendments, under the approach outlined above, final authorization of Illinois's CAMU program will not be granted until Illinois resolves its audit law conflicts to meet the minimum requirements for authorization under RCRA section 3006(b).

In addition, Illinois has another law, referred to as the ''Illinois Site Remediation Law'' that raises EPA concerns regarding the adequacy of state enforcement authorities for the purpose of final authorization under RCRA section 3006(b). The Illinois Site Remediation Law [56] replaces strict liability with limited liability requiring proof of causation for all remediations under the Illinois Environmental Protection and Groundwater Protection Acts, including the RCRA program. This law increases the state's burden of proof necessary to establish a violation under federally approved Illinois programs, thereby affecting the adequacy of the state's enforcement authority under these programs. EPA has notified Illinois of its concerns regarding the Illinois Site Remediation Law.[57] As a condition for final authorization of the CAMU program, and, unless circumstances regarding the Site Remediation Law change, Illinois must modify its Site Remediation Law to meet the minimum requirements for final authorization under RCRA section 3006(b). EPA will continue to work closely with Illinois officials to address authorization issues for both the Illinois Audit Law and the Illinois Site Remediation Law.

D. Expiration of Interim Authorization

In the August 22, 2000 notice, EPA proposed to extend the period of interim authorization for the CAMU amendments from January 1, 2003 (the date interim authorization expires under § 271.24(c)) to a date three years after the effective date of today's amendments. EPA has considered comments on this proposal, and has modified the date interim authorization expires for today's amendments to be the date of final authorization, provided that states submit a final application for authorization to EPA by August 30, 2004. Under the provisions in §§ 271.21(e)(2)(ii), (e)(2)(iv), and (e)(4)(ii), states have two years after July 1, 2002 to amend their CAMU regulations, and then an additional 60 days to submit a final authorization application to EPA, resulting in the August 30, 2004 deadline. This final deadline is different than the proposed approach, which would have required states to receive final authorization from EPA by January, 2005. As reflected in their comments, states were concerned that under the proposed approach, there would be no deadline for states to submit their application that would ensure EPA approval by the expiration of interim authorization.

Under the approach in today's final rule, the deadline which states must meet to retain regulatory authority for today's amendments occurs sooner than in the proposal, but is at an interim step in the authorization process, and is not dependent on EPA action. Further, interim authorization may actually extend for a longer period of time than in the proposal because it extends until final EPA action is taken on a state's authorization application. This revised deadline is now located in new § 271.27(b) and amended § 271.24(c).

[56] Illinois Environmental Protection Act, 415 ILCS 5/58.9.

[57] See January 11, 1999, letter from David Ullrich, Region V Acting Regional Administrator, to Mary Gade, Director, Illinois Environmental Protection Agency, and James Ryan, Illinois Attorney General, detailing EPA's authorization concerns with the Illinois Site Remediation Law.

The final approach continues to require a deadline for state action because of the temporary nature of interim authorization. EPA continues to believe that final authorization should be the goal.

EPA believes that this extension to the expiration of interim authorization for the CAMU amendments rule will provide states sufficient time to amend their regulations so they are equivalent to the federal CAMU regulations, and then allow them to go through the final authorization process in § 271.21. If a state does not submit its final application for today's amendments before the deadline of August 30, 2004, interim authorization will expire, and EPA would then be responsible for implementing the new CAMU amendments in these states. (EPA would not implement the provisions in the 1993 CAMU rule that were unaffected by the amendments; the authorized states would continue to implement them.) EPA believes that this potential reversion of the implementation authority to EPA will act as a strong incentive for states with interim authorization to expeditiously seek final authorization. Further, EPA does not believe that this final authorization process will be particularly difficult. See below for additional detail regarding EPA's intention to expedite the authorization of states for the CAMU rule amendments. As part of the authorization process, EPA commits to reviewing and granting approval of a final authorization application within the time frame for interim authorization, provided that states expeditiously amend their regulations to include today's final amendments.

E. Authorization for § 264.555

Section § 264.555 of today's rule—which allows placement of CAMU-eligible wastes in off-site hazardous waste landfills—is less stringent than the existing regulations. Therefore, it will become effective only in those states which are not authorized for these parts of the hazardous waste program. Further, because the issues addressed by § 264.555 have no counterpart in the existing CAMU regulations (or any other RCRA regulation), this provision will would not be substantially equivalent to those regulations. Thus, states which are authorized for the 1993 CAMU rule will not be able to gain interim authorization-by-rule for the provisions in today's notice. The final CAMU amendments rule will not include the provisions in today's notice in the interim authorization-by-rule sections in proposed §§ 271.24(c) and 271.27 (see 65 FR 51115).

However, if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of today's notice in advance of adoption or authorization, EPA would not generally consider such implementation a concern for purposes of enforcement or state authorization. Of course, the state could not implement the requirements in a way that was less stringent than the federal requirements in today's rule, which, in this case, would include the public participation standards of today's rule. (This is similar to the approach the Agency took in promulgation of the 1993 CAMU rule. See 58 FR 8677, February 16, 1993.)

F. Authorization of States Currently Authorized for Corrective Action, but not the Existing CAMU Rule

There are a number of States authorized for corrective action that are not authorized for the 1993 CAMU rule. This situation applies in the following twelve states or territories: Arkansas, Colorado, Guam, Kentucky, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, New Hampshire, and Ohio. In addition to these states, some states authorized for the 1993 CAMU rule may not choose to receive interim authorization-by-rule. Because CAMUs expedite clean-ups, EPA encourages all of these states to seek final authorization for the CAMU regulations, including today's amendments as soon as possible. (Alternatively, states could request and receive interim authorization under § 271.24.) EPA also believes that the authorization process for the CAMU regulations can and should be completed expeditiously.

1. State Applications for Final Authorization

As discussed in the proposal, the state authorization revision procedures in § 271.21(b) provide EPA with the discretion to consider the circumstances of individual states when determining what should be the content of a state's application for final authorization. EPA believes that states which are authorized for corrective action and are seeking authorization for the amended CAMU rule generally will not need to submit a revised Program Description (PD) and Memorandum of Agreement (MOA) to EPA, where the state program seeking authorization for the CAMU regulations is the same program that is authorized for corrective action.

The implementation of the CAMU regulations requires states to make clean-up decisions that are in effect the same types of decisions states already implement through their corrective action programs. Therefore, EPA believes that the adoption and implementation of the CAMU regulations requires the same technical and resource capability that states already have to operate the corrective action program. Generally, no changes to the MOA between the state and EPA should be needed as a result of the CAMU regulations because Agency coordination issues have been addressed during the authorization process for corrective action. However, EPA would have the discretion to request these documents or other information, if necessary.

EPA believes that states should address the CAMU regulations in a revised Attorney General's (AG) statement of authority if necessary, or through other appropriate mechanisms. The CAMU regulations create a new type of waste management unit that can be used only in certain situations after a facility application and Agency review process. Thus, states may need to establish new statutory or regulatory authority, or interpret their existing authorities to determine that they can approve and regulate these units.

2. Authorization Approach for States That Adopt the CAMU Regulations by Reference or Verbatim

Many states adopt federal regulations verbatim or incorporate them by reference into their regulations. It is likely that many states will adopt the CAMU regulations in this manner. When states adopt federal regulations using these methods, it is not difficult for EPA to determine whether the state regulations are equivalent to their federal counterparts. Because of this ease of review, and the high priority of state authorization for the CAMU regulations, the Agency believes that the authorization process for these states under § 271.21 will be quick. Thus, once EPA receives an acceptable authorization application from a state which incorporates the CAMU amendments by reference or adopts them verbatim, EPA intends to immediately proceed to publish a direct final rule which grants final authorization to that state. Under this mechanism, the rule would become effective unless EPA received an adverse comment, in which case EPA would withdraw the rule prior to the effective date. An exception to this expectation would be cases where in EPA's judgment, known issues with the existing state program greatly affect the program's prospects for authorization.

An example of such issues would be questions regarding a state's enforcement authority (e.g., audit law issues), or capability (e.g., resource issues). It should also be noted that EPA will process all state authorization applications for the CAMU regulations as quickly as possible, regardless of the method of state adoption.

VI. Effective Date

In today's final rule, EPA is retaining the proposed effective date of 90 days. Regulations promulgated pursuant to RCRA Subtitle C generally become effective six months after promulgation. However, RCRA section 3010(b) provides for an earlier, or immediate, effective date in three circumstances: (1) Where the industry regulated by the rule at issue does not need six months to come into compliance; (2) the regulation is in response to an emergency situation; or (3) for other good cause. Because today's rule ''grandfathers'' CAMUs (see discussion above in ''Grandfathering CAMUs''), a 90-day effective date would only affect any unapproved CAMUs that do not meet the criteria for grandfathering (i.e., CAMUs for which a ''substantially complete'' application had not been submitted by November 20, 2000, and which had not been approved by the effective date). Thus, at the time this rule becomes effective, all existing and approved CAMUs will, by definition, be ''in compliance'' (because they will be grandfathered), and therefore industry will have no problem in coming into compliance by the effective date. (Several commenters expressed concern that 90 days did not provide enough time for them to modify CAMU applications and become approved by the effective date. These commenters, however, did not argue that they would be out of compliance unless EPA provided for a 6 months effective date; instead, their main concern was with the scope of grandfathering relief. These comments are discussed earlier in today's preamble in the section on grandfathering.)

One commenter believed that the effective date for today's final rule should be six months after publication to allow states a longer time period to notify EPA that they intend to and are able to use today's amendments as guidance in the implementation of their CAMU regulations. However, as discussed above, most states supported this notification deadline.

VII. Conforming Changes (40 CFR Part 260, Subpart S, § 260.10)

Today's rule changes the title of 40 CFR part 264, subpart S from ''Corrective Action for Solid Waste Management Units'' to ''Special Provisions for Cleanup.'' The current title reflects the Agency's intention in 1993, when it was added to the CFR, to finalize the comprehensive corrective action regulations for solid waste management units proposed in September 1990. 58 FR 8658 (February 16, 1993). As discussed more fully above, in the section titled ''Releases to Ground water (§ 264.552(e)(5)),'' the Agency withdrew the majority of that proposal in October 1999. In addition, the current provisions of subpart S, as well as those finalized today, address CAMUs, temporary units, and staging piles, which are all units which may only be used for the management of cleanup wastes, and which, in some instances, may be used at sites not subject to RCRA corrective action. In addition, today's rule includes provisions applicable to cleanup wastes disposed of off-site. EPA therefore believes that this change ensures that the title of subpart S more accurately conveys the provisions that are contained within it.

