AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-8-88
Vol. 53 No. 68
Pages 11633-11814

Federal Register

Friday
April 8, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and Boston, MA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for six months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill, Jr. Federal Building,
Auditorium,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8123

Contents

Federal Register

Vol. 53, No. 68

Friday, April 8, 1988

Administrative Conference of the United States
NOTICES
Meetings:
Administration Committee, 11692

Agricultural Marketing Service
RULES
Lemons grown in California and Arizona, 11636
Milk marketing orders:
Southern Illinois, 11637
Texas, 11638
PROPOSED RULES
Pears, plums, and peaches grown in California, 11669

Agriculture Department
See also Agricultural Marketing Service; National Agricultural Statistics Service
RULES
Organization, functions, and authority delegations:
Small Community and Rural Development, Under Secretary, et al.
Correction, 11636

Air Force Department
NOTICES
Environmental statements; availability, etc.:
Vandenberg Air Force Base, CA; Space Launch Complex 7, 11695

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list, 1988:
Additions and deletions, 11694
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Northern Mariana Islands, 11692
Sri Lanka, 11693
Uruguay, 11693

Defense Department
See also Air Force Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Threshold; cost comparison, 11795

Economic Regulatory Administration
NOTICES
Energy Supply and Environmental Coordination Act; prohibition orders, rescissions, etc.:
Iowa Electric Light and Power Co., 11699

Education Department
NOTICES
Agency information collection activities under OMB review, 11695
Grantback arrangements; award of funds:
Florida, 11697
Maryland, 11696
Grants; availability, etc.:
Perkins loan program—
Test case resolution and certification systems list publication; extension of deadline dates, 11699

Employment and Training Administration
NOTICES
Wagner-Peyser Act funds:
Basic labor exchange activities; planning estimates and allotments; 1988 PY, 11715

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 11717

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 11655
PROPOSED RULES
Air quality implementation plans:
Particulate matter (PM 10) emissions from stationary sources; measurement methods, 11688
Air quality implementation plans; approval and promulgation; various States:
Illinois, 11686
Hazardous waste:
Land disposal restrictions—
First third wastes, 11742
NOTICES
Air programs; fuel and fuel additive waivers:
Sun Refining & Marketing Co., 11701
Air programs; fuel and fuel additives:
Gasoline lead content; lead banking penalty and lead usage and reporting policies, 11700
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 11702
Weekly receipts, 11702
Monticello-Leesburg Lignite Mine, TX; wastewater discharge, 11703
Pesticide registration, cancellation, etc.:
Chlordane and heptachlor termiticides, 11798, 11801
(2 documents)
Toxic and hazardous substances:
Premanufacture notices receipts, 11703

Water pollution control:
Clean Water Act Class I and II administrative penalty assessments, 11701

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness directives:
DeHavilland, 11641
Societe Nationale Industrielle Aerospatiale, 11643
Teledyne Continental Motors, 11642
PROPOSED RULES
Airworthiness directives:
Bell, 11678
Boeing, 11676
Cessna, 11674
Societe Nationale Industrielle Aerospatiale, 11675
NOTICES
Committees; establishment, renewal, termination, etc.:
Air Traffic Procedures Advisory Committee, 11722
Meetings:
Air Traffic Procedures Advisory Committee, 11722

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 11668
Michigan, 11668
Nevada, 11668
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 11690
Minnesota and Iowa, 11690

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 11730

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Project cost limits under blanket certificates, 11644

Federal Highway Administration
NOTICES
Highway-railroad crossing improvement and maintenance needs study, 11723

Federal Maritime Commission
NOTICES
Agreements filed, etc., 11704

Federal Reserve System
RULES
Organization, functions, and authority delegations:
General Counsel; authority to administer oaths, etc., 11640
NOTICES
Applications, hearings, determinations, etc.:
First National Bancorp, Inc., et al., 11705
Meridian Bancorp., Inc., 11705
Middlefield Banc Corp. et al., 11705

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Sea lamprey control in Lake Champlain; lampricides, temporary use, 11713

Food and Drug Administration
RULES
Human drugs:
Stimulant drug products (OTC); final monograph Correction, 11731
Medical devices:
Clinical chemistry and toxicology devices—
General provisions and classifications; correction, 11645
NOTICES
Food for human consumption:
Identity standard deviation; market testing permits—
Pacific salmon, canned, 11710
Medical devices:
Surgical Simplex P Antibiotic Bone Cement; availability of order, 11711
Meetings:
Advisory committees, panels, etc., 11710
Consumer information exchange, 11712
Shellfish sanitation and shellfish-growing waters; vibrio vulnificus (bacteria) workshop; correction, 11730

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Threshold; cost comparison, 11795

Health and Human Services Department
See also Food and Drug Administration
RULES
Grants administration:
Block grant programs—
Audits and reporting requirements, etc.; correction, 11656
Program Fraud Civil Remedies Act; implementation, 11656
NOTICES
Agency information collection activities under OMB review, 11706
Privacy Act; systems of records, 11707

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
Draft statements for period 1980-1982; withdrawal status, 11712

Internal Revenue Service
RULES
Income taxes:
Passive foreign investment companies; shareholders (elections under 1291, 1294, 1295, 1297)
Correction, 11730
NOTICES
Organization, functions, and authority delegations:
District Directors of Employee Plans and Exempt Organizations Key Districts, 11728

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 11714

Justice Department
RULES
Program Fraud Civil Remedies Act; implementation, 11645

Labor Department
See also Employment and Training Administration; Employment Standards Administration
NOTICES
Internationally recognized worker rights in foreign countries, status; annual report, 11714

Land Management Bureau
NOTICES
Meetings:
Rawlins District Advisory Council, 11712
Withdrawal and reservation of lands:
Nevada, 11713

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Pacific OCS—
Oil and gas operations, 11714

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Threshold; cost comparison, 11795

National Agricultural Statistics Service
RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 11639

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 11730

National Highway Traffic Safety Administration
PROPOSED RULES
Alcohol traffic safety programs; incentive grant criteria, 11679

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 11730

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 11692

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Dairyland Power Cooperative, 11718

Personnel Management Office
RULES
Retirement:
Federal Employees Retirement System—
Basic annuity; alternative forms of annuity, 11633

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Mail disputes, 11685

Presidential Documents
PROCLAMATIONS
Special observances
Dennis Chavez Day (Proc. 5790), 11813
Productivity Improvement Week, National (Proc. 5791), 11811
Student-Athlete Day, National (Proc. 5789), 11809

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 11719

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 11719
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 11720
Applications, hearings, determinations, etc.:
American Pain & Stress, Inc., et al., 11719

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Initial and permanent regulatory programs:
Prime farmland, 11685

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See also Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 11727
(2 documents)
Meetings:
Debt Management Advisory Committee, 11727

Veterans Administration
NOTICES
Agency information collection activities under OMB review, 11728

Separate Parts In This Issue

Part II
Environmental Protection Agency, 11742

Part III
Department of Defense; General Services Administration, and National Aeronautics and Space Administration, 11795

Part IV
Environmental Protection Agency, 11798

Part V
The President, 11809

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

5789 11809
5790 11811
5791 11813

5 CFR

831 11633
842 11633

7 CFR

2 11636
910 11636
1032 11637
1126 11638
3600 11639
3601 11639

Proposed Rules:

917 11669

12 CFR

265 11640

14 CFR

39 (3 documents) 11641-11643

Proposed Rules:

39 (4 documents) 11674-11676, 11678

18 CFR

157 11644

21 CFR

340 11731
862 11645

23 CFR

Proposed Rules:

1309 11679

26 CFR

1 11731
602 11731

28 CFR

0 11645
71 11645

30 CFR

Proposed Rules:

785 11685
823 11685

39 CFR

Proposed Rules:

111 11685

40 CFR

52 11655

Proposed Rules:

52 (2 documents) 11686, 11688
264 11742
265 11742
268 11742
271 11742

45 CFR

79 11656
96 11656

47 CFR

73 (3 documents) 11668

Proposed Rules:

73 (2 documents) 11690

48 CFR

Proposed Rules:

43 11795
47 11795
52 11795

Rules and Regulations

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

Retirement; Alternative Forms of Annuity

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is amending its interim rules on alternative forms of annuity and extending the time limit for comment on those rules. Amended rules are necessary to implement a new provision of law that changes the manner of payment to certain retirees who elect an alternative form of annuity under section 8343a or 8420a of title 5, United States Code, and whose annuity entitlement commences after January 3, 1988, and before October 1, 1989.

DATES: Interim rule effective January 4, 1988; comments must be received on or before June 7, 1988.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632–4682.

SUPPLEMENTARY INFORMATION: Section 6001 of Pub. L. 100–203, enacted December 22, 1987, changes the way in which the lump-sum credit is paid to certain retirees who elect the alternative form of annuity provided by section 8343a and 8420a of title 5, United States Code. These interim regulations, which amend OPM's interim rules published November 28, 1986 (51 FR 42987) and January 16, 1987 (52 FR 2064), are required to implement the new provision.

Retirees under both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) whose annuity entitlement begins after January 3, 1988, and before October 1, 1989, and who elect an alternative form of annuity will receive payment of their lump-sum credit in two installments. By law, the first installment, payable at the time of retirement, will be 60 percent of the retiree's lump-sum credit; the second installment, payable one year after the commencing date of annuity, will consist of the remaining 40 percent of the lump-sum credit, plus interest on that amount. The rate of interest payable on the 40-percent portion will be the variable interest rate determined annually by the Department of the Treasury (the rate in effect throughout calendar year 1988 is 8.375%). For example, if an annuitant's commencing date of annuity is May 1, 1988, he or she will receive the interest rate in effect during calendar year 1988 for the 8 months remaining in that year, and the rate in effect during 1989 for 4 months. Since the rate for calendar year 1989 is not yet known it will be impossible to predict, at the time of retirement, the exact amount of that annuitant's final payment.

Sections 831.2207 (a) and (b), and 842.707 (a) and (b) of these rules require that payment of the second installment of the lump-sum credit must be deferred until a year after the annuity commencing date even if the annuitant dies before the second payment is made. That interpretation of the law is consistent with its purpose as a deficit reduction measure in fiscal years 1988 and 1989. Sections 831.2207(b) and 842.707(b) also reaffirm the policy stated in the existing interim rules that an annuitant who dies before the final adjudication of his or her annuity will be deemed to have made an affirmative election.

Sections 831.2207(c) and 842.707(c) establish how OPM intends to administer section 6001(c) of Pub. L. 100–203, providing for exceptions to the deferred payment schedule. Annuitants whose separation from service was involuntary, except for cause on charges of misconduct or delinquency, will not be subject to deferred partial payments of the lump-sum credit. (The exception does not apply to annuitants who retire under an "early out" authority under 5 U.S.C. 8336(d)(2) or 5 U.S.C. 8414(b)(1)(B).)

Annuitants who are suffering from a life-threatening affliction or other critical medical condition as of the date annuity entitlement commences are also exempt from the deferred payment requirement. Consistent with the intent of the latter exemption to permit full payment of lump-sum credit at the time of retirement in those cases in which the annuitant would not likely live long enough to receive the full amount, §§ 831.2207(c) and 842.707(c) include a list of critical medical conditions that are likely to be fatal within one year. Certification by a physician that the annuitant is suffering from any of those conditions will be sufficient to exempt the annuitant from the deferred payment schedule. If a medical condition is claimed other than one of those listed, the employee's physician must certify that the employee has a life-threatening affliction or other critical medical condition that is likely to be fatal within one year. To assure expeditious handling of this type of case, the physician's certification must be submitted either with the employee's application for retirement or with the alternative form of annuity election form.

Finally, these rules include changes in the existing rules that are not specifically related to Pub. L. 100–203. Sections 831.2203(e) and 842.704 have been amended to expand the conditions under which annuitants may elect or revoke an election of an alternative form of annuity. Generally, annuitants will now have until 30 days after the date of their first regular monthly annuity payment to elect or revoke an election of an alternative form of annuity. After OPM has notified the annuitant of the effect of an election of the alternative form of annuity, the annuitant will have one opportunity to either elect the alternative form of annuity or revoke a prior election.

The election can be revoked (up to the time limit) even if the lump-sum credit has already been paid, provided the money is returned with the annuitant's written revocation. Also, §§ 831.2204(b) and 842.705(b) are being amended to clarify that an individual who has taken an alternative form of annuity is not permitted to switch to a disability

annuity under CSRS or FERS. Sections 8343a and 8420a of the CSRS and FERS laws, respectively, do not allow disability annuitants to elect an alternative form of annuity.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Publication of proposed rulemaking would be impractical. The provisions being implemented were effective January 4, 1988. These regulations are needed immediately to administer the new provisions.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and retirees.

List of Subjects in 5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Constance Horner,

Director.

For the reasons set out in the preamble, title 5 of the Code of Federal Regulations is amended as set forth below.

PART 831—RETIREMENT

Subpart V—Alternative Forms of Annuities

1. The authority citation for Subpart V of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8343a; Sec. 6001, Pub. L. 100–203.

2. In § 831.2203, paragraph (e) is revised to read as follows:

§ 831.2203 Eligibility.

* * * * *

(e)(1) After an employee or Member retires, OPM will notify the individual concerning the specific amounts applicable to him or her under §§ 831.2204 through 831.2206.

(2) After an individual has received the notice described in paragraph (e)(1) of this section, he or she may elect an alternative form of annuity or revoke an election made prior to receiving the notice, provided he or she notifies OPM of the election or revocation, in writing, on or before the date of final adjudication.

(3) An election or revocation under paragraph (e)(2) of this section cannot be amended.

(4) Revocation of an election of an alternative form of annuity will not be honored unless full repayment of any portion of the lump-sum credit paid to the individual accompanies the written notice of revocation.

* * * * *

3. In § 831.2204, paragraph (b) is revised to read as follows:

§ 831.2204 Alternative forms of annuities available.

* * * * *

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapter III of chapter 83 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity, except that an individual who elected an alternative form of annuity is not eligible to apply for disability annuity under section 8337 of such subchapter.

4. Section 831.2207 is added to Subpart V to read as follows:

* * * * *

§ 831.2207 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1988, and before October 1, 1989.

(a) Except as provided in paragraph (c) of this section, if the annuity of an employee or Member commences after January 3, 1988, and before October 1, 1989, the lump-sum credit payable under § 831.2204 is payable to the individual, or his or her survivors, according to the following schedule:

(1) Sixty percent of the lump-sum credit is payable at the time of retirement, and

(2) Forty percent is payable, with interest determined under section 8334(e)(3) of title 5, United States Code, one year after the time of retirement.

(b) If an employee or Member whose annuity commences after January 3, 1988, and before October 1, 1989, dies before the date of final adjudication, that individual is subject to § 831.2203 (f) or (g), but the lump-sum credit will be paid in accordance with the schedule in paragraph (a) of this section.

(c) An annuitant is exempt from the deferred payment schedule under paragraph (a) of this section if the individual—

(1) Separates involuntarily, other than for cause on charges of delinquency or misconduct, or

(2) Has, at the time of retirement, a life-threatening affliction or other critical medical condition.

(3)(i) For the purpose of this section, "life-threatening affliction or other critical medical condition" means a medical condition so severe as to reasonably limit an individual's probable life expectancy to less than one year.

(ii) The existence of one of the following medical conditions is *prima facie* evidence of a life threatening affliction or other critical medical condition:

(A) Metastatic and/or inoperable neoplasms.

(B) Aortic stenosis (moderate—severe).

(C) Class IV cardiac disease with congestive heart failure.

(D) Respiratory failure.

(E) Cor pulmonale with respiratory failure.

(F) Emphysema with respiratory failure.

(G) Ventricular tachycardia.

(H) Severe cardiomyopathy.

(I) Aplastic anemia.

(J) Uncontrolled hypertension with hypertensive encephalopathy.

(K) Cardiac aneurysm.

(L) Agranulocytosis.

(M) Hepatic failure.

(N) Severe Hypoxic brain damage.

(O) Severe portal hypertension with esophageal varices.

(P) AIDS (Active—Not AIDS Related Complex or only seropositivity).

(Q) Life threatening infections (encephalitis, meningitis, rabies, etc.).

(R) Scleroderma with severe esophageal involvement.

(S) Amyotrophic lateral sclerosis (rapidly progressive).

(T) Hemiplegia with life threatening complications.

(U) Quadriplegia with life threatening complications.

(V) Ventricular flutter.

(iii) Evidence of the existence of a life-threatening affliction or other critical medical condition must be certified by a physician and sent to OPM on or before the date the annuitant elects to receive an alternative form of annuity. For the purpose of this section, "physician" has the same meaning given that term in § 339.102 of this chapter.

(iv) If a medical condition other than those listed in paragraph (c)(3)(ii) of this

section is claimed as a basis for exemption from the deferred payment schedule, OPM will review the physician's certification to determine whether the cited condition is life-threatening or critical.

(v) The cost of providing medical documentation under this paragraph rests with the employee or Member, unless OPM exercises its choice of physician.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart G—Alternative Forms of Annuities

5. The authority citation for Subpart G of Part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461; Section 6001, Pub. L. 100–203.

§ 842.702 [Amended]

6. Section 842.702 is amended to add, in alphabetical order, a new definition to read as follows:

* * * * *

"Date of final adjudication" means the date 30 days after the date of the first regular monthly payment as defined in § 831.603.

* * * * *

7. Section 842.704 is revised to read as follows:

§ 842.704 Election requirements.

(a) The election of an alternative form of annuity and evidence of spousal consent must be filed on a form prescribed by OPM within the time limit prescribed in paragraph (b)(2) of this section. The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent to the specific election as executed by the retiree, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(b) (1) After an employee or Member retires, OPM will notify the individual concerning the specific amounts applicable to him or her under §§ 842.705 and 842.706.

(2) After an individual has received the notice described in paragraph (b)(1) of this section, he or she may elect an alternative form of annuity or revoke an election made prior to receiving the notice, provided he or she notifies OPM of the election or revocation, in writing, on or before the date of final adjudication.

(3) An election or revocation under paragraph (b)(2) of this section cannot be amended.

(4) Revocation of an election of an alternative form of annuity will not be honored unless full repayment of any portion of the lump-sum credit paid to the individual accompanies the written notice of revocation.

(c) Except as provided in paragraph (d), an annuitant who dies before the time limit prescribed in paragraph (b)(2) of this section is deemed to have made an affirmative election under § 842.703(a) with a reduced annuity to provide a current spouse annuity, regardless of any election completed under § 842.606, and the lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code.

(d) If an annuitant described in paragraph (c) has completed an election under § 842.604 (a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence described in section 8424 of title 5, United States Code; and

(2) The election under § 842.604 (a) or (b) will be honored.

8. In § 842.705, paragraph (b) is revised to read as follows:

§ 842.705 Alternative forms of annuities available.

* * * * *

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapters II and IV of chapter 84 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity. An individual who has elected an alternative form of annuity is not eligible to apply for disability annuity under subchapter V of such chapter.

9. Section 842.707 is added to Subpart G to read as follows:

§ 842.707 Partial deferred payment of the lump-sum credit if annuity commences after January 3, 1988, and before October 1, 1989.

(a) Except as provided in paragraph (c) of this section, if the annuity of an employee or Member commences after January 3, 1988, and before October 1, 1989, the lump-sum credit payable under § 842.705 is payable to the individual, or his or her survivors, according to the following schedule:

(1) Sixty percent of the lump-sum credit is payable at the time of retirement, and

(2) Forty percent is payable, with interest determined under section 8334(e)(3) of title 5, United States Code, one year after the time of retirement.

(b) If an employee or Member whose annuity commences after January 3, 1988, and before October 1, 1989, dies before the time limit prescribed in § 842.704(b)(2), that individual is subject to § 842.704 (c) or (d), but the lump-sum credit will be paid in accordance with the schedule in paragraph (a) of this section.

(c) An annuitant is exempt from the deferred payment schedule under paragraph (a) of this section if the individual—

(1) Separates involuntarily, other than for cause on charges of delinquency or misconduct, or

(2) Has, at the time of retirement, a life-threatening affliction or other critical medical condition.

(3)(i) For the purpose of this section, "life-threatening affliction or other critical medical condition" means a medical condition so severe as to reasonably limit an individual's probable life expectancy to less than one year.

(ii) The existence of one of the following medical conditions is *prima facie* evidence of a life-threatening affliction or other critical medical condition:

(A) Metastatic and/or inoperable neoplasms.

(B) Aortic stenosis (moderate—severe).

(C) Class IV cardiac disease with congestive heart failure.

(D) Respiratory failure.

(E) Cor pulmonale with respiratory failure.

(F) Emphysema with respiratory failure.

(G) Ventricular tachycardia.

(H) Severe cardiomyopathy.

(I) Aplastic anemia.

(J) Uncontrolled hypertension with hypertensive encephalopathy.

(K) Cardiac aneurysm.

(L) Agranulocytosis.

(M) Hepatic failure.

(N) Severe hypoxic brain damage.

(O) Severe portal hypertension with esophageal varices.

(P) AIDS (Active—Not AIDS Related Complex or only seropositivity).

(Q) Life-threatening infections (encephalitis, meningitis, rabies, etc.).

(R) Scleroderma with severe esophageal involvement.

(S) Amyotrophic lateral sclerosis (rapidly progressive).

(T) Hemiplegia with life threatening complications.

(U) Quadriplegia with life threatening complications.

(V) Ventricular flutter.

(iii) Evidence of the existence of a life-threatening affliction or other critical medical condition must be certified by a physician and sent to OPM on or before

the date the annuitant elects to receive an alternative form of annuity. For the purpose of this section, "physician" has the same meaning given that term in § 339.102 of this chapter.

(iv) If a medical condition other than those listed in paragraph (c)(3)(ii) of this section is claimed as a basis for exemption from the deferred payment schedule, OPM will review the physician's certification to determine whether the cited condition is life-threatening or critical.

(v) The cost of providing medical documentation under this paragraph rests with the employee or Member, unless OPM exercises its choice of physician.

[FR Doc. 88-7770 Filed 4-7-88; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Correction

AGENCY: Department of Agriculture.

ACTION: Final rule; correction.

SUMMARY: This document corrects FR Doc. 88-5352 published in the **Federal Register** March 11, 1988 (48 FR 7877) as follows:

§§ 2.23 and 2.70 [Amended]

1. The term "State Agricultural Mediation Programs" is corrected to read: "State Agricultural Loan Mediation Programs" in the preamble, in § 2.23(a)(17) and in § 2.70(a)(32).

2. The authority citation is corrected to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

§§ 2.23 and 2.70 [Amended]

3. The term "Agriculture Credit Act of 1987" is corrected to read: "Agricultural Credit Act of 1987" in the preamble, in § 2.23(a)(17) and in § 2.70(a)(32).

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-6035.

Date: April 4, 1988.

Richard E. Lyng

Secretary of Agriculture.

[FR Doc. 88-7780 Filed 4-7-88; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 608]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 608 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 335,000 cartons during the period April 10 through April 16, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 608 (§ 910.908) is effective for the period April 10 through April 16, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987-88. The committee met publicly on April 5, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a 10-1 vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.908 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.908 Lemon Regulation 608.

The quantity of lemons grown in California and Arizona which may be handled during the period April 10, 1988 through April 16, 1988, is established at 335,000 cartons.

Dated: April 6, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-7849 Filed 4-7-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be delivered directly from the farms of producers to manufacturing plants and still be pooled and priced under the Southern Illinois order. The action was requested by the National Farmers Organization, a cooperative association that represents producers who supply milk for this market. The proponent cooperative recently lost a fluid-use account in the market. This action is necessary to assure that such cooperative's member dairy farmers who have regularly supplied the market's fluid needs will continue to share in the market's Class I sales during March and April 1988.

EFFECTIVE DATE: April 8, 1988, for the months of March and April 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed Suspension: Issued March 2, 1988; published March 7, 1988 (53 FR 7210).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who regularly have supplied the market's fluid needs will continue to have their milk pooled and priced under the order during the months of March and April 1988 and thereby receive the benefits that accrue from such pricing. These rules have been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and they have been determined to be "non-major" rules under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southern Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 7, 1988 (53 FR 7210). Such notice invited comments on a proposal to suspend certain provisions of the Southern Illinois order. Interested persons were given 7 days after the **Federal Register** publication of the notice to comment on the suspension proposal. No opposing views were received.

After consideration of all relevant material, including the proposal set forth in the notice, and other available information, it is hereby found and determined that for the months of March and April 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1032.13(b)(2), the words "or an other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In § 1032.13, paragraph (b)(3) in its entirety.

Statement of Consideration

This action suspends, for the months of March and April 1988, the limits on the amount of milk that may be moved directly from producers' farms to nonpool plants. The suspension will allow cooperatives and pool plant operators to divert (move milk to nonpool plants directly from the farms of producers) unlimited quantities of milk to manufacturing plants during such months and remain pooled and priced under the Southern Illinois order.

Under the producer milk provisions of the order not more than eight days of a dairy farmer's milk production may be diverted to unregulated manufacturing plants in each such month. Also, not more days of a dairy farmer's milk production may be diverted to manufacturing plants that are regulated under other Federal orders than is physically received at pool plants from such dairy farmer.

The National Farmers Organization (NFO), a cooperative association that represents dairy farmers who regularly have supplied milk for the market, asked that the limits on the amount of milk that handlers may divert to these two types of nonpool plants be suspended for March and April of this year. During the comment period, Mid-America Dairymen, Inc., a cooperative association that also supplies milk for this market, indicated its support for the suspension. No opposing views were received.

NFO recently lost a Class I outlet it had been supplying with milk. The milk NFO supplied to a pool distributing plant in the St. Louis area has been replaced by receipts from another market supplier. Since NFO's milk now lacks a fluid-use market, the cooperative must move its milk to manufacturing plants for surplus disposal. If the limits on such movements are not suspended, NFO will be unable to qualify for pool participation the milk of producers who have regularly supplied the market's fluid needs.

In view of the foregoing, it is appropriate to suspend the aforesaid provisions for the months of March and April 1988.

It is hereby found and determined that thirty days' notice of the effective date hereof is impratical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action ensures that dairy farmers who regularly have supplied the market's fluid requirements will continue to have their milk pooled and priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of such proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension. No views opposing the suspension were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for the months of March and April 1988.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1032.13 (b)(2) and (b)(3) hereby are suspended for the months of March and April 1988.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1032.13 [Amended]

2. In § 1032.13(b)(2), the words "or an other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer" are suspended.

3. In § 1032.13, paragraph (b)(3) is suspended in its entirety.

Signed at Washington, DC, on: April 4, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88–7731 Filed 4–7–88; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1126

Milk in the Texas Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Specifically, for such months the suspension makes inoperative the 60-percent delivery requirement for supply-balancing plants that are pooled and operated by cooperative associations, establishes a cooperative's diversion allowance on the basis of such handler's deliveries to all types of pool plants and allows pool plant operators to move unlimited quantities of milk directly from the farm to manufacturing plants. The provisions that relate to cooperatives were proposed for suspension by Associated Milk Producers, Inc., a cooperative association that operates supply-balancing plants that are pooled under the order and represents dairy farmers who supply milk for this market. The provisions pertaining to pool plant operators were proposed for suspension by The Southland Corporation, which operates distributing plants that are fully regulated under the order. This action is necessary to give handlers the necessary flexibility to dispose of the market's increasing milk supplies without engaging in uneconomic movements of milk solely for the purpose of retaining pool status for the milk of dairy farmers who regularly have supplied the market's fluid requirements.

EFFECTIVE DATE: April 8, 1988, for the months of March–July 1988.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 4, 1988; published March 11, 1988 (53 FR 7942).

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have supplied the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. These rules have been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "non-major" rules under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 11, 1988 (53 FR 7942). Such notice invited comments on proposals to suspend certain provisions of the Texas order. Interested persons were given seven days after the notice was published in the **Federal Register** to comment on the proposed action. No opposing views were received.

After consideration of all relevant material, including the proposals set forth in the notice and other available information, it is hereby found and determined that for the months of March–July 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1126.7(e), the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

2. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)".

3. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;"

Statement of Consideration

This action suspends, for the months of March through July 1988, portions of the pool plant and producer milk definitions of the Texas order. Specifically, during such five-month period the 60-percent delivery standard for supply-balancing plants operated by cooperative associations will not apply. Also, a cooperative's diversion allowance (the amount of milk that a cooperative may divert to nonpool manufacturing plants) will be based on the cooperative's deliveries to all types of pool plants (supply-balancing plants in addition to distributing and supply plants). Pool plant operators will be permitted to divert unlimited amounts of milk to nonpool manufacturing plants.

Under the current order provisions, a supply-balancing plant operated by a cooperative association and located in the marketing area is a pool plant if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. Also, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received at pool distributing and supply plants. The operator of a pool plant may divert not more than one-third of the milk that is physically received during the month at the handler's pool plant.

The provisions that relate to cooperative associations were proposed for suspension by Associated Milk Producers, Inc. (AMPI), a cooperative association that operates supply-balancing plants that are pooled under the order and represents a substantial number of producers who supply milk for the market. Suspension of the diversion limits for pool plant operators was proposed by The Southland Corporation (Southland), which operates distributing plants that are fully regulated under the Texas order.

AMPI requested that the provisions affecting cooperatives be suspended for the months of March-July 1988 and Southland asked that the provisions for pool plant operators be suspended for the months of March-June. During the comment period, Southland supported AMPI's proposal to include July in the suspension period if the diversion provisions are relaxed for pool plant operators in that month also. In that regard, Southland revised its suspension proposal and asked that the one-third limit not apply on diversions by pool plant operators for the months of March-July 1988.

The increasing volume of producer milk for this market cannot be qualified for pooling efficiently during the months of March-July this year under the order's current pool plant standards and diversion limitations. If the suspension is not granted, uneconomic movements of milk will have to be made by regulated handlers solely to qualify for pooling the increasing production of dairy farmers who regularly have supplied the market's fluid milk needs.

In view of the foregoing, it is appropriate to suspend the aforementioned provisions of the Texas order for the months of March-July 1988.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing in the marketing area in that such action will eliminate unnecessary milk movements and ensure that dairy farmers who have been supplying the market's fluid requirements will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning the proposed action. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication of this document in the **Federal Register** for the months of March-July 1988.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of the Texas order are hereby suspended for the months of March-July 1988.

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1126.7 [Temporarily suspended in part]

2. In § 1126.7(e), the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c) and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

§ 1126.13 [Temporarily suspended in part]

3. In § 1126.13(e)(2), the paragraph references "(a), (b), (c), and (d)" are suspended.

4. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" is suspended.

Signed at Washington, DC, on: April 5, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88–7777 Filed 4–7–88; 8:45 am]

BILLING CODE 3410–02–M

National Agricultural Statistics Service

7 CFR Parts 3600 and 3601

Amendment of Freedom of Information Act Implementing Regulations

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the National Agricultural Statistics Service's regulations implementing the Freedom of Information Act (FOIA) to conform to the Department of Agriculture's revised FOIA regulations (7 CFR Part 1, Subpart A), which were published in the **Federal Register** on December 31, 1987 (52 FR 49383). The rule also corrects typographical errors and makes a nomenclature change in the title "Statistician in Charge" to "State Statistician" to better reflect the responsibilities of the position.

EFFECTIVE DATE: April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447–7590.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Part 3600

Organization and functions (Government agencies).

7 CFR Part 3601

Freedom of information.

Accordingly, Parts 3600 and 3601, Chapter XXXVI, of Title 7, Code of Federal Regulations, are amended as set forth below.

PART 3600—[AMENDED]

1. The authority citation for Part 3600 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; and 7 CFR 2.85.

§ 3600.2 [Amended]

2. Section 3600.2 is amended by removing the words "Statistician in Charge" in the last line and inserting in their pace the words "State Statistician" and by redesignating the subparagraphs as paragraphs (a), (b), (c), (d), and (e).

§ 3600.3 [Amended]

3. Section 3600.3 is amended by redesignating the subparagraphs in paragraph (c)(4) as paragraphs (i), (ii), and (iii) and by redesignating the subparagraphs in paragraph (d)(1) as paragraphs (i), (ii), (iii), (iv), and (v).

4. Section 3600.3 is further amended by removing the word "survery" in paragraph (c)(4)(i) and inserting in its place the word "survey"; by removing the word "relating" in paragraph

(f)(1)(iv) and inserting in its place the word "related"; and by removing the period following the word "Part" in the introductory text of paragraph (g) and inserting a period following the closing parenthesis in that line.

Appendix A to Part 3600 [Amended]

5. Section 1 of Appendix A to 7 CFR Part 3600 is amended by removing the words "Statistician in Charge" and inserting in their place the words "State Statistician".

6. Section 2 of Appendix A to 7 CFR Part 3600 is amended by removing the word "ARKANSA" and inserting in its place the word "ARKANSAS" and by inserting the abbreviation "AR" before the ZIP Code "72201"; by inserting the word "of" between the words "Dept." and "Agriculture" in Hawaii; by inserting a comma after the number "398" in Montana; and by inserting the word "Rm." before the number "273" in Nebraska.

PART 3601—[AMENDED]

7. The authority citation for Part 3601 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

§ 3601.1 [Amended]

8. Section 3601.1 is amended by removing the citation "§§ 1.1 through 1.19" and adding in lieu thereof the citation "§§ 1.1 through 1.23".

§ 3601.3 [Amended]

9. Section 3601.3 is amended by removing the citation "§ 1.3(b)" and adding in lieu thereof the citation "§ 1.3(a)(3)".

§ 3601.4 [Amended]

10. Section 3601.4 is amended by removing the citation "§ 1.7(a)" and adding in lieu thereof the citation "§ 1.8(a)".

§ 3601.6 [Amended]

11. Section 3601.6 is amended by adding the word "Washington" and a comma before the abbreviation "DC" in the first sentence; and by removing the words "Statistician in Charge" in the second sentence and inserting in their place the words "State Statistician".

Done at Washington, DC, this 22nd day of March, 1988.

Charles E. Caudill,

Administrator, National Agricultural Statistics Service.

[FR Doc. 88–7732 Filed 4–7–88; 8:45 am]

BILLING CODE 3410–20–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0629]

Delegation of Authority to General Counsel

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adding a new subparagraph (12) to § 265.2(b) of its Rules Regarding Delegation of Authority (12 CFR 265.2(b)) to delegate to the General Counsel (with the concurrence of the Staff Director of the Division of Banking Supervision and Regulation) the authority, in connection with any proceeding under section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818), any examination or investigtion under section 10(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1820(c)), or any application, examination, investigation or other proceeding under the provisions of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*), to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum and to exercise such other powers as are permitted by law in matters involving the conduct of the affairs of State member banks, bank holding companies and persons associated with them and to designate representatives to undertake such actions pursuant to 12 U.S.C. 1818(n), 1820(c) and 1844(f). It is expected that this delegation of authority will relieve the Board from having to act on matters that are more efficiently and effectively handled by Board staff.

EFFECTIVE DATE: April 7, 1988.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel, Office of the General Counsel (202) 452–3420, or Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202) 452–2620, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to sections 8(n) and 10(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(n) and 1820(c)), and section 5(f) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(f)), the Board may authorize the initiation of an examination or investigation of a State member bank, a bank holding company and an individual connected with either of them in order to determine whether they complied with applicable laws and regulations. In connection with such proceedings, the Board or its designees may issue subpoenas to take testimony under oath and to obtain documents in order to gather information that usually is not obtainable during the routine bank examination and bank holding company inspection process. The ultimate purpose of the proceedings is to uncover facts that could, if warranted, support the use of the Board's other enforcement tools, such as cease and desist, removal, prohibition or civil money penalty actions. They, thus, represent the type of supervisory function that can be delegated to the staffs of the Federal Reserve Banks and the Board subject to the approval of the Board's General Counsel, acting with the concurrence of the Staff Director of the Division of Banking Supervision and Regulation.

In the past, Board staff has requested the initiation of special examinations and investigations in order to supplement the findings of the Systems's examiners, and the Board has approved all of its staff's requests. Since the Board expects that the number of staff requests for the initiation of such proceedings to increase due to the general increase in the number of complex enforcement cases involving insider abuse and misconduct, the Board decided to delegate to its General Counsel the authority to initiate special examinations and investigations, under 12 U.S.C. 1818(n), 1820(c) or 1844(f), when the General Counsel has the concurrence of the Staff Director of the Division of Banking Supervision and Regulation. By delegating this authority, Board staff will be able to expedite significantly the initiation of the investigatory stages of those supervisory matters that warrant additional discovery and fact gathering (through, *inter alia*, the subpoena process) prior to the presentation of the problem to the Board for appropriate follow-up enforcement action.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does

not have particular effect on small entities.

Public Comment

The provisions of section 553 of title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, Delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by adding new paragraph (b)(12) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(b) * * *

(12) With the concurrence of the Staff Director of the Division of Banking Supervision and Regulation to take, or to authorize other designated persons to take, such actions as are permitted pursuant to sections 8(n) and 10(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818(n) and 1820(c)), and section 5(f) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(f)), including administering oaths and affirmations, taking depositions, and issuing, revoking, quashing or modifying subpoenas and subpoenas duces tecum.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 31, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-7717 Filed 4-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-33-AD; Amendment 39-5889]

Airworthiness Directives; de Havilland Models DHC-2 Mk. I (L-20A, YL-20, U-6, and U-6A) and DHC-2 Mk. III Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to de Havilland Models DHC-2 Mk. I (L-20A, YL-20, U-6, and U-6A) and DHC-2 Mk. III airplanes, which supersedes AD 87-01-04, Amendment 39-5488 (51 FR 45306; December 18, 1986). The superseded AD required initial and repetitive dye penetrant inspections for cracks in the lugs of the lower attachment fork fitting of certain wing lift strut assemblies and strut serial numbers (S/N). Subsequent to the issuance of AD 87-01-04, de Havilland received a report of stress corrosion cracking in a part not within the strut S/N range specified in that AD. This AD extends the required inspection to additional strut assemblies and all S/N struts, and requires replacement of these strut assemblies, if cracked.