The conforming changes to § 260.10 are made to implement the distinction being drawn in today's rule between CAMUs that are grandfathered and CAMUs that are subject to today's standards at § 264.552. As discussed above in the section titled ''Eligibility of Wastes for Management in CAMUs,'' EPA is modifying the definition governing the types of wastes that can be managed in a CAMU, and is changing the name of waste eligible for management in CAMUs from ''remediation waste'' to ''CAMU-eligible waste.'' This revised definition applies to new CAMUs but not to CAMUs that qualify to continue implementation under today's ''grandfathering'' provisions (see § 264.550). EPA is making two conforming changes as a result of modifying the definition of remediation waste in this fashion. The first change is to remove the existing definition of CAMU at § 260.10 and to include it directly in § 260.551(a) (the introductory paragraph to the 1993 CAMU provisions, which becomes, as a result of the regulations finalized today, the regulations applicable to grandfathered CAMUs). The second change is to modify the existing definition of CAMU at § 260.10 by changing ''remediation wastes'' to ''CAMU-eligible wastes,'' and to place the definition directly in the amended CAMU regulations at § 264.552(a).

EPA also changed the term ''remediation waste'' to ''CAMU-eligible waste'' throughout the CAMU regulatory language.

EPA received no comments on these conforming changes and is therefore finalizing them as proposed.

VIII.Analytical and Regulatory Requirements

A. Planning and Regulatory Review Under Executive Order 12866

Under the Planning and Regulatory Review Executive Order 12866 (58 FR 51735 (October 4, 1993)), an agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or -

(D) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that today's final rule is a ''significant regulatory action'' because of novel legal or policy issues arising in the rule. 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. The final rule is estimated to have annual incremental costs between $217,000 and $452,000, and therefore is not viewed as economically significant under the Executive Order.

EPA has prepared an economic support document for the final rule entitled Economic Analysis of the Amendments to the Corrective Action Management Unit Rule.'' This document can be found in the docket for today's final rule.

This section of the analysis discusses: (1) The economic analysis background and purpose, (2) the CAMU administrative approval costs assessment, (3) the analysis of impacts resulting from the treatment and unit design requirements, (4) the assessment of potential change in CAMU usage to result from the rule, and (5) the summation of these impacts. There were

no comments on the proposed rule specifically addressing the economic analysis methodology or results. The Agency discusses economics-related comments in the relevant sections below. For a complete discussion of the comments received on the proposed rule, please see the response to comments document in the docket for today's final rule.

This section also provides a qualitative discussion of the potential impacts of allowing the placement of CAMU-eligible wastes in off-site hazardous waste landfills. See section III.K of today's preamble for a more detailed discussion of this provision.

1. Economic Analysis Background and Purpose

A CAMU is: ''An area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility.'' (40 CFR 264.552) CAMUs may be used to consolidate hazardous wastes from various areas at the facility. While one of the chief reasons for CAMU usage is to facilitate more treatment of cleanup wastes in general (see discussion earlier in the preamble), wastes placed in CAMUs are not subject to the land disposal restriction requirements for treatment. In addition, under the 1993 CAMU Rule, CAMUs are not required to meet the existing 40 CFR part 264 and part 265 minimum design, operating, closure, and post-closure requirements for hazardous waste units.

The CAMU provisions being finalized today amend the existing CAMU rule. This economic analysis examines the impacts from these final amendments compared to the existing CAMU rule provisions. This section briefly discusses the baseline and post-regulatory scenarios in the analysis, and provides an overview of the incremental impacts assessed.

a. Framework of the Analysis

The Agency faced two important questions in developing the framework for this analysis. The first was how to address defining the universe of facilities affected by today's final rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's final rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which could potentially be reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards apply to CAMUs which are not subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require remediation at some point in the future under one of these authorities, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the current CAMU rule. In this RIA, the Agency projected the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, which translates to approximately 75 CAMUs per year over a 20 year period.

However, based on data showing actual CAMU usage over the past eight years, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. These data, discussed in more detail below, show an actual CAMU approval rate of approximately six CAMUs per year. The disparity between the 1993 RIA projections and the actual usage is likely the result of four factors. First, the 1993 RIA baseline is very different from the remedial setting which has existed in recent years. Chiefly, the RIA assumed significant excavation and treatment of wastes at sites, with heavy reliance on combustion technologies and little use of innovative treatment or remedial approaches. These alternative approaches tend to be less expensive than combustion technology, and are much more available and in use than was anticipated in the 1993 RIA. Therefore, the pervasive demand for CAMUs to lower large remedial costs did not materialize as anticipated in the 1993 RIA. Second, due to its timing, the RIA estimates do not include impacts on CAMU use which resulted from various remedial policy developments such as the stabilization initiative and the use of environmental indicators. These developments have resulted in increased stabilization of sites, and thus less excavation and treatment of wastes (in the short term). This shift created conditions which reduced the need to rely on CAMUs as much as had been originally estimated in the 1993 RIA projections. Additionally, the availability of alternatives to CAMUs, such as staging piles and areas of contamination and the Phase IV LDR soil treatment standards, has potentially decreased the use of CAMUs somewhat compared to that originally projected. Third, given the historical rate at which facilities have progressed through the various stages of corrective action to reach a final remedy decision, the Agency thinks that the CAMU usage projections from the RIA were unrealistically high. The number of final remedy decisions at corrective action sites across the nation has not reached 75 per year. Therefore, it would be impossible to have an average of 75 CAMUs approved annually. Finally, the Agency believes that CAMU use has been dampened over the past eight years due to the uncertainty surrounding the use of CAMUs which resulted from the CAMU litigation, which followed shortly after the rule's promulgation.

Therefore, the Agency employed the data on existing CAMUs in the CAMU Site Background Document. EPA collected these data from regional and state site managers as part of this rulemaking effort. This report contains information on 47 CAMUs approved to date or scheduled for approval prior to the effective date of the rule (as of spring 2001). Under the grandfathering provisions in today's final rule, these CAMUs will remain subject to the 1993 CAMU regulations (as long as they continue to operate within the general scope of the originally issued CAMU authorizing document (e.g., permit)). For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design. These data are contained in the CAMU site background document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on

historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document. As noted, this document contains information from all the CAMUs approved to date for which the Agency had good data, and therefore provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which would affect CAMU usage in the future. (**Note:** One exception is the anticipated change is the removal of the uncertainty associated with the CAMU litigation. The Agency has assessed the order-of-magnitude impacts from this change on the CAMU usage rate as a part of the analysis of the incremental impacts of today's final rule.)

EPA also used these historical data to identify the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the provisions being finalized today (post-regulatory case). As discussed in more detail below, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the proposed provisions (post-regulatory case). In such an approach, the Agency again assumes that these actual CAMU remedies selected in the past are reasonably representative of CAMU remedies which would be selected under baseline conditions in the future. The Agency believes this assumption to be sound for the same reasons stated above regarding CAMU usage. EPA thinks these remedies are the reasonable outcome of the existing CAMU regulations implemented within the context of standard remedial goals for cleanup.

b. Baseline Case Description

The baseline scenario provides a reference against which the impacts of a particular action (e.g., a regulation) are measured. For the purposes of this analysis, the baseline is defined as the 1993 CAMU rule as implemented to date. The data underlying EPA's baseline analysis are described in the CAMU Site Background Document, which is included in the docket to today's final rule. This document provides detailed information on 47 existing CAMUs approved (or scheduled for approval) as of Spring 2001. Of the 47 CAMUs, eight are storage and/or treatment only CAMUs. According to these data, approximately 70 percent of facilities using CAMUs are performing treatment of waste. As mentioned above, EPA assumes that the 47 existing CAMUs are representative of future site characteristics and CAMU usage rates.

The Agency has not attempted to adjust this baseline to account for the effects of the uncertainty surrounding the CAMU ''litigation cloud,'' which EPA believes has slowed the implementation of the CAMU rule since shortly after its promulgation. As discussed above, the 47 CAMUs implemented under the existing rule represent the CAMUs known to be fully approved. These CAMUs were approved as a part of the overall remedy at the facility, and therefore would generally be expected to follow the remedy selection criteria for long-term reliability and protectiveness recommended in EPA guidance (in addition to the CAMU requirements).

The baseline is discussed in greater detail in the Economic Analysis of the Final Amendments to the CAMU Rule.

c. Post-Regulatory Case Description

The post-regulatory scenario is modeled as the CAMU rule amended by the provisions in today's final rule. The reader is directed to the preamble discussion and rule language for an understanding of the final rule provisions. The economic analysis focuses on the impacts from the finalized information submittal requirements related to the CAMU approval process, the treatment requirements and adjustment factors, and the liner and cap requirements. Although today's final amendments to the CAMU rule would be more stringent than the existing federal CAMU regulations, EPA believes in practice that CAMUs are already generally meeting these standards under the existing rule. Additionally, a bounding analysis is included which examines the overall impact of the final provisions on the rate of CAMU usage. See the Economic Analysis of the Final Amendments to the CAMU Rule for a more detailed discussion of the post-regulatory scenario for this analysis.

d. Incremental Impacts

The analysis of today's final rule focuses on two potential impacts: (1) the incremental impacts associated with the changes to the approval process for CAMUs; and (2) the incremental impacts associated with the change in treatment, unit design, and use of storage and/or treatment only CAMUs. Additionally, the Agency has prepared a bounding analysis estimating the impacts from a change in the overall usage of CAMUs resulting from today's final amendments. The methodology and results for these two components of the analysis, and for the bounding analysis, are discussed below. EPA has also provided a qualitative discussion of the potential impacts of allowing the disposal of CAMU-eligible waste in off-site hazardous waste landfills.

2. CAMU Administrative Approval Costs Assessment

Today's final amendments to the CAMU rule formalize a number of administrative steps in the CAMU approval process. This analysis examines the incremental impacts associated with those administrative steps compared to the approval process in the baseline. The estimates are formulated through input by EPA Regional and state regulators. The regulators contacted have extensive knowledge of the approval process under the existing CAMU rule, and understand the changes to that approval process that would be brought about by the final amendments. The analysis estimates total incremental impacts ranging between $77,200 and $242,400 per year.[58]

The Agency followed three steps in assessing the incremental impacts from the CAMU approval process formalized in the final rule. First, the Agency selected four CAMU experts from the Regions and four from the states. These experts were selected based on their knowledge of CAMU implementation under the existing rule and their knowledge of the final amendments. Of the 47 CAMUs, the vast majority were approved by the regions/states from which the eight experts came. Second, the Agency obtained incremental cost/burden estimates from CAMU experts through phone contacts made separately with each expert. Experts were provided with a copy of Appendix A of the settlement agreement reached between EPA and the Petitioners (this document is included in the docket for today's final rule). The phone contacts followed a set of questions designed to cover all areas of the final rule (these questions are included in the Economic Analysis of the Final Amendments to the CAMU Rule). EPA requested that experts estimate the additional approval burden

[58] This analysis does not include any administrative costs related to disposal of CAMU-eligible wastes off-site under the conditions of today's rule. Please see ''Paperwork Reduction Act'' section below for discussion of the additional paperwork burden associated with this provision. Also, see the assessment of the total impacts from today's rule in the ''Planning and Regulatory Review'' section for a qualitative discussion of the overall impacts associated with this provision.

for both regulators and owner/operators, as each would participate variously in performing such approval steps. Third, the Agency tabulated the burden estimates made by the CAMU experts. This process provided the Agency with expert estimates of the incremental impacts for the CAMU approval process. The estimates provided by individual experts ranged from a low of four hours total to a high of 1,875 hours total per CAMU. Using the individual estimates of burden provided by the experts, EPA calculated an average total burden range. EPA estimates the range of total incremental burden, calculated as an average of the eight expert estimates, to be between 210 hours and 514 hours per permanent CAMU, and between 34 hours and 50 hours per storage and/or treatment only CAMUs.