EFFECTIVE DATE: May 11, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 2/41, Revision A, dated August 14, 1987, applicable to this AD, may be obtained from the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 87-01-04, Amendment 39-5488 (51 FR 45306; December 18, 1986) to extend the required inspection to additional strut assemblies including all serial number struts and require replacement of these strut assemblies, if cracked, on all de Havilland Model DHC-2 Mk. I and DHC-2 Mk. III airplanes, was published in the **Federal Register** on December 1, 1987 (52 FR 45642). This proposal resulted from a report received of stress corrosion cracking in the lower attachment fitting of a strut whose S/N was not within the number range referenced in AD 87-01-04. Consequently, de Havilland issued S/B No. 2/41, Revision A, dated August 14, 1987, which recommends inspection of all strut assemblies C2W1103, C2W1103A, C2W1104, and C2W1104A, and all strut S/N's and replacement of cracked assemblies with strut assemblies C2W1115-1 and C2W1115-2 having steel end fittings. de Havilland states that strut assemblies C2W1103 and C2W1103A are identical, and C2W1104 and C2W1104A are identical. Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has issued AD CF-85-08, but has not revised their AD in accordance with S/B No. 2/41, Revision A. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of S/B No. 2/41, Revision A, and believes that the condition addressed by this bulletin is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Therefore, an AD superseding AD 87-01-04 is being issued on de Havilland Model DHC-2 Mk. I (L-20A, YL-20, U-6, and U-6A) and DHC-2 Mk. III airplanes to extend the effectivity of the required inspection to additional strut assemblies, including all strut serial numbers, and require replacement of these strut assemblies, if cracked.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections.

The FAA has determined that this regulation involves approximately 385 Model DHC-2 Mk. I and DHC-2 Mk. III airplanes in United States registry at an approximate annual cost of $240 for inspection of each airplane. The total cost for each inspection of the fleet is estimated to be $92,400 to the private

sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (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 regulatory 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, Aviation safety, Aircraft, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 87–01–04, Amendment 39–5488 (51 FR 45306, December 18, 1986) with the following new airworthiness directive:

De Havilland: Applies to all Model DHC–2 Mk. I (including L–20A, YL–20, U–6, and U–6A) and DHC–Mk. III (Turbo Beaver) (all serial numbers) airplanes with wing strut assemblies C2W1103, C2W1103A, C2W1104 and C2W1104A, certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect cracks due to stress corrosion in wing life strut assemblies, accomplish the following:

(a) Within 100 hours time-in-service (TIS), or one month, whichever occurs first after the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS, or 12 calendar months, whichever occurs first:

(1) Remove wing strut assemblies C2W1103 or C2W1103A and C2W1104 or C2W1104A, from the airplane and prepare the assemblies for inspection as described in the "ACCOMPLISHMENT INSTRUCTIONS" section of de Havilland Service Bulletin (S/B) No. 2/41, Revision A, dated August 14, 1987.

(2) Conduct a dye penetrant inspection with a 10-power glass for cracks in the lugs of the lower attachment clevis fitting.

(3) If cracks are found, prior to further flight replace the complete strut assembly with a strut assembly of the same part number that has had the lower clevis fitting inspection using the dye penetrant procedure and has been found free of cracks, or strut assembly C2W1115–1 or C2W1115–2, as appropriate.

(4) If no cracks are found, clean the lower clevis fitting and reinstall the wing strut assembly.

(5) If wing strut assembly C2W1115–1 or C2W1115–2 is installed, the recurring visual inspection specified in Paragraph (a) of this AD is no longer required.

(b) The airplane may be flown in accordance with FAR 21.197 to a location where the requirements of this AD may be accomplished.

(c) Upon submission of substantiating data by owner or operator through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the repetitive inspection intervals specified in this AD.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5; Telephone: (416) 633–7310, or these documents may be examined at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 87–01–04, Amendment 39–5488 (51 FR 45306; December 18, 1986).

This amendment becomes effective on May 11, 1988.

Issued in Kansas City, Missouri, on March 25, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88–7702 Filed 4–7–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–ANE–09; Amdt. 39–5888]

Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, O–470, IO–470, TSIO–470, IO–520, TSIO–520, GTSIO–520, and IO–550 Series Engines Equipped With Oil Filters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and opertors of certain Teledyne Continental Motors IO–360, TSIO–360, O–470, IO–470, TSIO–470, IO–520, TSIO–520, GTSIO–520, and IO–550, series engines by individual priority letter. The AD requires replacement of Teledyne Continental Motors oil filters, P/N's 649309 and 649310, with a serviceable part. The AD is needed to prevent possible loss of engine oil which could result in engine failure.

DATES: Effective—April 15, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 88–03–06, issued Febeuary 5, 1988, which contained this amendment.

Compliance as required in the body of the AD.

ADDRESSES: The applicable Service Bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601.

A copy of the Service Bulletin is contained in the Rules Docket, Docket Number 88–ANE–09, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jerry Robinetts, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On February 5, 1988, priority letter AD 88–03–06 was issued made effective immediately as to all known U.S. owners and operators of certain Teledyne Continental Motors IO–360, TSIO–360, O–470, IO–470, TSIO–470, IO–520, TSIO–520, GTSIO–520, and IO–550 series engines. The AD requires replacement of Teledyne Continental Motors oil filter, P/N's 649309 and 649310, with a servicable part. There have been seven failures of these oil filters, which resulted in substantial loss (in one case, 7 quarts in 1.5 hours) of engine oil. AD action was necessary to prevent possible loss of engine oil and subsequent engine failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by

individual priority letter AD 88-03-06, issued February 5, 1988, as to all known U.S. owners and operators of certain Teledyne Continental Motors IO-360, TSIO-360, O-470, IO-470, TSIO-470, IO-520, TSIO-520, GTSIO-520, and IO-550 series engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Teledyne Continental Motors (TCM): Applies to IO-360, TSIO-360, O-470, IO-470, TSIO-470, IO-520, TSIO-520, GTSIO-520, and IO-550 series engines equipped with oil filters.

Compliance is required at the next oil change or within 10 flight hours, whichever occurs first, unless already accomplished.

To prevent possible loss of engine oil and subsequent engine failure, accomplish the following:

(a) Determine if oil filter TCM P/N 649309 or 649310 is installed.

(1) If neither filter is installed, proceed to paragraph (b).

(2) If P/N 649309 is installed, replace with P/N 649923 or equivalent Parts Manufacturer Approval (PMA) product.

(3) If P/N 649310 is installed, replace with P/N 649922 or equivalent PMA Product.

(b) Make appropriate log book entry showing compliance with this AD.

(c) Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where this Ad can be accomplished.

(d) Upon request, an equivalent means of compliance with the requirements of this Ad may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

(e) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Atlanta Aircraft Certification Office, may adjust the compliance time specified in this AD.

Notes: (1) TCM Service Bulletin No. M88-4, dated January 15, 1988 refers to this subject.

(2) TCM oil filter P/N's 649309 and 649310, in inventory, should be returned to TCM in accordance with TCM Service Bulletin referenced in Note 1.

This amendment becomes effective April 15, 1988, as to all persons except those persons to whom it was made immediately effective by individual priority letter AD 88-03-06, issued February 5, 1988, which contained this amendment.

Issued in Burlington, Massachusetts, on March 25, 1988.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 88-7700, Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ASW-60, Amdt. 39-5886]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA 365N Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which reduces the service life of Part Number (P/N) 365A31-1898-20 attachment bolts for the spherical thrust bearing on Aerospatiale Model SA 365N series helicopters. The AD is needed to prevent failure of a spherical thrust bearing attachment bolt which could result in loss of control of the helicopter.

EFFECTIVE DATE: April 29, 1988.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service documents may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, ATTN: Customer Support.

A copy of each of the service documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone 513.38.30, or R.T. Weaver, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, Fort Worth, Texas 76193-0111, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: The Director Generale de l'Aviation Civile (DGAC), in accordance with existing provisions of the bilateral airworthiness agreement, has notified the FAA of an unsafe condition on certain Aerospatiale Model SA 365N series helicopters. It has been determined that the service life of attachment bolts for spherical thrust bearings has been reduced.

Aerospatiale has issued Service Bulletin No. 01.20, dated October 31, 1986, which reduces the service life of spherical thrust bearing attachment bolts, P/N 365A31-1898-20, from 4,800 to 1,000 hours. The DGAC has classified this bulletin as mandatory.

The Model SA 365N series helicopter is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (FAR).

Since this condition is likely to exist or develop on other helicopters of the same type design registered in the United States, an airworthiness directive is being issued which requires reduction of the service life of the attachment bolts from spherical thrust bearings on Aerospatiale Model SA 365N series helicopters.

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has

been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

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 § 39.13 of Part 39 of the FAR as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model SA 365N series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent failure of the attachment bolts of the spherical thrust bearings, accomplish the following:

(a) Replace attachment beam bolts (P/N 365A31-1898-20) for the spherical thrust bearings as follows—

(1) For bolts which have 900 or more hours' time in service on the effective date of this AD, replace the bolts within the next 100 hours' time in service; and

(2) For bolts which have less than 900 hours' time in service on the effective date of this AD, replace the bolts before they reach 1,000 hours' time in service.

(b) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, Fort Worth, Texas 76193-0100, or by the Manager, Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium.

(c) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the maintenance required by this AD may be accomplished.

Note.—Aerospatiale Service Bulletin No. 01.20 pertains to this subject.

This amendment becomes effective April 29, 1988.

Issued in Fort Worth, Texas, on March 22, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88-7689 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Project Cost Limits Under Blanket Certificates

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(s), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Issued February 5, 1988.

Order of The Director, OPPR

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(s) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1988, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), unless otherwise noted.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

Table II

Year	Limit
1982	$2,700,000
1983	$2,900,000
1984	$3,000,000
1985	$3,100,000
1986	$3,200,000
1987	$3,300,000
1988	$3,400,000

[FR Doc. 88-7247 Filed 4-7-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 78N-2285]

Clinical Chemistry and Clinical Toxicology Devices; Correction

AGENCY: Food and Drug Administration.
ACTION: Final rule; correction.

SUMMARY: In the Federal Register of May 1, 1987 (52 FR 16102), the Food and Drug Administration (FDA) published a final rule classifying preamendments clinical chemistry and clinical toxicology devices under the Medical Device Amendments of 1976. The final rule inadvertently stated that 3 of the 220 devices were in a class, other than the one the agency intended. In addition, the rule inappropriately repeated information on 3 sections and did not remove a reference to "general controls" in a section. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-9858, appearing at page 16102 in the Federal Register of Friday, May 1, 1987, the following corrections are made:

§ 862.1190 [Corrected]

1. On page 16126, first column, in paragraph (b) of § 862.1190 *Copper test system,* "Class II" should be corrected to read "Class I".

§ 862.1295 [Corrected]

2. On page 16127, second column, in paragraph (b) of § 862.1295 *Folic acid test system,* "Class I" should be corrected to read "Class II".

§ 862.1680 [Corrected]

3. On page 16132, first column, in paragraph (b) of § 862.1680 *Testosterone test system,* "(general controls)" should be removed.

§ 862.1700 [Corrected]

4. On page 16132, the redundant printing of § 862.1695 *Free thyroxine test system,* § 862.1700 *Total thyroxine test system,* and § 862.1705 *Triglyceride test system,* at the bottom of the second and top of the third columns, should be removed.

§ 862.1720 [Corrected]

5. On page 16133, first column, in paragraph (b) of § 862.1720 *Triose phosphate isomerase test system,* "Class II" should be corrected to read "Class I".

Dated: April 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7749 Filed 4-7-88; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Parts 0 and 71

[Order No. 1268-88]

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Department of Justice.
ACTION: Final rule.

SUMMARY: The Department of Justice hereby adopts rules implementing the Program Fraud Civil Remedies Act of 1986. With respect to actions initiated by the Department of Justice, the rules establish administrative procedures for imposing the statutorily authorized civil penalties against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Department. With respect to actions initiated by other agencies, the rules assign officials within the Department of Justice responsibilities regarding approval of agency requests to initiate actions, stays of agency proceedings at the request of the Department, and collection and compromise of liabilities imposed by the agencies.

EFFECTIVE DATE: April 8, 1988.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division. Telephone: (202) 633-3452. (Part 71, Subpart A); Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Telephone: (202) 724-7179. (Part 71, Subpart B).

SUPPLEMENTARY INFORMATION: In October 1986, Congress enacted the Program Fraud Civil Remedies Act, Pub. L. 99-509, to establish a new administrative procedure as a remedy against those who knowingly make false claims or statements. The statute requires specified Federal agencies to follow certain procedures to recover penalties and assessments against persons who file false claims or statements. The statute provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. To facilitate the new process and promote uniformity in the Government, the President's Council on Integrity and Efficiency distributed draft model regulations to its membership. In Subpart A of these regulations, the Department of Justice, with minor variations, has adopted the model regulations set forth in the Council's final draft. In keeping with the statute's requirements, the agency's regulations provide that the Counsel, Office of Professional Responsibility or a designee will act as the Investigating Official; the Associate Attorney General will serve as Reviewing Official; the General Counsel, Justice Management Division and bureau officials with similar responsibility will act for the Associate Attorney General in prosecuting claims; an administrative law judge will be the presiding official; and the Deputy Attorney General or his designee will act as Authority Head on appeals. The new administrative process should enhance the Department's ability to deter fraud in those cases where the costs of litigation in the past have exceeded the amount of recovery, thus making it uneconomical to pursue such claims. The statute provides for a jurisdictional limit of $150,000 and a maximum penalty of $5,000 for each false claim or statement. The regulations should provide the Department with an effective remedy against a person alleged to have submitted false claims or statements while providing due process to that person.

In Subpart B of these regulations, the Assistant Attorney General, Civil Division, has been assigned the responsibility for the approval and disapproval of requests by other agencies to initiate administrative actions under the Program Fraud Civil Remedies Act of 1986. The regulations also designate the Assistant Attorneys General for the litigating divisions (Antitrust, Civil, Civil Rights, Criminal, Land and Natural Resources, and Tax) to make the determinations called for by the Act in connection with a proceeding conducted by another agency when such proceeding may adversely affect pending or potential criminal or civil action under the responsibility of the litigating division. Finally, they designate the Assistant Attorney General, Civil Division, as the official responsible for decisions to initiate civil actions to collect or enforce any civil penalty or assessment imposed by an agency under the Act, and to defend in litigation and/or to settle or compromise such liabilities at any time subsequent

to the filing of a petition for judicial review by the person upon whom the liability was imposed.

Under the terms of the Act, these designations may not be further delegated below the level of the Assistant Attorney General; they may, of course, be made by persons acting as Assistant Attorney General during the absence of the incumbent or while the position is vacant. Similarly, while the decision to initiate or compromise a collection action is reserved to the Assistant Attorney General for the Civil Division, the conduct of such litigation and negotiation of settlement proposals shall be handled by Division attorneys or Assistant United States Attorneys subject to the Assistant Attorney General's supervision.

These rules were published for comment at 53 FR 4034 on February 11, 1988. No comments were received. The rules, as proposed, are hereby adopted.

These rules do not constitute "major rules" within the meaning of Executive Order 12291, section 1(a). Nor do the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), apply. These rules contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1978, and fall within the exceptions to coverage.

List of Subjects

28 CFR Part 0

Claims, Fraud, Organization and function (government agencies).

28 CFR Part 71

Claims, Fraud, Organization and function (government agencies), Penalties.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Title 28 of the Code of Federal Regulations is hereby amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

§ 0.45 [Amended]

2. Section 0.45, paragraph (d) is amended by inserting, "the Program Fraud Civil Remedies Act of 1986," in the present text directly following the words "False Claims Act,"

3. Part 71 is added to read as follows:

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Subpart A—Implementation for Actions Initiated by the Department of Justice

Sec.

71.1 Purpose.
71.2 Definitions.
71.3 Basis for civil penalties and assessments.
71.4 Investigation.
71.5 Review by the reviewing official.
71.6 Prerequisites for issuing a complaint.
71.7 Complaint.
71.8 Service of complaint.
71.9 Answer.
71.10 Default upon failure to file an answer.
71.11 Referral of complaint and answer to the ALJ.
71.12 Notice of hearing.
71.13 Parties to the hearing.
71.14 Separation of functions.
71.15 Ex parte contacts.
71.16 Disqualification of reviewing official or ALJ.
71.17 Rights of parties.
71.18 Authority of the ALJ.
71.19 Prehearing conferences.
71.20 Disclosure of documents.
71.21 Discovery.
71.22 Exchange of witness lists, statements, and exhibits.
71.23 Subpoenas for attendance at hearing.
71.24 Protective order.
71.25 Fees.
71.26 Form, filing and service of papers.
71.27 Computation of time.
71.28 Motions.
71.29 Sanctions.
71.30 The hearing and burden of proof.
71.31 Determining the amount of penalties and assessments.
71.32 Location of hearing.
71.33 Witnesses.
71.34 Evidence.
71.35 The record.
71.36 Post-hearing briefs.
71.37 Initial decision.
71.38 Reconsideration of initial decision.
71.39 Appeal to authority head.
71.40 Stays ordered by the Department of Justice.
71.41 Stay pending appeal.
71.42 Judicial review.
71.43 Collection of civil penalties and assessments.
71.44 Right to administrative offset.
71.45 Deposit in Treasury of United States.
71.46 Compromise or settlement.
71.47 Limitations.
71.48–71.50 [Reserved]

Subpart B—Assignment of Responsibilities Regarding Actions by Other Agencies

Sec.

71.51 Purpose.
71.52 Approval of Agency requests to initiate a proceeding.
71.53 Stays of Agency proceedings at the request of the Department.
71.54 Collection and compromise of liabilities imposed by Agency.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812.

Subpart A—Implementation for Actions Initiated by the Department of Justice

§ 71.1 Purpose.

This subpart implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute. The subpart establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 71.2 Definitions.

"ALJ" means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

"Authority" means the United States Department of Justice, including all offices, boards, divisions and bureaus.

"Authority head" means the Attorney General or his designee. For purposes of these regulations, the Deputy Attorney General is designated to act on behalf of the Attorney General.

"Benefit" means in the context of "statement", anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status or loan guarantee.

"Claim" means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans or insurance);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority

(1) For property or services if the United States

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

"Complaint" means the administrative complaint served by the rviewing official on the defendant under § 71.7.

"Defendant" means any person alleged in a complaint under § 71.7 to be liable for a civil penalty or assessment under § 71.3.

"Government" means the United States Government.

"Individual" means a natural person.

"Initial decision" means the written decision of the ALJ required by § 71.10 or § 71.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

"Investigating Official" means the Counsel, Office of Professional Responsibility (OPR) of the Department of Justice. The Counsel, OPR, may delegate his responsibility with respect to investigations in a bureau to an appropriate bureau official, providing that such official is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule. (Actual investigations may be performed by individuals reporting to the investigating official or his designee, who shall retain investigative responsibility.)

"Knows or has reason to know" means that a person, with respect to a claim or statement

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

"Makes" shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

"Person" means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

"Representative" means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

"Reviewing official" means the Associate Attorney General. For purposes of § 71.5 of these rules, the Associate Attorney General, personally or through his immediate staff, shall perform the functions of the reviewing official provided that such person is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule. All other functions of the reviewing official, including administrative prosecution under these rules, shall be performed with respect to the components listed below by the individuals listed below acting on behalf of the Associate Attorney General:

(a) For the offices, boards, divisions and any other components not covered below, the General Counsel, Justice Management Division;

(b) For the Bureau of Prisons (BOP), the General Counsel, BOP;

(c) For the Drug Enforcement Administration (DEA), the Chief Counsel, DEA;

(d) For the Federal Bureau of Investigation (FBI), the Assistant Director, Legal Counsel Division;

(e) For the Immigration and Naturalization Service (INS), the General Counsel, INS; and

(f) For the United States Marshals Service (USMS), the Associate Director for Administration.

"Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 71.3 Basis for civil penalties and assessments.

(a) Any person who makes a claim that the person knows or has reason to know:

(1) Is false, fictitious, or fraudulent;

(2) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(3) Includes, or is supported by, any written statement that

(i) Omits a material fact;

(ii) Is false, fictitious, or fraudulent as a result of such omission; and

(iii) Is a statement in which the person making such statement has a duty to include such material fact; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(b) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(c) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(d) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(e) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(f) Any person who makes a written statement that

(1) The person knows or has reason to know

(i) Asserts a material fact which is false, fictitious, or fraudulent; or

(ii) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(2) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(g) Each written representation, certification, or affirmation constitutes a separate statement.

(h) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(i) No proof of specific intent to defraud is required to establish liability under this section.

(j) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(k) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 71.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, he may issue a subpoena.

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations within the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the appropriate component of the Department.

§ 71.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 71.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 71.3, the reviewing official shall transmit to the Assistant Attorney General, Civil Division, a written notice of the reviewing official's intention to have a complaint issued under § 71.7. Such notice shall include

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that support the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 71.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 71.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 71.7 only if

(1) The Assistant Attorney General, Civil Division, approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 71.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 71.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 71.7 Complaint.

(a) On or after the date the Assistant Attorney General, Civil Division, approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 71.8.

(b) The complaint shall state the following:

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) The fact that failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 71.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 71.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 71.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 71.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 71.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 71.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 71.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 71.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 71.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 71.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 71.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 71.8. At the same time, the ALJ shall send a copy of such notice to the reviewing official or his designee.

(b) Such notice shall include

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 71.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 71.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case,

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

§ 71.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 71.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring

disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with this section.

(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 71.17 Rights of parties.

Except as otherwise limited by this part, all parties may

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 71.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 71.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 71.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 71.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Assistant Attorney General, Civil Division, from the reviewing official as described in § 71.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 71.9.

§ 71.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 71.22 and 71.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery are to be handled according to the following procedures:

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of

depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 71.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 71.24.

(e) Depositions are to be handled in the following manner:

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 71.8.

(3) The deponent may file with the ALJ within ten days of service a motion to quash the subpoena or a motion for a protective order.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 71.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 71.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ may not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragaraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 71.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ upon a showing of good cause. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 71.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 71.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be the subject of inquiry, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a sealed deposition be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 71.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 71.26 Form, filing and service of papers.

(a) *Form.* Documents filed with the ALJ shall include an original and two copies. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena). Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(b) *Filing.* Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 71.8 shall be made by delivering a copy or by

placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 71.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 71.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 71.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for the following reasons:

(1) Failure to comply with an order, rule, or procedure governing the proceeding;

(2) Failure to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the proceeding.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 71.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 71.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise closed by the ALJ for good cause shown.

§ 71.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon public confidence in the management of Government programs and operations;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the

Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 71.32 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 71.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a writtten statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 71.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 71.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 71.24.

§ 71.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 71.24.

§ 71.36 Post-hearing briefs.

ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 71.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 71.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 71.31.

(c) The ALJ shall promptly serve the intial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 71.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a

motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 71.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 71.39.

§ 71.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 71.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(b) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 71.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(c) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(d) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(e) There is no right to appear personally before the authority head.

(f) There is no right to appeal any interlocutory ruling by the ALJ.

(g) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary circumstances causing the failure to raise the objection.

(h) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there was reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(i) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(j) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(k) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 71.3 is final and not subject to judicial review.

§ 71.40 Stays ordered by the Department of Justice.

If at any time an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Assistant Attorney General who ordered the stay.

§ 71.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 71.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 71.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 71.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 71.42 or § 71.43, or any amount agreed upon in a compromise or settlement under § 71.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 71.45 Deposit in Treasury of the United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 71.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of

any review under § 71.42 or during the pendency of any action to collect penalties and assessments under § 71.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 71.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 71.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 71.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 71.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by written agreement of the parties.

§§ 71.48–71.50 [Reserved]

Subpart B—Assignment of Responsibilities Regarding Actions by Other Agencies

§ 71.51 Purpose.

This subpart further implements the Program Fraud Civil Remedies Act of 1986. The Act authorizes the Attorney General, or certain officials whom the Attorney General may designate, to make determinations or otherwise act with respect to another agency's exercise of the provisions of the Program Fraud Civil Remedies Act. See, *e.g.*, 31 U.S.C. 3803(a)(2), 3803(b), 3805. This subpart designates officials within the Department of Justice who are authorized to exercise the authorities conferred upon the Attorney General by the Program Fraud Civil Remedies Act with respect to cases brought or proposed to be brought under it.

§ 71.52 Approval of Agency requests to initiate a proceeding.

(a) The Assistant Attorney General of the Civil Division is authorized to act on notices by an agency submitted to the Department of Justice pursuant to 31 U.S.C. 3803(a)(2) and, pursuant to the provisions of section 3803(b), to approve or disapprove the referral to an agency's presiding officer of the allegations of liability stated in such notice.

(b) The Assistant Attorney General of the Civil Division may

(1) Require additional information prior to acting as set forth above, in which case the 90 day period shall be extended by the time necessary to obtain such additional information; and

(2) Impose limitations and conditions upon such approval or disapproval as may be warranted in his or her judgment.

§ 71.53 Stays of Agency proceedings at the request of the Department

With respect to matters assigned to their divisions, the Assistant Attorneys General of the litigating divisions are authorized to determine that the continuation of any hearing under 31 U.S.C. 3803(b)(3) with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, and to so notify the authority head of this determination and thereafter to determine when such hearing may resume.

§ 71.54 Collection and compromise of liabilities imposed by Agency.

The Assistant Attorney General of the Civil Division is authorized to initiate actions to collect assessments and civil penalties imposed under the Program Fraud Civil Remedies Act of 1986, and, subsequent to the filing of a petition for judicial review pursuant to section 3805 of the Act, to defend such actions and/or to approve settlements and compromises of such liability.

April 5, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–7730 Filed 4–7–88; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3359–7; KY–045]

Approval and Promulgation of Implementation Plans, Kentucky; Documents Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves revisions to 401 KAR 50:015, Documents incorporated by reference, submitted by the Commonwealth of Kentucky on March 23, 1987. Regulation 401 KAR 50:015 incorporates by reference the methods required to demonstrate compliance with the regulations adopted by the Kentucky Division of Air Pollution Control. Several amendments being approved today adopt reference methods incorporated in 40 CFR Parts 60 and 61 that are used to demonstrate compliance with federal regulations which Kentucky has adopted or is adopting by reference. One amendment approved in this notice adopts EPA's revised "Guideline on Air Quality Models (Revised)", EPA–450/2–78–027R, OAQPS No. 1.2–080R, July 1986.

EFFECTIVE DATE: This rule will become effective on May 9, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams of the EPA Air Programs Branch at the above address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On January 27, 1987, the Kentucky Natural Resources and Environmental Protection Cabinet conducted a public hearing in Frankfort, Kentucky to receive comments on revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference. These revisions incorporate several reference methods required in the federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) which Kentucky has adopted, or will soon be adopting, by reference. In addition, EPA's "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, OAQPS 1.2–080R, July 1986, was added under Section 5, entitled Environmental Protection Agency, of 401 KAR 50:015. Since no adverse comments regarding these amendments were received at the State's public hearing, the amended version of 401 KAR 50:015 became effective for the Commonwealth of Kentucky, as proposed, on February 10, 1987. After a thorough review of the March 23, 1987, submittal of these amendments to EPA, the Agency proposed to approve the revised version

of 401 KAR 50:015 on October 16, 1987 (52 FR 38481).

The following reference methods from 40 CFR Part 60, Standards of Performance for New Stationary Sources, were incorporated into the Kentucky regulation 401 KAR 50:015 being approved today: Methods 3A, Determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental analyzer procedure); Method 6C, Determination of sulfur dioxide emissions from stationary sources (instrumental analyzer procedure); and Method 7E, Determination of nitrogen oxides emissions from stationary sources (instrumental analyzer procedure). In addition, the following test methods from 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, were also incorporated into 401 KAR 50:015 by the amendments being approved today: Method 108, Determination of particulate and gaseous arsenic emissions; Method 108A, determination of arsenic content in ore samples from nonferrous smelters; and Method 111, Determination of polonium-210 emissions from stationary sources. An updated version of one of the documents on air quality models published by EPA and recently revised, the "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, OAQPS 1.2–080R, July 1986, was incorporated under section 5, entitled Environmental Protection Agency, of the amended version of 401 KAR 50:015 being approved today.

Kentucky regulation 401 KAR 50:015, in the amended version being approved today, merely incorporates the methods for determining compliance which are required by federal regulations which Kentucky has already adopted or is adopting by reference. Therefore, the amendments being approved today simply render Kentucky's compliance requirements in 401 KAR 50:015 the same as the federal compliance requirements. Simply incorporating these compliance methods does not affect any sources or other entities. Any impact would occur in the individual regulation where the methods are required.

EPA proposed approval of this regulation on October 16, 1987 (52 FR 38481). No comments were received in response to that proposal. For this reason and the reasons discussed in the preceding paragraph, EPA is today finalizing approval of the version of 401 KAR 50:015 currently effective in Kentucky.

Final Action

EPA is today finalizing approval of revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference. These revisions simply adopt reference methods that are used to demonstrate compliance with federal regulations. Another amendment also being approved in this notice adopts EPA's "Guideline on Air Quality Models (Revised)," EPA–450/2–78–027R, OAQPS No. 1.2–080R, July 1986.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See § 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.,

Note: Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: March 24, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart S—Kentucky

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

Authority: 42 U.S.C. 7401–7642

2. Section 52.920 is amended by adding paragraph (c)(53) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference, submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on March 23, 1987.

(i) Incorporation by reference.

(A) Revisions to Kentucky regulation 401 KAR 50:015, Documents incorporated by reference which became State-effective on February 10, 1987.

(B) Letter of March 23, 1987, from the Kentucky Natural Resources and Environmental Protection Cabinet transmitting the foregoing revisions.

(ii) Additional material—none.

[FR Doc. 88–7166 Filed 4–7–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs; Correction

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule: Correction.

SUMMARY: This notice corrects the numbering of three sections of 45 CFR Part 96, the regulation governing the Department's block grant programs.

FOR FURTHER INFORMATION CONTACT: Bob Raymond, 202–245–7316.

In FR Doc. 87–23550, published in the Federal Register of Tuesday, October 13, 1987, on page 37957, the following corrections are made:

1. On page 37966, in column 2, instruction number 7 is amended by adding at the end the following:

7. * * *, and by redesignating the internal designations (1) and (2) in the remaining paragraph to read (a) and (b), respectively.

§§ 96.110 amd 96.111 [Redesignated as §§ 96.120 and 96.121]

2. On page 37968, in column 1, § 96.110 is redesignated as § 96.120 and § 96.111 is redesignated as § 96.121.

Date: March 31, 1988.

James F. Trickett,

Deputy Assistant Secretary for Administrative and Management Services.

[FR Doc. 88–7722 Filed 4–7–88; 8:45 am]

BILLING CODE 4150–04–M

45 CFR Part 79

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, HHS, Office of Inspector General (OIG).

ACTION: Final rule.

SUMMARY: This final rule implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), which authorizes the Department of Health and Human Services (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statements to it.

EFFECTIVE DATE: These regulations are effective on April 8, 1988.

FOR FURTHER INFORMATION CONTACT: D. McCarty Thornton, Office of the General Counsel, (202) 245–6306.

SUPPLEMENTARY INFORMATION:

I. Background

The Program Fraud Civil Remedies Act (the Act), enacted on October 21, 1986 as sections 6103 and 6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and codified at 31 U.S.C. 3801 through 3812, establishes an administrative remedy against any person who makes a false claim or written statement to any of certain Federal agencies, including the Department of Health and Human Services (the Department). In brief, any person who makes a claim or written statement to an affected agency knowing, or with reason to know, that it is false, fictitious, or fraudulent may be held liable in an administrative proceeding for a penalty of up to $5,000 per claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

Since 1981, the Department has had similar authority to impose civil monetary penalties and assessments on those who present or cause to be presented false claims in the Medicare, Medicaid, and Maternal and Child Health Block Grant programs (42 U.S.C. 1320a–7a; 42 CFR Part 1003). The Program Fraud Civil Remedies Act (PFCRA) does not abrogate or modify this authority. Whenever a person may be liable under either the PFCRA or the Civil Monetary Penalty law, the Department may elect to pursue either remedy.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the statute.

PCIE Model Regulations

In keeping with the Senate Governmental Affairs Committee's stated desire that "the regulations would be substantially uniform throughout government" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 12 (1985)), the President's Council on Integrity and Efficiency (PCIE) requested this Department to form a task force to develop model regulations by which all affected Federal agencies could implement the Act. The task force completed a set of model regulations in March 1986, and the PCIE recommended that all affected agencies adopt them.

Shortly thereafter, several Federal agencies, including the Veterans Administration (VA) and the General Services Administration (GSA), published proposed regulations closely following the PCIE model. The Department of Health and Human Services published its notice of proposed rulemaking on July 21, 1987 (52 FR 27423).

The Department received comments from a law firm representing 13 States. In addition, while not filing comments with this Department, the Public Contract Law Section of the American Bar Association (ABA) filed virtually identical comments with both the VA and GSA. In response to these comments, the task force made changes to the model regulations, which the PCIE distributed to affected agencies on September 18, 1987.

Based on the comments received, the Department is now adopting the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions specific to the Department's organization.

II. Response to Comments and Summary of Revisions

1. Major actors in bringing cases

The Act prescribes roles for four major actors within the Department in bringing cases under the Act: the investigating official, the reviewing official, the presiding official, and the authority head. The proposed regulations named the Department's Inspector General, or a designee within the OIG compensated at or above the basic rate of pay for grade GS–16 under the General Schedule, as the investigating official. The General Counsel, or a designee within the Office of the General Counsel also compensated at or above that rate, is to act as the reviewing official. Under the proposed rule, Administrative Law Judges (ALJs) would be the presiding officers, and the Secretary or the Under Secretary of the Department was to function as the authority head.

Upon reconsideration, we have revised the regulations to designate the Departmental Grant Appeals Board (DGAB) as the authority head to hear appeals from ALJ initial decisions in PFCRA cases, and to affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed under this provision. The Secretary customarily relies on this body to resolve a wide range of disputes between components of the Department and their grantees or participants in cooperative agreements. (See 45 CFR Part 16, Appendix A.) As the administrative tribunal of last resort for such disputes since 1981, the DGAB has developed considerable experience as an appellate body having a body of accessible case law and a strong support staff. In addition, its members are isolated from the political pressures that might otherwise be brought to bear on the Secretary or Under Secretary if they were to retain this authority.

Furthermore, the ALJ who hears cases brought under the Civil Money Penalty Law, 42 U.S.C. 1320a–7a, is assigned to the DGAB, and the DGAB is scheduled to take over final review responsibilities from the Appeals Council of the Social Security Administration in all cases involving OIG-initiated sanctions of health care providers and practitioners under 42 U.S.C. 1320a–7 and 1320–7a. The determinations that the DGAB will be making under this new delegation are similar to those under PFCRA. Hence, we believe that the DGAB is best suited to exercise review authority under PFCRA economically, efficiently, and fairly.

2. Definition of "benefit"

The ABA Public Contract Law Section objected to the definition of the term "benefit" in the model regulations and in § 79.2 of our proposed regulations, arguing that the definition went beyond Congress' intent to confine it as a subclass of "money."

The statute uses the term "benefit" in three different places: (a) in the definition of "claim," (b) in the definition of "statement," and (c) in section 3803(c)(2), where it is defined narrowly to refer to benefits under specific governmental assistance programs to individuals. Only in the definition of "claim" is the term referred to parenthetically as a subclass of "money." No such restriction applies when "benefits" is used in the definition of "statement." In that context, we believe that Congress intended the term to be defined broadly to suit the remedial purposes of the statute. We believe that by providing a remedy against making false statements, as well as against false claims, Congress intended the Act to cover material false statements in obtaining preferences, licenses, permits, certificates, employment, and other advantages from the authority—although such things of value might not be characterized as "money" in common parlance. To make our intention clear, we have amended the definition of "benefit" in § 79.2 to restrict it to application within the context of "statement."

3. Definition of "person"

Thirteen States objected that the statute does not permit the Department to include States and their political subdivisions in the definition of

"person," as originally proposed in § 79.2. As a result, we have revised the definition of "person" to reiterate the statutory definition in 31 U.S.C. 3801(a).

4. Review by the reviewing official

31 U.S.C. 3809 requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. Section 79.5 of the regulations reflects our belief that this does not require the reviewing official to determine that a defendant could pay the statutory maximum, but rather that the defendant could pay an "appropriate amount."

Because we believe that Congress inserted 31 U.S.C. 3809(2) to ensure that the limited enforcement resources of the authority and the Department of Justice (DoJ) be used most efficiently, we have deleted the final sentence in § 79.5(b)(6) of the proposed regulations. The final regulation leaves the issue of what will constitute sufficient support for the reviewing official's statement on collectability to the Department and DoJ.

5. Service of a complaint

Consistent with 31 U.S.C. 3803(d)(1), § 79.8 of the regulations provides that the reviewing official may serve the complaint by delivering it or by mailing it by registered or certified mail.

We have modified the language in the regulations to make it clear (a) that service upon a defendant is complete when he or she receives it, (b) that service by delivery may be effected as provided under Rule 4(d) of the Federal Rules of Civil Procedure, and (c) what will constitute proof of service.

In addition, § 79.26(b) has been revised slightly to make it clear that, except where the regulations provide for service as specified in § 79.8, service is complete upon placing a copy of the document in the United States mail addressed to the party or the party's representative.

6. Filing an answer

Consistent with Congress' conception of the notice of allegations of liability as a "complaint" (S. Rep. No. 99–212, 99th Cong., 1st Sess. 14 (1985)), § 79.9 of the proposed regulations provided that the defendant request a hearing by filing an answer. In the answer, the defendant is to admit or deny each of the allegations in the complaint and to state any defenses upon which he or she intends to rely. In response to the model regulations, the ABA Public Contract Law Section specifically objected that the statute does not require a potential defendant to answer, but only to request a hearing within 30 days. Moreover, they believed that 30 days might be too short a time to formulate an appropriate answer.

We reject the notion that there is no authority to compel an answer. Focusing of issues in advance of litigation is as essential in administrative litigation as it is in the courts, serving the interests of all parties and the trier of fact. Congress clearly envisioned some early narrowing of the issues to enable the presiding officer to schedule the hearing, as required by 31 U.S.C. 3803(d)(2).

To the objection that the defendant has only 30 days to respond, it should be noted that persons are required to answer a summons and complaint within 20 days under Rule 12(a) of the Federal Rules of Civil Procedures. However, we have amended the regulations to provide that a defendant may file within 30 days of receipt of the complaint a request for hearing and a request for an extension of time for up to an additional 30 days to file a complete answer in accordance with § 79.9 of the regulations.

7. Reconsideration and appeal to authority head

The Act expressly authorizes appeal of the ALJ's initial decision to the authority head by a defendant found to be liable for penalties and assessments. Section 79.38 permits any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decision-maker an opportunity to correct any errors in it.

Section 79.39 of the regulations establishes procedures for a defendant found liable in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). A commenter objected that by allowing reconsideration the proposed regulation limited the liable defendant's right to file an appeal any time within 30 days.

In response to this comment, we have amended § 79.39(b) to permit the defendant to file an appeal any time during that period. However, that section also provides that the authority head's consideration of the appeal will be stayed automatically if a party files a timely motion for reconsideration.

III. Regulatory Impact Analysis

A. Executive Order 12291

We have determined that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. As we have indicated, this rule establishes procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit or make false claims or statements to the Department. As such, this rule has no direct effect on the economy or on Federal or State expenditures. Accordingly, we have concluded that no regulatory impact analysis is required.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), we prepare and publish a regulatory flexibility analysis for each regulation unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency will have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, these final regulations will not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, the Secretary certifies that this final regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

These regulations are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since they do not contain information collection or recordkeeping requirements as defined by that Act.

List of Subjects in 45 CFR Part 79

Administrative practice and procedure, Fraud, Investigations, Organizations and functions (Governmental agencies), Penalties.

Title 45, Subtitle A of the Code of Federal Regulations is amended as follows:

I. In Title 42 of the Code of Federal Regulations, a new Part 79, Program

Fraud Civil Remedies, is added to read as follows:

PART 79—PROGRAM FRAUD CIVIL REMEDIES

Sec.

79.1 Basis and purpose.
79.2 Definitions.
79.3 Basis for civil penalties and assessments.
79.4 Investigation.
79.5 Review by the reviewing official.
79.6 Prerequisites for issuing a complaint.
79.7 Complaint.
79.8 Service of complaint.
79.9 Answer.
79.10 Default upon failure to file an answer.
79.11 Referral of complaint and answer to the ALJ.
79.12 Notice of hearing.
79.13 Parties to the hearing.
79.14 Separation of functions.
79.15 Ex parte contacts.
79.16 Disqualification of reviewing official or ALJ.
79.17 Rights of parties.
79.18 Authority of the ALJ.
79.19 Prehearing conferences.
79.20 Disclosure of documents.
79.21 Discovery.
79.22 Exchange of witness lists, statements, and exhibits.
79.23 Subpoenas for attendance at hearing.
79.24 Protective order.
79.25 Fees.
79.26 Form, filing and service of papers.
79.27 Computation of time.
79.28 Motions.
79.29 Sanctions.
79.30 The hearing and burden of proof.
79.31 Determining the amount of penalties and assessments.
79.32 Location of hearing.
79.33 Witnesses.
79.34 Evidence.
79.35 The record.
79.36 Post-hearing briefs.
79.37 Initial decision.
79.38 Reconsideration of initial decision.
79.39 Appeal to authority head.
79.40 Stays ordered by the Department of Justice.
79.41 Stay pending appeal.
79.42 Judicial review.
79.43 Collection of civil penalties and assessments.
79.44 Right to administrative offset.
79.45 Deposit in Treasury of United States.
79.46 Compromise or settlement.
79.47 Limitations.

Authority: Secs. 6101–6104, Pub. L. 99–509, 100 Stat. 1874 (31 U.S.C. 3801–3812).

§ 79.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, §§ 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812, 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 79.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Health and Human Services.

Authority head means the Departmental Grant Appeals Board of the Department of Health and Human Services.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 79.7.

Defendant means any person alleged in a complaint under § 79.7 to be liable for a civil penalty or assessment under § 79.3.

Department means the Department of Health and Human Services.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 79.10 or 79.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Health and Human Services or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association or private organization, and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the General Counsel of the Department or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit,

§ 79.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1). Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 fo reach such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) *Applications for certain benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of paragraph (c) of this section, the term "benefits" means—

(i) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) Old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) Benefits under title XVIII of the Social Security Act;

(iv) Aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(v) Medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(vi) Benefits under title XX of the Social Security Act;

(vii) Benefits under section 336 of the Older Americans Act; or,

(viii) Benefits under the Low-Income Home Energy Assistance Act of 1981, which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 79.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefor; or

(iii) Such documents suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating

official to report violations of criminal law to the Attorney General.

§ 79.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 79.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 79.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's attention to issue a complaint under § 79.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 79.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 79.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 79.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 79.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 79.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 79.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 79.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer as set forth in § 79.9 will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 79.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 79.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 79.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant, before that time expires, may file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. As provided in § 79.11, the reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 79.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 79.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 79.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 79.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial

decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 79.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 79.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 79.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 79.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 79.13 Parties to the hearing.

(a) The parities to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 79.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

§ 79.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communciate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 79.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 79.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 79.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 79.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplication of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact——, or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 79.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 79.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 79.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 79.9.

§ 79.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admission of the contents or authenticity of any relevant document or of the truth of any revelant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 79.22 and 79.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 79.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 79.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 79.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 79.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 79.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not

appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 79.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the wintess is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 79.8, except that a subpoena on a party or upon an individual under the control of a party may be served as prescribed in § 79.26(b).

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 79.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with repect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested:

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 79.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 79.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filed a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 79.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 79.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) Except as provided in paragraph (c) of this section, when the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five calendar days will be added to the time permitted for any response.

§ 79.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 79.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 79.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 79.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 79.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 79.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 79.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 79.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and

(3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 79.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 79.24.

§ 79.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 79.24.

§ 79.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the party receives the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 79.36 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 79.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 79.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 79.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 79.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 79.39.

§ 79.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 79.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies

the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30-days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, and the time for filing motions for reconsideration under § 79.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 79.3 is final and is not subject to judicial review.

§ 79.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 79.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 79.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 79.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 79.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 79.42 or § 79.43, or any amount agreed upon in a compromise or settlement under § 79.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 79.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 79.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 79.42 or during the pendency of any action to collect penalties and assessments under § 79.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 79.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 79.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 79.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 79.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: January 21, 1988.

Richard P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: March 14, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 88-7489 Filed 4-7-88; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-507; RM-5501]

Radio Broadcasting Services; Cape Coral, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 279C2 for Channel 280A at Cape Coral, Florida, and modifies the Class A license for Station WRCC(FM) to specify Channel 279C2, at the request of the licensee Radio Cape Coral, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-507, adopted March 4, 1988, and released April 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Cape Coral, Florida by adding Channel 279C2 and removing Channel 280A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-7758 Filed 4-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-262; RM-5727]

Radio Broadcasting Services; Newberry, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 229C2 for Channel 228A at Newberry, Michigan, as that community's second wide coverage are broadcast service, in response to a petition filed by Jack St. Andre. We have also authorized the modification of Station WNBY's license to specify Channel 229C2 in lieu of Channel 228A. Concurrence of the Canadian government has been obtained for the allotment of Channel 229C2 at Newberry. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 16, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-262, adopted March 4, 1988, and released April 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Michigan by removing Channel 228A at Newberry and adding Channel 229C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-7759 Filed 4-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-94; RM-5584]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dale G. Gardner, allocates Channel 248C1 to Mesquite, NV, as the community's first local FR service. Channel 248C1 can be allocated to Mesquite in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective May 16, 1988. The window period for filing applications will open on May 17, 1988, and close on June 1, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 87-94, adopted March 4, 1988, and released April 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nevada is amended by adding the entry for Mesquite, Channel 248C1.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-7760 Filed 4-7-88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in the State of California; Proposed Increase in Size Requirements and Clarification of Maturity Regulations for Plums

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on several proposed changes to the size and maturity regulations established for California plums. The minimum size requirements for numerous plum varieties subject to variety-specific size requirements would be revised by decreasing the number of plums allowed in an eight-pound sample. The Plum Commodity Committee established under the marketing order has proposed the change to make plums more marketable and to give retailers and consumers a better product. This proposal also would add seven new varieties of plums to the variety-specific size list and remove one from the variety-specific list. The proposal, in addition, would clarify the regulations by specifying the current maturity requirements in greater detail and would simplify the maturity determination system currently used by the plum industry.

DATE: Comments must be received by April 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of the written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jerry N. Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Rom 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 [7 CFR Part 917], regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 650 handlers of plums, peaches, and nectarines subject to regulation under marketing orders [7 CFR Parts 916 and 917], and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of such fruit may be classified as small entities.

Shipments of California plums are regulated by grade, maturity, and size under Plum Regulation 19 [7 CFR 917.460, as amended and published in the **Federal Register** on April 29, 1987, 52 FR 15488]. Most of the proposed changes to § 917.460 were recommended by the Plum Commodity Committee, which works with the Department in administering the marketing order for fresh California pears, plums, and peaches. This proposed rule is based upon the plum committee's recommendation, information submitted by the committee, and other available information. The proposed changes reflect crop and market conditions experienced last season and expected conditions in 1988.

Inspected shipments, in packages, of California plums for the 1987 season totalled 17,399,500 and they were primarily marketed in the fresh market. In 1987, the total production value of California plums was about $75,361,000. Although this proposed rule would impose requirements on plums, exemptions from the inspection and certification requirements would continue. These exemptions include provisions for the shipment of minimum quantities of the fruit.

Variety-specific size regulations for plums are implemented when the plum variety is produced in commercially significant quantities; i.e., shipments in excess of 10,000 packages during a season. When varieties are no longer produced in significant quantities (less than 5,000 packages during the previous season), they are removed from the variety-specific size requirements, but are subject to minimum size requirements established for non-listed varieties. The quantities used in making these determinations are the same as those used in prior seasons. These requirements are specified in paragraphs (b) and (c) of § 917.460.

To implement the plum committee's size recommendations, paragraphs (b) and (c) of § 917.460 would be revised to increase the size requirements for 47 varieties of plums and decrease the size requirement for the Sharron's Plum variety of plums. This would be accomplished by decreasing the number of plums allowed in an eight-pound sample (count per pound requirements) for 47 varieties and by increasing the number of plums allowed in an eight-pound sample for the Sharron's Plum variety of plums from 61 to 63. In addition, four-basket crate equivalents for each listed count per pound size requirement would be specified. The proposal would not subject plums that

are packed in four-basket crates to the eight-pound sample test. When plums are packed in four-basket crates the proposed four-basket crate requirements would be used. When these requirements are compared to the current requirements, 30 varieties of plums would be subject to increased size requirements. The current minimum size regulations do not specify four-basket crate equivalents for each count per pound size requirement. When plums are packed in four-basket crates, the size is indicated by the arrangement of the fruit in the top layer. For example, the term "4 × 4" means that the top layer contains four rows with four pieces of fruit in each row and the term "4 × 5" means four rows with five pieces of fruit in each row. The term "3 × 4 × 5" means that the top layer contains five rows of fruit with alternating rows containing 3 and 4 pieces of fruit.

As indicated earlier, the count per pound requirements for many commercially significant varieties would be increased and the shipment of the "4 × 4," "3 × 4 × 5," and "4 × 5" sizes for many varieties would be curtailed. The size predominantly affected would be "4 × 5." For example, the Andy's Pride variety of plums (a listed variety), would be subject to a maximum limit of 66 plums per eight-pound sample, as compared to the present maximum limit of 69 plums per eight-pound sample, if packed in any authorized container other than a four-basket crate. However, if the handler packed these plums in a four-basket crate, then the plums would be subject to a four-basket crate-based minimum size limit of "3 × 4 × 5" instead of "4 × 5," which is equivalent to 69 plums per eight-pound sample. The minimum size for non-listed varieties would continue to be 139 plums per eight-pound sample or "6 × 6" when packed in four-basket crates.

The recommended size changes would help the California plum industry sell more fruit and encourage repeat purchases. According to the committee, much of the 1987 crop was dumped or sold at discounted prices because smaller sized plums are not as desirable in the marketplace and consumers reject them, and small size plums were the reason for product backup at shipping point and retail in 1987.

Early season purchases of small-sized plums have a negative impact on total plum sales because consumers do not make repeat purchases after being dissatisfied with their original purchases. The committee reports increased size requirements are needed to make plums more marketable and would improve consumer satisfaction which is needed to maintain current markets and to build new markets.

The elimination of small-sized plums would respond to consumer demands for larger fruit and benefit the consumer and the entire plum industry. A consumer research study conducted and paid for by the plum committee in 1984 indicated that the basic problem hurting plum sales was small size and the corresponding high pit to flesh ratio. In 1986, "4 × 5" size Red Beaut variety plums were initially quoted at $12 per box, but were subsequently sold for $4 to $5. According to the committee this is evidence of a firm rejection of small size Red Beaut plums. Because of all the reported young plum acreage and the cultural practices (e.g., proper thinning) growers can take to increase plum size and yields, no shortage is expected as a result of the recommended size changes, but rather more healthy market conditions for California plums.

Subsequent to the committee's meeting on December 9, 1987, on this proposal, the Department has received a number of letters from interested persons both in support of the size increases and opposed to them. The views of those in favor of the size increases generally reflect the rationale of the committee in recommending the proposed regulation. On the other hand, those opposed to the size increases, including some growers and packers from the early production areas of Kern and southern Tulare counties, contend that they have consistently found markets for smaller sized plums, the sale of which has been profitable. Others contend that the difficulties in sales of smaller sized plums experienced in 1984 and 1987 resulted from oversupply of these plums, not because small plums were undesirable. Many expressed concern that if shipments of smaller sized plums were eliminated, they would suffer severe economic hardship especially in the early production areas.

In addition, the proposal would establish variety-specific size requirements for plum varieties now produced in commercially significant quantities and remove one variety no longer produced in significant quantities from variety-specific size requirements. Specifically, the Ambra, Black Ace, Black Giant, Black Gold, Royal Diamond, Royal Garnet, and Shayna varieties of plums would be added to the variety-specific size requirements in paragraph (b) of § 917.460. The Bee Gee variety of plums would be removed from the variety-specific size requirements. Shipments of the varieties that would be individually regulated exceeded 10,000 packages during the 1987 season. Shipments of the variety that would be removed from the variety-specific size requirements fell below 5,000 packages during the 1987 season.

Further, the proposal would revise paragraph (a) of § 917.460 to clarify the plum maturity requirements and simplify the maturity determination system currently used by the plum industry. Among other things, the revision of paragraph (a) would specify that no handler can ship plums unless they are at least "well-matured," as defined in paragraph (d) and would specify the role of Federal or Federal-State inspectors in making "well-matured" determinations.

Currently the first sentence of paragraph (a) states that: "No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that maturity shall be determined by the application of color standards by variety or such other tests as determined to be proper by the Federal or Federal-State Inspection Service."

It is proposed that this statement be revised to read: "No handler shall ship any lot of packages or containers of any plums unless such plums grade at least U.S. No. 1, except that the plums shall be 'well-matured,' rather than 'mature,' but not over-ripe or shriveled." This change would clarify the fact that all plums marketed under this program must be "well-matured," rather than "mature" as defined in the U.S. grade standards for plums. Since May 19, 1980 [45 FR 33596; May 20, 1980] plums have been required to be "well-matured" rather than "mature," and this requirement has been implemented by the Federal-State Inspection Service since that time.

In addition to specifying that plums must be "well-matured," the proposed change would define "well-matured." It would read as follows: " 'Well-matured' means a condition distinctly more advanced than 'mature.' " "Mature" is defined in the U.S. grade standards as follows: " 'Mature' means that the fruit has reached the stage of maturity which will insure a proper completion of the ripening process." This is a minimum standard of maturity which was in effect before the more recent advances in handling and distribution techniques and does not preclude inspecting to a higher degree of maturity. In 1980, in fact, it was determined that plums picked and packed at this minimum maturity level were poorly received by consumers because they lacked flavor and were too hard. The "well-matured" requirement has resulted in more

consumer acceptance and expansion of markets for California plums.

The proposal would also simplify the current maturity determination procedures. To ascertain compliance with "well-matured" standard with regard to each variety of plums, various tests are used. Since 1980, the Federal-State Inspection Service, based on its expertise, has been primarily responsible for determining which specific test or tests should be used for each variety of plums and which test level (e.g. particular percent of color or particular color chip) is appropriate for each variety. When the Federal-State Inspection Service has sufficient experience with a variety to determine that a particular test or tests and a particular test level should normally be appropriate for the entire production area for every year, it has advised the Plum Commodity Committee of that determination. The Plum Commodity Committee has then ratified that determination, publishing it in their annual bulletin. After such a determination for a particular variety has been published, variances during the season or permanent changes between seasons have been made by the Committee or its Maturity Subcommittee. The Committee and its Staff have provided advice to the Federal-State Inspection Service in making its maturity determinations, and likewise the Federal-State Inspection Service and the Committee Staff have advised the Committee and its Maturity Subcommittee in making variances and changes.

Over the years, these procedures have provided fair and equitable treatment to producers and handlers. The Federal-State Inspection Service is the recognized authority on matters relating to grading and inspection. The Committee Staff have backgrounds in inspection and packing and have a vast amount of concentrated hands-on experience with plums. The members of the Committee are all growers and often handlers of plums who are nominated by their peers in each production district. They have practical business experience in the plum industry, as well as enjoying the confidence of their peers with regard to their expertise and integrity.

The current procedures have, however, at times created logistical problems, particularly with regard to variances during the season. Requests for variances require prompt consideration and action. Committee members are dispersed over a wide geographical area and have daily responsibilities with regard to their own businesses. While most Committee members have been extremely giving of their time with regard to their variance duties, the demands of such duties have imposed a hardship on the members.

It is, therefore, proposed that the responsibility for variances during the season and changes between the seasons be given to the Federal or Federal-State Inspection Service. This change would simplify the procedures by assigning all maturity determinations and the application of those determinations to one group. In making this proposal it is intended that the Federal or the Federal-State Inspection Service, while considering variances and changes, will seek the advice of the Committee and its Staff in order to draw upon their wealth of expertise. It is also intended that any changes and any variances would be applicable to all growers and handlers of the particular variety. Finally, it is intended that any changes and variances will be made at the supervisory level of the Federal or the Federal-State Inspection Service, rather than by the particular packing-house inspector. This will ensure that these decisions are made by those who have the greatest background and expertise and who are in a position to be knowledgeable concerning current conditions throughout the entire production area. It is expected that this change in procedure will have very negligible substantive effect. The experience of the last eight seasons indicates that almost invariably there has been a concurrence of opnion regarding the proper decision among the Federal-State Inspection Service, the Committee Staff and the Committee or Subcommittee.

Further, a table would be added to paragraph (a) of § 917.460 which would specify color chips and other maturity guides which the Federal or the Federal-State Inspection Service intends to use for the specified varieties of plums.

For these varieties, not less than 90 percent of any lot shall meet the surface color, flesh color, or spring requirements established for the variety, or not less than 90 percent of any lot shall meet the ground color standard established for that variety.

The varieties listed in the table are those described above where the inspection service has sufficient experience to determine a generally appropriate test or tests and test levels. The Federal or the Federal-State Inspection Service will have the authority to make variances from the guides in the table during the season for any variety to reflect changes in crop and weather conditions that would make the guide an inappropriate measure of "well-matured." For varieties not listed in the table, the Federal or Federal-State Inspection Service would use such tests as they deem appropriate. Single sets of the color chip guides used by the Federal or Federal-State Inspection Service may be obtained from the Plum Commodity Committee at: 701 Fulton Avenue, Sacramento, California 95865 or can be inspected at such location during regular business hours. The committee's telephone number is 916–483–9261.

There are several changes in the table from the list in the 1987 Plum Bulletin. The maturity guide for Roysum plums would be changed by adding "green streaking" as a maturity indicator with regard to ground color. This is intended to help make maturity determinations for this variety of plums more accurate. The "well-matured" guide for fresh prune/plums would be revised by changing the basis used in determining the soluble solids average from a base which requires the consideration of varying amounts of the least mature appearing fruits to one which only requires a representative sample. Expereince has indicated that the current procedure is overly restrictive. Also, the soluble solids percentage for fresh French Prunes used as a guide by the Federal or Federal-State Inspection Service would be reduced from 19 percent to 18 percent. The French Prune has been developed for a one-pick harvest and some handlers have had difficulty meeting the 19 percent requirement in past seasons. French Prunes should still be able to meet the well matured standard at 18 percent. "Soluble solids" percentages are highly correlated with the sweetness of the fruit juices.

It is the Department's view that the proposed change to add several new varieties of plums now produced in commercially significant quantities to the variety-specific (named-variety) size requirements and to delete one variety no longer produced in commercially significant quantities from those requirements would not be detrimental to small entities. These changes are expected to improve the quality of plums in the fresh market which would be beneficial in maintaining current markets and developing new ones. The proposd change to clarify the maturity requirements for plums is intended to foster and facilitate a greater understanding of these requirements within the plum industry and, as such, would not result in additional costs. The proposed change to the well matured

guides for French Prunes would relax present requirments.

The committee is of the view that the higher size requirements are necessary to provide consumers and retailers better sized plums. Industry surveys and questionnaires conducted during past seasons indicate that consumers prefer larger sized well-matured fruit. The industry has been gradually adjusting its size requirements to accommodate the wishes of the consumers and the trade to maintain the industry's good quality image.

According to the committee, the proposed changes are necessary to remove from the market those sizes of fruit which are not being well received by consumers. These actions are intended to foster repeat purchases and maintain consumer satisfaction.

Based on the above, the Administrator of AMS has determined that the changes proposed above would not have a significant economic impact on a substantial number of small entities.

The committee's recommendation, other information, and all written comments timely received in response to this request for comments will be considered before a final determination is made on this proposal. Commenters are encouraged to submit the reasons in support of or in opposition to this proposed rule. Any pertinent data to support their views and comments should also be submitted.

A comment period of less than 30 days is deemed appropriate for this proposal. The harvest and shipment of the 1988 plum crop is expected to start May 10, 1988, and growers and handlers should be given as much notice as possible of any changes, if adopted to permit the industry to plan accordingly. Moreover, the Department already has received numerous letters in support of and in opposition to the proposed plum size changes indicating that the industry is very much aware of the committee's recommendation.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, pears, plums, peaches, California.

For the resons set forth in the preamble, 7 CFR Part 917 is proposed to be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.460 is revised to read as follows:

§ 917.460 Plum Regulation 19.

(a)(1) No handler shall ship any lot of packages or containers of any plums unless such plans grade at least U.S. No. 1, except that the plums shall be "well-matured," rather than "mature" but not over-ripe or shriveled. Conformity with the well-matured requirement shall be determined by the Federal or Federal-State Inspection Service by the application of color guides or other tests as it deems proper for each variety. Internal discoloration not considered serious damage and healed growth cracks emanating from the stem end which do not cause serious damage shall be permitted. In addition to the above, any lot of Tragedy or Kelsey plums shall be permitted an additional 10 percent tolerance for defects not considered serious damage.

(2) During the 1988 and subsequent seasons, the Federal or the Federal-State Inspection Service intends to use the maturity guides listed in Table I in making maturity determinations for the specified varieties. For these varieties, not less than 90 percent of any lot shall meet the surface color, flesh color or "spring" requirements established for the variety or not less than 90 percent of any lot shall meet the ground color standard established for the variety except that for the Ebony variety, an additional lot tolerance of 17 percent shall be permitted for fruit not meeting the "spring" requirement. For varieties not listed, the Federal or the Federal-State Inspection Service will use such tests as it deems proper. The Federal or the Federal-State Inspection Service has the authority to make variances for any variety from any guide or tests, including those in Table I, during the season to reflect changes in crop or weather conditions that would make the existent guide an inappropriate measure of "well-matured".

TABLE I

Column A, variety	Column B, maturity guides
Ace	1/2 of surface mottled red color characteristic of the variety, or 3/4 red or light amber flesh color.
Amazon	1/2 of surface red with "spring."
Ambra	Full surface dark red color with "spring."
Andy's Pride	Some of surface mottled red with remainder good yellow color. *G color.*
Angee	That portion of the surface not distinct red color shall be light yellow color. *I color.*
Angeleno	Full surface dark purple or 3/4 dark purple with remainder light greenish yellow. *B color.*
Armelita	Full surface dark red color with "spring."

TABLE I—Continued

Column A, variety	Column B, maturity guides
Ashag	90 percent of surface dark red with "spring."
August Rosa	2/3 of surface red or full yellow color. *I color.*
Autumn Rose	1/2 of surface red color or full light yellow color. *F color.*
Beauty	85 percent of surface yellowish green or trace of red. *A color.*
Bee-Gee	3/4 of surface red color with "spring."
Bella-Rosa	3/4 of surface red color, remainder yellow color. *C color.*
Berry Red	Full surface red color.
Blackamber	Full surface red color with "spring."
Black Beaut	Full surface distinct red color with "spring," or supervisor discretion.
Black Giant	3/4 of surface red color with remainder yellow color. *H color.*
Black Jewel	Full surface dark red color with "spring."
Black Knight	Smooth shoulders. 3/4 of surface dark red color or full distinct red.
Burgandy	Full dark red surface color or full distinct red flesh color.
Burmosa	1/2 of surface red color or full yellowish green color. *A color.*
Carolyn Harris	1/2 of surface mottled red characteristic of the variety or 3/4 red or light amber flesh color.
Casselman	Not less than 95 percent of the surface shall be distinct red color or full yellow color. *I color.*
Catalina	Full surface red color with "spring."
Durado	1/2 of surface red (any degree), with remainder yellowish green. Smooth shoulders. *A color.* Note: This plum must be considered on individual field basis.
Early Beaut	3/4 of surface distinct red color or full light greenish yellow color. *F color.*
Early Ann	"Spring." 3/4 of surface dark purplish blue with Hawaiian remainder yellow color.
Early Simka	Dark red color, remainder full light yellow color. *F color.*
Ebony	Full surface dark red with "spring." Additional lot tolerance of 17 percent for fruit not meeting the spring requirement.
El Dorado	"Spring." Full dark red surface color or part red with remainder yellow color, except stem cavity. *D color.*
Eldorosa	1/2 of surface red color or full light greenish yellow color. *D color.*
Elephant Heart	1/2 of surface mottled red color characteristic of the variety, or 3/4 red or light amber flesh color.
Emily	1/2 of surface red color or full light greenish yellow color. *B color.*
Empress	Full surface dark purplish blue or 3/4 dark purplish blue, remainder light greenish yellow color. *B color.*
Frank Ann	Full surface yellow color. *D color.*
Freedom	3/4 of surface dark red with remainder full light greenish yellow color. *C color.*
Fresno Black	90 percent of surface dark red with "spring."
Fresno Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Friar	Full surface red color with "spring."

TABLE I—Continued

Column A, variety	Column B, maturity guides
Frontier	1/2 of surface mottled red color characteristic of the variety, or 2/3 red or light amber flesh color.
Gar-Rosa	1/2 of surface red color or full light greenish yellow color. *C color.*
Gavora	3/4 of surface red color or light greenish yellow color. *B color.*
Grand Rosa	3/4 of surface red color or full light greenish yellow color. *C color.*
Hiland Rosa	1/2 of surface red color or yellowish green color. *B color.*
Honey Gold	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
Improved Late Santa Rosa.	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
July Red	3/4 of surface red color.
July Santa Rosa.	3/4 of surface red color or full greenish yellow color. *C color.*
June Beaut	Full surface red with "spring."
Kelsey	Shoulders and surface smooth with "spring."
King David	3/4 of surface red color with remainder light greenish yellow color. *D color.*
King Richard	Full surface red color or light greenish yellow. *D color.*
King's Black	3/4 of surface red with remainder light yellow color, *F color.*
King's Red	Full surface red color or full light yellow color. *H color.*
Laroda	Full surface dark red or dark red color at blossom end and remainder of surface full light yellow color, with a surface tolerance of 5 percent for fruit not meeting the yellow surface requirement. *F color.*
Late Duarte	1/2 of surface mottled red color characteristic of the variety, or 2/3 red or light amber flesh color.
Late Santa Rosa.	85 percent of surface distinct red color or full light yellow color, light green streaking permitted. *F color.*
Linda Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Mariposa	1/2 of surface mottled red color characteristic of the variety, or 3/4 red or light amber flesh color.
May Rosa	2/3 of surface red color or full light greenish yellow. *C color.*
Midsummer	Full surface dark red.
Milwaukee	3/4 of surface red color with "spring."
Nubiana	"Spring." Full surface dark purplish blue or 3/4 surface dark purplish blue with remainder light amber color characteristic of the variety.
Padre	1/4of surface red color or full light greenish yellow color. *B color.*
Premier	1/2 of surface red color with remainder light greenish yellow color. *B color.*
Prima Rosa	3/4 of surface distinct red color or full light greenish yellow color. *F color.*

TABLE I—Continued

Column A, variety	Column B, maturity guides
President	3/4 of surface reddish purple color with remainder light yellowish green color. *A color,* or full light greenish yellow color. *B color.*
Fresh Prune/ Plums.	That portion of the surface not red color shall be changing in color from dark green to light green. In addition, for all varieties of prune/plums shipped fresh, the soluble solids shall average 19 percent: *Provided,* That for French Prunes the soluble solids shall average 18 percent: *Provided Further,* That Moyer Prunes shall average 16 percent soluble solids.
Queen Ann	"Spring." Full surface dark purple color or some purple color with remainder of surface light greenish yellow color. *B color.*
Queen Rosa	"Spring." 1/2 of surface red or yellowish green color. *B color.*
Red Beaut	3/4 of surface distinct red color or full light greenish yellow color. *F color.*
Red Glow	1/2 of surface red, remainder full light greenish yellow color. *F color.*
Red Heart	1/2 of surface mottled red color characteristic of the variety, or 3/4 red or light amber flesh color.
Red Rosa	85 percent of surface distinct red color or full light yellow color. Light green streaking permitted. *F color.*
Redroy	3/4 of surface red color or 10 percent of surface red color with remainder light yellow color. *F color.*
Rich Red	3/4 of surface distinct red color or full light greenish yellow color. *F color.*
Rosa Ann	3/4 of surface distinct red color or full light yellow color. *F color.*
Rosa Grande	3/4 of surface red color or greenish yellow color. *B color.*
Rose Ann	3/4 of surface distinct red color or full light yellow color. *F color.*
Rosemary	3/4 of surface red, remainder full light greenish yellow color. *F color.*
Royal Beaut	3/4 of surface red color or full light greenish yellow. *D color.*
Royal Diamond.	Full surface red color with "spring."
Royal Garnet	Full surface red color or full light greenish yellow color. *G color.*
Royal Red	Full surface distinct red color or 1/2 of surface red color, remainder light yellow color. *C color.*
Royal Zee	2/3 of surface red color or full light greenish yellow color. *F color.*
Roysum	3/4 of surface distinct red color or full light yellow color with green streaking. *F color.*
Santa Rosa	2/3 of surface red color or full light greenish yellow color. *C color.*
Shayna	Full surface red color or full light yellow color. *F color.*
Shiro	Full surface greenish yellow color or trace of red color. *B color.*

TABLE I—Continued

Column A, variety	Column B, maturity guides
Simka, New Yorker.	Full surface dark red color or dark red color with remainder of surface full light yellow color. *F color.*
Spring Beaut	3/4 of surface distinct red or full light greenish yellow color. *F color.*
Standard	2/3 of surface purple color or full surface light greenish yellow color. *B color.*
Swall Rosa	That portion of the surface not distinct red color shall be full yellow color. *I color.*
Tragedy	30 percent of surface purple color or full light greenish yellow color. *B color.*
Valentine	1/2 of surface mottled red color characteristic of the variety, or 3/4 of the surface red or light amber flesh color.
Wickson	Shoulders and surface smooth with "spring."

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

(b) No handler shall ship any package or other container of any variety of plums listed in Column A of the following Table II unless such plums are of a size that an eight-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table, or unless such plums are packed in a four-basket crate and are of a size equal to or larger than the size designation in Column C of said table:

TABLE II

Column A, variety	Column B, plums per sample	Column C, min. 4 basket crate size
Ambra	67	4×5
Andys Pride	66	3×4×5
Angeleno	54	4×4
Angee	63	3×4×5
Autumn Rosa	66	4×5
Black Ace	58	3×4×5
Blackamber	51	3×4×4
Black Beaut	62	3×4×5
Black Diamond	51	3×4×4
Black Giant	52	4×4
Black Gold	60	3×4×5
Black Knight	50	4×4
Carolyn Harris	61	3×4×5
Casselman	60	3×4×5
Catalina	51	3×4×4
Durado	69	4×5
Early Hawaiian Ann	58	3×4×5
Ebony	64	3×4×5
El Dorado	62	4×4
Empress	55	3×4×5

TABLE II—Continued

Column A, variety	Column B, plums per sample	Column C, min. 4 basket crate size
Freedom	50	3×4×4
Friar	51	3×4×4
Frontier	58	3×4×5
Gar-Rosa	69	4×5
Grand Rose	52	4×4
July Red	60	3×4×5
July Santa Rosa	65	4×5
Kelsey	47	4×4
King David	50	4×4
King Richard	54	4×4
King's Black	50	4×4
Laroda	52	4×4
Late Santa Rosa	60	3×4×5
Linda Rosa	63	3×4×5
Mariposa	61	3×4×5
Midsummer	58	3×4×5
Nubiana	56	4×4
President	55	3×4×5
Prima Black	62	3×4×5
Queen Ann	48	4×4
Queen Rosa	50	3×4×4
Red Beaut	69	4×5
Red Rosa	60	3×4×5
Redroy	55	3×4×5
Rich Red	69	4×5
Rosa Ann	65	4×5
Rosemary	48	4×4
Rose Ann	60	3×4×5
Royal Diamond	51	3×4×4
Royal Garnet	69	4×5
Royal Red	69	4×5
Roysum	69	4×5
Santa Rosa	65	4×5
Sharron's Plum	63	3×4×5
Shayna	52	4×4
Simka	48	4×4
Spring Beaut	69	4×5
Standard	83	5×5
Wickson	51	4×4

(c) No handler shall ship any package or container of any variety of plums not specifically named in paragraph (b) of this section, unless such plums are of a size that an eight-pound sample representative of the sizes of the plums in the packge or container contains not more than 139 plums, or unless such plums are packed in a four-basket crate and are of a size equal to or larger than the 6×6 size designation.

(d) *Definitions.* As used herein, "U.S. No. 1," "mature," and "serious damage" mean the same as defined in the United States Standards for Grades of Fresh Plums and Prunes [7 CFR 51.1520 through 51.1538]. "Well-matured" means a condition distinctly more advanced than "mature."

Dated: April 5, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-7778 Filed 4-7-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-08-AD]

Airworthiness Directives; Cessna Models 402B, 402C, 404, F406, 421C, 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Cessna Models 402B, 402C, 404, F406, 421C and 441 airplanes, which would require structural reinforcement of Enviroform type passenger seats. Reports have been received of seats separating from the seat base. The proposed action would reinforce this interface and preclude failure of the seats and prevent severe injury, or fatalities, to the occupants in the event of a minor crash.

DATES: Comments must be received on or before July 1, 1988.

ADDRESSES: Cessna Service Bulletin CAB87-16 and CQB87-5, both dated December 4, 1987, and MEB 87-9, Rev. 1, dated February 19, 1988, applicable to this AD may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277, or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-08-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. an 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Wichita Aircraft Certification Office, FAA, Central Region, ACE-120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the propsoed 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 summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules 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, General Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-08-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The Enviroform type passenger seats used in certain 400 Series Cessna airplanes are constructed from two parts of molded composite; consisting of the seat, back and bottom, and the pedestal bonded together at their interface. A failure of the bond causes separation of the seat and pedestal. Such failures resulted in Cessna issuing Service Letter ME77-30, and Service Kits SK 421-72 and SK 421-78, that provided fasteners and a doubler to reinforce the bond. AD 78-06-03, Amendment 39-3162, (43 FR 11969, March 23, 1978) was in-turn issued to require compliance with the Cessna Service Instructions as applicable to those Models 402B, 421B, and 421C airplanes equipped for air taxi operation. Cessna did not incorporate the reinforcement in new production seats because the bonding process and acceptance tests had been altered to correct the previous discrepancies. Subsequently, Cessna began production of the Models 402C, 404, F406, and 441 airplanes. These airplanes were not covered by AD 78-06-03. The FAA has learned that there have been three seat failures on the models not covered by AD 78-06-03, all of which were on seats that did not have the interface fasteners. These failures have been attibuted in part to tandem mounting which imposes loads on the pedestal-seat interface that are not provided for in Airworthiness Standards. Since failure of these seats can cause severe or even fatal injury to the occupant, Cessna responded by issuing Service Bulletins CAB87-16 and CQB87-5, both dated December 4, 1987,

and MEB87-9, Rev. 1, dated February 19, 1988, which provide instructions for the installation of Service Kit SK 421-135 on Enviroform seats. Since the condition described is likely to exist or develop in other Models 402B, 402C, 404, F406, 421C, and 441 airplanes of the same design, the AD would require modification of the seat per the above applicable service bulletins.

The FAA has determined there are approximately 771 airplanes (approximately 5400 seats) affected by the proposed AD. The cost of modifying these seats as required by the proposed Ad is estimated to be $929.60 per airplane. The total cost is estimated to be $716,200 to the private sector. Few, if any, small entities own more than 5 affected airplanes; therefore, the total cost of this inspection is less than the threshold for a significant economic impact.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291, (2) is not a "significant rule" under 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 copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public 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, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the following models and serial numbered airplanes certified in any category:

Model	Serial Numbers
402	402B1047 thru 402C1020.
404	404-0001 thru 404-0859.
F406	F406-0001 thru F406-0021.
421	421C0055 thru 421C1807.
441	441-0001 thru 441-0362.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To assure structural integrity of the bond between the seat and seat back assembly (upper part) to the seat pedestal assembly (bottom part) of Enviroform type passenger seats, accomplish the following:

(a) Install the structural reinforcement provided with Cessna Service Kit SK 421-135, dated December 4, 1987, on each Enviroform type passenger seat in accordance with the applicable Cessna Service Bulletin CAB87-16 or CQB87-5, both dated December 4, 1987, or MEB87-9, Rev. 1, dated February 19, 1988.

(b) The 100 hour compliance time for paragraph (a) of this AD may be extended up to an additional 10 hours time-in-service to allow compliance at previously scheduled maintenance periods.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 18, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-7701 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ASW-62]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale Model AS355E, AS355F, and AS355F1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require installation of an automatic reignition system for the Allison 250C-20F engine (which corresponds to Aerospatiale modifications AMS 350A07-1823, AMS 350A07-1856, AMS 350A07-1905, AMS 350A07-1910, and AMS 350A07-1920), and is covered by Service Bulletins No. 01.18 and No. 80.02 on Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS355E, AS355F, and AS355F1 helicopters. The proposed AD is needed to prevent engine flameout (power loss) due to engine inlet icing associated with flight into certain ambient atmospheric conditions. Engine flameout could result in a subsequent emergency landing which could be hazardous.

DATES: Comments must be received on or before May 31, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attn: Rules Docket, Fort Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Regional Counsel, FAA, Building 3B, Room 158, Fort Worth, Texas. Comments must be marked: Docket No. 87-ASW-62. Comments may be inspected at the above location between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service bulletin may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, FAA, Southwest Region, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111, telephone (817) 624-5123.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, Southwest Region, for examination by interested persons. A report summarizing each FAA-public

contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ASW-62." The postcard will be date/time stamped and returned to the commenter.