Expert views differed significantly on the impacts. Four of the experts believed the formalization of a process associated with certain steps might potentially reduce overall burden. Such a formalized process, they believed, would result in less time spent discussing the proper approach to take at a particular stage in the approval process. Alternatively, several experts thought that the changes in process requirements were so onerous that they could potentially drive facilities away from using CAMUs.

The experts estimated additional burden associated with four areas of the final amendments: (1) Information submission associated with the determination of whether wastes were subject to LDRs at the time of disposal. This requirement is a part of the provision in the final amendments which deals with CAMU waste eligibility; (2) identification of principal hazardous constituents (PHCs); (3) treatment standards and use of adjustment factors to provide site-specific flexibility in meeting the national treatment standards. Many experts focused on adjustment factor E (§ 264.552(e)(4)(v)(E)), which would offer adjustment from the treatment standards based on the long-term protection offered by the unit, in making their burden estimates. Many experts believed this factor to be the most complicated, and therefore the most likely to require significant formalized written justification; and, (4) the liner and cap standards in the final rule.

Employing these burden estimates, the Agency calculated the cost impact attributable to these provisions. The Agency performed the following steps in estimating total burden. First, the Agency estimated the number of CAMUs approved annually. The per CAMU estimate of additional burden is multiplied by an estimate of the number of CAMUs approved per year. As discussed in the Economic Analysis of the Final Amendments to the CAMU Rule, EPA assumed this rate to be the same as that calculated for the baseline. This rate was estimated to be six CAMUs per year, or five permanent CAMUs and one storage and/or treatment only CAMU per year. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule. Second, the Agency multiplied the additional hours estimated for approval by the annual number of CAMUs approved. This calculation results in an estimate of the total incremental burden associated with the final amendment approval process. This burden estimate ranges from 1,050 hours per year to 2,570 hours per year for permanent CAMUs, and 34 hours per year to 50 hours per year for storage and/or treatment only CAMUs. Third, the Agency obtained a labor rate to apply to the estimates of additional hours. EPA used a range of hourly labor rates ($71.24/hour to $92.52/hour) from the recently approved Part B Permit ICR because the CAMU experts did not provide a breakdown of labor categories in their estimates. Fourth, the Agency multiplied the total incremental hours estimated for the CAMU approval process under the final amendments by the labor rate. This approach produced an estimate for the total incremental impacts attributable to the approval process in the rule ranging from $77,200 per year to $242,400 per year.

This range represents the annual incremental impacts estimated to result from the final amendments, assuming that six CAMUs are approved per year. If the annual approval rate changed, the annual impacts for that year would change accordingly. Dividing that range by six (the number of CAMUs approved per year) yields an estimate of the incremental impact per CAMU; this estimate ranges between approximately $12,900 and $40,400 per CAMU. This calculation assumes that all the costs for CAMU approval occurred within a single year. A bounding analysis conducted using the highest burden estimate to calculate the impacts for the approval process yields an impact of $882,500 per year, or $147,000 per CAMU.

3. Assessment of the Incremental Impacts Related to the Treatment and Unit Design Provisions, and to the Storage and/or Treatment Only CAMU Provisions

This section examines the incremental impacts attributable to the treatment and unit design provisions, and to the storage and/or treatment only CAMU provisions in today's final rule. As described in the analytical framework discussion above, this analysis examines what changes would be required to make the 47 existing baseline CAMUs consistent with the new amendments. Based on these estimated changes, the Agency determines the impacts of the final amendments. (Please see the side-by-side comparison of the existing CAMU regulations and today's final rule language which is included as an appendix in the Economic Analysis of the Final Amendments to the CAMU Rule for today's final rule.)

The Agency first examines the treatment and unit design specifications employed for existing CAMUs under the baseline. These baseline CAMU remedies were assessed in light of the treatment and unit requirements promulgated today. An assessment was made of expected differences in treatment and unit design anticipated under the final amendments, and the resulting costs for those changes were quantified.

The section next addresses the storage and/or treatment only provisions in the CAMU amendments. EPA assesses how the storage and/or treatment only CAMU provisions have been implemented in the baseline by examining the temporary CAMUs approved to date under the existing rule. These CAMUs were analyzed in light of the new storage and/or treatment only CAMU provisions in the final amendments.

a. Treatment and Unit Design Standards Implemented in the Baseline

Data on the implementation of the existing CAMU rule shows that the 39 permanent CAMUs approved to date have generally employed significant treatment of wastes (approximately 70 percent of CAMUs employed treatment of wastes prior to disposal) with disposal in protective units (i.e., generally employing liners for new units, protective caps, and ground water monitoring). EPA has detailed information on 47 CAMUs in the baseline (see the CAMU Site Background Document in the docket for today's final rule for a complete discussion of each CAMU). These data provide a reasonable datum from which to assess the incremental impacts associated with the new treatment and unit design provisions in the final amendments.

b. Treatment and Unit Design Provisions in the Post-Regulatory Case

The final amendments would establish national minimum treatment standards which all principal hazardous constituents must meet prior to placement in a CAMU, unless the Agency determines in a given case that the standards are inappropriate (see discussion of adjustment factors below). This national minimum standard, which is essentially taken from the treatment standard promulgated for hazardous soils in the Phase IV LDR Final Rule, among other things, requires treatment of wastes to 90 percent reduction from the original concentrations, capped by 10 × UTS levels. This standard would apply for all CAMU-eligible wastes.

Accompanying the national minimum treatment standard are five adjustment factors, which provide site-specific flexibility in applying these treatment standards through identification of certain conditions under which full compliance with the national standard may be adjusted. This adjustment may be employed to make treatment more or less stringent, and may be used to adjust a treatment level or method. These final treatment requirements and adjustment factors were crafted through examination of the current implementation of the CAMU rule in the baseline, and the general process involved in remedial selection in the corrective action program, as well as the treatment variances used for as-generated waste under the Land Disposal Restrictions program.

The final amendments would also establish standards for liners at all new and replacement units or lateral expansion of existing units, and caps at units where waste is left in place. The reader is directed to the relevant discussions on the final provisions in their appropriate preamble sections above (see ''Liner Standard,'' ''Cap Standard,'' and ''Adjustment Factors to the Treatment Standard'').

c. Incremental Impacts Associated with Final Treatment and Unit Design Provisions

Having examined the provisions on treatment and unit design in the final amendments, the Agency then assessed the incremental impacts from these provisions with respect to current baseline implementation of the CAMU rule. The Agency examined how the baseline requirements have been implemented to date, and assessed where changes would be required at these facilities under post-regulatory conditions. See Economic Analysis of the Final Amendments to the CAMU Rule for details on this comparison.

EPA estimated the incremental costs associated with these standards through the following steps. First, the Agency compared the data on each baseline CAMU against the provisions in the final CAMU amendments. For this assessment, EPA addressed the following questions for each CAMU remedy, where necessary: (1) Does the facility have constituents that would likely be designated as PHCs? (2) For a facility where PHCs are determined to likely be present, was treatment performed to reduce PHC concentrations? (3) Where treatment was being performed, was it meeting the final national minimum standards? (4) Was the CAMU an existing unit? and (5) What liner and cap requirements were instituted for the CAMU? Second, based on this assessment, the Agency made a determination as to whether the CAMU was consistent with the treatment and unit design provisions of the final amendments. Third, where the Agency identified inconsistency with the final national minimum standards, application of the adjustment factors was considered. Potential use of adjustment factors was only considered appropriate where site-specific factors were consistent with the circumstances described in today's preamble for the different adjustment factors. And fourth, where the adjustment factors were not applicable, the Agency identified the steps that would be necessary to render the CAMU consistent with the final provisions. Each of the above steps was performed by EPA based on a detailed knowledge of the baseline CAMU requirements, the final rule provisions, and the details of the existing CAMU being analyzed. Please see the site summaries for the 47 CAMUs which are included in the CAMU Site Background Document (included in the docket for today's final rule). Additionally, the reader is directed to the preamble discussion of the adjustment factors for elaboration on how each adjustment factor would be applied at a given facility.

EPA performed this evaluation for the 39 permanent baseline CAMUs approved to date. The Agency estimated costs in the cases where additional requirements were identified as necessary for the CAMU to reach consistency with the final provisions. Results for the 39 permanent CAMUs are shown below in Exhibit VIII–1; results for the eight storage and/or treatment only CAMUs are discussed following the exhibit.

For the 39 permanent CAMUs, EPA estimates that 26 facilities would potentially require use of one of the adjustment factors to achieve consistency with the final amendments. Note that the potential use of adjustment factors was considered where such use would be consistent with the circumstances described in today's preamble for each adjustment factor. Of the five adjustment factors provided for in the amendments, adjustment factor A for technical impracticability was estimated to be applied eight times to achieve consistency, adjustment factor B addressing consistency with site cleanup goals was estimated to be possibly needed 13 times to achieve consistency, and adjustment factor E providing adjustment from the treatment standards based on the long-term protection offered by the unit was estimated to be possibly applied 11 times to achieve consistency. (Note that the estimated frequency of use for the individual adjustment factors does not sum to the overall number of facilities using adjustment factors due to the Agency identifying different available options for adjustment factor use at several facilities.)

As shown in Exhibit VIII–1, the analysis revealed three facilities for which the unit design employed in the original CAMU decision was not consistent with the final amendments. In two cases, a final cap would be required to achieve consistency with the final provisions. EPA estimated costs for these caps based on the specific information for the given facility. These costs are shown in the exhibit, and discussed in greater detail in the background document for the economic analysis. EPA estimated costs for the cap at one facility to range from $642,000 to $1,203,000, and costs for the cap at the other facility at approximately $221,000. Additionally, one CAMU would require a liner to achieve consistency with the final provisions. EPA estimated costs for addition of a liner based on the specific information for the given facility. These costs are shown in the exhibit, and are estimated to be $225,000.

EXHIBIT VIII–1.—COMPARISONS OF BASELINE PRACTICES AND POST-REGULATORY FOR PERMANENT CAMUS

CAMU comparison: Baseline to post-regulatory	Number of CAMUs	Significance of differences	Estimated incremental impact
Treatment and Unit Design Consistent With Post-Regulatory	36	N/A	N/A.
Treatment Not Consistent With Post-Regulatory Requirements	0	N/A	N/A.
Unit Design Not Consistent With Post-Regulatory Requirements	3	Two Facilities May Have Required Additional Cap Design Features*.	Cap Costs: 1. $642,000 to $1,203,000, 2. $221,000.
		One Facility May Have Required a Liner.	Liner Costs: 3. $225,000. [Total=$1,088,000 to $1,649,000]
Treatment and Unit Design Not Consistent with Post-Regulatory Requirements.	0	N/A	N/A.

*These two CAMUs address the disposal of off-site soils contaminated with lead that resulted from smelting operations. Both facilities remain subject to long-term maintenance and periodic review.

The total estimated costs associated with ensuring that all the permanent CAMUs approved under the existing rule are consistent with the final amendments is estimated to range from approximately $1,088,000 to $1,649,000. EPA then annualized these costs over 20 years at 7 percent, divided the resulting range by the number of permanent CAMUs (39 total), and multiplied it by the number of CAMUs projected to be approved each year. This set of calculations yields the expected costs for the rule due to the treatment and unit design requirements of $140,000 to $210,000 per year. The Agency believes that these estimates reasonably cover the additional requirements to achieve such consistency with the final standards. However, EPA acknowledges the possibility that, due to the variability of site characteristics and the limitations of the available data for the given CAMUs, additional negligible costs such as minor additional treatment of small volumes of waste could be incurred at any given facility. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

Several commenters on the proposed rule believed that the amended treatment and unit design standards for permanent CAMUs are too prescriptive and stringent. According to the Agency's analysis, however, almost all of the 39 existing permanent CAMUs are meeting the treatment and design standards in the baseline. As discussed above, EPA estimates moderate incremental costs associated with these amended standards. One commenter acknowledged that the existing permanent CAMUs analyzed for the proposed rule analysis ''would generally meet the revised standards.'' However, the commenter believed that this stringent implementation of the existing CAMU rule was, at least in part, the effect of the ''litigation cloud'' resulting from the legal challenge to that rule. They provided no evidence in support of such a claim. The Agency generally believes that the types of remedies seen at the CAMUs approved to date represent the logical outcome of a responsible implementation of the 1993 CAMU rule and reflect EPA's intentions in that rule. However, the Agency agrees with the commenter's point that the clarification of EPA's intentions provided in today's final rule is preferable as a matter of public policy.

d. Incremental Impacts Associated With the Storage and/or Treatment Only CAMU Provisions

The 1993 CAMU Rule provisions did not contain standards that were specific to temporary CAMUs (which are now called storage and/or treatment only CAMUs in the final provisions). However, data indicate that eight storage and/or treatment only CAMUs were approved in the baseline, and were generally employed for short-term treatment or storage of wastes at a site. These data provide a useful datum from which to assess the potential for incremental impacts resulting from the final amendments as they address storage and/or treatment only CAMUs.

The Agency analyzed the potential incremental costs associated with achieving consistency with the final rule standards for the storage and/or treatment only CAMUs. No inconsistencies were identified for these nine CAMUs; therefore, there were no incremental costs estimated for these units. This analysis does not consider any changes in the number of CAMUs approved per year which could result from the rule.

As stated above, EPA made these comparisons based upon the types of contaminants, the unit design standards achieved, and the general circumstances surrounding the use of CAMUs.

4. Assessment of the Incremental Change in the Number of CAMUs Approved

One potential impact anticipated to result from today's final rule is a change in the average number of CAMUs approved per year. This section presents the Agency's bounding analysis of the impacts associated with an incremental change in the number of CAMUs.

The 1993 CAMU Rule was designed to provide incentives for remediation by removing certain regulatory requirements that affect the management of hazardous remediation waste during cleanup. The rule allows facilities to manage hazardous waste in a CAMU without triggering the Land Disposal Restrictions (LDR) requirements, and to dispose of hazardous remediation waste in a CAMU. The CAMU is exempt from minimum technology requirements (MTRs), although it is subject to performance-based standards intended to protect human health and the environment. The rule established performance standards for the design, operation, and closure of CAMUs, and provided the site-specific flexibility that EPA believes is necessary to encourage remediation at cleanup sites. However, EPA was sued on the CAMU rule shortly after its promulgation. The resulting uncertainty surrounding the viability of the CAMU rule, along with other factors discussed above such as the increased use of Areas of Contamination (AOCs) and staging piles, the introduction of the Phase IV Land Disposal Restriction (LDR) soil treatment standards, and the stabilization initiative in corrective action, led to considerably less use of CAMUs than the Agency originally anticipated.

With today's final rule, the Agency intends to resolve the litigation uncertainties which have dampened CAMU usage. Such resolution could

promote the increased use of CAMUs. However, as discussed above, the Agency does not expect CAMU usage to approach the rate projected in the 1993 CAMU RIA (roughly 75 CAMUs per year). The Agency believes that the ''litigation cloud'' only accounts for part of the difference between actual CAMU usage over the past eight years and the usage estimated in the 1993 RIA. Other factors contributing to a potential change in future CAMU use include the impact of the formalized approval process, and the effect of the treatment and unit design provisions. It is very difficult to assess the significance of these factors on the individual decision at a given facility regarding whether to use a CAMU in remediation. This complexity led the Agency to prepare an order-of-magnitude analysis which seeks to establish the general direction of change in CAMU usage, and to quantify the approximate impacts from such change. These estimates focus only on the potential for changes in the number of CAMUs approved, and do not address the possible impacts from the formalized approval process or the treatment and unit design requirements of today's final rule. These impacts are presented to illustrate the potential savings which could come from such a change in CAMU usage, and should not be considered a part of EPA's estimate of the actual impacts from today's final rule.

The Agency assessed the overall direction of the expected change in CAMU use for the three time periods identified for purposes of this analysis: (1) Grandfathering Window (August 2000 through 2001); (2) Early After Promulgation (2002 for one year); and, (3) Post-Promulgation Equilibrium (2003 for four years). These time periods were designed by the Agency in order to portray the effects of the factors identified above according to logical breaks in their influence.

The Agency estimated the potential change in the number of CAMUs employed for each of the three time periods based roughly on the baseline CAMU usage figure of six CAMUs per year. Given the complexity of projecting the effect of these influences on CAMU usage in the future, these estimates are provided for illustrative purposes only. The cost savings from this change were estimated using results from the 1993 CAMU RIA (see page 3–9 of that report). This analysis, prepared in support of the CAMU rule, estimated the cost savings at a randomly selected sample of corrective action sites based on expert panel assessments of the costs for remediation with and without a CAMU. These figures were extrapolated to determine the national cost impacts for the CAMU rule. The RIA presents an annual average cost savings per CAMU of $0.5 million to $0.8 million per facility in 1992 dollars (changing the figures to 2001 dollars yields an annual cost savings per CAMU ranging from $0.6 million to $0.9 million).

This range was employed for purposes of this analysis to estimate order-of-magnitude cost impacts resulting from the changes in CAMU usage due to today's final rule. The annual cost savings per CAMU figure presented in the 1993 RIA provides the only readily available data from which to quantify the impacts of a shift from remediation without a CAMU to use of a CAMU. Although, the Agency believes that this cost savings estimate could significantly overestimate actual savings, due to the assumptions employed in the 1993 RIA regarding excavation and combustion of cleanup wastes.

Within each of the three time periods examined, a facility could either shift from not using a CAMU (baseline) to using a CAMU (post-regulatory), or using a CAMU (baseline) to not using a CAMU (post-regulation). In the case where a facility did not use a CAMU, there is a range of possible alternatives which could be considered. For purposes of this analysis, the Agency bracketed this range with leaving waste untouched on one hand, or performing full remediation without a CAMU on the other hand. As stated above, EPA employed the cost savings estimate from the 1993 RIA to model the cost savings for the case of a shift from performing full remediation without a CAMU (baseline) to using a CAMU (post-regulatory). EPA did not possess data on either the possibility of a shift from leaving waste in place (baseline) to using a CAMU in remediation (post-regulatory), or the cost impacts associated with such a shift. Finally, EPA does not believe it is reasonable to assume that facilities will shift away from CAMU use as a result of today's final rule; the anticipated costs from today's rule are not significant enough to result in such shifts. However, in the Post-Promulgation Equilibrium time period, EPA modeled the case of a shift from CAMU use (baseline) to full remediation without a CAMU (post-regulatory). While the Agency does not expect such a change, it is modeled below for illustrative purposes. The impacts from the changes in CAMU usage for the three time periods are assessed below according to these categories of change identified and discussed above (see Exhibit VIII–2 below).

EXHIBIT VIII–2.—ASSESSMENT OF THE POTENTIAL CHANGE IN CAMU USAGE RESULTING FROM THE FINAL RULE

Categories of potential change in CAMU usage	Scope of the assessment (August 2000 through approximately 2006)		
	Grandfathering window (August 2000 to Jan. 2002: approximately 1½ years)[1]	Early after promulgation (Jan. 2002 to Jan. 2003: 1 year)[2]	Post-promulgation equilibrium (Jan. 2003 through approximately 2006)[3]
Baseline: Full remediation (no CAMU). Post-Reg: CAMU	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (annual savings of $0.6 to $0.9 million per facility).
Baseline: Leave wastes untouched (no CAMU). Post-Reg: CAMU	No Change in CAMU Use Found	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).
Baseline: CAMU Post-Reg: Full remediation (no CAMU)	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (annual cost of $0.6 to $0.9 million per facility).
Baseline: CAMU Post-Reg: Leave wastes untouched (no CAMU).	No Change Estimated	Change Highly Uncertain	Potential for 5 facilities estimated (no cost info available).

[1] Publication of the proposed amendments (August 2000) to the anticipated effective date of Final rule (March–April 2002), which is 90 days after promulgation of the Final rule (December 2001).

[2] The effective date of Final rule to one year after effective date of Final rule.
[3] One year after effective date of Final rule for roughly 5 years of ''equilibrium.''

For greater details on the approach to estimating these impacts, please refer to the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule. These impacts are presented in the exhibit above.

a. Grandfathering Window

For this time period, no additional costs or savings are estimated. The data collected in the revision of the CAMU Site Background Document showed no increase in CAMU usage during this period.

b. Early After Promulgation

As the exhibit above shows, EPA believes that the factors influencing potential changes in CAMU usage during this period are too uncertain to provide an assessment of the potential impacts for this time period. Beside the factors identified above, there may be a reduction in CAMU usage resulting from the anticipated increase in CAMUs within the grandfathering time window. Please see the background document for greater discussion on this issue.

c. Post Promulgation Equilibrium

For this time period, the cost savings associated with a potential increase or decrease in CAMU usage of 5 CAMUs per year are estimated as:

$$5 \text{ CAMUs per year} \times \frac{\$0.6 - \$0.9 \text{ million per year}}{\text{per CAMU}} = \$3.0 - \$4.5 \text{ million per year}$$

This estimate, ranging from a positive cost of $4.5 million per year to a savings of $4.5 million per year, is a rough figure based upon the projected change in CAMU usage for this period. Again, while it is possible that the facilities which shift to or from CAMU usage under this scenario would be those which left waste untouched, cost figures on this shift were not available. Therefore, no estimate of impacts associated with such a shift is provided.