Priority Letter AD 86-24-02, issued on November 21, 1986, originally required in part, instrument panel placard operating limitations to advise the flightcrew to avoid operating conditions where visible atmospheric moisture ingestion into the engines could result in ice formations which cause engine flameout. This priority letter was subsequently published as a final rule in the **Federal Register** on December 11, 1987 (52 FR 46985). The final rule version recognizes the eligibility of the Aerospatiale-developed automatic engine reignition system, proposed by this NPRM, as an equivalent means of compliance and, accordingly, omits helicopters so configured by serial number limitation in the applicability statement.

Certain other continuous ignition systems have been approved as equivalent means of compliance with AD 86-24-02. These approvals would be accepted as equivalent means of compliance with this proposed AD.

The SNIAS Model AS 355E, AS 355F and AS 355F1 helicopters not equipped with automatic or FAA-approved continuous engine reignition systems are susceptible to moisture-induced engine flameout which could result in a hazardous emergency landing. Since this condition is likely to exist or develop on other helicopters of the same design, the proposed AD would require installation of an automatic engine reignition system per SNIAS modifications AMS 350A07-1823, AMS 350A07-1856, AMS 350A07-1905, AMS 350A07-1910, or AMS 350A07-1920 in conjunction with corresponding SNIAS Service Bulletins No. 01.18 and No. 80.02 along with the incorporation of the associated flight manual and instrument flight manual changes on SNIAS Model AS 355E, AS 355F and AS 355F1 helicopters, as listed in the applicability section of the proposed AD.

The FAA has determined that this proposed regulation only involves 155 rotorcraft, which are estimated to be operated by a total of 100 operators. Certain operators may already be in compliance with the AD by previously incorporating the SNIAS autoignition system or by installing a specifically approved continuous ignition equivalent method of compliance. It is estimated that the remaining operators will incur a total cost of only $1,376 per aircraft. Therefore, I certify this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact, positive or negative, is minimal; and (4) if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all SNIAS Model AS355E, AS355F, and AS355F1 helicopters (serial numbers before 5362) fitted with debris guards, Part Numbers (P/N) 355A58-0519-0201 and 355A58-0519-0391, certificated in any category, except those helicopters previously equipped with this identical modification.

Compliance is required within the next 200 hours' time in service, unless already accomplished.

To prevent engine failure (flameout) resulting from ingestion of atmosphere moisture in engine inlets, accomplish the following:

(a) Install an engine automatic relight system in accordance with SNIAS Service Bulletins AS 355 No. 01.18, Revision 2, approved October 5, 1987, and No. 80.02, Revision 2, approved July 8, 1987 (SB No. 80.02 corresponds to SNIAS Modification AMS 350A07-1823, IFR-VFR versions; AMS 350A07-1856, IFR versions; AMS 350A07-1905, IFR-VFR versions; AMS 350A07-1910, IFR-VFR versions; AMS 350A07-1920, IFR-VFR versions). Installation of the SNIAS relighting kit requires exclusive utilization of Champion or Auburn igniter P/N 6877518 or Champion igniter P/N 23006266 and limits the service life of each newly installed igniter to 1,200 hours' time in service. Any of the required Champion or Auburn igniters already installed and having 1,000 or more hours' time in service must be replaced with new Champion or Auburn P/N 6877518 igniters or Champion P/N 2300266 igniters.

(b) Incorporate into the applicable RFM the basic flight manual revisions and instrument flight rules (IFR) flight manual supplements (if IFR equipped), or later FAA-approved flight manual revisions, as follows:

(1) For the Model AS355E, basic rotorcraft flight manual, Revision 4, Code Date 87-10.

(2) For the Model AS355F, basic rotorcraft flight manual, Revision 3, Code Date 87-10 and IFR rotorcraft flight manual supplement 11.4, Revision 3, Code Date 87-12.

(3) For the Model AS355F1, basic rotorcraft flight manual, Revision 2, Code Date 87-10, and IFR rotorcraft flight manual supplement 11.4, Revision 1, Code Date 87-12.

(c) To ensure the limited service life of the igniters defined in paragraph (a) above is properly identified and adhered to, the following updates (or future revisions thereto) should be incorporated in the Master Servicing Recommendations—Chapter 5-99 (Airworthiness Limitations):

(1) AS355E, Revision 15, Page 21.

(2) AS355F, Revision 15, Page 23.

(3) AS355F1, Revision 15, Page 23.

(d) Upon accomplishing the requirements of paragraphs (a), (b), and (c) above, the placard required by paragraph (a) of AD 86-24-02 may be removed.

(e) Upon request, an alternate means of compliance which provides an equivalent level of safety with the requirements of this AD may be used when approved by the Manager, Aircraft Certification Division, ASW-100, FAA, Fort Worth, Texas 76193-0100.

(f) Continuous ignition systems previously found to be equivalent methods of compliance with priority letter AD 86-24-02, dated November 21, 1986; or with Amdt. 39-5796 (52 FR 46985; December 11, 1987) effective January 27, 1988, are approved as equivalent methods of compliance to this AD.

Issued in Fort Worth, Texas, on March 25, 1988.

L.B. Andriesen,

Acting Director, Southwest Region.

[FR Doc. 88-7703 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-23-AD]

Airworthiness Directives; Boeing Model 747 and Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The notice proposes a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, equipped with the two piece off-wing escape ramp and slide, and to all Model 767 series airplanes, which would require modification of the Model 747 door opening thrusters and Model 767 off-wing escape slide door opening/snubbing actuators by replacing certain O-rings. This proposal is prompted by reports of actuator and thruster malfunctions that resulted in non-deployment of the slides. The malfunctions were the result of insufficient oil in the thruster or actuator due to leakage past defective or contaminated O-rings. This condition, if not corrected, could lead to failure of the escape slide to deploy, thus delaying and possibly jeopardizing successful emergency evacuation of an airplane.

DATES: Comments must be received no later than May 31, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–23–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from OEA Corporation P.O. Box 10488, Denver, Colorado 80210. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM–120S; telephone (206) 431–1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be consider by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. 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 summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–23–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. DISCUSSION: The Boeing Model 747 and Model 767 off-wing escape slides are installed in a compartment in the wing-to-body fairing. The Model 747 off-wing compartment door opening thrusters and the Model 767 off-wing compartment door opening/snubbing actuators are used to open the compartment door, thus deploying the off-wing escape slide. These devices perform a similar function on both airplanes, operate in a similar manner, and are activated when the exit is opened in an emergency.

Defective or contaminated O-rings intsalled in these thrusters and actuators have resulted in loss of oil. The loss of oil has resulted in malfunction of the thruster or actuator, and failure of the off-wing escape slide to deploy.

There are two of the Model 747 thrusters (or Model 767 actuators) installed on each compartment door and the system was designed to operate when only one of the thrusters or actuators performs as intended.

Within the past year, there have been five reported incidents of non-deployment of the Model 767 off-wing slide that have been attributed to the failure of the actuators. There are also nine other actuator problems that were probably caused by O-ring damage or contamination. In addition, several Model 747 operators have reported finding low oil levels in the thrusters, and one operator reported a malfunction of a thruster. There have been no reported Model 747 incidents that resulted in non-deployment of the escape slide; however, if only one actuator malfunctioned and the escape slide deployed, this malfunction may not have been detected. It is apparent that the majority of the problems are associated with contaminated O-rings.

The FAA has reviewed and approved OEA Service Bulletin 2174200–25–012, dated December 23, 1987, for the Model 747, and OEA Service Bulletin 3092100–25–001, dated December 23, 1987, for the Model 767, which contain instructions for the replacement of the existing O-rings with special quality O-rings. (OEA Corporation is the manufacturer of the Model 747 thruster and Model 767 actuator.) This replacement must be accomplished in a clean area and the modified actuators leak-checked and radiographed to assure proper assembly.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the O-rings and inspection of the Model 767 actuators and Model 747 thrusters in accordance with the service bulletins previously mentioned. In addition, the Boeing Commerical Airplane Company has notified the FAA that it is preparing two service bulletins for issuance in the near future, which will incorporate the instructions of the accomplishment of the proposed modifications currently in the OEA bulletins. The FAA may consider referencing these service bulletins in the final rule as an approved method of compliance.

It is estimated that 150 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $60,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 or Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 767 series airplanes and to Model 747 series airplanes equipped with the two piece off-wing escape ramp and slide, certificated in any category. Compliance required within 15 months after the effective date of this AD, unless previously accomplished.

To ensure that the off-wing escape slide does not malfunction due to leaking actuators or thrusters, accomplish the following:

A. Replace the O-rings in accordance with the following service bulletins, as applicable. Replacement must be accomplished in a clean area, and a radiographic inspection and leak check inspection of the modified units must also be performed.

1. Model 747 door opening thrusters identified in OEA Service Bulletin 2174200-25-012, dated December 23, 1987, or later FAA-approved revisions.

2. Model 767 door opening/snubbing actuators identified in OEA Service Bulletin 3092100-25-001 dated December 23, 1987, or later FAA-approved revisions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to OEA Corporation, P.O. Box 10488, Denver, Colorado 80210. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 31, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-7698 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ASW-63]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A-1, and 212 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would establish a mandatory fatigue retirement life limit on main rotor masts and trunnions used on the Bell Model 204B, 205A, 205A-1, and 212 helicopters. The proposed AD is needed to prevent main rotor mast and trunnion fatigue failures which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter.

DATES: Comments must be received on or before June 3, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Fort Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked: Docket No. 87-ASW-63.

Comments may be inspected in Regional Rules Docket, Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 87-ASW-63. The postcard will be date/time stamped and returned to the commenters.

Based on the recent manufacturer's fatigue stress tests and fatigue analysis of main rotor masts and trunnions under ground-air-ground (GAG) loading conditions, the FAA has determined that these components can no longer be operated with an unlimited service life and must be removed after a specified time in service.

Since this condition is likely to exist or develop on helicopters of the same type design, the proposed AD would establish a mandatory retirement life for the main rotor mast and trunnion installed on Bell Model 204B, 205A, 205A-1, and 212 helicopters.

The FAA has determined that this proposed regulation involves 821 aircraft. It is anticipated that 5 helicopters per year will require replacement of the main rotor mast and trunnion at an annual cost of approximately $51,250 for five helicopters. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to Model 204B, 205A, 205A–1, and 212 helicopters certificated in any category. (Airworthiness Docket No. 87–ASW–63)

Compliance is required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor mast, P/N 204–011–105–450 (all dash numbers), and main rotor trunnion, P/N 204–011–450 (all dash numbers), and main rotor trunnion, P/N 204–011–105–001, which could result in a catastrophic failure of the main rotor system and subsequent loss of the helicopter, accomplish the following:

(a) Within 10 days after the effective date of this AD, create a historical service record for the main rotor mast, P/N 204–011–105–001, and record the time in service accumulated on the main rotor mast and trunnion. If the time in service cannot be determined, enter 900 hours for each year from the date the mast and trunnion were installed.

(b) For masts and trunnions with more than 14,000 hours' time in service on the effective date of this AD, remove the masts and trunnions from service within the next 100 hours' time in service.

(c) For masts and trunnions with less than 14,900 hours' time in service on the effective date of this AD, remove the masts and trunnions from service at 15,000 hours' time in service.

(d) If the mast and trunnion are installed on the Model 205A or 205A–1 and used for high frequency external load operations, the time in service must be determined as follows:

(1) For 1 to 20 external load lift events per hour, 1 hour time in service must be entered on the historical service record.

(2) For 21 or more external load lift events per hour, 2 hours' time in service must be entered on the historical service record.

(e) If the mast and trunnion are installed on the Model 212 and used for high frequency external load operations, the time in service must be determined as follows:

(1) For 1 to 9 external load lift events per hour, 2 hours' time in service must be entered on the historical service record.

(2) For 10 to 17 external load lift events per hour, 3 hours' time in service must be entered on the historical service record.

(3) For 18 or more external load lift events per hour, 5 hours' time in service must be entered on the historical service record.

(f) Compliance with Bell Helicopter Textron, Inc., Alert Service Bulletin 204–87–15, Rev. A, dated 8/21/87; 205–87–26, Rev. A, dated 8/21/87; or 212–87–44, Rev. A, dated 8/21/87, as applicable, is an acceptable means of compliance with this AD.

(g) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas 76193–0170.

Issued in Fort Worth, Texas, on March 18, 1988.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 88–7697 Filed 4–7–88; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

23 CFR Part 1309

[Docket No. 82–18; Notice 11]

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes revisions to the agency's regulation implementing section 408 of the Highway Safety Act of 1966, relating to the criteria States must meet to be eligible for alcohol incentive grants. The agency believes some portions of the regulation are unnecessarily restrictive in defining the manner in which a State may demonstrate compliance with the statutory criteria. This action is intended to increase flexibility for the States, by establishing alternative methods of demonstrating compliance with the section 408 criteria to qualify for alcohol incentive grant funds. The agency requests comments on the proposed changes discussed in this notice.

DATES: Comments must be received by May 9, 1988. The rule will be effective upon publication of the final rule in the **Federal Register.**

ADDRESS: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, NTS–01, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1755; or Ms Heidi L. Coleman, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The 408 program was enacted in 1982, under 23 U.S.C. 408 (Pub. L. 97–364), as a two-tier grant program, providing Federal funds (basic and supplemental grants) to States that qualify by implementing certain programs designed to reduce the drunk driving problem. The amount received as a basic grant equals 30 percent of the State's FY 1983 highway safety grant (section 402) apportionment. The amount received as a supplemental grant may not exceed 20 percent of the State's FY 1983 section 402 apportionment. Section 402 apportionments are made to the States under a grant program established by the Highway Safety Act of 1966, 23 U.S.C. 402, to aid the States in conducting highway safety programs.

In 1984, section 408 was amended, Pub. L. 98–363, to expand the scope of the 408 program to include programs to combat drugged driving as well as drunk driving and to establish a third grant for which States may qualify (special grants) to encourage the States to enact tough minimum sentencing standards. The amount received as a special grant may not exceed 5 percent of the State's FY 1984 sections 402 and 408 apportionments.

Under the 1982 Act, States could receive section 408 incentive grants in no more than three fiscal years. (The 1984 amendment did not affect this period.) Section 203 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, amended section 408 by extending from three to five, the number of fiscal years in which a State may receive section 408 incentive grants.

Section 408 Criteria

To be eligible for funding under section 408 of the Act, each State must meet certain requirements. The statutory criteria include, for basic grants, that the State provide "for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender of the

driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committee an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer."

The State must also provide that: Repeat offenders receive a mandatory sentence of 48 consecutive hours imprisonment or 10 days of community service; a BAC of 0.10% is established as illegal per se; and increased efforts or resources are dedicated to the enforcement of alcohol-related laws and increased efforts are used to inform the public of this enforcement.

Under the statute, a State is not eligible for a supplemental grant unless it is first eligible for a basic grant, and in addition provides for some or all of the criteria established by the Secretary of Transportation. By regulation, a total of twenty-two supplemental criteria have been promulgated.

To be eligible for a special grant, section 408 of the Act requires that a State must enact a statute which provides for specific minimum sentencing requirements with regard to both license suspensions and terms of imprisonment or community service.

The agency has promulgated regulations, which are codified in 23 CFR Part 1309, to define the statutory criteria and to specify how States are to demonstrate compliance with the criteria.

The section 408 program has had a significant impact on the legislative and operational progress in State programs. Through their efforts to qualify for section 408 funding and the activities funded with alcohol incentive grants, States have made progress in terms of both program improvements and reductions in the proportion of fatalities that involve intoxicated drivers. No State has been able to qualify for funding under the section 408 program, however, since November 1985. While many States have faced difficulties in qualifying for section 408 grants due to the stringency of the statutory criteria, others have had difficulties with the details of the regulatory criteria for demonstrating compliance.

We are not authorized to modify the statutory requirements. The agency can, however, consider amending certain requirements that have been established by regulation.

For example, as noted above, section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for the prompt suspension for a period of not less than 90 days of the driver's license of any first offender who refuses to submit to a chemical test to determine whether the individual was intoxicated while operating a motor vehicle. These individuals are known as "first refusers," in order to distinguish them from other first offenders who submit to, and fail, a chemical test for alcohol. The regulation states that, to demonstrate compliance, a State must submit both a copy of the law or regulation implementing this requirement and a statistically valid sample providing certain necessary data. A number of States that have made significant improvements in their programs to combat drunk and other drug impaired driving have failed to qualify for section 408 grant funding. For example, notwithstanding general agreement that Illinois has an outstanding drunk and other drugged driving program, the agency determined that the State does not qualify for section 408 grant funds because it has been unable to demonstrate compliance with this criterion in accordance with the regulation. In response to the agency's determination, the State of Illinois suggested that we should allow States to demonstrate compliance with this requirement by showing that first refusers receive a hard driver's license suspension for an *average* of 90 days.

The agency has decided to begin this rulemaking as a result of the Illinois application for section 408 funding and subsequent correspondence with the agency. We intend to review not only the portion of our regulation which Illinois has highlighted, but also other aspects of the rule, seeking to provide as much flexibility to the States as the statute permits, while maintaining the statutory criteria to ensure that States that qualify under the section 408 program have effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. In particular, we believe that we can provide significant flexibility by providing alternative methods for States to demonstrate compliance with the Section 408 criteria. This proposal to add alternative compliance schemes, the agency believes, will go a long way toward easing the qualification difficulties faced by many States. We are indebted to the State of Illinois for bringing this problem to our attention, and we will welcome comments from all interested parties. We are particularly interested in hearing from States that are currently participating in, or that believe they may be able to become qualified for funding under, the section 408 program.

In this proposal, the agency will explore ways in which we propose to relax the regulatory conditions, while continuing to remain within the statutory framework. The agency invites all interested parties to comment on the proposals set forth below.

It would be particularly helpful for the agency to receive comments from States interested in qualifying for section 408 funds, regarding whether the changes being proposed would in fact help them to qualify. We are also interested in receiving comments from interested parties regarding whether it is believed the proposed changes would affect the effectiveness of States' programs to reduce drunk and other drug impaired driving. If the agency determines that any of these proposed changes could adversely affect the effectiveness of State programs, we may decide at the final rule stage, not to adopt some or all of the changes proposed in this notice. Alternatively, we may adopt requirements which are less stringent than those which are currently in our regulation, but which are stricter than those now being proposed.

The agency would also consider making changes which have not been specifically proposed in this notice, in response to suggestions received in the comments. We encourage respondents to examine the agency's regulation to determine whether the amendment of other sections would assist States in qualifying for section 408 grants. For example, we request comments regarding the definition of "prompt," the certification requirements, and the requirements to qualify for a special grant. In addressing the possibility of making other amendments, commenters should keep in mind that the agency can not consider amending portions of the regulation which reflect statutory requirements, and that we must continue to qualify only States that have effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance.

Proposed Regulatory Changes

(1) Definition of Imprisonment

States have, on a number of occasions in the past, requested clarification regarding the definition of the term "imprisonment" in § 1309.3(c) of the regulation. This section currently defines the term to mean "confinement in a jail, minimum security facility or in-patient rehabilitation or treatment

center." The agency recognizes that some States are faced with serious problems involving overcrowded prisons. To address these problems, some States resort to using somewhat unconventional quarters, such as community corrections facilities, hotels or other buildings, as minimum security facilities. As long as individuals are in fact detained in them for the requisite period of time, the agency agrees that confinement in these quarters meets the definition of "imprisonment." We propose to amend the definition of the term to clarify its meaning. States should note, however, that the agency does not consider time spent at work under a work release program, to constitute detention or confinement. In other words, an individual must serve 48 consecutive hours within the confines of the work release center, to meet the requirement that the State provide that persons convicted of driving while intoxicated more than once in any five year period, who are sentenced to imprisonment (rather than community service), must be *confined* for a 48 *consecutive* hour period.

We invite comments on whether "house arrest", or at home detention, by electronic or other means should constitute imprisonment under the agency's regulation. It would assist the agency for comments to include information on the types of house arrest systems currently in place, the manner in which they are operated, technical or other problems experienced with these systems and any techniques discovered for overcoming these problems, the approximate number of offenders in each house arrest program and the approximate period of time offenders are detained in this manner.

(2) Use of a Restricted, Provisional or Conditional License

Under the definition of the terms "suspension" or "revocation" in the agency's regulation, 23 CFR 1309.3(f), a first offender's 90 day suspension may include "a minimum of 60 days of a restricted, provisional or conditional license" as long as the offender is temporarily debarred of all driving privileges for a minimum of the first 30 days. No period of the 90 day license suspension for a first refuser, or of the one year license suspension for repeat offenders or repeat refusers may be subject to a restricted, provisional or conditional license.

The regulation limits the purposes for which a restricted, provisional or conditional license may be issued to first offenders. For example, a conditional license may be issued for individuals to drive between their residence and place of employment, but may not be issued for individuals to drive between their residence and place of study. The agency believes that this condition may be unnecessary, and proposes to eliminate the the limitation. To ensure that the availability of restricted, provisional or conditional licenses does not undermine license suspension requirements in a State, however, we propose to retain the condition that these licenses can only be issued in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender. The agency proposes also to amend this section to clarify that guidelines need not be published where the State has a law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued.

(3) Certification Requirements

The agency proposes to eliminate two procedural barriers which were established by regulation. Specifically, we propose to strike from § 1309.4(a)(2)(i), the requirement that States must provide information showing active implementation of criteria during the four years prior to applying for a grant when the certification is based upon prior adoption of a criterion. The agency also proposes to delete the word "existing" from § 1309.4(a)(2)(iii), thereby permitting States to maintain aggregate expenditures, in accordance with the statute, based not only on existing alcohol traffic safety programs, but also on innovative activities. Neither of these requirements was created by statute, and the agency does not believe they contribute meaningfully to the purpose of the 408 program.

The agency also proposes to amend § 1309.4(a)(2) to reflect that State certifications are to be submitted to NHTSA. We will take responsibility for directing certifications to the appropriate office within the agency.

(4) Demonstrating Compliance With the Prompt Suspension Requirement

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for the prompt suspension of the driver's license of any person who commits an alcohol-related offense, including the refusal to submit to a chemical test. The license suspension must be for a period of not less than 90 days for first offenders. First offenders include both individuals who are determined to be intoxicated while operating a motor vehicle as a result of a chemical test and those who refuse to submit to a chemical test. The suspension must not be less than one year for repeat offenses (including both repeat failures and repeat refusals). The agency's regulation implementing this requirement provides in § 1309.3(f) that, for first offenses (other than refusals), the first 30 of the 90 days must be a "hard" suspension, under which no conditional license may be made available; for first refusals, all of the 90 days must be a "hard" suspension. Section 1309.5(a)(2) of the regulation provides that, to demonstrate compliance, a State must submit both a copy of the law or regulation implementing this requirement and a statistically valid sample providing certain necessary data.

As explained earlier in this notice, the State of Illinois has suggested that the agency should allow States to demonstate compliance with this requirement by showing that first refusers receive a hard driver's license suspension for an *average* of 90 days. The agency proposes to amend the regulation to make the change which Illinois requests. In addition, we believe other changes may assist additional States to demonstrate compliance with the section 408 criteria, while remaining within the statutory framework.

The agency proposes to adopt a new format for demonstrating compliance with this criterion, which would allow each State to choose whether to base its application on either the text of a complying law (including a regulation or binding policy directive) or on data demonstrating that the State in fact complies with the prompt suspension criterion. The amount of information would also depend upon whether the State is applying for first or subsequent year funding.

Under this proposed format, the agency would consider a State to be a "Law" State if the terms of the State's statutes or regulations, on their face, meet each element of the prompt license suspension criterion. We would also accept a binding policy directive implementing or interpreting existing laws or regulations which, on its face, meets each element of this criterion.

To comply with this criterion in the first year it receives a basic grant, a "Law" State would be required to submit only the law, regulation or binding policy directive itself; the State would not be required to submit any data in that year. To comply with this criterion in subsequent years, the State would be required to submit data demonstrating that the average time from arrest to suspension of a driver's license either does not exceed 45 days

or that it does not exceed 90 days and the State would need to submit a plan showing how it intends to achieve a 45 day average. In subsequent years, the State would also be required to submit data on the actual license suspension terms (specifically, the duration of court ordered suspensions), but the agency would accept data showing that the State meets an average of these terms, or a plan to achieve these averages.

For example, with regard to a first offender (other than a refuser), the State would need to show that all driving privileges are temporarily debarred for an average term of 90 days, or for an average term of 30 days followed immediately by the use of a restricted, provisional or conditional license for an average term of 60 days (or the State would need to submit a plan showing how it intends to achieve these averages). In addition, the State would need to show that the average time from arrest to suspension does not exceed an average of 45 days (or does not exceed an average of 90 days, and the State would need to submit a plan showing how it intends to achieve a 45 day average). Data showing the average license suspension terms must include only the period of time actually ordered by the State. For example, the data must not reflect the period of time during which an individual is eligible to reapply for a driver's license, but simply fails to do so. In addition, the data must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

States that do not qualify as "Law" States will be called "Data" States. To comply with this criterion, these States would be required to submit data both in the first and in subsequent years. The State would be required to submit data demonstrating that the average time from arrest to suspension of a driver's license either does not exceed 45 days or that it does not exceed 90 days and the State would need to submit a plan showing how it intends to achieve a 45 day average. The State would also be required to submit data on the license suspension terms. The agency would accept data showing that the State meets an average of the terms. A Data State would not have the option of submitting a plan showing how it intends to achieve these averages. Data showing the average license suspension terms must include only the period of time actually ordered by the State. The data must include license suspension terms only to the extent they are actually completed. The State would be permitted to submit data based on a representative sample.

Every element of the prompt suspension requirement must be met on the face of the State's law, regulation or binding policy directive, if it is to be considered a "Law" State. If the law, regulation or binding policy directive which qualified a State as a "Law" State in a previous year is changed, repealed or otherwise made no longer binding, so that any element of this requirement is no longer being met, the State will be treated as a "Data" State in subsequent years. Until the law, regulation or policy directive is reinstated, the State would no longer have the option of submitting a plan to achieve an average of license suspension terms to demonstrate compliance with the prompt suspension requirement for subsequent year basic grants.

Since the agency is providing increased flexibility by permitting States to show compliance through averages, we will be able to accept absolutely no deviations from States that qualify based on data. For example, to demonstrate compliance with the 90 day license suspension term for first offenders (including both failures and refusers), a State submitting data which shows an 89 day average would not be eligible for funding. The agency believes this is consistent with section 408 of the Act. We recognize that to meet the averages strictly, some offenders may have to receive a suspension term longer than is prescribed in the Federal statute.

We believe this new format would provide increased flexibility to assist States in qualifying for section 408 grant funds, while continuing to ensure that only States with effective programs to reduce drunk and other drug impaired driving are accepted. It would also provide an incentive to States to adopt the requirements of this criterion in either their laws, regulations or binding policy directives, by requiring less data of such States.

The changes proposed in this discussion would require amendments to §§ 1309.3(d), 1309.3(f) and 1309.5(a).

(5) Demonstrating Compliance With the Mandatory Sentence Requirement

Section 408 of the Act requires that, to be eligible for a basic grant, each State must provide, among other things, for a mandatory sentence, which shall not be subject to suspension or probation, of any person convicted of driving while intoxicated more than once in any five year period. The mandatory sentence must consist of either imprisonment for not less than 48 consecutive hours or not less than ten days of community service. The agency's regulation implementing this requirement provides in § 1309.5(b)(2) that, to demonstrate compliance, a State must submit both a copy of the law implementing this requirement and a statistically valid sample providing certain necessary data.

The agency proposes to adopt an approach for demonstrating compliance with this criterion, similar to the one described above with regard to the prompt suspension criterion. We propose to allow each State to choose whether to base its application on either the text of a complying law (including a regulation or binding policy directive) alone or on a combination of the State's law and data demonstrating that the State in fact complies with certain aspects of the mandatory sentence criterion. However, since the statute requires specifically that States shall provide for mandatory sentences which are not subject to suspension or probation, the agency does not believe it has the discretion to permit States to demonstrate compliance with this criterion by means of overall averages.

As we described under the prompt suspension criterion, the agency would consider a State to be a "Law" State under this criterion if the terms of the State's statutes or regulations, on their face, meet each element of the mandatory sentence criterion. We would also accept a binding policy directive implementing or interpreting existing laws or regulations which, on its face, meets each element of this criterion. In particular, the law, regulations or binding policy directives must provide specifically that 48 hours of the term of imprisonment must be served consecutively. Alternatively, a State could provide that all persons covered by this criterion are subject to not less than ten days of community service.

To comply with this criterion both in the first and in subsequent years it receives a basic grant, a "Law" States would be required to submit only the law, regulation or binding policy directive itself; the State would not be required to submit any data.

To comply with this criterion, States that do not qualify as "Law" States ("Data" States) would also be required to have a law, regulation or binding policy directive which meets each element of the mandatory sentence criterion, with one exception: it would not need to provide specifically that the 48 hour term of imprisonment must be

served consecutively. In addition, these States would be required to submit data both in the first and in subsequent years, demonstrating substantial compliance with the consecutiveness requirement. The agency would accept data based on a representative sample. By representative sample, the agency means that data should be obtained from all communities in the State or from a sample of communities representative of the State as a whole.

The consecutiveness element of the imprisonment requirement and all other elements of the mandatory sentence criterion must be met explicitly in a State's law, regulation or binding policy directive, if it is to be considered a "Law" State. If the law, regulation or binding policy directive which contains the consecutiveness element is changed, repealed or otherwise made no longer binding, causing that element to no longer be met, the State will be treated as a "Data" State in subsequent years. Until the law, regulation or policy directive containing that element is reinstated, the State would be required to submit data demonstrating compliance with the consecutiveness requirement, in addition to its law, regulation or binding policy directive containing the other elements of this criterion, for subsequent year basic grants. If the law, regulation or binding policy directive which contains the other elements of this criterion is changed, repealed or otherwise made no longer binding, causing any of these elements to no longer be met, the State will become ineligible for section 408 funds under this criterion.

We believe this new approach would provide increased flexibility to assist States in qualifying for section 408 grant funds, while continuing to ensure that only States with effective programs to reduce drunk and other drug impaired driving are accepted. It would also provide an incentive to States to adopt the requirements of this criterion in either their laws, regulations or binding policy directives, by permitting States that do so to avoid submitting data in order to qualify for first and for subsequent year basic grants, under this criterion.

(6) Promptness Requirement for Supplemental Grants

To demonstrate that its license suspensions occur "promptly" under the first criterion for a basic grant, States must show, in accordance with § 1309.(d) of the agency's regulation, that "the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State must submit a plan showing how it intends to achieve a 45 day average." (Elsewhere in this notice, we propose to change this language. However, its meaning would be retained in §§ 1309.3(d), 1309.5 (a)(2)(ii) and (a)(3)(i).) The regulation, however, in § 1309.6 (a) and (c)(1), creates a more stringent promptness standard in order for States to qualify for supplemental grants. These subsections require the State to have an average time from date of arrest to suspension of a license which does not exceed 45 days.

This criterion goes beyond what is required by statute. In this regard, section 408 of the Act requires only that the State "is eligible for a basic grant." Accordingly, the agency proposes to remove this more stringent requirement regarding promptness.

(7) Miscellaneous Amendments

The agency also proposes two miscellaneous amendments to correct typographical errors which currently appear in the regulation.

Comments

Interested persons are invited to comment on this proposal. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by May 9, 1988. The agency has not provided a longer comment period because it wishes to make these less stringent requirements available to the States before the end of the current fiscal year. In order to expedite the submission of comments, simultaneous with the issuance of this notice NHTSA will mail copies to all Governors and Governors' Representatives for Highway Safety.

All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 82-18; Notice 11 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Federalism Assessment

The agency has considered whether this action would have any federalism implications. We have determined that this proposal would further the principles of federalism established by the Framers of the Constitution while striking an appropriate balance between increased State flexibility and an appropriate level of Federal involvement as required by the enabling legislation for this grant program. The involvement of alcohol and controlled substances in our motor vehicle fatalities does constitute a problem of national scope, and for this reason, Congress directed the agency to make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. In this NPRM, we propose to provide more flexibility to the States, by removing some of the procedural barriers to their qualification for incentive grant funds which were established by regulation, while retaining the requirements and the purpose of the section 408 statute.

Economic and Other Effects

NHTSA has analyzed the effect of this section and has determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. State participation in the 408 program is voluntary. Accordingly, neither a draft Regulatory Analysis nor a Preliminary Evaluation is required.

When the agency promulgated regulations to implement the section 408 program on February 7, 1983 (48 FR 5545), it determined that the rulemaking should be classified as significant under the Department's regulatory policies and procedures. A regulatory evaluation was prepared at that time and placed in the public docket (Docket No. 82-18; Notice 5). Persons interested in in reviewing this document, should request it from the docket section.

In compliance with the Regulatory Flexibility Act, the agency has evaluated the effects of this rule on small entities. Based on the evaluation, I certify that this rule will not have a significant economic impact on a

substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

The requirements in this proposal that States retain and report to the Federal government information which demonstrates compliance with alcohol incentive grant criteria, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through April 30, 1990; OMB No. 2127–0501.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that this action will not have any effect on the human environment.

List of Subjects in 23 CFR Part 1309

Alcohol, Drugs, Grant programs, Transportation, Highway safety.

In accordance with the foregoing, NHTSA proposes the amendment of Part 1309 of Title 23 of the Code of Federal Regulations as follows:

PART 1039—[AMENDED]

1. The authority citation for Part 1309 would continue to read as follows:

Authority: 23 U.S.C. 408; delegation of authority at 49 CFR 1.50.

§ 1309.3 [Amended]

2. Section 1309.3(c) would be revised to read as follows:

(c) "Imprisonment" means confinement in a jail, minimum security facility, community corrections facility, in-patient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

3. Section 1309.3(d) would be revised to read as follows:

(d) "Prompt" means that the period of time from arrest to suspension of a driver's license does not exceed 45 days.

4. Section 1309.3(f)(1) would be revised to read as follows:

(f) * * *

(1) For first offenses (other than refusals), the temporary debarring of all driving privileges for a term of not less than 90 days, or not less than 30 days followed immediately by a term of not less than 60 days of a restricted, provisional or conditional license. A restricted, provisional or conditional license may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which a restricted, provisional or conditional license may be issued or with Statewide published guidelines and in exceptional circumstances specific to the offender.

5. Section 1309.3(f)(2) would be revised to read as follows:

(f) * * *

(2) For refusal to take a chemical test for first offenses, the temporary debarring of all driving privileges for a term of not less than 90 days.

6. Section 1309.3(f)(3) would be revised to read as follows:

(f) * * *

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for a term of not less than one year or longer, subject to the requirements of § 1309.5, or § 1309.7 as appropriate.

§ 1309.4 [Amended]

7. Section 1309.4(a)(2) introductory text would be amended by removing the phrase "Office of Alcohol and State Programs, NTS–20," which appears before the word "NHTSA". Paragraph (a)(2)(i) of that section would be amended by removing the period at the end of the first sentence, and in its place inserting a comma, and by removing in its entirety the second sentence which begins "If the certification" and ends with the words "application for a grant,". Paragraph (a)(2)(iii) of that section would be amended by removing the word "existing" which appears prior to the phrase "alcohol traffic safety programs".

§ 1309.5 [Amended]

8. Section 1309.3(a)(2) would be revised to read as follows:

(a) * * *

(2)(i) To demonstrate compliance in the first fiscal year the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulation, which provides for each element of the prompt license suspension requirement.

(ii) To demonstrate compliance in subsequent fiscal years the State receives a basic grant, a Law State shall submit, in addition to the information identified in § 1309.5(a)(2)(i), data showing the number of licenses suspended, that the average length of the suspension terms for first-time and repeat offenders (including those who refuse to submit to a chemical test) meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not include license suspension periods which exceed the terms actually prescribed by the State, and must reflect terms only to the extent that they are actually completed. If the State's data do not meet the average license suspension terms defined in § 1309.3(f), the State can demonstrate compliance with this element by submitting a plan showing how it intends to achieve these averages. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(iii) For the purpose of this paragraph (a), "Law State" means a State that has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the prompt license suspension criterion.

9. A new § 1309.5(a)(3) would be added to read as follows:

(3)(i) To demonstrate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit data showing the number of licenses suspended, that the average length of the suspension terms for first-time and repeat offenders (including those who refuse to submit to a chemical test) meets the terms defined in § 1309.3(f) and that the average number of days it took to suspend the licenses from date of arrest meets the definition for promptness in § 1309.3(d). The State can provide the necessary data based on a representative sample. Data on the average length of the suspension term must not reflect license suspension periods which exceed the terms actually prescribed by the State, and must only reflect terms to the extent that they are actually completed. If the State's data do not meet the average promptness requirement defined in § 1309.3(d), the State can demonstrate compliance with this element by submitting data showing that the average time from arrest to suspension of a driver's license does not exceed 90 days and a plan showing how it intends to achieve a 45 day average.

(ii) For the purpose of this paragraph (a), "Data State" means a State that

does not meet the definition of "Law State" in § 1309.5(a)(2)(iii).

10. Section 1309.5(b)(2) would be revised to read as follows:

(b) * * *

(2)(i) To demonstate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Law State shall submit a copy of the law, regulation or binding policy directive implementing or interpreting the law or regulations, which provides for each element of the mandatory sentence criterion.

(ii) For the purpose of this paragraph (b), "Law State" means that the State has a law, regulation or binding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, including the requirement that the 48 hour term of imprisonment must be served consecutively.

11. A new § 1309.5(b)(3) would be added to read as follows:

(b) * * *

(3)(i) To demonstate compliance in the first and in subsequent fiscal years the State receives a basic grant, a Data State shall submit, in addition to the information identified in § 1309.5(b)(2)(i), data showing that it substantially complies with the consecutiveness requirement. The State can provide the necessary data based on a representative sample.

(ii) For the purpose of this paragraph (b), "Data State" means a State that has a law, regulation or biding policy directive implementing or interpreting an existing law or regulation which provides for each element of the mandatory sentence criterion, except that it need not specifically provide that the 48 hour term of imprisonment must be served consecutively.

12. Section 1309.5(b)(1) would be amended by removing the word "or" the second place it appears, and by inserting in its place the word "of".

§ 1309.6 [Amended]

13. Sections 1309.6(a) and 1309.6(c)(1) would be amended by removing the words which appear in each paragraph following the phrase "license suspension system", and by inserting in their place the words "which meets the requirements of § 1309.5, and".