The main competing influences in this time period are the removal of the uncertainty surrounding the litigation of the CAMU rule, and the potential dampening effect of the formalized approval process and treatment/unit design standards.

Several commenters stated that the ''onerous'' approval process and the ''excessively stringent'' treatment standards established in the amendments would result in decreased use of CAMUs. In fact, some commenters believed that the amendments would result in facilities choosing to cap-in-place rather than selecting more environmentally protective options. EPA's analysis of the approval process and treatment requirements suggests that these provisions will result in minimal to modest cost increases over the existing rule to facilities employing a CAMU.[59]

For illustrative purposes only, EPA estimated the total annual impacts of the rule including the estimates just calculated for the potential changes in CAMU usage, along with the estimates developed for the approval process and for the treatment and unit design standards. The range of estimates for this bounding analysis are shown by year for the scope of the analysis in Exhibit VIII–3 below. The Agency developed an upper bound estimate by adding the high-end cost associated with a potential change in CAMU usage, $4.5 million per year, to the high-end cost for the approval process, $242,000 per year, and the high-end cost for the treatment and unit design standards, $210,000 per year. This summation yields an upper bound cost for the rule of $5.0 million per year. EPA developed a lower bound estimate by adding the low-end impact associated with a potential change in CAMU usage, $4.5 million per year in savings, to the low-end of the cost for the approval process, $77,000 per year, and the low-end cost for the treatment and unit design standards, $140,000 per year. This summation yields a savings for the rule of approximately $4.3 million. Therefore, the bounding analysis provides a range from approximately $4.3 million in savings to $5.0 million in costs.

EXHIBIT VIII–3.—TOTAL IMPACTS FOR THE RULE INCLUDING CHANGES IN THE NUMBER OF CAMUS PER YEAR A BOUNDING ANALYSIS: OVER THE SCOPE OF ANALYSIS

[In millions of dollars]

Bounding analysis estimates	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
Impacts from CAMU usage changes (Illustrative in Nature).	No Change Estimated.	Too Uncertain to Estimate.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost.	$4.3 savings—$5.0 cost

The question may be raised as to how this cost savings for increased CAMU usage in the above bounding analysis compares with the $1 to $2 billion annual savings in the 1993 CAMU RIA. The 1993 RIA baseline represented facilities performing remediation under the corrective action requirements, generally excavating wastes and treating in compliance with the land disposal restriction (LDR) requirements via combustion technologies. Given the resulting high costs for such baseline remedial approaches, the relief provided by the original CAMU regulation was presumed to be widely applied in the post-regulatory case. Therefore, significant CAMU usage was estimated. The baseline for today's final rule is described by the historical data EPA obtained on those facilities which have

[59] Additionally, one of the Agency's chief motives in entering into the settlement agreement was the resolution of the CAMU legal challenge which may have deterred the use of CAMUs in cleanup decisions. However, as discussed above, the Agency is unclear as to the long-term result of the amendments in effecting CAMU usage.

approved CAMUs over the past eight years. The projections made above regarding the potential change in CAMU usage resulting from today's final provisions are based roughly on these baseline CAMU usage figures. Therefore, the increase in CAMU usage projected in the post-regulatory case in the above bounding analysis for today's final rule is relatively low.

The difference in projected CAMU usage from the 1993 RIA and the actual usage seen in the CAMU Site Background Document is believed to be attributable to four factors. These four factors were discussed above under the analytical framework. The ''litigation cloud'' effect is just one of the factors posited to account for this difference. Therefore, the potential resolution of this litigation uncertainty through today's final rule is not anticipated to result in the significant CAMU usage estimated in the 1993 RIA. Furthermore, the increased CAMU usage estimated in the above bounding analysis is not intended to serve as an update to the 1993 RIA projections. Rather, due to the complexity involved in estimating CAMU usage in the post-regulatory case for today's final rule, the above estimates are made for illustrative purposes only, and do not represent a definitive statement of the expected savings from the rule.

5. Assessment of the Total Impacts for the Final Amendments to the CAMU Rule

This section presents a brief assessment of the total impacts of the Final Amendments to the CAMU Rule. The Agency presents the total impacts estimated for the formalized CAMU approval process and for the treatment/unit design standards, and storage and/or treatment only provisions for CAMUs below in Exhibit VIII–4; the estimates for the bounding analysis discussed above are not included in the exhibit. In addition, EPA qualitatively discusses the potential impacts of § 264.555, which allows CAMU-eligible waste to be disposed of off-site in hazardous waste landfills, without meeting the land disposal restrictions. Please see the Economic Analysis of the Final Amendments to the CAMU Rule for a full discussion of these impacts.

EXHIBIT VIII–4.—TOTAL ANNUAL IMPACTS ESTIMATED OVER THE SCOPE OF ANALYSIS, ASSUMING CONSTANT RATE OF 6 CAMUS PER YEAR

[In thousands of dollars]

Impacts assessed for CAMU amendments	Impact estimates for each year within the scope of analysis					
	2001	2002	2003	2004	2005	2006
1. CAMU Approval Process Impacts	No Costs Incurred	$77–$242	$77–$242	$77–$242	$77–$242	$77–$242
2. Impacts from Treatment and Unit Design Requirements.	No Costs Incurred	$140–$210	$140–$210	$140–$210	$140–$210	[1]$140–$210
Total impacts	No Costs Incurred	$217–$452	$217–$452	$217–$452	$217–$452	$217–$452

[1] This cost was calculated from a capital cost, annualized over 20 years. Therefore, it would continue for 15 more years.

The total impacts associated with the final rule are estimated as the sum of the incremental approval costs and the incremental treatment/unit design costs. The analysis provides estimates of the impacts from the rule from the grandfathering window to five years following the effective date of the rule (2001 to 2006). As discussed above, the impacts for the treatment and unit design standards are annualized figures associated with two facilities which required additional unit design criteria be met to achieve consistency with the final amendments. The cost impacts estimated for the potential change in the number of CAMUs are considered in the bounding analysis, which are discussed above. The total impacts are determined to range from $217,000 per year to $452,000 per year.

EPA also qualitatively examined the potential impact of allowing CAMU-eligible wastes to be disposed of off-site, under certain conditions, without meeting the land disposal restrictions. Despite the existence of various alternatives to full Subtitle C management of cleanup wastes under the baseline requirements (e.g., treatability variances), facilities are still likely to reduce the scope of their remedial efforts (or not conduct cleanup at all) because of Subtitle C requirements. Under the baseline conditions, facilities that send hazardous remediation waste off-site for disposal would typically incur significant costs to meet the requirements of the land disposal restrictions. Under today's rule, however, these facilities have the option of treating CAMU-eligible waste to the national minimum treatment standards (or the adjusted standards) and sending the waste off-site for disposal in a hazardous waste landfill. In this case, facilities may have enough of an incentive to clean up that they will increase their remedial efforts over what they would have pursued under baseline conditions. For these facilities, increasing the amount of cleanup may actually increase costs. These costs, however, would be borne voluntarily and therefore reflect (in the facility owner's view) an overall gain for the facility.

Thus, EPA believes that the off-site provision of today's rule will result in an overall reduction of costs to facilities through a reduction in treatment requirements when cleanup waste is sent off-site for disposal in hazardous waste landfills.

B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

This section of the preamble addresses the potential impacts incurred by small entities as a result of the final CAMU amendments. For the proposed rule, EPA analyzed the potential impacts on small entities for the 39 CAMUs approved at that point in time. EPA received no comments on the proposed analysis. As discussed earlier, EPA has updated the number of existing CAMUs through reviews performed by the states and Regions. This analysis, therefore, updates the analysis performed for the proposed rule by assessing the potential impacts to small entities for the nine newly identified CAMUs, and by making other minor adjustments to the CAMUs identified in the proposed rule analysis. There is no change, however, to the conclusion reached in the proposed rule analysis, that this action will not have a significant economic impact on a substantial number of small entities.

1. Methodology to Assess Small Entity Impacts

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 the final amendments to the rule on small entities, small entity is defined as: (1) A small business that meets the RFA default definitions for small business (based on SBA size standards *www.sbaonline.sba.gov/size*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that there are three facilities employing CAMUs which are small entities, and that these facilities would incur impacts ranging from no impact to 0.01 to 0.32 percent of net sales if they had to apply for their CAMU under the amended standards. Additionally, there are five facilities for which EPA could not obtain the data to determine size status, but which EPA had the data to assess impacts. For these five facilities, the impacts ranged from 0.01 to 0.07 percent of net sales. The Agency was unable to obtain data for an additional two facilities. However, these facilities are not expected to incur significant impacts as a result of today's rule. The Agency reached this determination based on the analysis which is described below.

a. Framework for the Analysis

The Agency faced two important questions in developing the framework for analyzing small entity impacts. The first was how to define the universe of facilities affected by today's rule. The second was how to assess the incremental changes in CAMUs under the baseline and post-regulatory scenarios.

The universe of facilities which could potentially employ a CAMU in remediation, and thus could be affected by today's rule, includes facilities performing cleanups under RCRA corrective action, Superfund, and state cleanup authorities. There are over 6,000 facilities which can be potentially reached through corrective action authority; this figure does not include Superfund sites or other cleanup sites where CAMUs may be used in the future. Of these facilities, today's final rule would not impose costs on any existing CAMUs that continue to manage wastes in the general manner for which they were approved, or, of course, on any facilities which manage their wastes without the use of a CAMU (e.g., they send their wastes off-site). Today's final standards would apply only to CAMUs which do not remain subject to the existing standards under the grandfathering provisions. However, to determine the number of facilities, out of this total number, which would in fact require cleanup at some point in the future, and would employ a CAMU in the remedy, would require significant effort and yield uncertain results.

Therefore, EPA considered the use of existing data on CAMU usage. The Agency first examined the 1993 CAMU RIA, which was performed in support of the existing CAMU rule. In this RIA, the Agency made a projection of the number of facilities which would employ CAMUs in the future. This projection was based on use of expert panels which reviewed, on a facility-by-facility basis, a randomly selected sample of 79 corrective action facilities and determined when CAMUs would be employed in remediation. The impacts estimated for these facilities were extrapolated to the corrective action universe to develop a national estimate of impacts for the CAMU rule. The Agency estimated that the existing rule would result in CAMUs being employed at approximately 1,500 facilities, or approximately 75 CAMUs per year over a 20 year period. The identities of these facilities, which would have been required for assessing the small entity impacts associated with the rule, were not determined; no impacts assessment was performed for the 1993 CAMU rule.