14. Section 1309.6(b) introductory text would be amended by removing the word "a" which appears after the phrase "Have in place", and by inserting in its place the word "and".

Issued on April 4, 1988.

Diane K. Steed,

National Highway Traffic Safety Administrator.

[FR Doc. 88-7650 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 785 and 823

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Prime Farmland

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

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI), is extending the comment period it reopened on March 23, 1988 (53 FR 9453) on the issue of allowing the creation of water bodies within permit areas containing prime farmland.

DATE: Written Comments; OSMRE will accept written comments on the proposed rule until 5 p.m., Eastern time, on May 12, 1988.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dermot M. Winters, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: On March 25, 1987 (52 FR 9644), OSMRE issued a proposed rulemaking which included an 'exemption' for water bodies created on permit areas containing prime farmland. That proposed rulemaking provided an exemption from the prime farmland standards for water bodies where the total acreage of prime farmland would not be decreased in the permit area. Under that proposed rule, but subject to the approval of the regulatory authority, an operator would be able to install a water body on an area that prior to mining contained prime farmland soil. This would only apply where the prime farmland soils obtained from the excavation of the water body were utilized to reconstruct an equal amount of prime farmland on areas which were not prime farmland areas prior to mining.

On March 23, 1988 (53 FR 9453) the public comment period on the water bodies issue was reopened for 30 days. In announcing the reopening, OSMRE stated it no longer believed that an exemption to the prime farmland rules was necessary to allow operators to create water bodies within permit areas containing prime farmland so long as the aggregate premining prime farmland acreage within the permit area is retained. The shifting of prime farmland soils from a premining location to a post-reclamation location within the permit area is currently authorized and could properly be considered part of normal practice in restoring prime farmland.

A written request from the American Mining Congress to extend the reopened comment period on the water bodies issue in order to afford its members additional time to prepare their comments has been received by OSMRE. As a result, OSMRE is extending the comment period until May 12, 1988, and will accept written comments on the water bodies issue from all interested parties until 5 p.m. Eastern time on that date.

All comment responses should be sent to the OSMRE Administrative Record at the location specified above under "**ADDRESSES**".

List of Subjects in CFR 30 Part 702

Administrative practice and procedures, Surface mining, Underground mining.

Date: April 5, 1988.

Richard O. Miller,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88-7752 Filed 4-7-88; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR PART 111

Mail Disputes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would remove an ambiguity in postal regulations concerning the disposition of mail while claimed by two or more parties. During

proceedings to resolve the dispute, the mail is to be held by the postmaster.

DATE: Comments must be received on or before May 9, 1988.

ADDRESS: Written comments should be mailed or delivered to the Associate General Counsel, Office of Field Legal Services, Law Department, U.S. Postal Service, 475 L'Enfant Plaza W., SW, Washington, D.C. 20260–1125. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 6015, at the above address.

FOR FURTHER INFORMATION CONTACT: William P. Bennett, (202) 268–2966.

SUPPLEMENTARY INFORMATION: On August 5, 1987, the Postal Service published in the **Federal Register** (52 FR 29011) a final rule amending the Domestic Mail Manual, section 153.72, to provide for final disposition of mail disputes by the Judicial Officer Department of the Postal Service in cases where neither the postmaster nor regional counsel is able to resolve the matter by less formal means. These regulations provide that when disputants cannot agree as to which one should receive delivery of the mail or who should act as a receiver, the postmaster shall resolve the dispute based upon the evidence supplied by the parties. If the postmaster is unable to make such a determination, the matter is forwarded to the regional counsel for informal resolution. If the regional counsel, after five working days or such additional time as may be agreed to by all parties, is unable to reach an informal resolution, and has not ordered the mail returned to sender, then the matter is forwarded to the Judicial Officer Department for decision in accordance with the rules of procedure of that department.

Currently, there is no explicit direction to postmasters as to the disposition of disputed mail while the matter is pending before the Judicial Officer Department. This lack of direction has led to uncertainty among postmasters. The Postal Service accordingly proposes to amend the Domestic Mail Manual to state that the disputed mail would be held by the postmaster until such time as notice of final disposition is received from the Judicial Officer Department. A new sentence would be added at the end of DMM 153.72, stating specifically that a postmaster must hold the disputed mail in such circumstances until the Judicial Officer's decision appears.

Although exempt by 30 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comments on the following proposed revisions of part 153 of the Domestic Mail Manual which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

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

PART 153—CONDITIONS OF DELIVERY

2. In 153.7, revise .72 to read as follows:

153.7 Conflicting Orders by Two or More Parties for Delivery of Same Mail.

* * * * *

.72 Reference to Regional Counsel or Judicial Officer Department. Where the disputing parties are unable to select a receiver, they shall furnish to the postmaster all available evidence on which they rely to exercise control over the disputed mail. If after receipt of such evidence, the postmaster is still in doubt as to who should receive the mail, the postmaster will submit the case to the regional counsel for informal resolution. If after five working days, or such additional time as may be agreed to by all parties, no informal resolution is achieved and no order has been made by regional counsel to return the mail to sender, then regional counsel shall forward the case file to the Judicial Officer Department for decision in accordance with the rules of procedure of that department. If a dispute is referred to the Judicial Officer Department, the postmaster shall hold the disputed mail until such time as notice of final disposition is received from the Judicial Officer.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–7735 Filed 4–7–88; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3362–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for Ozone. The revision pertains to control of volatile organic compound (VOC) emissions from large petroleum dry cleaners in the Illinois portions of ozone attainment demonstration areas for Chicago and St. Louis, Missouri. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by May 9, 1988.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On June 25, 1987, the State of Illinois submitted a regulation to control VOC emissions from large petroleum dry cleaners located in the Illinois ozone demonstration areas.

This regulation is applicable to sources located in the following Illinois counties: Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair, and Will. What follows is a summary of the provisions of the regulation, including USEPA's evaluation of each provision, and USEPA's proposed approval and solicitation of public comment.

Review of Illinois' Large Petroleum Dry Cleaning Regulation

A. Section 215.607—Standards for Petroleum Solvent Dry Cleaners

(a) The owner or operator of a petroleum solvent dry cleaning dryer shall either:

(1) Limit emissions of volatile organic material to the atmosphere to an average of 3.5 kilograms of volatile organic material per 100 kilograms dry weight of articles dry cleaned, or

(2) Install and operate a solvent recovery dryer in a manner such that the dryer remains closed and the recovery phase continues until a final solvent flow rate of 50 milliliters per minute is attained.

(b) The owner or operator of a petroleum solvent filtration system shall either:

(1) Reduce the volatile organic material content in all filtration wastes to 1.0 kilogram or less per 100 kilograms dry weight of articles dry cleaned, before disposal, and exposure to the atmosphere, or

(2) Install and operate a cartridge filtration system, and drain the filter cartridges in their sealed housings for 8 hours or more before their removal.

Evaluation

The two alternative dryer limits above are both consistent with the model regulation in Appendix E of the September 1982 Control Technique Guideline (CTG) document titled "Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners". These dryer limits are, therefore, approvable. The two solvent filtration system control alternatives are also equivalent to those in the CTG. These control alternatives are, therefore, approvable.

B. Section 215.608—Operating Practices for Petroleum Solvent Dry Cleaners

In order to minimize fugitive solvent emissions, the owner or operator of a petroleum solvent dry cleaning facility shall employ good housekeeping practices including the following:

(a) General Housekeeping Requirements.

(1) Equipment containing solvent (washers, dryers, extractors and filters) shall remain closed at all times except during load transfer and maintenance. Lint filter and button trap covers shall remain closed except when solvent-laden material is being removed.

(2) Cans, buckets, barrels and other containers of solvent or of solvent-laden material shall be covered except when in use.

(3) Solvent-laden material shall be exposed to the atmosphere only for the minimum time necessary for load transfer.

(b) Installation and Operation of Equipment.

(1) All cartridge filters shall be installed and operated in accordance with the procedures and specifications recommended by the manufacturer for the cartridge filter. After installation, the cartridges shall be inspected, monitored and maintained in accordance with the manufacturer's recommendation; and

(2) Vents on containers for new solvent and for solvent-containing waste shall be constructed and maintained so as to minimize solvent vapor emissions. Criteria for the minimization of solvent vapor emissions include the elimination of solvent buckets and barrels standing open to the atmosphere, and the repair of gaskets and seals that expose solvent-rich environments to the atmosphere, to be determined through visual inspection.

Evaluation

These operating practices constitute prudent measures which will reduce VOC emissions. These operating practices go beyond the requirements in the CTG and are, therefore, approvable.

C. Section 215.609—Program for Inspection and Repair of Leaks

(a) The owner or operator of a petroleum solvent dry cleaning facility shall conduct the following visual inspection on a weekly basis:

(1) Washers, dryers, solvent filters, settling tanks, vacuum stills and conveyors of petroleum solvent shall be inspected for visible leaks of solvent liquid.

(2) Pipes, hoses and fittings shall be inspected for active dripping or dampness.

(3) Pumps and filters shall be inspected for leaks around seals and access covers.

(4) Gaskets and seals shall be inspected for wear and defects.

(b) Leaks of petroleum solvent liquid and vapors shall be repaired within three working days of detection, unless necessary replacement parts are not on site.

(1) If necessary, repair parts shall be ordered within three working days of detection of the leak.

(2) The leak shall be repaired within three days of delivery of necessary parts.

Evaluation

Illinois' leak detection and repair program is very similar to the requirements in the CTG and is, therefore, approvable.

D. Section 215.610—Testing and Monitoring

(a) Compliance with §§ 215.607(b)(2), 215.608 and 215.609 shall be determined by visual inspection; and

(b) Compliance with §§ 215.607 (a)(2) and (b)(1) shall be determined by methods described in EPA–450/3–82–009 (1982) and does not include any later amendments or editions.

(c) If a control device is used to comply with § 215.607(a)(1), then compliance shall be determined using 40 CFR Part 60, Appendix A, Method 25 (1984) and does not include any later amendments or editions.

Evaluation

These test methods are consistent with the methods, for large petroleum dry cleaners, specified in the September 14, 1986, memorandum entitled "Volatile Organic Compound (VOC) Test Methods or Procedures for Source Categories in Groups I, II, and III Control Techniques Guidelines (CTG's)". This memorandum contains USEPA's recommended VOC test methods. Therefore, the testing and monitoring methods listed in Illinois' § 215.610 are approvable.

E. Section 215.611—Exemption for Petroleum Solvent Dry Cleaners

This rule is only applicable to sources with potential VOC emissions in excess of 100 tons per year. Sources whose operating permit conditions limit potential VOC emissions to 100 tons per year are exempt from these regulations.

Evaluation

This section is approvable because it is consistent with the CTG and USEPA guidance. It should be noted that Illinois requires petroleum solvent dry cleaners to obtain operating permits. The permit process is used to determine which sources are exempt from the requirements of this regulation.

F. Section 215.612—Compliance Dates and Geographical Areas

Sources in Cook, DuPage, Kane, Lake, Macoupin, Madison, McHenry, Monroe, St. Clair, and will Countries are required to achieve compliance no later than December 31, 1987.

Evaluation

This section is approved because it includes all of Illinois' ozone non-attainment areas, and it allows less than a year for sources to achieve final compliance and is, therefore, expeditious.

G. Section 215.613—Compliance Plan

This section requires sources subject to § 215.610(c) to submit compliance plans by May 31, 1987.

Evaluation

This section is approvable, as it will assist Illinois in the administration of this rule.

Proposed Rulemaking Action

USEPA's Evaluation finds that this regulation is consistent with the Large Petroleum Dry Cleaning CTG, as well as the revelant USEPA guidance on test methods and expeditiousness. USEPA, therefore, proposes to approve the incorporation of this regulation in the Illinois Ozone SIP.

Public comment is solicited on the proposed SIP revision and on USEPA's proposed approval of it. Public comments received by the date indicated above will be considered by USEPA in the development of its final rulemaking action.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporated by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: December 30, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88–7725 Filed 4–7–88; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[AD–FRL–3362–6]

Approval and Promulgation of Implementation Plans; Appendix F, Addition of Methods for Measurement of PM_{10}; Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking (ANPR).

SUMMARY: The EPA is planning to propose a test method for the determination of particulate matter (PM) with an aerodynamic diameter of 10 μm or less (PM_{10}) from stationary sources in a new Appendix F in 40 CFR Part 52. The publication of this method will provide a test procedure that EPA may use, if necessary, to enforce PM_{10} emission limits and will also provide States with an acceptable procedure for PM_{10} that States may choose to use in their State Implementation Plans (SIP's). The publication of the method is not intended to prescribe what PM_{10} test method a State must use, nor imply that a State must write emission limits specific to PM_{10} emissions.

The purpose of this ANPR is (1) to assist EPA in deciding which one of several methods under consideration is most acceptable for publication in the Federal Register, and (2) to solicit comments on the most acceptable approach to the measurement of condensible emissions, since available PM_{10} procedures do not measure condensibles.

DATE: Comments should be submitted on or before May 9, 1988.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–88–08, U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, D.C. 20460.

Docket. Docket No. A–88–08, containing materials relevant to this notice, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roy Huntley or Roger Shigehara, Emission Measurement Branch, Technical Support Division (MD–19), telephone number (919) 541–2237, or Joseph J. Sableski, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5697.

SUPPLEMENTARY INFORMATION: When EPA promulgated the PM_{10} National Ambient Air Quality Standard (NAAQS), "total suspended particulate matter" was replaced by PM_{10} as the basis for PM standards. Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410), specifies that States are to submit plans for EPA approval that provide for the attainment and maintenance of such standards through control programs directed at sources of the pollutants involved. In some cases, States may need to make provisions in their SIP's for a method that will measure specifically the emissions of PM_{10} from stationary sources.

Before the promulgation of the NAAQS for PM_{10}, when SIP's did not contain a stack test method for PM, EPA would use the appropriate method from Appendix A of 40 CFR Part 60 to determine emissions for compliance purposes. On August 29, 1986 (51 FR 31076), EPA proposed to amend 40 CFR 52.12(c) to allow EPA to use methods in Part 52 as well as Part 60 to measure emissions when the applicable SIP contains no suitable test methods.

The EPA is now considering proposing a method for measuring PM_{10} emissions in a new Appendix F to 40 CFR Part 52. There are three candidates under consideration: The first, Method F–2 [known as the Exhaust Gas Recycle (EGR) Procedure], uses a recycle loop to maintain a constant flow rate through a sizing device while maintaining isokinetic flow conditions. The second, Method F–2A [previously known as SIM–5 and called the Constant Flow Rate (CFR) Procedure in this notice], is similar to the interim method published in Appendix C of the PM_{10} SIP Development Guideline, EPA–450/2–86–001, June 1987. A third approach is the calculation of PM_{10} emissions from Method 5 or 17 data and a measured or assumed ratio of PM_{10} to total PM. For copies of both the EGR and the CFR Procedures, contact Roy Huntley, telephone number (919) 541–1060, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

One purpose of this notice is to solicit comments from interested persons as to which of the approaches should be published in the Federal Register as:

1. A method that EPA would use in those cases where the SIP contains a PM_{10} based emission standard and an approved method is not included in the SIP; and

2. An approved method that States could include in their SIP's if a PM_{10} method is needed.

As can be seen from the summaries of the methods, emission rates are measured at stack conditions or at 120 °C (248 °F), depending on the specific procedure. In some cases, significant amounts of PM_{10} may be in the gaseous

state at these temperatures, but condense to become PM when discharged and cooled in the ambient air. It is the consensus that these condensible emissions are in the PM_{10} size range and, therefore, are potential candidates for PM_{10} control.

A second purpose of this notice is to solicit comments from interested persons as to acceptable approaches to the measurement of condensible emissions.

Technical Problems in PM_{10} Source Emission Measurement

The PM_{10} standard is based on the aerodynamic behavior of particles. Therefore, the two types of inertial separators—cascade impactors and cyclones—are most appropriate. Although similar principles are involved, each has advantages and disadvantages.

Cascade impactors are best suited for determining multiple cut fractions of PM. Their technology is developed to the point that their performance can be predicted accurately from geometrical and flow considerations. However, each stage can collect only a few milligrams of PM before particle bounce adversely affects its performance. Because of the effect of particle bounce, the sampling time is relatively short.

Cyclones perform well as single stage collectors, do not suffer from problems due to particle bounce, and have the potential of collecting PM mass in the order of grams. However, current theories on cyclone operation are rudimentary and cannot predict accurately cyclone performance from geometrical and flow considerations. Therefore, cyclones must be calibrated empirically to determine the particle cut size (the aerodynamic particle diameter that has a 50 percent probability of penetration through the sizing device, also called D_{50}). Cyclones capable of collecting PM_{10} with acceptable sharpness of cut have been developed and are available for both the EGR and CFR procedures.

Sampling from stacks presents challenges when using inertial sizing devices. For example, the cut size is a function of the flow rate and viscosity of the gas flowing through the sizing device. Therefore, the flow rate through the sizing device must be kept at a constant, discrete value to maintain the cut size at 10 μm while extracting the sample isokinetically at each traverse point. The two PM_{10} methods offer different solutions to this problem.

The EGR Procedure

The EGR train samples isokinetically at the nozzle tip and recycles a filtered, dried portion of the exhaust sample gas back thrugh a single stage cyclone to maintain the constant flow rate required for a cut size of 10 μm. Isokinetic sampling is maintained by changing the recycle and sample flow rates. For example, if the stack gas velocity increases, the tester can increase the nozzle velocity to match the stack velocity by increasing the sample flow rate while simultaneously decreasing the recycle flow rate so that the total flow rate through the cyclone remains the same. Thus, the recycle capability of the EGR procedure permits the tester to sample isokinetically in the presence of variable stack gas velocities while maintaining a constant cut size of 10 μm in the cyclone.

The EGR sampling train includes a meter and flow control console to monitor and control the sample, recycle, and total flow rates throughout the sampling train. The nozzle is constructed to allow for the addition of recycle exhaust gas. The sampling protocol is similar to Method 5, 40 CFR Part 60, except that the required maximum number of points sampled in a stack is 12. Also, a total PM catch can be calculated by summing the PM_{10} catch and the cyclone catch.

The EGR sampling train is available commercially. However, only one company manufactures the train. The cost of the EGR train is approximately $10,000.

The CFR Procedure

The CFR procedure is similar to the interim PM_{10} method in the PM_{10} SIP Development Guideline. The only difference is that the sampling protocol of the interim method requires only four sampling points, while the CFR procedure requires an expanded number of sampling traverse points (8 to 12).

The CFR sizing device can be either a cyclone or a cascade impactor. In this procedure, a constant flow rate required for a 10 μm cut size is maintained throughout the sample traverse. The anisokinetic errors are kept within acceptable limits by specifying a permissible range of velocities for each sampling probe nozzle. The nozzle is selected such that its maximum velocity values bracket all of the actual sampling point velocities. Often only one nozzle is required to complete a sample run, but if the sampling point velocities vary beyond the specified range of any single nozzle, two or more nozzles and sampling trains would be required. A large selection of nozzles with small incremental differences in nozzle diameter increases the likelihood that the sample run can be completed with one nozzle and sampling train.

To add practicality to the procedure, the criteria for accepting the results in terms of isokinetic variation are more liberal than for the EGR procedure. Rather than the 10 percent allowed for the EGR procedure, an isokinetic variation of ±20 percent with all of the sampling points within the nozzle velocity limits or ±10 percent with no more than one sampling point outside the nozzle velocity limits are used. Because the inertial effects on the particles of interest are less than that on particles greater than PM_{10}, the effect of anisokineticity will be only slight for PM_{10}, but the total PM catch will not be as accurate as the EGR procedure.

The CFR procedure uses a standard Method 5 sampling train, two glass fiber filters, and an inertial sizing device (either a cyclone or a cascade impactor). The cascade impactors will have to be calibrated extensively for this procedure. The approximate cost of a calibrated impactor, precollector, and 11 nozzles is $8,000.

To account for one of the effects of sampling anisokinetically, the sampling time at each point is adjusted to be proportional to the velocity at that point to provide a velocity weighted sample.

Description of Possible Approaches to Measurement of PM_{10} Emissions

Consider Solids Only

Both Methods F–2 and F–2A use in-stack sizing devices and filters. Therefore, both methods determine PM_{10} as it occurs at stack temperatures. If stack temperatures are variable, condensible PM may cause the PM_{10} results to vary with temperature.

Include as PM_{10} Condensible Matter at a Reference Temperature

Both Methods F–2 and F–2A are written to include out-of-stack filters directly behind the probe maintained at a constant temperature of 120±14 °C (248±25 °F). The out-of-stack filters are included not as a recommendation, but to illustrate how the methods would appear if EPA were to choose to use such a requirement based on comments received from the ANPR. The temperature of 120±14°C (248±25 °F) is used to be consistent with the filter temperature requirement of Method 5. Of course, other reference temperatures may be selected. The rationale for the collection of PM at a given temperature is that since PM measurements can vary with temperature, PM measurements should be made at a reference temperature.

In both PM_{10} methods, the in-stack and out-of-stack filters are used rather

than using a single out-of-stack filter. The PM_{10} concentrations at many sources can be very low, and the recovery of small amounts of PM_{10} over a large surface area, such as the interior surfaces of a long probe, is difficult. In both methods, the PM_{10} is the sum of the PM recovered on both filters and on all of the surfaces from the sizing device to the front half of the out-of-stack filter.

Use Method 5 and PM_{10} Ratios

A third approach to measuring PM_{10} is to use Method 5 and PM_{10} ratios to estimate PM_{10} emission rates. There are two problems with this approach. First, the available particle size data was measured at stack conditions. Because PM is a function of temperature, this data may not correlate well with actual PM_{10} emissions. Second, such ratios would be determined from present data for each source and would represent averages, and, while adequate for emission inventory, would not be adequate as a compliance method.

Possible Approaches to Measurement of Condensible Emissions

This section discusses the possible approaches to the measurement of condensible matter after the solid PM is separated from the gas stream.

Use the Impinger Catch

One approach to the measurement of condensible PM is to use impingers or condensers to collect the material at an ice bath temperature. The ice bath provides an easy means of maintaining the temperature at a constant level. The impinger solution is then evaporated to dryness and the residue weighed to determine the amount of condensible matter.

A disadvantage to this approach is that noncondensible gases can react with other gases or condensibles in the impinger solution to form PM that would not have otherwise formed. A nitrogen purge of the impinger solution immediately after the test run is said to minimize the amount of reaction products; the effectiveness of the procedure, however, has not been documented.

Use a Series of Procedures for Different Sources

A second approach is to develop special procedures aimed at "different" condensibles and sources. For example, if it is determined that sulfur trioxide is the only condensible matter emitted by a particular source, the procedure would be designed to collect and analyze sulfur trioxide. If the condensible gas is determined to be only organic matter, then another procedure would be developed to collect and analyze organic matter; e.g., extraction of organic compounds from the impinger solution.

Use Dilution and Filter

A third approach would be to dilute and cool the sample gas with conditioned ambient air to below the moisture dew point of the sample gas. This approach simulates conditions at the stack exit. The sample is then collected entirely on a filter where such processes as compound formation and loss of volatile organic compounds might be similar to those which take place in ambient air reference method sampling. A modification would be to remove the particles greater than 10 μm only before dilution of the sample gas. The PM_{10} particles that remain would act as condensation nuclei.

Research has been completed on this approach. However, equipment for diluting the sample gas while determining an accurate sample volume has not yet been developed to the extent that it can be used as a compliance method.

Responses on any issue raised by this notice will be appreciated. Of particular use to the Agency will be responses to the following questions. Which PM_{10} method is the most desirable, which PM_{10} method is the least desirable, and why? What approach to condensibles should be used? Are there procedures we have not considered?

Date: April 4, 1988.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 88-7724 Filed 4-7-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-664; RM-4181]

Radio Broadcasting Services; Bisbee, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a proposal to allot Channel 217A to Bisbee, Arizona, as requested by Lee M. Spinks, on behalf of Tea Multimedia, based on the Commission's recent amendment of its Rules to provide for a "demand" system for NCE-FM services located within 199 miles of the United States-Mexico border area. As a result, the Bisbee proposal may be considered in the application context rather than the rule making process. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (292) 634-6530. Questions related to the application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, BC Docket No. 82-664, adopted March 4, 1988, and released April 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-7761 Filed 4-7-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-141, RM-6030]

Radio Broadcasting Services; Spring Grove, MN, and Mason City, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sun Communications, Inc., proposing the substitution of FM Channel 252C2 for 252A at Spring Grove, Minnesota, and modification of its license for Station KQYB to specify operation on Channel 252C2. To accommodate Channel 252C2 at Spring Grove, an additional channel substitution would be necessary. Channel 250A must be substituted for Channel 252A at Mason City, Iowa. Channel 252A is licensed to Station KCMR, Mason City, and Channel 250A can be substituted at KCMR's site coordinates. The coordinates used for this proposal are as follows: Spring

Grove, Minnesota 43–40–37; 91–44–14 Mason City, Iowa 43–07–18; 93–11–32.

DATES: Comments must be filed on or before May 23, 1988, and reply comments on or before June 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Samuel Miller, Miller and Fields, P.C., P.O. Box 3303, Washington, DC 20033 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–141, adopted March 16, 1988, and released April 1, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–7762 Filed 4–7–88; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss (1) Daniel Joseph's study and draft recommendations on use of settlement judges, (2) Marianne Smythe's study and draft statement on the CFTC's reparations process, and (3) research into dispute resolution in government contract disputes by Crowell and Moring.

Date: Monday, April 18, 1988 at 10:00 a.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For Further Information Contact: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, (202) 254–7020.

Jeffrey S. Lubbers,

Research Director.

April 5, 1988.

[FR Doc. 88–7776 Filed 4–7–88; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Application for Marine Mammals Permits; John G. Shedd Aquarium (P396B)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* John G. Shedd Aquarium 1200 South Lakeshore Drive, Chicago, Illinois 60605
2. *Type of Permit:* Public Display
3. *Name and Number of Marine Mammals:* False Killer Whale (*Pseudorca crassidens*) 6
4. *Type of Take:* Live import
5. *Location of Activity:* Japan
6. *Period of Activity:* 5 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9440 Koger Boulevard, St. Petersburg, Florida 33720.

Date: April 5, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–7774 Filed 4–7–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Reduction of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Northern Mariana Islands (CNMI) From Imported Parts

April 5, 1988.

The chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 13, 1988. For further information contact Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

On November 2, 1987, a notice was published in the **Federal Register** (52 FR 42032) which continued the limit for cotton, wool and man-made fiber

sweaters in Categories 345, 445, 446, 645 and 646, which were determined by the U.S. Customs Service to be products of foreign countries or foreign territories and exported from the Commonwealth of the Northern Mariana Islands (CNMI) during the period which began on November 1, 1987 and extends through October 31, 1988. The continuation of this limit was based upon certification by the United States that 40 percent of the employees are citizens or nationals of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or the United States.

The purpose of this notice is to advise the public that this requirement has not been fulfilled. Consequently, the limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, exported from the CNMI during the period November 1, 1987 through October 31, 1988, is being reduced from 100,000 dozens to 82,585 dozens, according to the provisions of our administrative arrangement.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 5, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 27, 1987 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, assembled in the Commonwealth of the Northern Mariana Islands from foreign parts and exported to the United States during the twelve-month period which began on November 1, 1987 and extends through October 31, 1988.

Effective on April 13, 1988, the directive of October 27, 1987 is hereby amended to reduce the limit for cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646 to a level of 82,585 dozens. The wool sublevel for Categories 445 and 446 is reduced to a level not to exceed 12,388 dozens.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7742 Filed 4-7-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

April 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Adjusting limits for carryover.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: The limits for certain cotton, wool and man-made fiber textile products exported from Sri Lanka during the periods which began on June 1, 1987 through December 31, 1987 and January 1, 1988 through May 31, 1988 were adjusted, effective on March 8, 1988, for carryover between the two periods. Published below is a copy of the directive to the U.S. Customs Service adjusting the limits for the June 1, 1987 through December 31, 1987 period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 18413, published on May 15, 1987; 53 FR 52 and 53 FR 53, published on January 4, 1988; and 53 FR 7225, published on March 7, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

March 2, 1988.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka, I request that, effective on March 8, 1988, you adjust the restraint limits established in the directive of December 30, 1987 for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the seven-month period which began on June 1, 1987 and extended through December 31, 1987.

Category	Adjusted 7-mo. limit [1]
331	606,428 dozen pairs.
333/633	1 dozen.
334	101,018 dozen.
337	12,618 dozen.
338	145,510 dozen.
340	271,774 dozen.
341	273,430 dozen.
350	14,629 dozen.
351	46,092 dozen.
359-C/659-C [2]	72,767 pounds.
363	2,609,640 numbers.
442	2,743 dozen.
445/446	26,240 dozen.
631	38,441 dozen pairs.
634	39,413 dozen.
635	109,383 dozen.
636/836	65,133 dozen.
640	22,248 dozen.
641	271,387 dozen.
642/842	75,871 dozen.
644	12,069 numbers.
645/646	42,193 dozen of which not more than 25,567 dozen shall be in Category 646.
647	165,544 dozen.
648	76,747 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987.

[2] In Category 359-C, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222. In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

This letter will not be published in the **Federal Register**.

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7743 Filed 4-7-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Uruguay

April 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: April 13, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the

quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: Under the terms of the Bilateral Textile Agreement of December 30, 1983 and January 23, 1984 between the Governments of the United States and Uruguay, the current limit for Category 335 is being reduced for carryforward used in the July 1, 1987 through December 31, 1987 period.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 48855, published in the **Federal Register** on December 28, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 5, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 28, 1987 concerning imports of certain cotton and wool apparel, produced or manufactured in Uruguay and exported during the six-month period which began on January 1, 1988 and extends through June 30, 1988.

Effective on April 13, 1988, the directive of December 28, 1987 is hereby amended to reduce the import restraint limit for Category 335 to 29,498 dozen [1], under the terms of the bilateral agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–7744 Filed 4–7–88; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: May 9, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Cover, Mattress, Plastic
7210–00–082–5739
Enamel, Aerosol
8010–01–060–6461
8010–00–935–7156
8010–00–159–4919
8010–00–159–4520
8010–00–159–4521
8010–00–159–4522
Lacquer, Aerosol
8010–00–598–5455
8010–00–936–8369
8010–00–936–8371

Service

Unpackaging
Corpus Christi Army Depot
Corpus Christi, Texas

C. W. Fletcher,

Executive Director.

[FR Doc. 88–7747 Filed 4–7–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1988 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 9, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 24, 1987, January 29, and February 12, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (52 FR 27842, 53 FR 2622 and 4200) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1988:

Commissary Wareouse Service
Shaw Air Force Base, South Carolina
Janitorial Service
Prince Georges County Memorial, USAR Center
6600 Baltimore Avenue
Riverdale, Maryland
Southern Maryland Memorial, USAR Center

Dower House Road
Washington, DC
Janitorial Service
The Rexnord Building
4277 Poche Court West
New Orleans, Louisiana

C.W. Fletcher,

Executive Director.

[FR Doc. 88-7748 Filed 4-7-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent (NOI) To Prepare an Environmental Impact Statement for the Proposed Construction and Operation of Space Launch Complex 7 at Vandenberg Air Force Base (AFB), California

The Department of the Air Force is proposing to construct and operate Space Launch Complex 7 (SLC-7) at Vandenberg AFB to launch Department of Defense satellites beginning in 1994 into polar orbit aboard Titan Centaur expendable space launch vehicles. The proposed location of SLC-7 is near Cypress Ridge on South Vandenberg, approximately one mile south of SLC-6, the Vandenberg AFB launch site for the Space Shuttle. The proposed action includes the construction of the launch complex and support facilities, the extension of roads and utilities on Vandenberg AFB, and the launching of the Titan Centaur. In addition, existing launch support facilities constructed for other space launch systems at Vandenberg AFB (i.e., Space Shuttle) are proposed to be used and/or modified as required to support the new launch complex. The satellites proposed to launch aboard the Titan Centaur from SLC-7 require polar orbits. Vandenberg AFB is the only existing U.S. government launch site that can launch satellites into polar orbits without over flying populated land masses. Therefore, Vandenberg AFB is the only feasible location for the proposed SLC-7. Alternative sites on Vandenberg AFB are being evaluated for SLC-7 including a coastal terrace near Point Arguello, and an upland terrace approximately one miles south of the proposed Cypress Ridge site.

The Department of the Air Force will hold two public scoping meetings to solicit inputs on significant environmental issues associated with the construction and operation of SLC-7 at Vandenberg AFB. These scoping meetings are scheduled for May 3, 1988 at the Lompoc Civic Auditorium, 217 South "L" Street, Lompoc, CA from 7:00—10:00 pm; and May 5, 1988 at the Goleta Valley Community Center, 5679 Hollister Avenue, Goleta, CA from 7:00—10:00 pm. In addition to these two scoping meetings, written inputs to the scoping process are solicited. Comments in response to this NOI or as part of the scoping process are requested in writing within 30 calendar days from publication of this notice in the **Federal Register**.

Questions concerning the proposed action or the NEPA process for the action, comments on this NOI, or written inputs to the scoping process should be mailed to Mr. Robert Mason, Department of the Air Force, Headquarters Space Division/DEV, P.O. Box 92960, Los Angeles, CA 90009-2960. Telephone inquiries should be directed to Mr. Mason at (213) 643-1409.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88-7710 Filed 4-7-88; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 9, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (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 Director, Information Technology Services, publishes this 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) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 4, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Planning, Budget, and Evaluation

Type of Review: New
Title: Administrative Cost Study of the College Cost Containment Project
Frequency: One time only
Affected Public: Businesses or other for-profit, non-profit institutions
Reporting Burden:
Responses: 600
Burden Hours: 900
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect information from postsecondary institutions that have participated in the College Cost Containment Project. The Department will use the data to analyze and test cost reduction methods.

Office of Special Education and Rehabilitation Services

Type of Review: New
Title: Evaluation of State Vocational Agency Costs
Frequency: One time only
Affected Public: State or local governments
Reporting Burden:
Responses: 40
Burden Hours: 920
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect information on Vocational

Rehabilitation agency costs from State Vocational agencies. The Department uses the information to assess direct and indirect costs rates, and to prepare a report to Congress.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for Grants for Supplemental Funds under the Cooperative Education Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 590
Burden Hours: 885
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by postsecondary institutions to apply for supplemental funds under the Cooperative Education Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New
Title: Case Studies of Effective Migrant Education Projects
Frequency: One time only
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 663
Burden Hours: 179
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0

Abstract: This study will collect and identify information on effective migrant education practices from State and local educators and individuals. The Department will use the information to assess migrant education projects and to prepare a handbook on effective practices for State and local migrant educators.

[FR Doc. 88-7765 Filed 4-7-88; 8:45 am]
BILLING CODE 4000-01-M

Intent To Repay to the Maryland State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Maryland State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education as a result of final audit determinations. This notice describes the SEA's plan, submitted on behalf of the Baltimore City Public Schools (BCPS), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All comments must be received on or before May 9, 1988.

ADDRESS: All comments should be addressed to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043, MS-6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4694.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Department of Education has recovered $2,500,000, plus accrued interest, from the Maryland Department of Education (SEA) in partial satisfaction of claims arising from two audits covering fiscal years (FYs) 1974 through 1978. An additional payment of $1,250,000, plus accrued interest, will be made to the Department by the SEA no later than July 15, 1988.

The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the Department's first final audit determination found Title I funds had been spent in BCPS in violation of (a) the general aid prohibition set forth in 20 U.S.C. 241e(a)(1)(B) and 45 CFR 116a.22(b)(6); (b) the requirements in 20 U.S.C. 1225(b) and 45 CFR 100b.55, which required that Title I funds be obligated and expended within one fiscal year after the fiscal year in which such funds became available; (c) the requirements in 20 U.S.C. 241e(a)(3)(B) and 45 CFR 116.40, which required that Title I funds supplement State and local funds; (d) the requirements in 45 CFR 116a.20, which required that Title I funds be spent in eligible school attendance areas; and (e) the requirements in 20 U.S.C. 1232c(a) and 45 CFR 100b.477, which required that adequate records be kept to reflect time and effort of Title I employees assigned to programs in addition to Title I.

In another final audit determination, the Department found BCPS failed to satisfy Title I comparability requirements in 20 U.S.C. 241e(a)(3)(C) and 45 CFR 116.26 (for the period July 1, 1974 through November 20, 1976) and 45 CFR 116a.26 (for the period November 21, 1976 through June 30, 1978). Those requirements provided that a local educational agency (LEA) could receive Title I funds only if it used its State and local funds in each Title I area to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas."

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $2,812,000 and has submitted a plan on behalf of BCPS for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The final audit determinations against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1

has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The SEA's plan proposes that the BCPS will use the grantback funds to provide summer school programs in 1988 and 1989 and to provide activities to enhance components of the regular Chapter 1 program during school year 1988–89.

The objective of the summer school programs will be to improve Chapter 1 students' performance in reading and mathematics. Services will be provided at 14 school sites to approximately 2,800 children in grades 1–4 from 115 public schools and 22 nonpublic schools. At each site, there will be a project facilitator, secretary, and 15 teachers.

The program will be operative for four weeks during the month of July 1988 and July 1989. Students in the program will receive 90 minutes of instruction in reading and/or mathematics and will be assigned to groups according to their diagnosed skill need and/or grade level. The instructional program will be an extension of the regular school year Chapter 1 program. However, unlike the regular school year program, the teacher will be assigned students for whom a tailored individual instructional plan has been developed.

Staff orientation and parent training will be provided prior to the beginning of the program. The program will have a strong parental involvement component. There will be reinforcement activities that are to be done at home with the involvement of the family. Strategies for assisting students with reinforcement activities will be disseminated to parents through a series of workshops to be held prior to, and concurrent with, the summer program. Parents will also be encouraged to participate in cultural experiences with the children that relate to the reading instruction, that is to be centered around thematic units, such as marine life, space, etc.

During school year 1988–89, grantback funds will be used for staff development, parent involvement activities, and the integration of cultural experiences into the regular Chapter 1 reading instructional program.

Staff development will focus on improving teachers' competence with the diagnostic/prescriptive and thematic unit approaches that are used in Chapter 1 programs to improve student performance. The grantback funds will provide the resources for intensive training for Chapter 1 teachers. Support teachers and administrators will continue to monitor the Chapter 1 programs to ensure that the strategies gained through the staff development efforts are applied in the classroom setting.

In an effort to involve more parents in the Chapter 1 reading and mathematics instructional program and maintain continuity from the 1988 summer program, parental involvement will be a major focus during the 1988–89 school year. Grantback funds will be used to provide activities for parents and teachers to get acquainted, provide opportunities for parents to attend workshops and conferences relating to Chapter 1, and to train parents to continue the home reinforcement activity concept from the summer program.

During school year 1988–89, grantback funds will also be used for cultural enrichment activities as an enhancement to the Chapter 1 instructional program. Two cultural experiences that are incorporated into the thematic units of instruction will be provided to children at each Chapter 1 school site. Chapter 1 reading and mathematics teachers will collaborate on the type of experiences to be scheduled.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Maryland SEA under a grantback arrangement. The grantback award would be in the amount of $1,875,000, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered to date by the Department as a result of the audits. An additional payment of $937,500 will be made when the SEA submits the third installment of $1,250,000, plus accrued interest, which is due in July 1988 in accordance with the audit settlement agreement.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be sent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1989 and January 1, 1990, submit reports to the Secretary which—

(a) Indicate that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describe the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: April 4, 1988.

William J. Bennett,

Secretary of Education.

[FR Doc. 88-7766 Filed 4-7-88; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Intent To Repay to the Florida State Department of Education Funds Recovered as a Result of a Final Audit Determination; Intent To Award Grantback Funds

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act

(GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Florida State Department of Education, the State educational agency (SEA), an amount equal to approximately 68 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Duval County and Gadsden County local educational agencies (LEAs), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before May 9, 1988.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Room 2043, MS–6276), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4694.

SUPPLEMENTARY INFORMATION:

A. Background

In February 1986, the Department recovered $483,517.01 from the Florida SEA in satisfaction of claims arising from an audit covering fiscal year 1974. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965, a program that addressed the special educational needs of educational deprived children in areas with high concentrations of children from low-income families. Specifically, three LEAs—namely, Duval County, Gadsden County, and Orange County—were not in compliance with Title I comparability requirements. Those requirements provided that an LEA could receive Title I funds only if it used its State and local funds in each Title I area to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas * * *." 20 U.S.C. 241e(a)(3)(C) (1976). The amounts of misspent funds in the LEAs were $98,022.00, $34,028.10, and $45,466.91, respectively.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $328,537 and has submitted a plan on behalf of Duval County and Gadsden County LEAs for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981. 20 U.S.C. 3801 *et seq.* The SEA's request did not include Orange County because that LEA chose not to participate. The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I that is designed to serve educationally deprived children in low-income areas.

Under the SEA's plan, additional benefits would be provided with the grantback funds for eligible Chapter 1 children. In Duval County, grantback funds in the amount of $73,516 would be used to provide inservice training to regular first grade teachers who have eligible Chapter 1 children in their classes. This training is necessary to assist the regular classroom teachers in better meeting the special needs of the Chapter 1 children in their classrooms. Many Chapter 1 children have language and auditory deficiencies and need a broad-based language approach to reading instruction in primary grades to prepare them for the varied reading tasks ahead in elementary school. Yet, Chapter 1 students are with Chapter 1 teachers for only thirty minutes each day for small group instruction, while the regular classroom teachers provide instruction for the remainder of the school day. Under the SEA's plan, regular first grade teachers would receive three days of teaching strategies using instructional materials emphasizing language and auditory skills development that have been successful in delivering instruction to educationally disadvantaged children. The training would be directly related to the teachers' needs to develop competencies to be more effective in meeting the special needs of children served in the Chapter 1 project.

Gadsden County would use $255,021 in grantback funds to provide a six-week reading and math summer school program for approximately 825 children who are eligible for Chapter 1 services. The services would be provided to children in grades Pre K–6 in six elementary schools for four days per week, four hours per day. Fifty-five teachers, 55 teacher aides, and 7 media specialists would provide the instructional services. The summer school teachers would identify the reading and math skills needing instructional reinforcement and write prescriptions for each student. An aide would assist each teacher in the classroom and, at a scheduled time, the teacher or aide would take the children to the media center for special instruction.

Equitable services to those provided to eligible children in public schools in both LEAs would be made available to eligible children who attend private schools.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to

do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Florida SEA under a grantback arrangement. The grantback would be in the amount of $328,537, which is approximately 68 percent of the funds recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEAs agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1988, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEAs, will, not later than January 1, 1989, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: April 4, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 88-7767 Filed 4-7-88; 8:45 am]

BILLING CODE 4000-01-M

Perkins Loan (Formerly National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Extension of deadline dates to resolve test case results and to publish list of certified systems.

The Secretary extends the deadline date to resolve test case results from March 15, 1988 to April 29, 1988. In addition, the Secretary extends the March 1988 date for publishing a final notice listing certified systems to May 1988.

On September 23, 1987 (52 FR 35902-35904), the Secretary published a notice of procedures for certification of need analysis services' systems. Detailed information concerning these procedures was included in that notice. The purpose of this notice is to extend the closing date for resolving test cases. The extension is necessary because of the unanticipated need for extensive technical assistance to servicers regarding the resolution of test cases. The delay in resolving test cases also results in the delay of publishing the list of certified need analysis servicers' systems.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW., Room 4018, ROB-3, Washington, DC 20202, Telephone (202) 732-4490.

Dated: April 4, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program)

[FR Doc. 88-7768 Filed 4-7-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket Nos. OFU- 002, 003, 004]

Acceptance of Application for Rescission of a Prohibition Order Submitted by Iowa Electric Light and Power Co. for a Certain Prohibition Order Issued Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE)[1] hereby gives notice that acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1964 (ESECA), as amended by (15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b)), it has accepted and is considering a request by the Iowa Electric Light and Power Company to rescind the Prohibition Order issued on June 30, 1975, to the following powerplant:

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

Owner	Docket No.	Generating station	Unit No.	Location
Iowa Electric Light & Power Co	OFU-002	Sutherland	1	Marshalltown, Iowa.
	OFU-003		2	
	OFU-004		3	

ERA is taking this action in accordance with the provisions of 10 CFR Part 303, subpart J ("Modification of Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. Detailed information for the proceeding is provided in the **SUPPLEMENTARY INFORMATION** section below.

The public file containing a copy of the Application for Rescission and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 10585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

DATES: Comments on DOE's intention to consider the requested rescission of the

above listed Prohibition Order is invited. Written comments are due on or before May 23, 1988. A request for public hearing must also be made within this 45-day public comment period. In making its decision regarding the requested recission action, DOE will consider all relevant information submitted or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs Case Control Unit, Room GA–093, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Nos. OFU–002, OFU–003, OFU–004 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Progams, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room GA–113, Washington, DC 20585, Telephone (202) 536–6947.

SUPPLEMENTARY INFORMATION: On June 30, 1975, in accordance with the Energy Supply and Environmental Coordination Act, the Federal Energy Administration issued a Prohibition Order to Iowa Electric Light and Power Company prohibiting the burning of natural gas as a primary energy source in Sutherland Generating Station Units 1, 2 and 3. Subsequent Notice of Effectiveness (January 17, 1978) and Amended Notice of Effectiveness (December 21, 1978) were issued for these units.

Pursuant to 10 CFR 303.130 *et seq.*, Iowa Electric Light and Power Company is filing its Application for Rescission of Prohibition Orders due to a substantial change in the facts or circumstances upon which the Prohibition Order was originally issued. Since the issuance of the Prohibition Order and the Notice of Effectiveness, the United States Congress has passed legislation making adequate supplies of natural gas available to the interstate market for end users consumption generally without curtailment.

Iowa Electric Light and Power Company believes it would be advantageous to be able to use natural gas as a primary energy source in its Sutherland generating units when such an opportunity exists. With the Prohibition Orders now in effect, the Company does not have this operational flexibility.

Issued in Washington, DC, on March 30, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–7783 Filed 4–7–88; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3362–3]

Regulation of Fuels and Fuel Additives; Lead Banking Penalty Policy and Revision of Lead Usage and Reporting Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of penalty policy guidelines.

SUMMARY: This action announces the modification of the penalty policy guidelines for lead usage and lead reporting violations of the lead phasedown regulations, 40 CFR 80.20(e). The lead usage enforcement policy initially was published at 44 FR 58954 (October 12, 1979), and was previously amended at 51 FR 25253 (July 11, 1986).

FOR FURTHER INFORMATION CONTACT: Kathy M. Clark Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 475–7208.

SUPPLEMENTARY INFORMATION: The current penalty policy for assessing and mitigating civil penalties under section 211(d) of the Clean Air Act for violations of the lead phasedown regulations is being revised for usage and reporting violations, and a corresponding penalty policy is being established for banking violations. Two major changes to these policies are the manner by which penalties are calculated and also the economic value ascribed to a gram of lead rights, either for usage or banking purposes. The economic value of a gram of lead his risen steadily in terms of EPA compliance-enforcement costs. Therefore, the value of lead rights for all usage violations will be $.05 per gram of lead for all violations discovered after the date of publication of this notice, regardless of the quarter in which the violation may have occurred. The same value of $.05 per gram of lead will apply to all lead phasedown banking violation penalty calculations.

The method of calculating the proposed penalty for both usage and banking violations will be identical. In the past, the economic benefit component was calculated using an appropriate value of a gram of lead and added to a gravity component (deterrent factor) of $50,000 in order to arrive at the proposed penalty amount for a usage violation. In some cases, where the violator gained a substantial economic benefit, the $50,000 deterrent factor was considered as a "business expense", rather than serving as an actual deterrent. The gravity component has been changed so that it reflects the extent of the violation more accurately. Under this new policy, the economic benefit component will be calculated at $.05 per gram and the gravity component will be equal to the economic benefit component. The sum of these two will equal the proposed penalty for both banking and usage violations. Cases which involve a prior history of violation of the lead phasedown regulations will have an increase gravity component calculated.

As with other enforcement policies, EPA may exercise its enforcement discretion by attempting to resolve some minor violations without issuing a formal Notice of Violation. Moreover, the policies discussed in this notice are intended solely for the guidance of government personnel. They are not intended to create any rights or obligations, substantive or procedural, enforceable by any party. The Agency reserves the right to act at variance with these policies and procedures in any given case and to change these policies and procedures at any time without prior notice.

Copies of the policy announced in this action are available from Kathy M. Clark at the address in the Further Informaiton section of this notice.

Dated: April 4, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–7726 Filed 4–7–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL-33624]

Fuels and Fuel Additives; Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On March 14, 1988, Sun Refining and Marketing Company (Sun) submitted an application for a waiver of the prohibition against introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act (Act). This application seeks a waiver for an ether-gasoline fuel blend containing up to 15 percent by volume methyl tertiary butyl ether (MTBE). The Administrator of EPA has until September 12, 1988 to grant or deny this application (The statutory deadline of 180 days ends on September 10, 1988, which is a Saturday. Therefore, the deadline is the next regular working day, September 12, 1988.) If not denied by that date, it will be deemed to be granted, under section 211(f)(4).

DATE: Comments should be submitted on or before May 9, 1988.

ADDRESS: Copies of the information relative to this application are available for inspection in public docket EN–88–02 at the Central Docket Section (LE–131) of the EPA, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:00 a.m. and 3:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 475–8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. EPA has defined "substantially similar" at 46 FR 38582 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application (in this case, by September 12, 1988), the statute provides that the waiver shall be treated as granted.

Methyl tertiary butyl ether (MTBE) is already permitted in gasoline in volumes up to approximately 11 percent under EPA's substantially similar interpretive rule (46 FR 38582, July 28, 1981). Sun Refining and Marketing Company (Sun) is requesting that EPA grant a waiver for introduction into commerce of an ether-gasoline fuel blend containing up to 15 percent MTBE by volume as measured by gas chromatograph or equivalent techniques. The waiver application specifies that the ether-gasoline blend must conform with the requirements of ASTM D–2 Proposal P–176, "Proposed Specification for Automotive Spark Ignitioin Engine Fuel", and/or as adopted as an ASTM standard, and the fuel manufacturer must take all reasonable precautions, including identification and description of the product on shipping manifests, to ensure that the finished fuel is not used as a base gasoline to which other oxygenated materials are added, according to EPA limitations and guidelines. The application states that handling situations with marketing of 15 percent MTBE would be the same as current marketing with other MTBE concentrations up to 11 percent.

EPA invites comments on whether the Administrator should grant or deny this waiver application.

Dated: April 4, 1988.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 88–7727 Filed 4–7–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL. 3362–7]

Clean Water Act Class II; Proposed Administrative Penalty Assessment and Opportunity To Comment for Star-Brite, Inc., Joplin, MO

AGEMCY: Environmental Protection Agency (EPA).

ACTION: Proposed penalty assessment.

SUMAMRY: EPA is providing notice of a proposed Administrative Penalty Assessment for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue Class I or Class II penalty proceeding. EPA provides public notice of the Proposed Assessment of Civil Penalty Pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CRF Part 22. The procedures through which the public may submit written comment on a proposed Class II Order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II Order is thirty days after issuance of public notice. On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties. In the Matter of Star-Brite, Inc., 510 Tyler, Joplin Missouri, 64801; EPA Docket No. VII–88–W–0001.

Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing, Thereon was filed on March 7, 1988 with Regional Hearing Clerk, Linda McKenzie, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913/236–2811, FTS 757–2811. EPA proposed a penalty of up to $125,000 for discharging process wastewater into the publicly owned treatment works of the City of Joplin in violation of the applicable pretreatment standard (40 CFR Part 413 Subpart A Electroplating of Common Metals Sub-category). Star-Brite, Inc., is a non-integrated metal finishing facility.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's

Consolidated Rules, review the Complaint or other documents filed in these proceedings, comment upon a proposed assessment, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk identified above. The administrative record for the proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by Star-Brite, Inc., the respondent, is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential iformation. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days from date of this publication in the **Federal Register.**

Date: March 31, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88-7723 Filed 4-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3363-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 21, 1988 through March 25, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074/75. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. DS-DOI-A90065-00, Rating EC2, Undeveloped Coastal Barriers, Coastal Barrier Resources System Proposed Changes, Implementation, ME, MA, RI, CT, NY, MS, AL, TX, LA, DE, VA, NC, SC, GA and FL. SUMMARY: EPA noted environmental concerns with the preferred alternative which could result in a lack of federal regulatory consistency with the Coastal Barriers Resources Act. EPA also noted concern regarding the justification for deletions from the Coastal Barriers Resources System as well as proposed boundary delineations for aquatic habitat associated with land parcels included in the System.

Final EIS

ERP No. F-BLM-K61072-CA, Red Mountain Wilderness Study Area, Wilderness Recommendation, Designation or Nondesignation, Arcata Resource Area, Ukiah District, Mendocino County, CA. SUMMARY: EPA requested that BLM coordinate non-point source water pollution planning with the State of California pursuant to section 319 of the U.S. Clean Water Act.

ERP No. F-BLM-K61080-CA, Arcata Resource Area Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, King Range and Chemise Mountain WSAs, Ukiah District, Humboldt and Mendocino Counties, CA. SUMMARY: EPA requested that BLM coordinate non-point source water pollution planning with the State of California pursuant to section 319 of the U.S. Clean Water Act.

ERP No. FS-COE-E35080-AL, Mallard-Fox Creek Area, Morgan County Port Access Channel and Dredged Material Disposal, Development and Use, Morgan County, AL. SUMMARY: EPA expressed concerns regarding mitigation for habitat lost by filling the embayment contained in site 1.

ERP No. FC-COE-K35012-CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Mile 0 to 194, Updated Information, Solano, Sacramento, Sutter, Colusa, Glenn, Yolo and Butte Counties, CA. SUMMARY: EPA is concerned about the adequacy of mitigation measures planned to compensate for riparian habitat losses caused by the project. EPA requested an explanation of project compliance with section 404 of the Clean Water Act, and a presentation of cumulative impact analyses.

ERP No. F-FHW-E40706-GA, Mansell Road/GA-400 Interchange Extension, Mansell Road and Old Roswell Road Intersection to Old Alabama Road/ Turner Road, Funding and 404 Permit, Fulton County, GA. SUMMARY: EPA has concerns with potential water quality and wetland impacts associated with this highway project and the lack of detailed mitigation plans to offset or minimize these impacts.

Dated: April 5, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-7756 Filed 4-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3362-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5074.

Availability of Environmental Impact Statements Filed March 28, 1988 Through April 1, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880100, DSuppl, FHW, MD, Relocated MD-32 Improvements, MD-108 to Pindell School Road, Project Location Reevaluation, Funding and 404 Permits, Howard County, MD, Due: May 23, 1988, Contact: Edward Terry (301) 962-4010.

EIS No. 880101, Draft, NPS, AK, Lake Clark National Park and Preserve, Wilderness Recommendations. Designation or Nondesignation, AK, Due: July 7, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 880102, Draft, AFS, CA, Black Diamond Mine Development, Plan of Operations Approval, Angeles National Forest, Tujanga Ranger District, Los Angeles County, CA, Due: June 27, 1988, Contact: Richard Borden (818) 574-5255.

EIS No. 880103, Final, COE, NY, Cazenovia Creek Flood Damage Reduction Plan, Implementation, Town of West Seneca, Erie County, NY, Due: May 9, 1988, Contact: Tod Smith (716) 876-5454.

EIS No. 880104, Draft, FHW, OR, Mill Creek/West Sixth Street Bridge Replacement, Funding, The Dalles, Wasco County, OR, Due: June 2, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 880105, DSuppl, CGD, NY, Davids Island Residential Development, Marina and Bridge Access Roads from New Rochelle Mainland and Davis Island Construction, Updated Information and Design Modifications, Bridge and 404 Permits, City of New Rochelle, Long Island Sound, Westchester County, NY, Due: May 31, 1988, Contact: Gary Kassof (212) 668-7994.

Amended Notices

EIS No. 880046, Draft, FHW, CA, Twin Bridge Replacement across Chorro Creek, South Bay Boulevard, Funding and 404 Permit, City of Morro Bay, San Luis Obispo County, CA, Due: April 28, 1988, Contact: Glenn Clinton (916) 551-1310. Published FR 2-26-88—Review period extended.

Dated: April 5, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88-7755 Filed 4-7-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3362-9]

Intent To Prepare an Environmental Impact Statement on Monticello-Leesburg Lignite Mine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Issuance of a new source National Pollutant Discharge Elimination System (NPDES) permit to the Texas Utilities Mining Company (TUMCO) for discharge of wastewater from the Monticello-Leesburg Surface Lignite Mine in Camp County, Texas.

Purpose: To meet National Environment Policy Act (NEPA) and Clean Water Act (CWA) requirements for consideration of impacts on the environment (e.g. water, air, land use, biology, socio-economics, etc.) which may result from issuance of the requested permit.

For Further Information and to be Placed on Project Mailing List: Contact: Norm Thomas, Chief, Federal Activities Branch, U.S. EPA Region VI (6E-F), Dallas, Texas 75202-2733, (214) 655-2260 or (FTS) 255-2260.

Summary: TUMCO proposes two expansions of the existing 20,000 acre Monticello Surface Lignite Mine. The first of these expansions is an additional 25,000 acres near Leesburg, Texas. EPA and TUMCO have entered into a Memorandum of Understanding (MOU) for a third party EIS on this proposed Monticello-Leesburg Mine area. The second proposed expansion (i.e. the B-2 area; approximately 17,000 acres located north of Mount Pleasant, Texas) will be covered by a separate MOU and EIS in the near future.

Alternatives: EPA may issue a NPDES permit for the project proposed or with modifications, or deny this permit. TUMCO may operate the project with a NPDES permit as proposed; with modifications to reduce adverse impact; or take no action.

Scoping: The public is invited to identify issues that should be addressed in the EIS. A public meeting will be held in the district Courtroom on the third floor of the County Courthouse in Pittsburg, Texas at 7:00 p.m. on May 17, 1988.

Estimated Date of EIS Release: November, 1988.

Responsible Official: Robert E. Layton Jr., P.E., Regional Administrator.

Richard Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-7754 Filed 4-7-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59842; FRL-3362-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066 (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of twenty-six such PMNs and provides a summary of each.

DATES: Close of Review Periods:

Y 88-0114—February 28, 1988.

Y 88-0118, 88-0119, 88-0120, 88-0121, and 88-0122—March 9, 1988.

Y 88-0123—March 9, 1988.

Y 88-0124, 88-0125, and 88-0126—March 13, 1988.

Y 88-0127—March 14, 1988.

Y 88-0128—March 15, 1988.

Y 88-0129 and 88-0130—March 17, 1988.

Y 88-0131, 88-0132, and 88-0133—March 21, 1988.

Y 88-0134, 88-0135, and 88-0136—March 23, 1988.

Y 88-0137—March 24, 1988.

Y 88-0138, 88-0139, 88-0140, and 88-0141—March 27, 1988.

Y 88-0142—March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 88-0114

Importer. UNI-NTF, Inc.

Chemical. (S) Toluenediisocyanate, polybutylene glycol, trimethylolpropane polymer blocked with -caprolactam.

Use/Import. (S) Resin in understudy auto coating. Import range: 24,000 kg/yr.

Y 88-0118

Importer. Confidential.

Chemical. (G) Unsaturated polyester ether.

Use/Production. (S) Component of industrial glass binder. Prod. range: 306,000 kg/yr.

Y 88-0119

Importer. Goldschmidt Chemical Corporation.

Chemical. (G) Polyether polysiloxane.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Y 88-0120

Importer. Goldschmidt Chemical Corporation.

Chemical. (G) Polyoxyalkylene polyester.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

Y 88-0121

Importer. Plymouth Chemical Company, Inc.

Chemical. (G) Crosslinked, polyacrylic homopolymer.

Use/Production. (S) Water absorbing polymer. Prod. range: Confidential.

Y 88-0122

Importer. Plymouth Chemical Company, Inc.

Chemical. (G) Crosslinked, polyacrylic homopolymer.

Use/Production. (S) Water absorbing polymer. Prod. range: Confidential.

Y 88-0123

Importer. DSM RIM Nylon, Inc.

Chemical. (G) Polyoxypropylene polyoxyethylene block copolymer ester acyl caprolactam.

Use/Import. (S) Plastic parts. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 >500 mg/kg, species (Rat).

Acute dermal toxicity: LD50 >2,000 mg/kg, species (Rabbit).

Eye irritation: slight, species (Rabbit).

Skin irritation: negligible, species (Rabbit).

Y 88–0124

Manufacturer. Adhesives Research, Inc.

Chemical. (S) 2,5-Furandione ethene nitrile, 1,4-dimethyl, 2,2'-azo 1-azobis 2,5-diterbutylhydroquinone.

Use/Production. (S) Adhesives. Prod. range: 15,000 kg/yr.

Y 88–0125

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyurethane.

Use/Production. (G) Polymeric Plastics. Prod. range: Confidential.

Y 88–0126

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyurethane.

Use/Production. (G) Coating or film. Prod. range: Confidential.

Y 88–0127

Manufacturer. Confidential.

Chemical. (G) Copolymer of acrylic esters.

Use/Production. (S) Coating: Coating modifier. Prod. range: Confidential.

Y 88–0128

Manufacturer. Alco Chemical Corporation.

Chemical. (S) Polyacrylic acid, partial sodium salt; modified polyacrylic acid.

Use/Production. (S) Industrial water treatment. Prod. range: 500,000–2,000,000 kg/yr.

Y 88–0129

Manufacturer. Koppers Co., Inc.

Chemical. (S) Polymer of: oxybis(propanol); 2,2'-oxybis(ethanol); 1,2-propandiol; 1,4-benzenedicarboxylic acid; 1,3-dibenzofurandione; 2,5-furandione.

Use/Production. (S) Bulk molding compound. Prod. range: Confidential.

Y 88–0130

Importer. Dynamit Nobel Chemicals.

Chemical. (S) Saturated Polyester Resin of Aryl dicarboxylic acids and alkyl diols.

Use/Import. (S) Paint additive. Import range: Confidential.

Toxicity Data.

Acute oral toxicity: LD50 >5 g/kg, species (Rat).

Acute dermal toxicity: LD50 3.16 g/kg, species (Rabbit).

Y 88–0131

Importer. Reichhold Chemicals, Inc.

Chemical. (G) Urethane modified alkyd resin.

Use/Import. (S) Paint component. Import range: Confidential.

Y 88–0132

Manufacturer. General Electric Company.

Chemical. (G) Poly (ethersulfoneamide acid) resin.

Use/Production. (S) Engineering Thermoplastic Composites. Prod. range: Confidential.

Y 88–0133

Manufacturer. Quantum Emery Division.

Chemical. (G) Adipic acid-neopentyl glycol, 1,2-propandiol copolymer isodecyl ester.

Use/Production. (S) PVC resin plasticizer. Prod. range: 720,000 kg/yr.

Y 88–0134

Importer. Shell Oil Company.

Chemical. (G) Terpolymer with polyolefin and carbon monoxide.

Use/Import. (G) Engineering thermoplastic. Import range: 33,000 kg/yr.

Toxicity data.

Acute oral toxicity: LD50 1,000 mg/kg, species (Rat).

Acute dermal toxicity: LD50 >2,000 mg/kg, species (Rabbit).

Eye irritation: none, species (Rabbit).

Skin irritation: negligible, species (Rabbit).

Y 88–0135

Importer. Confidential.

Chemical. (G) Resin modified phenolic resin.

Use/Import. (G) Polymer binder for printing ink. Import range: Confidential.

Y 88–0136

Importer. Confidential.

Chemical. (G) Resin modified phenolic resin.

Use/Import. (G) Polymer binder in printing ink. Import range: Confidential.

Y 88–0137

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd Resin for coatings. Prod. range: 110,000 kg/yr.

Y 88–0138

Manufacturer. Aristech Chemicals Corp.

Chemical. (G) Unsaturated polyester resin thermosetting polyester resin.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Y 88–0139

Manufacturer. Confidential.

Chemical. (G) Polymer of aromatic diacid, alkanediol and branched alkanediol.

Use/Production. (G) Polymer for coating application. Prod. range: Confidential.

Y 88–0140

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester urethane.

Use/Production. (G) Coating. Prod. range: Confidential.

Y 88–0141

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters, an acid monomer and a vinyl monomer.

Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.

Y 88–0142

Manufacturer. Aristech Chemical Corp.

Chemical. (G) Unsaturated polyester resin; thermosetting polyester resin.

Use/Production. (G) Thermosetting polyester Resin. Prod. range: Confidential.

Date: March 30, 1988.

Steve W. Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 88–7641 Filed 4–7–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–010951–001.

Title: Port of Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (MPA)

Polish Ocean Lines, Inc. (POL).

Synopsis: The proposed agreement amends Agreement No. 224–010951 to reflect that MPA will discount billings for port charges for loaded containers moved by POL into and out of the Port of Baltimore (Port) and drayed to railheads in the Port.

Agreement No: 224–011049–002.

Title: Tampa Port Terminal Agreement.

Parties:

Tampa Port Authority
Seagull Terminal and Stevedoring Company.

Synopsis: The proposed agreement (1) extends the term of the basic lease through July 31, 1988, and (2) increases the lease premises to approximately 31,360 square feet.

By Order of the Federal Maritime Commission.

Dated: April 5, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–7716 Filed 4–7–88; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First National Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 USC 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First National Bancorp, Inc.,* Centre Hall, Pennsylvania; to engage *de novo* through its subsidiary, Centre Hall Life Insurance Company, Centre Hall, Pennsylvania, in the business of life and disability insurance as a domestic life and disability reinsurer pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union National Corporation,* Cleveland, Ohio; to engage *de novo* through its subsidiary, Union National Life Insurance Company, Phoenix, Arizona, in reinsuring credit life and disability insurance on the sum of payments issued in connection with lease transactions made by Union National Corporation's Bank subsidiaries pursuant to § 225.25(b)(8) of the Board's Regulation Y. The lease transactions involved are nonoperating and full payout leases.

Board of Governors of the Federal Reserve System, April 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–7706 Filed 4–7–88; 8:45 am]

BILLING CODE 6210–01–M

Meridian Bancorp., Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp., Inc.,* Reading, Pennsylvania; to acquire Atlantic Equipment Leasing Co., Inc., Wyomissing, Pennsylvania, and thereby engage in equipment leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–7707 Filed 4–7–88; 8:45 am]

BILLING CODE 6210–01–M

The Middlefield Banc Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 29, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *The Middlefield Banc Corporation*, Middlefield, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Middlefield Banking Company, Middlefield, Ohio.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Elkhart Banc Shares, Inc., Elkhart, Illinois, and thereby indirectly acquire Elkhart Community Bank, Elkhart, Illinois.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 51 percent of the voting shares of SBV Bancshares, Inc., Virden, Illinois, and thereby indirectly acquire State Bank of Virden, Virden, Illinois.

Board of Governors of the Federal Reserve System, April 4, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-7708 Filed 4-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 1, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Evaluation of Minnesota Medicaid Capitated Health Alternatives—NEW—Follow up survey to evaluate the effectiveness of a Medicaid capitated health demonstration. Respondents: Individuals or households. Number of Respondents: 1,360; Frequency of Response: One-time; Estimated Annual Burden: 898 hours.

2. ESRD Death Notification—0938-0448—This form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. It's primary purpose is to collect fact of death and cause of death. Respondents: Businesses or other for-profit. Number of Respondents: 1,701; Frequency of Response: Occasionally; Estimated Annual Burden: 3,759 hours.

3. Supplemental Survey Mechanism—NEW—This mechanism establishes procedures whereby State survey agencies inspecting Home Health Agencies (HHA) will contact beneficiaries to obtain information on services provided by the HHA. Respondents: Individuals or households. Number of Respondents: 3,900; Frequency of Response: Single-time; Estimated Annual Burden: 5,850 hours.

OMB Desk Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth—NEW—To assess the influence of Pub. L. 99-272 on State and local foster care agencies and their allocation of resources, and the impact of the new legislation on programs, services and adolescents (aged 16 years and older) served by Title IV-E foster care program. Respondents: State or local governments. Number of Respondents: 500; Frequency of Response: One-time; Estimated Annual Burden: 500 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Quality Control Negative Case Action Worksheet/Review Schedule—0970-0006—The form FSA-6401 (QC negative case action Worksheet/Review Schedule) records the results of State agencies quality control reviews of negative case actions. The negative case action review performed by States is a mandatory part of the AFDC quality control program. The negative case action review promotes proper State administration of the AFDC and adult assistance programs by assessing the appropriations of State performance in the denial or termination of benefits. Respondents: State or local governments. Number of Respondents: 20,057; Frequency of Response: Annual; Estimated Annual Burden: 20,114 hours.

OMB Desk Officer: Elaina Norden

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Centers for Disease Control

1. Feasibility Study/Teratogenicity of High-Dose Vitamin A Supplements—NEW—The purpose of this study is to compare the rates of major abnormalities among infants of women who took high-dose vitamin A supplements during pregnancy with rates among infants of women who took multi- or prenatal vitamins. This feasibility study will estimate the number of exposed infants that may be identified in a full study. Respondents: Individuals or households. Number of Respondents: 6,667; Frequency of Response: One-time; Estimated Annual Burden: 556 hours.

Food and Drug Administration

1. Labeling for Weight Control Foods—0910-0218—Provides for labeling to enable those who need to control their weight to identify and evaluate foods which may help them to identify and evaluate foods and attain/maintain desired weight using a balanced and nutritious diet program. Respondents: Businesses or other for-profit. Number of for-profit. Number of Respondents: 82; Frequency of Response: Other; Estimated Annual Burden: 300,025 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-1238
FSA: 202-245-0652
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk

Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: April 4, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-7719 Filed 4-7-88; 8:45 am]

BILLING CODE 4150-04-M

Privacy Act of 1974; Amendment of System Notice

AGENCY: Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of amendment to existing system of records.

SUMMARY: The Department of Health and Human Services (DHHS) is amending the system notice for its system #09-90-0024. This system was formerly called "Accounting Records of Payments to and Collections from Individuals from Operating Division, Agency, and Regional Finance Management and Disbursing Offices." We are renaming it the "Financial Transactions of HHS Accounting and Finance Offices." The amendments would do the following: (1) Add a new routine use allowing disclosure of credit card numbers to banks in order to collect payments on debts, (2) amend the routine use for litigation-related disclosures, and (3) make other minor changes.

EFFECTIVE DATE: The new and revised routine uses will take effect without further notice May 9, 1988, unless comments received on or before that date cause a contrary decision.

ADDRESS: Please address comments to: Deputy Assistant Secretary, Finance, Room 743-H, Hubert Humphrey Building, 200 Independece Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sue Mundstuk, DASF Privacy Act Coordinator, telephone (202) 245-6841.

SUPPLEMENTARY INFORMATION: The system notice was last published at 49 FR 30124 (1984). The proposed new routine use for credit card transactions would allow HHS to transmit credit card numbers, provided voluntarily by debtors, to banks designated by the Treasury Department as collecting agents. This will enable persons owing HHS money to use credit cards to pay their debts, and will thus improve our debt collection activity.

We are revising our litigation routine use to more completely cover the litigation-related disclosures that are necessary.

We are revising the description of the categories of individuals covered by the system. The system was originally intended to include all persons who receive payment from, or owe money to, HHS finance offices. The categories that have been listed in the notice were originally intended to be exemplary rather than exhaustive. We are revising the notice to make this intent clear. We are making minor changes in Appendices 1 and 2 of the system notice, to update it.

These actions do not require a report of altered system under 5 U.S.C. 552a(o).

The complete system notice is below.

Dated: March 28, 1988.

Dennis J. Fischer,

Deputy Assistant Secretary, Finance.

09-90-0024

SYSTEM NAME:

Financial Transactions of HHS Accounting and Finance Offices.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix 1.

Memoranda copy of claims submitted for reimbursement of travel and other expenditures while on official business may also be maintained at the administrative office of the HHS employee. Records concerning delinquent debts may also be maintained at the program office or by designated claims officers apart from the finance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who receive a payment from OPDIV/Agency/Regional finance offices and all person owing monies to these HHS offices. Person receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe HHS a refund and persons who have received from HHS goods or services for which there is a charge or fee (e.g., Freedom of Information Act requesters).

The following systems of records contain similar payment and collection transaction records, some, but not all, of which duplicate records in this system:

Alcohol, Drug Abuse, and Mental Health Administration.

09-30-0023—Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA.

09-30-0027—Grants and Cooperative Agreements: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Service, HHS/ADAMHA/OA.

Health Resources and Services Administration

09-15-0044—Health Education Assistance Loan (HEAL) Program Loan Control Master File, HHS/HRSA/BHPR.

09-15-0045—HRSA Loan Repayment/Debt Management Record System, HHS/HRSA/OA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, address, purpose of payment, accounting classification and amount paid.

Also, in the event of an overpayment and for delinquent loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 (Pub. L. 81-784). Debt Collection Act of 1982 (Pub. L. 97-365).

PURPOSE(S):

These records are an integral part of the accounting systems at principal operating component, agency, regional office and specific area locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When an individual is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to an individual, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service and applicable state and local taxing officials of taxable income. This is a Department-wide notice of payment and collection activities at all locations listed in Appendix 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records will be routinely disclosed to the Treasury Department for check preparation.

2. Records may be disclosed to members of Congress concerning a Federal financial assistance program.

Also, disclosure may be made to a congressional office from an individual's record in response to an inquiry from the congressional office made at the request of that individual.

3. In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

4. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

5. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

7. Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

8. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when

(1) HHS, or any component thereof; or

(2) Any HHS employee in his or her official capacity; or

(3) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record about a loan applicant or potential contractor or grantee may be disclosed to credit reporting agencies to obtain a credit report in order to determine his/her creditworthiness.

10. When an individual applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his/her application may be disclosed to the Treasury Department to find out whether he/she has a delinquent tax account, for the sole purpose of determining his/her creditworthiness.

11. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To another Federal agency so that agency can effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request his/her mailing address under I.R.C. 6103(m)(2) in order to locate him/her or in order to have a credit report prepared;

d. To agents of the Department and to other third parties, including credit reporting agencies, to help locate him/her or to obtain a credit report on him/her, in order to help collect or compromise a debt;

e. To debt collection agents under 31 U.S.C. 3718 or under common law to help collect a debt; and

f. To the Justice Department for litigation for further administrative action.

Disclosure under part (d) of this use is limited to the individual's name, address, Social Security number, and other information necessary to identify him/her. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a commercial credit report on the individual. Part (a) applies to claims or debts arising or payable under the Social Security Act if and only if the employee consents in writing to the offset.

12. A record from this system may be disclosed to another Federal agency that has asked the Department to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to: Name, address, Social Security number, and other information necessary to identify the individual, information about the money payable to or held for the individual, and other information concerning the administrative offset.

13. Disclosures with regard to claims or debts arising under or payble under the Social Security Act may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1986 (31 U.S.C. 3701(a)(3)). However, this disclosure will not be made with regard to debts from overpayments to beneficiaries under Title II (Old-Age, Survivors, and Disability Insurance) and Title XVI (Supplementary Security Income) of this Act. The purpose of this disclosure is to aid in the collection of outstanding debts owed the Federal Government. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose.

14. Information in this system of records is used to prepare W–2 and 1099 Forms to submit to the Internal Revenue Service and applicable state and local governments items considered to be included as income to an individual: certain travel related payments to employees, all payments made to persons not treated as employees (e.g. fees to consultants and experts), and amounts written-off as legally or administratively uncollectable, in whole or in part.

15. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the individual has given his/her credit card number for this purpose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of

this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(f) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy documents are manually filed at agency and regional office sites; and on disc pack and magnetic tape at central computer sites.

RETRIEVABILITY:

This varies according to the particular operating accounting system within the Operating Division, Agency and Regional Office. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number. Intra-departmental uses and transfers concern the validation and certification for payment, and for HHS internal audits.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HHS funded programs.

2. *Physical Safeguards:* File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office.

The safeguards described above were established in accordance with HHS Chapter 45–13 of the General Administration Manual; and the HHS ADP Systems Manual Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accord with General Accounting Office principles and standards as authorized by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

See Appendix 2.

NOTIFICATION PROCEDURE:

Inquiries are to be made, either in writing or in person, to the organizations listed under "Location" in appendix 1, with the exception of Food and Drug Administration contact:

FDA Privacy Act Coordinator (HFW–30) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Give name and social security number, purpose of payment or collection (travel, grant, etc.) and, if possible, the agency accounting classification.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also clearly specify the record contents being sought, and may include an accounting of disclosures that have been made of their records, if any. (These access procedures are in accordance with Department Regulations [45 CFR 5b.5(a)(2)) Federal Register, October 8, 1975, page 47410.)

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Travel vouchers submitted by the individual; grant, contract and loan award document; delinquent loan, grant and scholarship record; consultant invoice of services rendered; and application for travel advance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1

Location

Payments to and Collections from individuals records are located at the following HHS Regional Offices:

Regional Office 01, John F. Kennedy Federal Bldg., Government Center, Boston, MA 02203.