However, based on data depicting the actual CAMU usage rate over the past eight years at six CAMUs per year, the Agency believes the 1993 RIA projections do not represent an accurate forecast of the expected use of CAMUs in the future. (Some reasons for this disparity between the 1993 RIA projections and the actual usage are discussed above). Therefore, the Agency considered using the data on actual CAMU approval for this analysis. This report contains information on 47 CAMUs approved under the existing rule for which the Agency had good quality data. For each CAMU, the Agency obtained information on the use of the CAMU at the site, types of wastes managed, treatment required, and unit design; the data are contained in the CAMU Site Background Document, which is included in the docket for today's final rule.

Using these data, the Agency estimated an annual CAMU approval rate for the past eight years, and applied that rate to project CAMU usage in the future. In projecting future use based on historical data, the Agency assumes that the 47 CAMUs are reasonably representative of expected future CAMU use. This assumption rests on the completeness of the data in the CAMU Site Background Document; this document contains information from all the CAMUs to date for which the Agency had good data. Therefore, it provides a reasonable basis for understanding how the CAMU rule has been implemented to date. For purposes of this analysis, the Agency assumes there will be no new regulations or policy initiatives which affect CAMU usage in the future.

Use of these historical data also mitigated the problems associated with determining the differences in a CAMU under the existing rule (baseline case) as compared to a CAMU under the final provisions (post-regulatory case). As discussed in more detail above, the Agency used the information on the 47 existing CAMU remedies to assess consistency with the final provisions in today's rule. This assessment involved a facility-by-facility comparison of the existing remedy (baseline case) with the final provisions (post-regulatory case). In such an approach, the Agency again assumes that these historical data are reasonably representative of future CAMU remedies under baseline conditions. The Agency believes this presupposition to be sound for the same reasons stated above regarding CAMU; there were no comments received on the proposed rule regarding this approach.

Therefore, the analysis of the small entity impacts anticipated to result from today's final rule rests on an assessment of facilities which have existing CAMUs, not an analysis of facilities which will actually be impacted in the future by this rule. As stated above, the Agency believes that this rule will not significantly affect the nature of CAMU usage related to the types of facilities employing CAMUs in the future. Thus, the Agency believes the analysis of future small entity impacts based on historical CAMU usage is reasonable.

b. Methodological Approach for SBREFA Analysis

This analysis employs the data on the existing CAMUs from the CAMU Site Background Document to assess the potential for impacts on small entities resulting from the final rule. The Agency performed two screening analyses using these data. Screening analyses are the tools the Agency uses to assess the potential for the rule to result in a significant impact on a substantial number of small entities, and thus the need for development of a Small Business Advocacy Review Panel. First, the Agency examined those facilities which employed CAMUs in the baseline to determine whether any of these facilities were small entities, and if so whether they incurred a significant impact as a result of the final rule. Second, for those facilities for which the size status could not be determined, the Agency assumed small entity status, and performed a significant impact screen using the Sales Test (i.e., assessing the ratio of incremental costs to net sales for a facility). As there are no small organizations or small governmental jurisdictions which currently have CAMUs, these entities are not anticipated to incur any impacts resulting from the rule. The results from each screening analysis are discussed below.

c. Examination of Existing CAMUs for Small Entity Status

EPA collected data on the employee size and net sales for the 47 facilities employing CAMUs in the baseline (the sources from which these data were obtained are listed in the background document). Using these data, EPA determined, according to the SBA size standards (see *www.sbaonline.sba.gov/size/section04b.htm),* whether any of the 47 facilities were small entities. Of the facilities for which data existed to determine size status, only three were identified as small entities. The impact incurred on these three small entities was under 0.01 percent of net sales. This finding suggests that it is very unlikely that these facilities would be significantly impacted by the rule. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

d. Significant Impact Screen of Facilities for Which Size Was Undetermined

The Agency examined the seven facilities for which data concerning size status were not available. Using the Standard Industrial Classification (SIC) Code for a given facility, the Agency was able to obtain data for five of these facilities on the estimated receipts for small entities within the SIC code and the number of small entities within the SIC code (these data were obtained from *www.sba.gov/advo/stats/int_data.html).* (The latest available industry Census data is from 1997, prior to the establishment of the North American Industry Classification Code System (NAICS) codes.) The estimated receipts for these entities were employed as a surrogate for net sales. From these data, the average estimated receipts per small firm within the SIC code was determined. This figure, the average estimated receipts per small firm, was then assumed to be representative of the receipts for the facility in question. The Sales Test ratio (i.e., the ratio of the average estimated receipts per firm by SIC code to the annual incremental costs of the final rule incurred by the facility) was then calculated.

For the five facilities for which data existed to calculate the Sales Test ratio, this ratio ranged between 0.01 percent and 0.07 percent. The Agency believes this range of percentages reasonably validates a conclusion of no significant impacts for these facilities. However, there were two facilities for which the data required to make this calculation were not available. Based on the annual incremental costs projected for these two facilities as a result of the final rule, it seems very unlikely that these facilities, if they were small entities, would incur significant impacts. See the Economic Analysis of the Final Amendments to the CAMU Rule in the docket for today's final rule for greater detail on this analysis.

2. The Impacts Estimated on Small Entities

Based on the two screening analyses described above, the Agency has concluded that today's final rule would not have a significant impact on a substantial number of small entities. (In addition, no small entity impacts are expected from the provision allowing off-site disposal of CAMU-eligible waste (40 CFR 264.555), as facilities use this provision only when it is to their advantage; in fact, EPA expects that this provision will be particularly useful to small entities.)

C. Paperwork Reduction Act

The information collection requirements in this final rule will be 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. 1573.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460, by e-mail 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.* The requirements are not effective until OMB approves them.

The U.S. Environmental Protection Agency (EPA) is amending the regulations for CAMUs under RCRA. EPA originally established regulations applicable to CAMUs at 40 CFR part 264, subpart S (58 FR 8658, Feb. 16, 1993). EPA is amending these regulations to, among other things, more specifically define the eligibility of wastes to be managed in CAMUs, establish treatment requirements for wastes managed in CAMUs, and set technical standards for CAMUs. With regard to paperwork requirements, the rule adds language identifying specific types of information that facilities must submit in order to gain CAMU approval at § 264.552(d)(1)–(3) and requires that CAMU-authorizing documents require notification for ground water releases as necessary to protect human health and the environment at § 264.552(e)(5).

The general requirement for information submission, at § 264.552(d), requires the owner or operator to submit sufficient information to enable the Regional Administrator to designate a CAMU. EPA is modifying the existing information requirement under § 264.552(d) to include submission of the specific information listed under final § 264.552(d)(1)–(3)). The modifications are additions to the existing general requirement, and add three specific information submission requirements (unless not reasonably available) to directly address the final amendments pertaining to CAMU eligibility: (1) The origin of the waste and how it was subsequently managed (§ 264.552(d)(1)); (2) whether the waste was listed or identified as hazardous at the time of disposal and/or release to the environment (§ 264.552(d)(2)); and (3) whether the waste was subject to the land disposal requirements of Part 268 at the time of disposal and/or release to the environment (§ 264.552(d)(3)). Additionally, EPA is requiring certain facilities to notify EPA of releases to ground water. EPA will use this information to monitor releases and make determinations of when the releases might cause danger to human health or the environment. Facility owners or operators may use these data

to keep track of releases and prevent them from reaching unacceptable levels.

EPA is amending the requirements for designating a CAMU under the authority of sections 1006, 2002(a), CFR, 3005(c), 3007, 3008(h), and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984. In particular, under sections 2002 and 3007 of RCRA, EPA is requiring the information collection amendments to the CAMU rule described above because they are needed for the Agency to effectively designate and track the operation of CAMUs.

In addition, the rule requires persons seeking approval to send CAMU-eligible wastes off-site (without meeting land disposal restriction requirements) to submit enough information to allow the Regional Administrator to provide that approval (see 40 CFR 264.555).

EPA estimates the total annual respondent burden and cost for the final new paperwork requirements to be approximately 1,354 hours and $123,958. The bottom line respondent burden over the three-year period covered by this ICR is 4,107 hours, at a total cost of approximately $371,874. The Agency burden or cost associated with this final rule is estimated to be approximately 189 hours and $7,860 per year. The bottom line Agency burden over the three-year period covered by this ICR is 567 hours, at a total cost of approximately $23,580.[60]

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the information that will be requested pursuant to the final amended CAMU rule. If such a claim were asserted, EPA must treat the information in accordance with the regulations cited above. EPA also will make sure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

D. Unfunded Mandates Reform Act

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

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The amendments final today establish approval process changes and treatment/unit design requirements which are overall already in use in the baseline. Therefore, the incremental impacts, as discussed in this analysis, are not estimated to be significant. See the above analysis for an overview of the impacts estimated for the final amendments. Thus, the CAMU Final Amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

Finally, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Under today's final rule, small governments will not implement the CAMU rule and are not generally expected to use CAMUs based on current patterns of CAMU usage seen in historical data. In addition, the CAMU rule makes no distinction between small governments and any potential regulated party.

E. National Technology Transfer and Advancement Act

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

The final rulemaking involves technical standards (e.g., use of the TCLP or other tests to assess compliance with treatment requirements). The Agency did not identify any potentially applicable voluntary consensus standards during its efforts to develop appropriate standards (e.g., during its discussions with Agency personnel and

[60] Subsequent to conducting the Information Collection Request Analysis, EPA updated the number of CAMUs used for ''permanent'' disposal and the number used for ''storage and/or treatment'' only. The ICR estimates that 31 of the 39 CAMUs in the CAMU Site Background Document were for permanent disposal; the correct number is 30 of 39. EPA will make the necessary recalculations to the ICR in the context of the final rule. EPA believes that the change in estimated burden as a result of such recalculations will be inconsequential.

stakeholders who are experts in the areas addressed by this rulemaking). EPA also did not receive comments identifying potentially available voluntary consensus standards.

F. Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

Today's final rule does not have tribal implications because Indian tribal governments do not implement the CAMU rule. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under 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 final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe that this rule presents disproportionate or additional risks to children. The Agency does not believe that the risks addressed by today's amendments—i.e., the risks from on-site management of hazardous cleanup wastes—present a disproportionate risk to children. The final rule, among other things, sets minimum CAMU treatment and design standards designed to help ensure the protectiveness of CAMUs. EPA's analysis of these requirements shows that CAMUs are already meeting the minimum standards in this rule. As amended by the final rule, the CAMU rule would continue to require that a decision concerning overall protectiveness of any specific CAMU be made by the Regional Administrator based on site-specific circumstances, including risks to children where appropriate. The Agency is committed to ensuring that these site-specific assessments include an assessment of risks to children where appropriate. Therefore, the Agency believes that these amendments do not present disproportionate or additional risks to children at facilities employing a CAMU.

H. Federalism (Executive Order 13132)

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.''

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. First, any direct effects on the states will not be substantial, because, as described more fully above, the Agency expects the increased analytical costs for oversight agencies (i.e., EPA or authorized states) associated with the rule to be insignificant. In addition, although the final amendments would limit the discretion available to oversight agencies under the current CAMU rule, the Agency's record demonstrates that the CAMU decisions expected under the amendments are generally the same as those reached under the current regulatory framework. In addition, EPA does not believe the final rule would have a substantial direct effect on states as regulated parties, since based on past patterns of CAMU usage, state governments are not generally expected to use CAMUs.

As for the EPA-state relationship and distribution of power and responsibilities, today's rule includes state authorization provisions that would allow the large majority of states currently authorized for the CAMU provisions to become interim authorized for the amendments at the same time those amendments become effective. Thus, for those states, there will be no period in which the amendments are in effect federally, but not as a matter of state law. Even for those CAMU-authorized states that do not become interim authorized under this procedure, the Agency does not believe that any impact of the rule would be substantial. Although the Agency would implement the amendments in such states until they become authorized, EPA does not expect that this will generally result in changes to the state's individual CAMU decisions under state law, since, as described above, state CAMU decisions will likely be consistent with today's amendments. Thus, Executive Order 13132 does not apply to this rule.

The Agency notes, in addition, that prior to entering into the CAMU settlement agreement, EPA did discuss with the states potential impacts on states from amendments to the CAMU rule. During these discussions, individual states expressed concerns about potential disruption caused by the authorization process that would be required in states that are already authorized for the 1993 CAMU rule, the reduced discretion that would be available under any amendments to the CAMU rule, and the potentially more elaborate process that would be involved in making CAMU decisions.

EPA recognizes that these are valid concerns, and addressed them in the proposal and today's final rule. For example, EPA has included a provision that grandfather existing CAMUs and those that are substantially in the approval process. The rule also includes an approach to authorization that is intended to reduce disruption for states with authorized CAMU programs, and to expedite authorization for states that have corrective action programs but are not yet authorized for CAMU. In addition, EPA recognizes that increased process would be introduced by this rule, but, as is described in the background section of today's preamble, has tried to find a reasonable balance by

adding sufficient detail to achieve the proposal's goals while preserving site-specific flexibility that provides incentives to cleanup. Finally, the rule is designed to incorporate the CAMU designation process into the existing decision-making process that is typically used by states and EPA for cleanups, including that used for making CAMU determinations. For example, EPA designed the principal hazardous constituent process, and certain final adjustment factors to reference the overall cleanup decision-making process within which the CAMU decision is made.

I. Environmental Justice (Executive Order 12898)

On February 11, 1994, the President issued Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,'' and an accompanying memorandum to federal department and agency heads. The Order establishes a policy to help ensure that all communities, including minority communities and low-income communities, live in a safe and healthful environment. As noted in the presidential memorandum, it is designed to focus federal attention on the human health and environmental conditions in minority communities and low-income communities to realize the goal of achieving environmental justice. The Order also is intended to foster nondiscrimination in federal programs that substantially affect human health or the environment, and to give minority communities and low-income communities greater opportunities for public participation in, and access to public information on, matters relating to human health and the environment. In general, to the greatest extent practicable and permitted by law, the Order directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Today's final rule is intended to amend the existing CAMU rule through, among other things, establishing a formalized process for approval of CAMUs, as well as setting national minimum treatment and unit design standards for CAMUs. The treatment and unit design standards formalize the existing expectations that site decisions be made within the overall decision making process in a manner protective of human health and the environment. The Agency's analysis shows that CAMUs are already meeting these minimum standards. Therefore, the Agency believes that these amendments, although formalizing such requirements, would not appreciably affect the risks at facilities where CAMUs are employed. This rule does not specifically address the overall remedial decision making process within which CAMUs are approved. Thus, EPA believes that this rule will not have any disproportionately high and adverse human health or environmental effects on minority populations or low-income populations. The Agency continues its commitment to ensuring that environmental justice concerns are addressed within remedial decisions in corrective action.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 90 days following publication.

K. Energy Effects (Executive Order 13211)

Today's final rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, EPA has concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Parts 260, 264, and 271

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Dated: December 21, 2001.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 260, 264 and 271 are amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended:

a. By removing the definition of ''Corrective action management unit (CAMU).''

b. By revising the definition of ''Remediation waste.''

The revision reads as follows:

§ 260.10 Definitions.

* * * * *

Remediation waste means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6927, 6928(h), and 6974.

4. The title for Part 264 Subpart S, ''Corrective Action for Solid Waste Management Units,'' is revised to read ''Special Provisions for Cleanup.''

5. Section 264.550 is added to Subpart S to read as follows:

§ 264.550 Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in paragraph (b) of this section, CAMUs are subject to the requirements of § 264.552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the requirements in § 264.551 for grandfathered CAMUs; CAMU waste, activities, and design will not be subject to the standards in § 264.552, so long as the waste,

activities, and design remain within the general scope of the CAMU as approved.

6. Section 264.552 is redesignated as § 264.551 and newly designated § 264.551 is amended by revising the section heading and paragraph (a) introductory text to read as follows:

§ 264.551 Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

* * * * *

7. A new § 264.552 is added to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit under the requirements in this section. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU must be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) *CAMU-eligible waste means:*

(i) All solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup. As-generated wastes (either hazardous or non-hazardous) from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in paragraph (a)(1)(i) of this section are not ''CAMU-Eligible Wastes'' where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Regional Administrator exercises the discretion in paragraph (a)(2) of this section to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding paragraph (a)(1)(i) of this section, where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Regional Administrator may prohibit, where appropriate, the placement of waste in a CAMU where the Regional Administrator has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of part 268 of this chapter, or applicable unit design requirements of this part, or applicable unit design requirements of part 265 of this chapter, or that non-compliance with other applicable requirements of this chapter likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not sorbents have been added) in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in § 264.314(d) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to § 264.314(f).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with § 264.314(c). Sorbents used to treat free liquids in CAMUs must meet the requirements of § 264.314(e).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Regional Administrator may designate a regulated unit (as defined in § 264.90(a)(2)) as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under § 264.113 or § 265.113 of this chapter; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The subpart F, G, and H requirements and the unit-specific requirements of this part 264 or part 265 of this chapter that applied to the regulated unit will continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Regional Administrator shall designate a CAMU that will be used for storage and/or treatment only in accordance with paragraph (f) of this section. The Regional Administrator shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies (including innovative technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will

remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Regional Administrator to designate a CAMU in accordance with the criteria in this section. This must include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed (including a description of the timing and circumstances surrounding the disposal and/or release);

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of part 268 of this chapter were in effect for the waste listing or characteristic.

(e) The Regional Administrator shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in paragraph (g) of this section, requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in paragraph (f) of this section, into which wastes are placed must be designed in accordance with the following:

(i) Unless the Regional Administrator approves alternate requirements under paragraph (e)(3)(ii) of this section, CAMUs that consist of new, replacement, or laterally expanded units must include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1x10–7 cm/sec. FML components consisting of high density polyethylene (HDPE) must be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Regional Administrator may approve alternate requirements if:

(A) The Regional Administrator finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in paragraph (e)(3)(i) of this section; or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Regional Administrator finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with paragraph (f) of this section, CAMU-eligible wastes that, absent this section, would be subject to the treatment requirements of part 268 of this chapter, and that the Regional Administrator determines contain principal hazardous constituents must be treated to the standards specified in paragraph (e)(4)(iii) of this section.

(i) Principal hazardous constituents are those constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Regional Administrator will designate as principal hazardous constituents:

(*1*) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(*2*) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Regional Administrator will also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Regional Administrator may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Regional Administrator may also designate other constituents as principal hazardous constituents that the Regional Administrator determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are ''principal hazardous constituents,'' the Regional Administrator must consider all constituents which, absent this section, would be subject to the treatment requirements in 40 CFR part 268.

(iii) Waste that the Regional Administrator determines contains principal hazardous constituents must meet treatment standards determined in accordance with paragraph (e)(4)(iv) or (e)(4)(v) of this section:

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment must achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by paragraph (e)(4)(iv)(C) of this section.

(B) For metals, treatment must achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media (tested according to the TCLP) or 90 percent reduction in total constituent concentrations (when a metal removal treatment technology is used), except as provided by paragraph (e)(4)(iv)(C) of this section.

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in § 268.48 Table UTS of this chapter.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste must also be treated to eliminate these characteristics.

(E) For debris, the debris must be treated in accordance with § 268.45 of this chapter, or by methods or to levels established under paragraphs (e)(4)(iv)(A) through (D) or paragraph (e)(4)(v) of this section, whichever the Regional Administrator determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Regional Administrator may specify a leaching test other than the TCLP (SW846 Method 1311, 40 CFR 260.11(11)) to measure treatment effectiveness, provided the Regional Administrator determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Regional Administrator may adjust the treatment level or method in paragraph (e)(4)(iv) of this section to a higher or lower level, based on one or more of the following

factors, as appropriate. The adjusted level or method must be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in paragraph (e)(4)(iv) of this section;

(B) The levels or methods in paragraph (e)(4)(iv) of this section would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site (established either site-specifically, or promulgated under state or federal law);

(C) The views of the affected local community on the treatment levels or methods in paragraph (e)(4)(iv) of this section as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in paragraph (e)(4)(iv) of this section;

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(*1*) Where the treatment standards in paragraph (e)(4)(iv) of this section are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(*2*) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*3*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at § 264.301(c) and (d); or

(*4*) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(*5*) Where, after review of appropriate treatment technologies, the Regional Administrator determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in paragraphs (e)(3)(i) and (ii) of this section, or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards must be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Regional Administrator may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification will be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in paragraph (f) of this section, requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Regional Administrator and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in paragraph (f) of this section, closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Regional Administrator for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under paragraph (e) of this section, the Regional Administrator shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator must cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in paragraph (e)(6)(iv)(B) of this section:

(*1*) Provide long-term minimization of migration of liquids through the closed unit;

(*2*) Function with minimum maintenance;

(*3*) Promote drainage and minimize erosion or abrasion of the cover;

(*4*) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(*5*) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(B) The Regional Administrator may determine that modifications to paragraph (e)(6)(iv)(A) of this section are needed to facilitate treatment or the performance of the CAMU (e.g., to promote biodegradation).