Regional Office 02, 26 Federal Plaza, New York, NY 10007.

Regional Office 03, 3535 Market Street, P.O. Box 13716, Philadelphia, PA 19101.

Regional Office 04, 101 Marietta Tower, Atlanta, GA 30323.

Regional Office 05, 300 South Wacker Drive, Chicago, IL 60606.

Regional Office 06, 1200 Maine Tower, Dallas, TX 75202.

Regional Office 07, Federal Office Bldg., 601 East 12th Street, Kansas City, MO 64106.

Regional Office 08, 19th and Stout Streets, Denver, CO 80294.

Regional Office 09, Federal Office Buildings, 50 United Nations Plaza, San Francisco, CA 94102.

Regional Office 010, Arcade Plaza Bldg., 1319 Second Avenue, Seattle, WA 98101.

Payments to and Collections from individuals records are located at the following HHS Operating Division and Agency Headquarters and Field Offices:

Office of the Secretary (to include Office of Human Development Services records), Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Div. of Accounting Operations, Washington, DC 20201.

Indian Health Service, Headquarters, 5600 Fishers Lane, Room 6A–30, Rockville, MD 20857.

Aberdeen Area Office, Indian Health Service, Federal Building, 115 4th Avenue SE., Aberdeen, SD 57401.

Alaska Native Health Service, 250 Gambell Street, Anchorage, AK 99501.

Albuquerque Area Office, Indian Health Service, 505 Marquette NW., Suite 1502, Albuquerque, NM 87102–2162.

Albuquerque IHS Headquarters West Office, Indian Health Service, 2401 12th Street, NW. RM3N, Albuquerque, NM 87102.

Bemidji Area Office, Indian Health Service, 203 Federal Building, Bemidji, MN 56601.

Billings Area Office, Indian Health Service, Post Office Box 2143, 711 Central Avenue, Billings, MT 59103.

California Area Office, Indian Health Service, 2999 Fulton Avenue, Sacramento, CA 95821.

Nashville Area Office, Indian Health Service, 1101 Kermit Drive, Suite 810, Nashville, TN 37217–2191.

Navajo Area Office, Indian Health Service, P.O. Box G, Window Rock, AZ 86515–0190.

Oklahoma Area Office, Indian Health Service, 215 Dean A. McGee Street NW., Room 409, Oklahoma City, OK 73102.

Phoenix Area Office, Indian Health Service, 3738 North 16th Street, Suite A, Phoenix, AZ 85016–5981.

Portland Area Office, Indian Health Service, 1220 SW Third Avenue, Room 476, Portland, OR 97204.

Tucson Area Office, Indian Health Service, 7900 South J.J. Stock Road, Tucson, AZ 85746.

Public Health Service, Centers for Disease Control, Financial Management Office, 1600 Clifton Road, Atlanta, GA 30333.

Public Health Service, Centers for Disease Control, CDC/NIOSH Accounting Branch, Robert A. Taft Laboratories, Room 116, 4676 Columbia Parkway, Cincinnati OH 45226.

Food and Drug Adm., HFA-120, 5600 Fishers Lane, Rockville, MD 20857.

Food and Drug Adm., 880 W. Peachtree St., NW., Atlanta, GA 30309.

Food and Drug Adm., 585 Commercial Street, Boston, MA 02109.

Food and Drug Adm., 599 Delaware Avenue, Buffalo, NY 14202.

Food and Drug Adm., Room 700—Federal Office Bldg., 850 3rd Avenue (at 30th Street), Brooklyn, NY 11232.

Food and Drug Adm., 20 Evergreen Pl., East Orange, NJ 07018.

Food and Drug Adm., Room 1204, U.S. Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106.

Food and Drug Adm., 900 Madison Avenue, Baltimore, MD 21201.

Food and Drug Adm., P.O. Box S-4427, San Juan, PR 00905.

Food and Drug Adm., Room 1222, Main Post Office Bldg., 433 West Van Buren Street, Chicago, IL 60607.

Food and Drug Adm., 1560 East Jefferson Avenue, Detroit, MI 48207.

Food and Drug Adm., 1141 Central Parkway, Cincinnati, OH 45202.

Food and Drug Adm., 240 Hennepin Avenue, Minneapolis, MN 55401.

Food and Drug Adm., 3032 Bryan Street, Dallas TX 75204.

Food and Drug Adm., Room 222, U.S. Customhouse Building, 423 Canal Street, New Orleans, LA 70130.

Food and Drug Adm., National Center for Toxicological Research, Jefferson, AR 72079.

Food and Drug Adm., 1009 Cherry Street, Kansas City, MO 64106.

Food and Drug Adm., Room 1002, U.S. Courthouse and Courthouse Building, 1114 Market Street, St. Louis, MO 63101.

Food and Drug Adm., Room 573, New Customhouse Building, 721 19th Street, Denver, CO 80202.

Food and Drug Adm., Room 518, Federal Office Building, 50 Fulton Street, San Francisco, CA 94102.

Food and Drug Adm., 1521 West Pico Boulevard, Los Angeles, CA 90015.

Food and Drug Adm., Federal Office Bldg., 909 First Avenue, Seattle, WA 96174.

National Institutes of Health, Operations Accounting Branch, Bldg. 31, Room B1B07, 9000 Rockville Pike, Bethesda, MD 20014.

National Institutes of Health, Rocky Mountain Laboratory, Hamilton, MT 59840.

Alcohol, Drug Abuse, and Mental Health Administration, Saint Elizabeths Hospital, Finance Office, Administration Bldg., Washington, DC 20032.

Social Security Administration, Program and Fiscal Operations Office, Post Office Box 47, Baltimore, MD 21203.

Social Security Administration, Bureau of Supplemental Income, 4-M-5 Annex Bldg., Baltimore, MD 21235.

Social Security Administration, Bureau of Disability Payments, 1506 Woodlawn Drive, 1J2, Baltimore MD 21241.

Social Security Administration, Northeastern Program Center, 9605 Horace Harding Expressway, Flushing, NY 11368.

Social Security Administration, Midatlantic Program Center, 401 North Broad Street, Philadelphia, PA 19108.

Social Security Administration, Southeastern Program Centr. 225 Third Avenue North, Birmingham, AL 35285.

Social Security Administration, Great Lakes Program Center, 165 North Canal Street, Chicago, IL 60606.

Social Security Administration, MidAmerica Program Center, 601 East 12th Street, Kansas City, MO 84106.

Social Security Administration, Western Program Center, Post Office Box 100, San Francisco, CA 94101.

Health Care Financing Administration, Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21235.

For Payments to and Collections from individuals records at the following central payments office for grants and contracts:

Office of the Secretary, Federal Assistance Financing Branch, Box 6021, Rockville, MD 20857.

Appendix 2

System Manager, Departmental principles and standards concerning the system of records are the responsibility of:

Department of Health, and Human Services, Assistant Secretary for Management and Budget, Office of the Secretary, Room 510A, Humphrey Building, Washington, DC 20201.

Operational responsibilities are as follows:

For Payments and Collections from individual records at Department and Regional Office:

HHS, Office of Secretary and Regional Office, Office of Secretary, Deputy Assistant Secretary, Finance, Room 70D1, Humphrey Building, Washington, DC 20201.

For Payments and Collections from individuals records at Principal Operating Component Offices:

Health (CDC, FDA, NIH, ADAMHA, HRSA, ASH, IHS)

Public Health Service, Director, Division of Financial Management, Room 16-17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Social Security Administration, Director, Office of Financial Management, Room 840 Annex Social Bldg., Baltimore, MD 21235.

Office of Human Development, Services Director, Office of Management Services, Room 309D, HHH Building, 200 Independence Ave., SW., Washington, DC 20201.

Family Support Administration, Associate Administrator, Office of Financial Management, HHS Wilber Cohen Building, Room 5611, 300 Independence Avenue SW., Washington, DC 20201.

Health Care Financing Administration Director, Office of Management and Budget, Room G-P-4, East High Rise Building, 6401 Security Blvd., Baltimore, MD 21235 or Room 538.H1, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

[FR Doc. 88-7718 Filed 4-7-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87P-0207]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Bumble Bee Seafoods, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate to inhibit protein curd formation during retorting is being amended to reflect that the test product is to be manufactured at one additional plant. This amendment will provide a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0121.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., 5775 Roscoe Ct., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water and containing added sodium tripolyphosphate, in order to measure consumer acceptance of the new food. The test product deviates from the requirements of the standard of identity for canned Pacific salmon (21 CFR 161.170) that was promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the **Federal Register** of July 13, 1987 (52 FR 26186). The expiration date of the permit is December 12, 1988.

Bumble Bee Seafoods, Inc., has requested that the temporary permit be amended to permit the test product to be manufactured at an additional plant at Chugach Alaska Fisheries, Inc., Ocean Dock Rd., Cordova, AK 99574.

Accordingly, under the provisions of 21 CFR 130.17(f), FDA is amending the temporary permit to indicate that, in addition to the Petersburg Fisheries' plant in Petersburgh, AK 99833, the test product is to be manufactured at Chugach Alaska Fisheries, Inc., Ocean Dock Rd., Cordova, AK 99574. All other terms and conditions of this permit remain unchanged.

Dated: March 31, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88-7751 Filed 4-7-88; 8:45am]

BILLING CODE 4160-01-M

[Docket No. 84P-0346]

Surgical Simplex™ P Antibiotic Bone Cement; Availability of Commissioner's Order Following a Hearing Before an Ad Hoc Advisory Committee

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Commissioner of Food and Drugs' order on a petition for reconsideration of the agency's denial of premarket approval for Howmedica, Inc.'s Surgical Simplex™ P Antibiotic Bone Cement. The Commissioner's order, which follows receipt of the report and recommendation of the Ad Hoc Public Advisory Committee to Review the Denial of Premarket Approval for Surgical Simplex™ P Antibiotic Bone Cement, affirms the Center for Devices and Radiological Health's (CDRH) denial of approval for the device. This notice also announces the availability of the advisory committee's report and recommendation in the proceeding.

ADDRESS: Requests for single copies of the documents may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.).

FOR FURTHER INFORMATION CONTACT: Tenny P. Neprud, Jr., Division of Regulations Policy (HFC-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: By order dated June 29, 1984, the Director of the Office of Device Evaluation of FDA's CDRH denied approval of a premarket approval application (PMA) for the Surgical Simplex™ P Antibiotic Bone Cement filed by Howmedica, Inc., 235 East 42d St., New York, NY 10017. This device, a polymethylmethacrylate cement, that includes two antibiotics, erythromycin and colistin, is intended for use in attaching prostheses to living bone in orthopedic surgical procedures and in pathological fractures. The addition of the antibiotics to the bone cement is proposed to help reduce the risk of localized infection during the intraoperative and postoperative period. CDRH's denial was based on the applicant's failure to satisfy the safety and effectiveness requirements of section 515(d)(2) (A) and (B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(2) (A) and (B)).

In response to CDRH's order, the applicant filed a petition, under section 515(g) of the act, for administrative review of the decision. The petitioner requested that the Commissioner refer CDRH's denial of approval of the PMA to an advisory committee of experts established under section 515(g)(2)(B) of the act, for its independent review of the denial in accordance with section 515(g)(2)(A) of the act.

Accordingly, in the **Federal Register** of May 30, 1986 (51 FR 19610), FDA announced that it intended to establish such an advisory committee and defined the scope of its review by listing seven questions that the committee would consider (51 FR 19611). In subsequent notices the agency announced establishment of the committee (February 6, 1987; 52 FR 3865) and announced its membership and summarized the procedures to be followed at the hearing (April 1, 1987; 52 FR 10413).

The hearing was held on April 27, 1987, in Rockville, MD. Following the hearing, the advisory committee, after independent study of the data and information provided to it, including the testimony presented at the hearing, submitted to FDA its report and recommendation in accordance with section 515(g)(2)(A) of the act.

The Commissioner has issued his order in the matter in accordance with section 515(g)(2)(C) of the act. On the basis of the Commissioner's review of all the evidence in the proceeding, including the PMA, the advisory committee's report and recommendation, the comments of the parties, and all other parts of the record, the Commissioner found that, in the circumstances of this case, a well-controlled clinical investigation in humans is necessary to demonstrate a reasonable assurance that the device is safe and effective as labeled.

Accordingly, the Commissioner affirmed CDRH's order of June 29, 1984, denying approval of the PMA for Surgical Simplex™ P Anatibiotic Bone Cement on the ground that the PMA does not provide a reasonable assurance, as required by section 515(d)(2) (A) and (B) of the act, that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in the device's proposed labeling. Because the committee was given selected portions of the PMA to review in making its report and recommendation to FDA, to comply with section 520(h)(2) of the act (21 U.S.C. 360j(h)(2)), the Commissioner also directed CDRH to make a summary of the safety and effectiveness data on Surgical Simplex™ P Antibiotic Bone Cement available to the public at the earliest possible date.

A copy of the advisory committee's report and recommendation and a copy of the Commissioner's order have been included in the administrative record for this proceeding under Docket No. 84P-0346 and are available for public review in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA will include in the administrative record the summary of safety and effectiveness data on the device that CDRH prepares and will publish a notice of its availability in a future issue of the **Federal Register.**

Dated: April 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7705 Filed 4-7-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee meeting; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a public advisory committee meeting notice of the Pulmonary-Allergy Drugs Advisory Committee on April 28 and 29, 1988. The amendment reflects a revision of the agendas for the open committee discussion on April 28 and April 29, 1988. Notice of the April 28 and 29, 1988, meeting was published in the Federal Register of March 21, 1988 (53 FR 9148).

SUPPLEMENTARY INFORMATION: In FR Doc. 88-6059, appearing at page 9148 in the **Federal Register** of March 21, 1988, the following corrections are made under the heading "Pulmonary-Allergy Drugs Advisory Committee":

On page 9148, third column, lines 1-8 of the *Open committee discussion* paragraph, the agendas scheduled for the April 28 and April 29, 1988, meeting are revised to read as follows:

Open committee discussion. On April 28, 1988, the committee will discuss (1) The new drug evaluation review process, and (2) data supporting pediatric use of inhaled albuterol. On April 29, the committee will discuss (1) the guidelines for testing of

bronchodilators, and (2) the use of caffeine for apnea of prematurity.

Dated: April 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7750 Filed 4-7-88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings: Cincinnati District Office, chaired by James C. Simmons, District Director. The topics to be discussed are FDA's role in protecting Americans from the acquired immunodeficiency syndrome (AIDS) virus and the question of how FDA should set priorities for activities relating to AIDS.

DATE: Tuesday, April 26, 1988, 10 a.m.

ADDRESS: John Weld Peck Federal Bldg., 550 Main St., Rm. 5411, Cincinnati, OH 45202.

FOR FURTHER INFORMATION CONTACT: Theresa C. Hoog, Consumer Affairs Officer, Food and Drug Administration, 1141 Central Parkway, Cincinnati, OH 45202, 513-684-3501.

Minneapolis District Office, chaired by James I. Roberts, District Director. The topic to be discussed is food labeling issues—health claims, irradiation, and cholesterol.

DATE: Wednesday, April 27, 1988, 1:30 to 3:30 p.m.

ADDRESS: County Courthouse, 400 North 4th St., LaCrosse, WI 54601.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4100.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 1, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7704 Filed 4-7-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act; Withdrawal of Draft Environmental Impact Statement

AGENCY: Department of the Interior.

ACTION: Notice of withdrawal of Draft Environmental Impact Statement.

SUMMARY: This notice announces the status of withdrawal of draft environmental impact statements (EIS) that were issued during the period 1980-1982.

DATE: Effective March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce Blanchard, Director of Environmental Project Review, Office of the Secretary, Room 4239, Department of the Interior, Washington, DC 20240. Telephone (202) 343-3891.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969 (NEPA) during calendar years 1980, 1981 and 1982, the Department of the Interior prepared 208 draft EISs including supplemental draft EISs. Of these, 186 went directly to final EISs, 5 were superceded by revised draft EIS, 2 were superceded by notices of intent to prepare new DEISs, and 14 were closed without a final EIS for various reasons (e.g., proposal dropped, modified, enacted by Congress, etc.).

The remaining draft EIS (#81-42) was prepared by the National Park Service for the Chattahoochee River National Recreation Area General Management Plan in Georgia. This notice announces its withdrawal effective March 31, 1988. This draft EIS is 6 years old and policies, proposals, and environments have changed. Moreover, and possibly more important, comments received from reviewers are out of date and may not reflect current positions. If further Departmental action is necessary for this proposal, the NEPA process will be reinitiated.

This notice continues the Department's policy to ensure that its NEPA process is current. On December 31, 1982 all outstanding draft EISs released during calendar years 1970-1976 were withdrawn (48 FR 86). Similar withdrawals occurred on September 30, 1983 for 1977-1978 (48 FR 44114) and February 29, 1984 for 1979 (49 FR 10186). The 1977 withdrawal retained one draft EIS because it was involved in litigation (DES 77-18, Lower Truckee/Carson Rivers Operating Criteria, Nevada). This draft EIS was subsequently withdrawn by the Bureau of Reclamation on May 31, 1985 by a notice of intent to prepare a new EIS for the operating criteria (50 FR 23201).

Date: April 4, 1988.

Martin L. Smith,

Deputy Assistant Secretary of the Interior.

[FR Doc. 88-7746 Filed 4-7-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[WY-030-08-4111-01]

Rawlins District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 that a meeting of the Rawlins District Advisory Council will be held. The meeting will consist of a field trip/tour of Amoco's Bairoil CO^2 Cycling Facility and the Wertz and Lost Soldier oil fields.

DATE: May 11, 1988.

ADDRESS: Amoco's Bairoil CO^2 Cycling Facility, 2 Miles West of Lamont on Highway 73. Bairoil, Wyoming.

FOR FURTHER INFORMATION CONTACT: Carol Moore, ext. 345, or Dick Bastin, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10:00 a.m. in the conference room of the Main Office Building of Amoco's Bairoil CO^2 Cycling Facility. New members will be introduced. A public comment period will be held at 10:30 a.m. with a tour of the Cycling Facility and adjacent areas to follow. Lunch will be catered at the Amoco Office. A tour of the field operations at the Wertz and Lost Soldier oil fields will continue in the afternoon.

The meeting is open to the public. Anyone interested in attending the meeting and/or making an oral statement should notify the District Manager by May 4, 1988. Written statements also may be filed before the meeting for the Board's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Richard Bastin,

District Manager.

[FR Doc. 88-7711 Filed 4-7-88; 8:45 am]

BILLING CODE 4310-22-M

[(AA-320-08-4220-10)]

Proposed Withdrawal; Nevada.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 52,840 acres of public lands in Clark, Lincoln, and Mineral Counties, Nevada. These lands are scheduled to be exchanged in accordance with the terms of the Nevada-Florida Land Exchange Authorization Act of 1988 or, as appropriate, S. 854, 100th Congress. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–784–5481.

SUPPLEMENTARY INFORMATION: On April 5, 1988, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Base and Meridian

T. 11 S., R. 63 E.,
- Sec. 13, S½;
- Sec. 19, that part lying east of U.S. Highway 93 centerline;
- Secs. 20 to 29, inclusive;
- Secs. 30 and 31 inclusive, that part lying east of U.S. Highway 93 centerline;
- Secs. 32 to 35, inclusive;
- Sec. 36, W½.

T. 12 S., R. 63 E.,
- Sec. 1, W½;
- Secs. 2 to 5, inclusive;
- Sec. 6 and 7, that part lying east of U.S. Highway 93 centerline;
- Secs. 8 to 11, inclusive;
- Sec. 12, W½W½;
- Sec. 13, W½;
- Secs. 14 to 17, inclusive;
- Sec. 18, that part lying east of U.S. Highway 93 centerline;
- Sec. 19, that part lying east of U.S. Highway 93 centerline;
- Secs. 20 to 23, inclusive;
- Sec. 24, W½;
- Secs. 25 to 28, inclusive;
- Secs. 29, that part lying east of U.S. Highway 93 centerline;
- Sec. 30, that part lying east of U.S. Highway 93 centerline;
- Sec. 32, that part lying east of U.S. Highway 93 centerline;
- Secs. 33 to 36, inclusive;

T. 12 S., R. 64 E.,
- Sec. 31, W½SW¼, unsurveyed.

T. 13 S., R. 63 E.,
- Secs. 1 to 4, inclusive;
- Sec. 5, that part lying east of U.S. Highway 93 centerline;
- Sec. 8, that part lying east of U.S. Highway 93 centerline;
- Secs. 9 to 16, inclusive;
- Sec. 17, that part lying east of U.S. Highway 93 centerline;
- Sec. 20, that part lying east of U.S. Highway 93 centerline and north of State Highway 168 centerline;
- Secs. 21 to 23, inclusive, that part lying north of State Highway 168 centerline;
- Sec. 24;
- Sec. 25, that part lying north of State Highway 168 centerline;
- Sec. 26, that part lying north of State Highway 168 centerline;

T. 13 S., R. 64 E.,
- Sec. 6, W½, unsurveyed;
- Sec. 7, W½ and W½SE¼, unsurveyed;
- Secs. 18 and 19, unsurveyed;
- Sec. 30, unsurveyed, that part lying north of State Highway 168 centerline;

T. 6 N., R. 33 E.;
- Secs. 10 to 13, inclusive;
- Sec. 14, E½;
- Sec. 15, W½;
- Sec. 21;
- Sec. 22, W½ and S½SE¼;
- Sec. 23, E½ and S½SW¼;
- Sec. 24, E½, W½NW¼, NE¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, and SW¼;
- Sec. 25;
- Sec. 26, NE¼, W½, N¼SE¼, and W½SE¼;
- Sec. 27;
- Sec. 34;
- Sec. 35, NE¼NE¼, W½, W½SE¼, and SE¼SE¼;
- Sec. 36.

The lands described aggregate approximately 51,710 acres in Clark, Lincoln, and Mineral Counties.

The segregation applies to Federal mineral estate for the following described lands:

Mount Diablo Base and Meridian

6N., R. 33 E.,
- Sec. 14, W½;
- Sec. 15, E½;
- Sec. 22, NE¼ and N½SE¼;
- Sec. 23, NW¼ and N½SW¼;
- Sec. 24, SW¼SE¼NW¼.

The lands described aggregate approximately 1,130 acres in Mineral County.

The purpose of the proposed withdrawal is to maintain the status quo pending completion of the exchange provided for in the Nevada-Florida Land Exchange Authorization Act of 1988 or, as appropriate, S. 854, 100th Congress. Until a withdrawal application is filed, no further action will be taken on this proposal.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is canceled or a withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those uses compatible with the purpose of the proposed withdrawal and legislation.

April 5, 1988.

Dean Stepanek,

Assistant Director, Land and Renewable Resources.

[FR Doc. 88–7788 Filed 4–7–88; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Sea Lamprey Control in Lake Champlain; Extension of Review period for Draft Environmental Impact Statement on Use of Lampricides

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the review comment period has been extended for the DEIS on the Use of Lampricides in a Temporary Program of Sea Lamprey Control in Lake Champlain with an Assessment of Effects on Certain Fish Populations and Sportfisheries. The comment period has been extended from March 31, 1988 to October 1, 1988.

DATES: The written comment period has been further extended by the Fish and Wildlife Service to October 1, 1988. A Notice of Availability was published on October 22, 1987 (52 FR 39570). At that time it was announced that written comments were due on March 31, 1988.

ADDRESS: Comments should be addressed to: Howard N. Larsen, Regional Director, Region 5, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Abele, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100,X298. Individuals wishing copies of this Draft EIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the review process to date.

William C. Ashe,

Acting Regional Director.

[FR Doc. 88–7733 Filed 4–7–88; 8:45 am]

BILLING CODE 4130–55–M

Minerals Management Service

Environmental Document Prepared for Proposed Oil and Gas Operations on the Pacific Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service (MMS), U.S. Department of the Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Plans of Exploration on the Pacific OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR Section 1501.4 and Section 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of two NEPA-related Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs), prepared by the MMS for the following proposed oil and gas exploration activities on the Pacific OCS.

Activity/operator	Location	Date
Conoco, Inc., OCS-P 0522, Map 6B (Block 49N 66W).	Eastern Santa Barbara Channel.	March 3, 1988.
Chevron U.S.A., Inc., OCS-P 0525, Map 6B (Block 48N 64W).	.....do.....	March 31, 1988.

Persons interested in reviewing the environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for acitivities on the Pacific OCS are encouraged to contact the MMS office in the Pacific OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor, Office of Leasing and Environment, Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, Mail Stop 300, Los Angeles, CA, 90017-1297, telephone (213) 894-6775.

SUPPLEMENTAL INFORMATION: The MMS prepares EAs and FONSIs for proposals which relate to exploration for and the development/production of oil and gas resources on the Pacific OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposal constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(c). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 1, 1988.

James W. Sutherland,

Acting Regional Director.

[FR Doc. 88-7712 Filed 4-7-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation: Inland Container Corporation I, 151 N. Delaware Street, P.O. Box 925, Indianapolis, IN 46206-0925.

2. Directly or indirectly wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

A. Anderson Box Company, Inc.—Indiana.

B. El Morro Corrugated Box Corporation—Delaware.

C. El Morro Corrugated Box Corporation—de Puerto Rico.

D. Indisc, Inc.—Indiana.

E. Inland Paper Company, Inc.—Indiana.

F. Inland Real Estate Investments, Inc.—Indiana.

G. Inland-Rome Inc.—Delaware.

H. Inland-Orange Inc.—Delaware.

I. Sabine River & Northern Railroad, Inc.—Texas.

J. Inland Container Corporation—Delaware.

B. 1. Parent corporation and address of principal office: Pressure Vessel Service, Inc., d/b/a PVS Chemicals, Inc., 11001 Harper Avenue, Detroit, Michigan 48213.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporations:

(i) Bay Chemical Company—Michigan;

(ii) Dynecol, Inc.—Michigan;

(iii) Chemical Transport Services, Inc.—Michigan;

(iv) PVS Chemicals, Inc. (Illinois)—Michigan;

(v) PVS Chemicals, Inc. (New York)—Michigan;

(vi) PVS Chemicals, Inc. (Ohio)—Michigan;

(vii) Fanchem, Ltd.—Ontario, Canada;

(viii) PVS Chemicals, Inc. (Michigan)—Michigan;

(ix) PVS-Nolwood Chemicals—Michigan;

(x) PVS Chemicals, Inc. (Texas) (doing business as "Tulsa Chemical Company")

Noreta R. McGee,

Secretary.

[FR Doc. 88-7736 Filed 4-7-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs

Review of the Annual Reports Submitted to Congress Regarding the Status of Internationally Recognized Worker Rights in Foreign Countries

Notice

The purpose of this notice is to announce that the Secretary of Labor has been requested by the Committee on Appropriations of the Senate in Report 100-189 to conduct an indepth study with a view to improving the breadth, content and utility of the annual reports submitted to the Congress pursuant to section 505(c) of the Trade Act of 1974, as amended, 19 U.S.C. section 2465(c), regarding the status of internationally recognized worker rights in foreign countries. By July 29, 1988, the Secretary will submit a report to the Congress on the findings of this study, including recommendations for upgrading the internal capacity of the U.S. Government to monitor and report on other countries' respect for such rights.

The Department of Labor invites public comment on the annual reports as they pertain to internationally recognized worker rights. In particular, public input would be welcomed on:

1. The extent to which the reports cover the worker rights issues (the right of association; the right to organize and bargain collectively; the prohibition of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with regard to minimum wages, hours of work and occupational safety and health);

2. The completeness of the reports in addressing worker rights issues in various counties, including those with labor conditions which have been the

subject of adverse comment by other organizations;

3. The consistency of the reports in their treatment of worker rights issues when compared to the treatment given these issues by other organizations;

4. Recommendations for improving the coverage of worker rights in the annual reports.

In order for the Department of Labor to complete its study on time, public comments must be received no later than April 29, 1988. All communications should be addressed to: Mr. William Brumfield, Bureau of International Labor Affairs, U.S. Department of Labor, Room S–5006, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 523–6234.

Signed at Washington, DC, this 4th day of April, 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88–7720 Filed 4–7–88; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Final Planning Estimates for Program Year (PY) 1988 Basic Labor Exchange Activities Authorized Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the final planning estimates for Program Year (PY) 1988 [July 1, 1988 through June 30, 1989] for basic labor exchange activities provided under the Wagner-Peyser Act.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaerfl, Director, U.S. Employment Service, 200 Constitution Avenue NW., Room N–4470, Washington , DC 20210. Telephone: (202) 535–0157.

SUPPLEMENTARY INFORMATION: In accord with Section 6(b)(5) of the Wagner-Peyser Act, the Employment and Training Administration is publishing final estimates for each State's projected allotment for PY 1988.

Preliminary planning estimates were published in the **Federal Register** on February 12, 1988 (53 FR 4234). The total amount of funds currently available for distribution to States for public employment service activities is $723,029,000 less $14,600,000, which will be withheld to finance postage costs associated with the conduct of employment service business. This represents a $600,000 increase over postage costs published with the preliminary planning estimates due to a postal rate increase scheduled for April 1988. Funds will be distributed in accord with formula criteria established in Section 6(a) and (b) of the Wagner-Peyser Act. Civilian labor force (CLF) and unemployment data for Calendar Year 1987 were used in making the formula calculations. The Secretary of Labor set aside 3 percent of the total available funds, as authorized under Section 6(b)(4), to assure that each State will have sufficient resources to maintain statewide employment services. In accordance with this provision, $21,252,870 has been set aside for administrative formula distribution. These set-aside funds are included in the total planning estimate. Set-aside funds are distributed in two steps to States which have lost in relative share of resources from the prior year. In step one, States which have a CLF below one million and are below the median CLF density are maintained at 100 percent of their relative share of prior year resources. The remainder is distributed in step two to all other States losing in relative share of resources from the prior year but which do not meet the size and density criteria for step one.

Signed at Washington, DC, this 29th day of March 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

BILLING CODE 4510–30–M

U.S. DEPARTMENT OF LABOR--EMPLOYMENT AND TRAINING ADMINISTRATION
FINAL PY 1988 WAGNER-PEYSER ALLOTMENTS TO STATES
03-11-1988

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1*	STEP 2**	TOTAL	ALLOTMENT***
Alabama	10,889,925	0	327,741	327,741	11,217,666
Alaska	6,722,432	978,531	0	978,531	7,700,963
Arizona	8,604,829	0	0	0	8,604,829
Arkansas	6,364,287	0	602,048	602,048	6,966,335
California	71,382,852	0	0	0	71,382,852
Colorado	9,712,650	0	0	0	9,712,650
Connecticut	7,897,474	0	0	0	7,897,474
Delaware	1,919,258	0	59,508	59,508	1,978,766
District of Columbia	4,619,531	0	578,309	578,309	5,197,840
Florida	29,748,814	0	0	0	29,748,814
Georgia	15,604,562	0	0	0	15,604,562
Hawaii	2,471,802	0	309,440	309,440	2,781,242
Idaho	5,600,981	815,290	0	815,290	6,416,271
Illinois	32,431,825	0	0	0	32,431,825
Indiana	14,746,229	0	0	0	14,746,229
Iowa	7,888,297	0	987,519	987,519	8,875,816
Kansas	6,271,755	0	0	0	6,271,755
Kentucky	10,176,296	0	0	0	10,176,296
Louisiana	13,543,464	0	0	0	13,543,464
Maine	3,330,851	484,845	0	484,845	3,815,696
Maryland	11,455,779	0	0	0	11,455,779
Massachusetts	13,822,361	0	0	0	13,822,361
Michigan	26,516,201	0	0	0	26,516,201
Minnesota	11,502,431	0	0	0	11,502,431
Mississippi	7,393,294	0	261,555	261,555	7,654,849
Missouri	13,858,444	0	0	0	13,858,444
Montana	4,577,152	666,259	0	666,259	5,243,411
Nebraska	5,500,835	800,713	0	800,713	6,301,548
Nevada	4,449,473	647,674	0	647,674	5,097,147
New Hampshire	2,525,716	0	0	0	2,525,716
New Jersey	18,679,745	0	0	0	18,679,745
New Mexico	5,136,368	747,660	0	747,660	5,884,028
New York	47,599,335	0	5,958,861	5,958,861	53,558,196
North Carolina	15,816,562	0	0	0	15,816,562
North Dakota	4,660,908	678,451	0	678,451	5,339,359
Ohio	29,057,612	0	0	0	29,057,612
Oklahoma	10,883,227	0	1,362,449	1,362,449	12,245,676
Oregon	7,617,806	0	953,657	953,657	8,571,463
Pennsylvania	29,177,080	0	407,865	407,865	29,584,945
Puerto Rico	8,429,565	0	0	0	8,429,565
Rhode Island	2,418,261	0	144,456	144,456	2,562,717
South Carolina	8,389,840	0	0	0	8,389,840
South Dakota	4,307,751	627,045	0	627,045	4,934,796
Tennessee	12,672,600	0	0	0	12,672,600
Texas	49,088,632	0	0	0	49,088,632
Utah	9,421,576	1,371,423	0	1,371,423	10,792,999
Vermont	2,017,998	293,744	0	293,744	2,311,742
Virginia	14,229,439	0	0	0	14,229,439
Washington	12,853,942	0	0	0	12,853,942
West Virginia	4,947,026	701,336	0	701,336	5,648,362
Wisconsin	13,171,991	0	0	0	13,171,991
Wyoming	3,342,162	486,491	0	486,491	3,828,653
FORMULA TOTAL	685,449,226	9,299,462	11,953,408	21,252,870	706,702,096
Guam	331,490	0	0	0	331,490
Virgin Islands	1,395,414	0	0	0	1,395,414
Indicia Postage	14,600,000	0	0	0	14,600,000
NATIONAL TOTAL	701,776,130	9,299,462	11,953,408	21,252,870	723,029,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1987 TO THE PY 1988 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1987 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1987 TO THE PY 1988 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 88-7721 Filed 4-7-88; 8:45 am]

BILLING CODE 4510-30-C

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Maryland:
MD88-16 ..... pp. 456a-456b.
MD88-17 ..... pp. 456c-456d.

Volume II:

Iowa:
IA88-13 ..... pp. 66a-66b.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC88-1 (JAN. 8, 1988) ..... p. 77.
DC88-2 (JAN. 8, 1988) ..... p. 90.
Massachusetts:
MA88-3 (JAN. 8, 1988) ..... pp. 406, 408.
Maryland:
MD88-5 (JAN. 8, 1988) ..... pp. 431-432.
New York:
NY88-11 (JAN. 8, 1988) ..... pp. 782-784.
NY88-12 (JAN. 8, 1988) ..... pp. 792-795.
NY88-15 (JAN. 8, 1988) ..... pp. 814-816.
NY88-17 (JAN. 8, 1988) ..... pp. 820-822.
NY88-18 (JAN. 8, 1988) ..... pp. 830-832.
Listing by Location (index) ..... p. xxix.
Listing by Decision (index) ..... pp. liii-liv.

Volume II

Iowa:
IA88-5 (JAN. 8, 1988) ..... pp. 42-47.
Illinois:
IL88-19 (JAN. 8, 1988) ..... p. 232.
Indiana:
IN88-1 (JAN. 8, 1988) ..... pp. 234-246b.
IN88-2 (JAN. 8, 1988) ..... pp. 248-249.
IN88-3 (JAN. 8, 1988) ..... p. 267.
IN88-6 (JAN. 8, 1988) ..... pp. 300-302, 304.
Kansas:
KS88-6 (JAN. 8, 1988) ..... p. 346.
Missouri:
MO88-2 (JAN. 8, 1988) ..... p. 606.
MO88-10 (JAN. 8, 1988) ..... p. 656.
Listing by Location (index) ..... p. xxv.
Listing by Decision (index) ..... p. liii.

Volume III

Utah:
UT88-1 (JAN. 8, 1988) ..... pp. 336, 338.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1 day of April 1988.

ALAN L. MOS

Director, Division of Wage Determinations.

[FR Doc. 88-7541 Filed 4-7-88; 8:45am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Dairyland Power Cooperative; Notice of Consideration of Issuance of Amendment to Facility License and Opportunity for Hearing

[Docket No. 50-409]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional License No. DPR-45, issued to Dairyland Power Cooperative (the licensee), for the LaCrosse Boiling Water Reactor (LACBWR) located in Vernon County, Wisconsin. The amendment would involve approval of the LACBWR Decommissioning plan and associated Technical Specifications (TS) and an extension of Provisional License No. DPR-45.

On April 30, 1987 LACBWR was permanently shutdown. All spent fuel has been transferred from the reactor to the Spent Fuel Storage Well and License No. DPR-45 amended to possess-but-not-operate status. This amendment would accomplish the following:

(1) Approval of the licensee's Decommissioning Plan which involves 30-50 years of on-site storage of residual radioactivity followed by its removal (SAFSTOR). The licensee also proposes to retain spent fuel onsite in the Fuel Element Storage Well until a Federal repository is available for spent fuel disposal. The Decommissioning Plan analyzes the proposed monitoring, maintenance and operation of the spent fuel pool and the monitoring and maintenance of the remainder of the facility. The Plan also analyzes potential accidents at the facility and the controls established for radiation protection and the prevention of the release of radioactivity from the site. A supplement to the LACBWR Environmental Report submitted with the Decommissioning Plan analyzes the environmental impacts of the SAFSTOR decommissioning option;

(2) Revision of the TS to reflect the long term storage of fuel and residual radioactivity onsite. The TS requirements would be revised to reflect the SAFSTOR status such as requirements for radiation monitoring, facility maintenance and Fuel Element Storage Well operations.

(3) Extension of License No. DPR-45 for 40 additional years to be consistent with 10 CFR 50.51 which restricts the period of time of a license extension to 40 years from the date of issuance and also consistent with the licensee's Decommissioning Plan which requests approval of a 30 to 50 year SAFSTOR period followed by facility dismantling.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 9, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility 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 hearing and a petition for leave to intervene. Requests for a hearing and petitions 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. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petition 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 fifteen (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 fifteen (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, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. 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 becomes 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 [in Missouri 1-800-342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Kevin P. Gallen, Esq., Newman and Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplementary petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safey and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed findings of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 21, 1987 as revised February 22, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Dated at Rockville, Maryland, this 1st day of April, 1988.

For the Nuclear Regulatory Commission.

Peter B. Erickson,

Project Manager, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7737 Filed 4-7-88; 8:45am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Placement Questionnaire.

(2) Form(s) submitted: ES-24.

(3) Type of request: New collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households, businesses or other for-profit.

(6) Annual responses: 3,365.

(7) Annual reporting hours: 316.

(8) Collection description: Under Sections 12(i) and 12(l) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is authorized to establish, maintain and operate free employment offices to provide claimants for unemployment benefits with job placement services. The collection obtains information to improve and evaluate the effectiveness of the Board's employment services program.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88-7713 Filed 4-7-88; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Extension: Rule 22d-1, File No. 270-275; Form N-14, File No. 270-297.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 22d-1 under the Investment Company Act of 1940 [17 CFR 270.22d-1] and Form N-14 under the Securities Act of 1933 [17 CFR 239.23]

Rule 22d-1 provides registered investment companies that issue redeemable securities, their principal underwriters and dealers in their shares with an exemption from the uniform sales load provision of Section 22(d) of the Investment Company Act of 1940 to permit the sale of redeemable securities at varying sales loads. The rule imposes a burden of about 15 minutes annually, per respondent.

Form N-14 is used for registration under the Securities Act of 1933 of securities issued in business combination transactions by registered investment companies and business development companies. The form imposes a burden of about 2500 hours per response.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Date: March 30, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7739 Filed 4-7-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

American Pain & Stress, Inc., et al.; Order of Suspension of Trading

April 5, 1988.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Pain & Stress, Inc., Associated Systems Interntional, Inc., A.S.T.I. Corp., Inc., Brew Makers, Inc., Chevlon Industries, Inc., Dayton Filmcorp, Equifirst, Inc., Es-Tech International, Inc., Far East Trading, Co., Fortune Five-O Real Estate Corp., Foster Technology, Inc., ICEM Systems, Inc., International Chem-Pro Industries, Inc., Inter-Med International, Inc., James H. Fors & Associates, Inc., Land & Sea Resources, Inc., Lourdex Corp., Lutech International, Ltd., MedGroup, Inc., Micro-Books International, Inc., Naja-International, Inc., National Integrated Systems, Inc., Northridge/America Corp., Oroco, Inc., Oxygenetics, Inc., Pacific Biosystems, Inc., Pacific Composites, Inc., Pacific Western Corp., Precision Imaging Corp., Professional Dental Technologies, Inc., Protecto Industries, Inc., Public Service Corp., Renaissance Entertainment, Inc., Rio-Tek, Inc., Sea-Land Treasures, Inc., Seva Resorts, Inc., Southco Communications Corp., Stereo Vision 3-D Corp., Stowe Standardbred Breeders, Inc., Superior Resources, Inc., Totem Pole Gardens, Inc., Trivest International, Inc., Viral Research Technologies, Walsh Communications Group, Inc., Wellington Group, Ltd. and that the Commission has information that gives it reason to believe that false statements have been made concerning, among other things, claims for exemption from the registration provisions of the Securities Act of 1933 made by these companies and pursuant to which their securities are trading, and the corporate history, stock ownership and financial condition of these companies. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-

listed companies, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. EDT, April 5, 1988 through 11:59 p.m. EDT, on April 14, 1988.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-7741 Filed 4-7-88; 8:45 am]

BILLING CODE 88-7741-M

[Release No. 34-25545; File No. SR-CBOE-88-05]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice and Order Granting Partial Accelerated Approval to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1988, the Chicago Board Options Exchange, Incorporated, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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

Rule 6.2. Trading Rotations. No change.

Interpretations and Policies:

.01 Trading rotations shall be employed at the opening of the Exchange each business day. For each class of option contracts that has been approved for trading, the opening rotation shall be conducted by the Board Broker or Order Book Official acting in such class of options.

The opening rotation in each class of options shall be held promptly following the opening transaction in the underlying security on the principal exchange where it is traded. As a rule, a Board Broker or Order Book Official acting in more than one class of options should open them in the same order in which opening transactions are reported in the underlying securities. In conducting each such opening rotation, the Board Broker or Order Book Official should ordinarily first open the one or more series of options of a given class having the nearest expiration, then proceed to the series of options having the next most distant expiration, and so forth, until all series have been opened. If both puts and calls covering the same underlying security are traded, the Board Broker or Order Book Official shall determine which type of option *will* [would] open first, and shall alternate the opening of put series and call series. A Board Broker or Order Book Official may conduct the opening rotation in another manner only with the approval of two Floor Officials or at the direction of the Floor Procedure Committee. *A modified opening rotation such as that described in Interpretation .02 to Rule 24.13 may be conducted for certain index options classes.*

In the event an opening transaction in the underlying security has not been reported within a reasonable time after 8:30 a.m. (Chicago time), the Board Broker or Order Book Official acting in option contracts on such security shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of the delay. The opening rotation for option contracts in such security shall be delayed until an opening transaction is reported in the underlying security unless two Floor Officials determine that the interests of a fair and orderly market are best* served by opening trading in the option contracts.

.02 and .03 No change.

Rule 7.4 Obligation for Orders. (a) through (e)(3) No change.

(e)(4) The provisions of paragraph (e) of this rule shall not apply to matching certain opening buy and sell orders in S&P 100 options. The procedures for such orders are set forth in Interpretation .02 to Rule 24.13.

(f) No change.

Interpretations and Policies:

.01 No change.

.02 Board Brokers and Order Book Officials shall accept orders, including cancels and changes, at the opening on the same time sequence basis as pertains during the balance of the day. However, a Board Broker or Order Book Official shall not be held for orders accepted during a time interval from five (5) minutes prior to the report of a transaction in an underlying security through the end of the opening rotation in that class of option contracts for execution of such orders at the opening. *In the case of the S&P 100 options, an Order Book Official shall not be held for orders accepted during a time interval from ten (10) minutes prior to the opening of trading through the end of opening rotation for execution of such orders at the opening.*

.03 through .06 No change.

Rule 8.15. Lead Market-Makers and Supplemental Market-Makers. The Market Performance Committee may appoint one or more market-makers in good standing with an appointment in the S&P 100 options as Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") to participate in the modified opening rotation described in Interpretation .02 to Rule 24.13

(a) LMMs and SMMs shall be appointed on the first day following an expiration for a period of one month ("expiration month") and shall be assigned to a zone with one more LMMs and SMMs. The Committee shall select the series to be included in a zone.

1. Factors to be considered by the Committee in selecting LMMs and SMMs include: adequacy of capital, experience in trading index options, presence in the S&P trading crowd, adherence to Exchange rules and ability to meet the obligations specified below. An indiviual may be appointed as an LMM in only one zone for an expiration month but may also be appointed as an SMM in other zones. An individual may be appointed to be an SMM in more than one zone. When individual members are associated with one or more other members, only one member may receive an LMM appointment.

2. Removal of one or all LMMs and SMMs in a zone may be effected by the Committee on the basis of the failure of one or more LMMs or SMMs assigned to the zone to meet the obligations set forth in paragraphs b and c below, or any other applicable Exchange rule. An LMM or SMM removed under this Rule may seek review of that decision under Chapter XIX of the Rules.

3. If one or more LMMs are removed or if for any reason an LMM shall no longer be eligible for or shall resign his appointment or shall fail to perform his duties, the Committee may appoint an interim LMM to complete the monthly obligations of the former LMM.

4. The Committee shall review and evaluate the conduct of LMMs and SMMs, including but not limited to compliance with Rules 8.1, 8.2, 8.3, and 8.7 and may hold all LMMs and SMMs in a zone responsible for the performance of each LMM and SMM in the zone.

(b) The obligations of an LMM are as follows:

1. To quote a firm two-sided market of sufficient size to accommodate a relatively active opening within the bid/ask differentials permitted by Rule 8.7 in all option series assigned to the zone;

2. To facilitate any imbalances of customer orders in all series assigned to the zone;

3. To assist LMMs in other zones to facilitate excessive imbalances;

4. To perform the above obligations for a period of one expiration month commencing on the first day following an expiration. Failure to perform such

obligations for such time may result in suspension of up to three months from trading in all series of the S&P 100 option.

(c) The obligations of an SMM are as follows:

1. To accept the previously agreed to portion of opening order imbalances; and

2. To participate with the LMM in the modified trading rotation for a period of one calendar week. Failure to perform such obligations for such time may result in suspension of up to three months from participation as an LMM or SMM.

Rule 24.13 Trading Rotations. No Change.

Interpretation .01 No Change.

.02 Modified Opening Rotation—In conducting the opening rotation in S&P 100 options, certain option series having the nearest expiration may be opened as described in Interpretation .01 to rule 6.2 ("main rotation"). The remaining series having the nearest expiration and other series having more distant expirations may be divided into one or more zones and be opened simultaneously with the main rotation by an Order Book Official in the following manner. One or more Lead Market Makers (LMM) in each zone shall be responsible for quoting a two-sided market in each of the series assigned to the zone. The markets will generally be set without prior indication of the imbalances to be facilitated. Only in the case of extreme market conditions or an extremely large imbalance of opening orders may the Order Book Official indicate the direction or size of the order imbalance. Upon receiving the LMM market, the Order Book Official will state the net imbalance in each series to the LMM who shall buy or sell it.

Upon conclusion of the main rotation, the Order Book Official conducting the main rotation will declare open trading in all series. Such declaration shall apply to the main rotation and to all zones which have completed opening rotation. Open trading in the series assigned to the zones shall not commence before the Order Book Official conducting the main rotation has made such declaration.

Market-Makers who wish to participate in the opening of series in which they do not hold LMM or SMM appointments may transmit written non-cancellable proprietary and market maker orders to the LMM in that zone ten minutes prior to the opening of trading. The minimum participation shall not be less than the participation of a Supplemental Market-Maker ("SMM") in that zone.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

A modified rotation process has been developed to provide for a more rapid opening for S&P 100 Index Options ("OEX"). The rotation evolved out of pilot programs using simultaneous rotations for series in the more distant expirations. However, the proposed modified OEX rotation is new in that it provides for several sub-crowds or zones. At this time, it is contemplated that there will be six zones. A Lead Market-Maker (LMM), with assistance from other LMMs and from Supplemental Market-Makers ("SMM"), will be responsible for facilitating order imbalances in series assigned to each zone, simultaneously with the main rotation. The main rotation will be limited to selected front month series and all members of the trading crowd may participate.

The Exchange believes this procedure is sufficiently different from the procedures piloted under the general authority of Exchange Rule 24.13 that it is filing a proposed new interpretation to Rule 24.13 and a new Rule 8.15 as rule changes under section 19(b) before implementation of the new rotation procedure. Any restrictions on participation inherent in the new procedure are outweighed by the benefits to market-makers and the investing public of a faster opening.

The proposed procedure should reduce the average time for opening rotations to approximately 10 minutes, even under extreme market conditions such as those experienced in October. The Exchange is requesting accelerated approval of the proposed rule changes in order to implement the OEX modified rotation on Monday, March 28. The rule changes necessary to complement the proposed modified opening rotation are described below.

Rule 7.4 has been modified to make clear that only orders received ten minutes before the opening of the S&P options will be entitled to participate in the opening. This will help ensure that the opening rotation in all series commences at 8:30 a.m. (Chicago time) and ends as close to the target time of 8:40 a.m. as possible.

Rule 8.15 is new and sets forth selection and removal criteria for LMMs and SMMs to be used by the Market Performance Committee. It is contemplated that a subcommittee of the Committee will accept applications for LMMs and SMMs up to and including the Monday of the week ending with expiration. On Thursday of that week, the series included in each zone and the names of the LMMs and SMMs selected for the expiration will be announced by the Committee. The rule describes the factors to be considered by the Committee in making its selections. If there are more qualified LMM and SMM applicants than zone appointments available, the Committee may determine to rotate LMMs and SMMs on a monthly or weekly basis, respectively.

While there may be more than one LMM in each zone, only one LMM may speak for and commit all participants of the zone. A number of series may be assigned to each zone. LMMs and SMMs in a zone may agree as to the percentage participation of each LMM and SMM in the opening imbalance. The obligations of LMMs and SMMs and their joint responsibility for the zone opeining are also set forth in the Rule.

Interpretation .02 to Rule 24.13 is new and describes the modified rotation. It sets forth the way in which the OBO communicates and the LMM facilitates customer order imbalances on the book subject to Rule 7.5. It also provides the method by which non-participating marker-maker and proprietary orders may participate in the opening. Finally, it makes clear that open trading commences only upon completion of the traditional main rotation in which all market makers may participate.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Other

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Chicago Board Options Exchange, Inc., has requested that the proposed

rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, because the Exchange would like to implement the OEX modified rotation as soon as possible. The Exchange has stated that immediate implementation of these procedures will reduce the average time for OEX opening rotations to approximately ten minues, even under extreme market conditions such as those experienced in October.

The Commission finds good cause for approving the proposed rule change as it relates to modification of Interpretation .02 to Rule 7.4 and adoption of certain portions of Interpretation .02 to Rule 24.13, prior to the thirtieth day after the date of publication of the proposal in the **Federal Register.** The modification of Interpretation .02 to Rule 7.4 relieves an OEX Order Book Official ("OBO") from executing, at the opening, orders accepted between ten minutes prior to the opening of trading and the end of the opening rotation. The portions of Interpretation .02 to Rule 24.13 that the Commission will accelerate approval (1) provides for certain option series in the OEX opening rotation having the nearest expiration to be opened as described in Interpretation .01 to Rule 6.2 ("main rotation") and remaining near and far term series to be divided into one or more zones and opened simultaneously with the main rotation, and (2) provides that upon conclusion of the main rotation, the OBO conducting the main rotation will declare open trading in all series. Such declaration shall apply to the main rotation and to all zones which have completed opening rotation. Open trading in the series assigned to the zones shall not commence before the OBO conducting the main rotation has made such declaration. The Commission believes that the proposed changes will expedite the completion of the opening rotation by providing an earlier identification of order imbalances, thus providing the OBO an opportunity to facilitate such imbalances as soon as possible. Faster opening rotations will reduce the problems associated with delayed open trading, especially during extreme market conditions as witnessed during the October 1987 market decline.[1]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the proposed change relieving the OEX OBO from executing, at the opening, orders accepted between ten minutes prior to the opening of trading and the end of the opening rotation does not significantly alter existing rules since existing rules presently relieve the OBO from executing at the opening orders accepted five minutes prior to the opening of trading. As to the modification to certain portions of Interpretation .02 to Rule 24.13, a modified opening rotation in the OEX, based on dividing the OEX rotation into sections depending upon series, was implemented on an experimental basis by the exchange in January, 1988, and has run smoothly since its inception.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[2] that the proposed rule change referenced above be, and hereby is, approved, as it relates to modification of Interpretation .02 to Rule 7.4 and adoption of the specified portions of Interpretation .02 to Rule 24.13.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7740 Filed 4-7-88; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Commission, "A Report by the Division of Market Regulation on The October 1987 Market Break," February, 1988, p. 8-6.

[2] 15 U.S.C. 78s(b)(2) (1982).

[3] 17 CFR 200.30-3(a)(12) (1986).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reestablishment of the FAA Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Reestablishment of the FAA Air Traffic Procedures Advisory Committee.

Announcement. Notice is given of the reestablishment of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee. This advisory committee was established on the recommendation of a task group that was formed by the Secretary of Transportation on January 28, 1975. The task group's recommendation called for the establishment of a standing group to review all air traffic control procedures and practices. The Administrator of the FAA is the sponsor of the committee. The membership will include experts from the Government, the aviation industry, and those representing the viewpoints of other elements of the aviation community. Non-Federal members of the committee do not become Government employees. They serve without compensation and at their own expense. The committee will make recommendations for standardizing, clarifying, and upgrading present air traffic control procedures and practices and recommend new or revised procedures necessary to accommodate new air traffic control concepts.

Public Interest. The Secretary of Transportation has determined that the reestablishment and continued use of the committee is necessary in the public interest in connection with performance of duties imposed on the FAA by law. Meetings of the committee will be open to the public except as provided for in section 10(d) of the Advisory Committee Act.

Issued in Washington, DC, on March 31, 1988.

Walter H. Mitchell,

Executive Director, Air Traffic Procedure Advisory Committee.

[FR Doc. 88-7729 Filed 4-7-88; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held from April 18 through April 22, 1988. Attendance is open to the public, but will be limited to the space available.

FOR FURTHER INFORMATION CONTACT: Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from April 18, at 9 a.m., through April 22, 1988, at 11:30 a.m., at the Federal Aviation Administration headquarters, Washington, DC. The meeting will be held in the MOC room (10th floor) on April 18; conference room 8AB on April 19; and the Administrator's Round Room (10th floor) on April 20–22. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public not limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 15, 1988. The next quarterly meeting of the FAA ATPAC is planned to be held from July 11 through July 15, 1988, in Denver, Colorado. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on March 31, 1988.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 88–7728 Filed 4–7–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

[FHWA Docket No. 87–12, Notice No. 2]

Rail-Highway Crossing Study; Summary of Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental information.

SUMMARY: This notice summarizes the responses received to the request for comments on national highway-railroad crossing improvement and maintenance needs published in the **Federal Register** on August 21, 1987 (52 FR 31688). It also describes how these comments will be considered in the studies and report to Congress required by Section 159 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

FOR FURTHER INFORMATION CONTACT: Mr. Howard C. Hanna, Program Development Division, Office of Highway Safety, (202) 366–2131; or Mr. Paul L. Brennan, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET. Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 159 of the STURAA (Pub. L. 100–17, 101 Stat. 132) directs the Secretary of Transportation to conduct a study of national highway-railroad crossing improvement and maintenance needs, and how these crossing needs can be addressed in a cost-effective manner. A final report is to be submitted to the Congress by April 2, 1989.

On August 21, 1987, the FHWA published a notice and request for comments in the **Federal Register** (52 FR 31688), announcing initiation of the study and inviting comments on overall scope and conduct of the study, issues to be addressed, and pertinent information and research that would be helpful in assessing crossing needs and trends. The notice also indicated the FHWA intends to use the national rail-highway crossing inventory maintained by the Federal Railroad Administration (FRA) as a base for information collection, and encouraged States and railroads to review and update where necessary the information concerning crossings under their jurisdictions or responsibility.

Summary of Comments

A total of 61 responses have been received to date in reply to the August 21, 1987 notice. Of these, 37 commented on various aspects of the study, the remaining 24 were requests to be included in the agency mailing list being developed. The 37 submitting comments included one Federal agency, ten State highway or transportation agencies, three State commissions, five city and/or county agencies, five national associations or organizations, three railroads, and ten others, including universities, consulting firms, corporations and individuals.

All submissions addressed one or more of the nine issues listed in the legislation initiating the study. These included comments affirming the significance of the issue in addressing highway-railroad crossing needs, recommendations on scope and items to be considered under a particular issue, and information offered to assist in the needs assessment. Many of these comments identified particular countermeasures, devices or practices believed to be either already demonstrated or candidate cost-effective methods of protecting the public at crossings.

Several comments were considered recommendations of additional issues to study, either as extensions to the mandated items or as additional concerns. Others discussed overall study approach, use of the national inventory, benefits of uniform national criteria, State/local flexibility, and other particulars that did not appear to apply to only one issue. Where possible, these are summarized later under separate headings.

No responses objected to the study, or believed it was unnecessary or untimely.

Mandated Study Issues

Section 159 of the STURAA directs that the issues addressed by the study include, but not be limited to, the following:

1. An examination of any correlation which may exist between existing conditions at highway-railroad crossings and accident data at such crossings.

2. An examination of existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints at such crossings, including delays of police, fire, and emergency medical services.

3. An analysis of the most cost-effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State and local government and railroads; cost

effectiveness of the railroad relocation demonstration program conducted under section 163 of the Federal-Aid Highway Act of 1973 (Pub. L. 93–87, 87 Stat. 250, 280) as compared to the railroad-highway crossing program conducted under section 130 of Title 23, United States Code; and the cost of upgrading existing equipment at crossings to the latest technology.

4. An examination of driver behavior at such crossings and what technologies are most effective in changing behavior and preventing accidents.

5. An examination of what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors, has on railroad-highway crossing needs.

6. A review of any other potential costs associated with such crossings, including accident liability, increased truck size and weight, and maintenance responsibilities.

7. An examination of railroad and highway needs relating to crossing safety, capacity, and mobility and the needs of communities affected by railroad-highway crossings.

8. An examination of the feasibility of addressing these needs on a corridor or system basis.

9. An examination of the responsibility of rail and highway authorities in addressing these needs.

The following discussion summarizes for each of these nine items the concerns and recommendations most frequently mentioned in the comments received, and present plans for addressing the points raised during the study.

1. Correlation of Accidents

Most of the comments on this issue addressed problems that may be encountered, based on past analysis efforts or the limitations in data sources available. Good correlations require data not only on individual accident characteristics but also the physical, operational and environmental conditions that existed at the crossing. Major problems identified were differences in reporting among available databases, inability to link accident and condition data, and limitations in those large databases that can be correlated, such as the national inventory compiled by the FRA from crossing data submitted by the States and railroads. The two crossing characteristics most often mentioned as potential contributors to accidents but not in the national inventory were available sight distance, and crossing surface characteristics and conditions.

Because of time and resource limitations, development of a new, nationally applicable database for this study that adequately addresses these problems is not considered feasible. Significant effort will be put to the reexamination and better use of existing data sources, however, while clearly indicating their limitations.

2. Community Hazards and Impacts

Comments on this issue focused on how community impacts would be surveyed and measured, examples of specific crossing features or operating characteristics that create hazards and delays, and ways of providing proper protection at crossings within communities without impeding vital services or increasing driver frustration and noncompliance. Comments concerning the impacts of decreased community mobility and safety were about equally divided between those brought about by changes in railroad operations, and those brought about by community growth and highway traffic increases.

Community impacts will be analyzed principally through an examination of case studies, and simulation of crossing hazards and delays under varying conditions.

3. Cost Effective Methods

This issue elicited the most comments, with many respondents identifying countermeasures, devices or practices believed to have already demonstrated their cost effectiveness in protecting the public at crossings, or should be examined in further depth. Comments concerning the overall effectiveness of the existing Federal-aid grade crossing program under section 130 of Title 23, United States Code, were very positive, although some cautioned against expecting similar accident reductions in the future through physical improvements alone. It was recommended that the costs of delay (motorist and train) and non-train accidents be included, as well as train-vehicle accident costs, in determining the cost effectiveness of various countermeasures and in resource allocation decisions. Some comments indicated that the potential for unusually severe or catastrophic consequences, even when of low probability, should also be considered.

The most common candidates recommended for further analysis of their impact on crossing safety were specific crossing improvements such as sight distance clearance, special or supplemental signing, crossing surfaces, upgrading existing devices to current technology, new technology to supplement or replace existing devices, and grade separation structures. A few were train related (visible markings, speed controls, etc.), while some others were program related (simplified project procedures, construction practices, etc.) aimed at reducing costs.

A significant group of comments identified what could be called nonphysical improvements or off-site methods as potentially most effective, such as driver education, public information, traffic law enforcement, and project selection procedures. As these types of programs are not specifically mentioned in the nine basic study issues, these comments are considered under the section on Additional Study Areas.

All candidate methods identified in the responses will be considered in the study. Where data availability permits a determination of effectiveness considered generally applicable over a wide range of conditions, these estimates will be reported. The potential of other suggested methods for improving public safety at crossings must necessarily be assessed by alternate means.

Several comments referred to escalating or excessive costs for active warning device installations as a detriment to greater program effectiveness. Suggestions included alternate contracting procedures and less costly active devices (more than a crossbuck, less than flashing lights with gates) as resulting in greater benefits overall. If possible, cost-cutting measures that can be identified will also be evaluated.

4. Driver Behavior

Respondents agreed that a better understanding of driver reaction and behavior at grade crossings could be a key element in increased crossing safety. Potential study areas suggested include identification of over-represented crossing accident types, drug and alcohol involvement, driver reaction times, motorist recognition and understanding of existing warning systems, relationship between delay and compliance, and techniques for behavior adjustment. Technological changes suggested varied from small alterations to existing devices to developing a completely new approach to driver warning and control systems at crossings.

The comments on this issue suggested several potential underlying causes for poor driver performance at grade crossings which will be considered during the study. One is driver understanding and attitudes toward existing systems, potentially addressed through education and enforcement. A second is the warning system used,

where technological improvements can provide better recognition of hazards, achieve better compliance by being more responsive to driver needs, or even physically prohibit unsafe movements. Another underlying problem is the rail-highway grade crossing environment in general, where the infrequent but high-risk demands placed on the highway user by current systems may exceed the capabilities of many drivers.

5. Rail Traffic Patterns

Many respondents suggested that not only shifts in rail traffic, but shifts in railroad ownership as well, have or could have a significant effect on crossing needs. The recent conversion of significant rail mileage to numerous short lines and regional railroads, and the consolidation of heavy traffic on the remaining main lines in many areas, was the most frequently mentioned cause. Significant changes in train volumes and operating characteristics were reported for both main and branch line operations, with the upgrading or downgrading of existing warning systems in response to these changes creating reported administrative, financial and political problems. Longstanding State-railroad practices for identifying needs, financing improvements, and maintaining crossings and equipment were also cited as having been disrupted by these railroad industry changes.

Consultation with regional railroad and short line associations, as well as the Association of American Railroads, is anticipated during the course of the study, and analysis results and needs estimates will be subdivided by railroad classification where applicable.

6. Other Associated Costs

Most respondents affirmed the need to consider accident liability, increased truck size and weight, and maintenance as costs associated with safe crossing operation, and provided numerous examples of specific items to consider within these categories. Some responses included recommendations for additional costs to consider, and they are included in the section on Additional Study Areas or described below.

Other significant costs identified were vehicular delays during both normal and emergency situations, nontrain accidents at grade crossings and separation structures, emergency response costs for accidents involving property, people or the environment, and added access costs for land and businesses caused by crossing locations. The first three of these supplemental areas have been added to the study plan, but the fourth presents formidable difficulties.

7. Crossing Needs

Comments received on the overall approach to needs, rather than the inclusion or exclusion of specific items discussed under other headings, are summarized here. In collecting needs data, several warned that this could not be done adequately without State and railroad involvement. Reservations were expressed about extensive requests for new data, suggesting instead drawing upon earlier studies to the extent possible. Needs should anticipate future as well as present conditions and objectives. Testing of alternatives was also suggested, by applying different criteria to a network or groupings of crossings to estimate the costs and effects.

Several responses expressed concern with needs reported in absolute or finite numbers, as safety needs are never really met until all preventable accidents are eliminated, and even then needs remain to maintain that level. Some also felt this would lead to the merging of crossing needs with other highway program needs, although their objectives are very different. One expressed the belief that basing needs on minimum thresholds or criteria would penalize States that have done or want to do a better than average job of providing safer crossings, if resource allocation decisions are later based on needs.

A large number of responses, however, recommended that the study establish uniform national criteria or standards in one or more areas for priority setting, accident prediction, installation or removal of various devices, grade separations, maintenance, and others. For many of these recommendations it was unclear if they were meant as input to the needs process (to generate consistent estimates), or suggested end product of the study (establishing future program direction). To prevent misinterpretation, comments received both for and opposed to specific national criteria are summarized later under a separate heading.

Comments on the needs of communities affected by crossings suggested a cyclic and dynamic process, with changing crossing use (highway or rail) impacting community development and safety, but community changes continually altering crossing needs too. Local community needs were described as the weakest link in the current program, where lack of expertise and matching funds, plus local pressures, inhibited the identification or implementation of needed crossing safety improvements.

In reporting needs, the study will rely heavily on improvement and rehabilitation program estimates provided through the State and railroad associations, plus historic costs and projections for other needs. Arrangements with the American Association of State Highway and Transportation Officials and the Association of American Railroads are now underway, with contacts with additional affected groups planned. The concept of developing needs primarily by application of uniform criteria to a consistent national data base was considered but not adopted. Such an effort involves extensive on-site surveys for which resources are not available, and requires advance definition of uniform criteria for estimate purposes in areas where little or no basis now exists. Complete consistency in results will be lost by the selected method, for the opportunity to provide more complete coverage of needs as perceived by program participants. These estimates will be supplemented by several "what if" alternatives developed by applying candidate criteria to selected networks or classes of crossings identified in the national inventory.

Current plans envision needs matrices for crossings (improvements, rehabilitation, maintenance, etc.), for other associated activities (inventories, operations, public information, etc.) and for special initiatives (systems, corridors, communities, etc.).

8. Corridor or Systems Approach

Responses to this issue generally agreed with the feasibility of addressing crossing needs on a corridor or system basis. The system approach was recommend for examining the special needs of crossings on core national rail systems, or to develop a classification of crossing types identifiable as the most dangerous by group. The corridor approach was recommended to expedite paperwork, handle changes in crossing requirements brought about by abandonments or other operational and ownership changes, examine high density lines through communities, and to promptly adjust warning device activation settings where significant changes in train speeds occur over a section of track. One response cautioned, however, that too much concentration on specific rail corridors may diminish Statewide or areawide support for a crossing improvement program.

As indicated in the previous section, the study will specifically look at system and corridor needs as alternatives. Case studies of successful programs and projects using this approach will also be examined.

9. Responsibilities

Responses included numerous recommendations on what should be the financial and legal responsibilities of rail and highway authorities. These varied from interpretations applicable only to specific situations, to complete policy statements on the range of public vs. railroad responsibilties. Comments addressed such areas as crossing improvements, structure rehabilitation, maintenance, enforcement and education. The recommended basis for determining responsibilities included current practice (what works), legal or legislative precedent, traditional governmental functions, and relative benefits of the activity to the railroads and public.

The study will review existing divisions of responsibility, including variations and conflicts within and between jurisdictions, in financing and practices. Affirmation of or changes to what exists now, however, are considered potential study recommendations that can only be evaluated after completion of other study tasks. All suggestions made will be considered, but have not been summarized on details to avoid the implication of prejudgment or preference as to final report output.

Additional Study Areas

Several responses were believed to address study areas beyond those expressed in or inferred from the legislation, that will also be incorporated in the study.

Many comments identified the needs of public information and driver awareness programs, as essential complements to engineering and operational improvements. This was most frequently exemplified by the past successes of the Operation Lifesaver activities carried out or underway in most States and localities. The study will specifically include an examination of the effectiveness and needs of such programs.

Another area frequently cited was traffic law enforcement programs, as a potentially effective countermeasure to increase driver compliance. Although not as susceptible to numeric evaluation as some other areas, the study will look at consistency in laws and how better compliance with crossing warning devices can be achieved.

The impact of other supporting or off-site activities, such as data maintenance and analysis, programming, diagnostic teams, research, etc. will also be assessed.

A review of the basis for allocating available funding was suggested, to determine if limited resources could be distributed in a more optimum manner. Where future program alternatives involve Federal funding options, distribution methods and formulas will be included in the factors considered.

Needs of the general public do not specifically consider the problems of private crossings, significant in number but outside the purview of normal highway agency activities. In consultations with railroad and public agencies, and when compiling and reporting crossing characteristics, private crossings will be identified as a distinct issue.

Use of National Inventory Data

In the August 21, 1987 notice, the FHWA announced its intention to use the national rail-highway crossing inventory, compiled by the FRA from data submitted by the States and railroads, as a basis for collecting and summarizing study data. Several responses expressed reservations with this proposal, questioning the use of the national inventory for needs formulation, suggesting that additional updating and verification was necessary to insure its accuracy and reliability, or recommending improvements or expansions of the current inventory be undertaken as part of this study. Other comments suggested areas where further analysis of the national inventory data could enhance the understanding of crossing problems.

The FHWA recognizes the limitations inherent in the current national inventory, and that its accuracy is dependent on the degree to which individual States and railroads submit updating information. Despite these limitations the national inventory, and train-related crossing accidents reported through the FRA's accident/incident reporting system, remain the only consistent national data source of accidents and conditions at rail-highway crossings. To redo or significantly revise this base within the study period was considered impractical, and offered no concrete assurance of greater utility and accuracy for needs estimating. Although the information at specific crossings, or for particular routes or States, may not be precise enough to use for project decisions or State priority setting, the data in total are considered adequate to perform national level testing of alternatives, determination of trends and magnitudes, and selected correlations.

To clarify the FHWA's intent, the national inventory alone will not be used to determine needs. The inventory does provide a convenient framework, however, on which to assemble information from other sources on needs, conditions, hazards, etc. in an identifiable manner. As mentioned previously, it will also be used, in conjunction with accident data, as a basic resource for several supplemental studies.

Efforts have been and will continue to be made to use the most current information available in these studies. To date, updated information has been received for 56,231 crossings in the inventory since a request was made last fall to review the status.

Uniform National Criteria vs. State and Local Priorities

A large number of comments could be interpreted as advocating that uniform national standards should or should not be established for the rail-highway crossing program, either for calculating needs or as a recommendation of the study. Proposals for uniformity varied from national criteria for selecting and funding crossing improvements, to warrants for where and if specific improvement types should be installed. Advantages cited for national standards were consistency in application, greater safety, and most effective use of available funding. Those advocating greater flexibility referred to paperwork reduction, significant differences in motorist expectations and public policies between regions, and insensitivity to local conditions as reasons against national program or project standards.

Application of uniform procedures or standards will not be a study requirement for estimating crossing needs. Neither the data nor consensus necessary to prescribe such uniformity currently exist in most needs categories, such as maintenance, rehabilitation, public information, etc. To evaluate cost impacts and alternatives, uniform levels of warning device installation, annual costs, etc. may be applied to nationwide groupings of crossings, without implying these should be the "standard" solution.

The potential remains that recommendations for national guidelines or warrants in certain crossing program areas could result from the study findings. Where questions such as safety and cost effectiveness, consistency in results, and national applicability can be answered affirmatively, the pros and cons of

national guidelines or warrants in that area will be assessed.

Additional Information

The above summary of comments is necessarily brief and only highlights the responses received. All comments received are available for examination in the FHWA Docket No. 87–12, Room 4232, 400 7th Street, SW., Washington, DC, between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. The FHWA continues to encourage public input to the study on national highway-railroad crossing improvement and maintenance needs, and how these needs can be addressed in a cost effective manner. Therefore the docket will remain open for receipt of comments and suggestions throughout the study period (through March, 1989).

At the present time the FHWA and the FRA are conducting internal studies for several of the identified study elements. Coordination is also underway to obtain information to address specific elements of the study dealing with State and railroad activities. Contract services will be utilized to address specific study elements as needed. As this work progresses, the FHWA expects to provide additional opportunities for public input and viewpoints at various stages of study completion.

Issued on April 4, 1988.

Robert E. Farris,

Deputy Administrator.

[FR Doc. 88–7785 Filed 4–7–88; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 4, 1988.

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 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0215
Form Number: ATF REC 5110/10–ATF F 510.75
Type of Review: Extension
Title: Alcohol Fuel Plants (ATF) Records, Reports and Notices
Description: Data is necessary (1) to determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons, (2) to account for distilled spirits produced and verify proper disposition and (3) to keep registrations current and evaluate permissible variations from prescribed procedures.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 4,500 hours
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–7714 Filed 4–7–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 1, 1988.

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 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0018.
Form Number: ATF F 6 Part II (5330.3B).
Type of Review: Extension.
Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.
Description: This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. Forms are used by all persons who are members of the United States Armed Forces.
Respondents: Individuals or households.
Estimated Burden: 4,500 hours.
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–7763 Filed 4–7–88; 8:45 am]

BILLING CODE 4810–25–M

Debt Management Advisory Committee; Closed Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on May 3 and 4, 1988 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association, U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on May 3 and the preparation of a written report to the Secretary of the Treasury on May 4, 1988.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows: The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an

advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

Date: April 5, 1988.

[FR Doc. 88–7715 Filed 4–7–88; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

[Delegation Order No. 183 (Rev. 3)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authroity.

SUMMARY: Delegation Order No. 183 is revised to add the District Directors of Employee Plans and Exempt Organizations key districts to the officials authorized to grant a reasonable extension of time for making an election or application for relief in respect of tax under Subtitle A of the Internal Revenue Code. The revision also allows these District Directors to redelegate this authority. The complete text of the delegation order appears below.

EFFECTIVE DATE: March 22, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas W. Lewald, 1111 Constitution Avenue NW., Room 2237, Washington, DC 20224, Telephone No. (202) 566–6222 (not a toll free telephone number).

Lary Scollick,

Acting Chief, Employee Plans and Exempt Organizations Determinations Branch.

Order No. 183 (Rev. 3)

Effective date: 3–22–88

Extension of Time for Making Certain Elections

1. Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 1.9100–1, the Associate Chief Counsel (Technical and International) and the Assistant Commissioner (Employee Plans and Exempt Organizations) are authorized to grant a reasonable extension of time fixed by regulations for making an election or application for relief in respect of tax under Subtitle A of the Code, subject to the requirements of 26 CFR 1.9100–1.

2. Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 1.9100, the District Directors of Employee Plans and Exempt Organizations Key Districts are authorized to grant, for IRC 505(c) and 508 matters, a reasonable extension of time fixed by regulations for making an election or application for relief in respect of tax under Subtitle A of the Code, subject to the requirements of 26 CFR 1.9100–1.

3. The § 1.9100 authority described in section 1 may be redelegated as follows:

a. For matters under the jurisdiction of the Assistant Commissioner (Employee Plans and Exempt Organizations) to the Director, Exempt Organizations Technical Division. This authority may be further redelegated but not below Branch Chiefs, Exempt Organizations Technical Division.

b. For matters under the jurisdiction of the Associate Chief Counsel (Technical and International) to Directors of the Corporation Tax Division, the Employee Benefits and Exempt Organizations Division, and the Individual Tax Division, and to Branch Chiefs under the supervision of the Deputy Associate Chief Counsel (International). However, in the case of granting extension of time for filing applications for change in accounting method and accounting period not involving precedent issues this authority may be redelegated to the Associate Director, Corporate Tax 4, Corporate Tax Division.

4. The § 1.9100 authority delegated in section 2 may be redelgated no lower than Chief, Technical/Review Staff in EP/EO Key Districts.

5. Delegation Order No. 183 (Rev. 2) effective October 31, 1987, is superseded.

Approved:

Charles H. Brennan,

Deputy Commissionr (Operations).

Date: March 10, 1988.

[FR Doc. 88–7773 Filed 4–7–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2744. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: March 28, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Information Management and Statistics.

March 28, 1988.

Extension

1. Department of Veterans Benefits.
2. Veterans Mortgage Life Insurance Statement.
3. VA Form 29–8636.
4. This form is used by the veterans who have received specially adapted housing grants to provide information upon which insurance premiums can be determined or to decline the insurance.
5. On occasion.
6. Individuals or households.
7. 448 responses.
8. 112 hours.
9. Not applicable.

[FR Doc. 88–7769 Filed 4–7–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, April 5, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Application of United Savings Bank, Salem, Oregon, an insured stock savings bank, for consent to purchase certain assets of and to assume the liability to pay deposits made in Tualatin Valley