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs must be designated in accordance with all of the requirements of this section, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f),

and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at § 264.554(d)(1)(iii), (h), and (i):

(i) Must operate in accordance with a time limit, established by the Regional Administrator, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at § 264.554(d)(1)(i) and (ii), § 264.554(d)(2), § 264.554(e) and (f), and § 264.554(j) and (k) in lieu of the performance standards and requirements for CAMUs in this section at paragraphs (c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at paragraph (e)(3)(i) of this section, caps at paragraph (e)(6)(iv) of this section, ground water monitoring requirements at paragraph (e)(5) of this section or, for treatment and/or storage-only CAMUs, the design standards at paragraph (f) of this section.

(h) The Regional Administrator shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under paragraph (e)(4)(v) of this section to the treatment standards in paragraph (e)(4)(iv) of this section.

(i) Notwithstanding any other provision of this section, the Regional Administrator may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit must be approved by the Regional Administrator according to the procedures for Agency-initiated permit modifications under § 270.41 of this chapter, or according to the permit modification procedures of § 270.42 of this chapter.

(k) The designation of a CAMU does not change EPA's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

8. Section 264.554 is amended by adding (a)(1) and adding and reserving (a) (2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(a) * * *

(1) For the purposes of this section, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(2) [Reserved]

* * * * *

9. Section 264.555 is added to Subpart S to read as follows:

§ 264.555 Disposal of CAMU-eligible wastes in permitted hazardous waste landfills.

(a) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of RCRA 40 CFR part 268, if the conditions in paragraphs (a)(1) through (3) of this section are met:

(1) The waste meets the definition of CAMU-eligible waste in § 264.552(a)(1) and (2).

(2) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place identifies principal hazardous constitutes in such waste, in accordance with § 264.552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under § 264.552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(A), (C), (D) or (E)(*1*); or

(iii) Treatment standards adjusted in accordance with § 264.552(e)(4)(v)(E)(*2*), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste must have a RCRA hazardous waste permit, meet the requirements for new landfills in Subpart N of this part, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, ''permit'' does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Regional Administrator with regulatory oversight at the location where the cleanup is taking place to approve placement of CAMU-eligible waste in accordance with paragraph (a) of this section. Information required by § 264.552(d)(1) through (3) for CAMU applications must be provided, unless not reasonably available.

(c) The Regional Administrator with regulatory oversight at the location where the cleanup is taking place shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at § 264.552(h). The approval must be specific to a single remediation.

(d) Applicable hazardous waste management requirements in this part, including recordkeeping requirements to demonstrate compliance with treatment standards approved under this section, for CAMU-eligible waste must be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding 40 CFR 270.4(a), a landfill may not receive hazardous CAMU-eligible waste under this section unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with paragraph (d) of this section until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Regional Administrator responsible for oversight of the landfill and persons on the facility mailing list, maintained in accordance with 40 CFR 124.10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with this section; the notice must identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Regional Administrator within 15 days of notification.

(3) The Regional Administrator may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Regional Administrator may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Regional Administrator has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Regional Administrator objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding 40 CFR 270.4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of § 270.42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of paragraph (d) of this section, the Regional Administrator may modify, reduce, or eliminate the notification requirements of this paragraph as they apply to specific categories of CAMU-eligible waste, based on miminal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under this section must comply with the requirements of 40 CFR 268.7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with this section must comply with the requirements of § 268.7(b)(4), except that the certification must be with respect to the treatment requirements of paragraph (a)(2) of this section.

(g) For the purposes of this section only, the ''design of the CAMU'' in 40 CFR 264.552(e)(4)(v)(E) means design of the permitted Subtitle C landfill.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

10. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 9605, 6912(2), and 6926.

11. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of Regulation	Federal Register reference	Effective date
* * *	* * *	*	*
January 22, 2002	Corrective Action Management Unit Standards Amendments	[FR pages numbers]	April 22, 2002.
* * *	* * *	*	*

12. Section 271.24 is amended by revising paragraph (c) to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

* * * * *

(c) Interim authorization pursuant to this section expires on January 1, 2003, except that interim authorization for the revised Corrective Action Management Unit rule (except 40 CFR 264.555) promulgated on January 22, 2002 and cited in Table 1 in §271.1 expires on August 30, 2004 if the State has not submitted an application for final authorization.

13. A new § 271.27 is added to Subpart A to read as follows:

§ 271.27 Interim authorization-by-rule for the revised Corrective Action Management Unit rule.

(a) States shall be deemed to have interim authorization pursuant to section 3006(g) of RCRA for the revised Corrective Action Management Unit rule if:

(1) The State has been granted final authorization pursuant to section 3006(b) of RCRA for the regulation entitled ''Corrective Action Management Units and Temporary Units,'' February 16, 1993 and cited in Table 1 in §271.1; and

(2) The State notifies the Regional Administrator by March 25, 2002 that the State intends to and is able to use the revised Corrective Action Management Unit Standards rule as guidance.

(b) Interim authorization pursuant to this section expires on August 30, 2004 if the State has not submitted an application for final authorization.

[FR Doc. 02–4 Filed 1–18–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
January 22, 2002

Part IV

The President

Notice of January 18, 2002—Continuation of the National Emergency With Respect to Terrorists who Threaten To Disrupt the Middle East Peace Process

Federal Register
Vol. 67, No. 14
Tuesday, January 22, 2002

Presidential Documents

Title 3—

The President

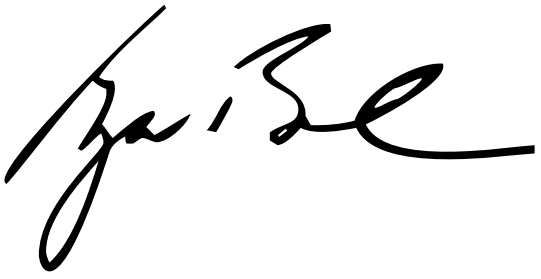
Notice of January 18, 2002

Continuation of the National Emergency With Respect to Terrorists who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President identified four additional persons, including Usama bin Laden, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency, must continue in effect beyond January 23, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 18, 2002.

[FR Doc. 02–1727
Filed 1–18–02; 10:57 am]
Billing code 3195–01–P

Federal Register

Tuesday,
January 22, 2002

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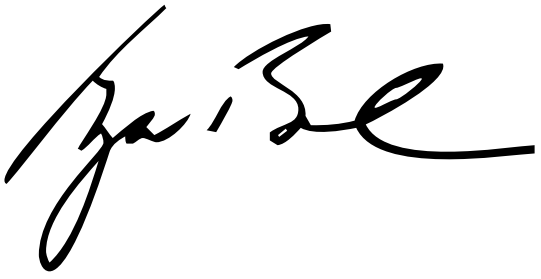

THE WHITE HOUSE,
January 18, 2002.

[FR Doc. 02–1727
Filed 1–18–02; 10:57 am]
Billing code 3195–01–P

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H.R. 2873/P.L. 107–133

Promoting Safe and Stable Families Amendments of 2001 (Jan. 17, 2002; 115 Stat. 2413)

Last List January 18, 2002

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–044–00001–6)	6.50	[4]Jan. 1, 2001
3 (1997 Compilation and Parts 100 and 101)	(869–044–00002–4)	36.00	[1] Jan. 1, 2001
4	(869–044–00003–2)	9.00	Jan. 1, 2001
5 Parts:			
1–699	(869–044–00004–1)	53.00	Jan. 1, 2001
700–1199	(869–044–00005–9)	44.00	Jan. 1, 2001
1200–End, 6 (6 Reserved)	(869–044–00006–7)	55.00	Jan. 1, 2001
7 Parts:			
1–26	(869–044–00007–5)	40.00	[4]Jan. 1, 2001
27–52	(869–044–00008–3)	45.00	Jan. 1, 2001
53–209	(869–044–00009–1)	34.00	Jan. 1, 2001
210–299	(869–044–00010–5)	56.00	Jan. 1, 2001
300–399	(869–044–00011–3)	38.00	Jan. 1, 2001
400–699	(869–044–00012–1)	53.00	Jan. 1, 2001
700–899	(869–044–00013–0)	50.00	Jan. 1, 2001
900–999	(869–044–00014–8)	54.00	Jan. 1, 2001
1000–1199	(869–044–00015–6)	24.00	Jan. 1, 2001
1200–1599	(869–044–00016–4)	55.00	Jan. 1, 2001
1600–1899	(869–044–00017–2)	57.00	Jan. 1, 2001
1900–1939	(869–044–00018–1)	21.00	[4]Jan. 1, 2001
1940–1949	(869–044–00019–9)	37.00	[4]Jan. 1, 2001
1950–1999	(869–044–00020–2)	45.00	Jan. 1, 2001
2000–End	(869–044–00021–1)	43.00	Jan. 1, 2001
8	(869–044–00022–9)	54.00	Jan. 1, 2001
9 Parts:			
1–199	(869–044–00023–7)	55.00	Jan. 1, 2001
200–End	(869–044–00024–5)	53.00	Jan. 1, 2001
10 Parts:			
1–50	(869–044–00025–3)	55.00	Jan. 1, 2001
51–199	(869–044–00026–1)	52.00	Jan. 1, 2001
200–499	(869–044–00027–0)	53.00	Jan. 1, 2001
500–End	(869–044–00028–8)	55.00	Jan. 1, 2001
11	(869–044–00029–6)	31.00	Jan. 1, 2001
12 Parts:			
1–199	(869–044–00030–0)	27.00	Jan. 1, 2001
200–219	(869–044–00031–8)	32.00	Jan. 1, 2001
220–299	(869–044–00032–6)	54.00	Jan. 1, 2001
300–499	(869–044–00033–4)	41.00	Jan. 1, 2001
500–599	(869–044–00034–2)	38.00	Jan. 1, 2001
600–End	(869–044–00035–1)	57.00	Jan. 1, 2001
13	(869–044–00036–9)	45.00	Jan. 1, 2001
14 Parts:			
1–59	(869–044–00037–7)	57.00	Jan. 1, 2001
60–139	(869–044–00038–5)	55.00	Jan. 1, 2001
140–199	(869–044–00039–3)	26.00	Jan. 1, 2001
200–1199	(869–044–00040–7)	44.00	Jan. 1, 2001
1200–End	(869–044–00041–5)	37.00	Jan. 1, 2001
15 Parts:			
0–299	(869–044–00042–3)	36.00	Jan. 1, 2001
300–799	(869–044–00043–1)	54.00	Jan. 1, 2001
800–End	(869–044–00044–0)	40.00	Jan. 1, 2001
16 Parts:			
0–999	(869–044–00045–8)	45.00	Jan. 1, 2001
1000–End	(869–044–00046–6)	53.00	Jan. 1, 2001
17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5]Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–042–00081–1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
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§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5]Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

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200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
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1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
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200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
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86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
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100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
*1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
*400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
*90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
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200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
*0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
*40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
*70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
*80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
*1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
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2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
*3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
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100–185	(869–044–00202–7)	26.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
*200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
*1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–042–00200–8)	55.00	Oct. 1, 2000
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
*600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2000 CFR set		1,094.00	2000
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained..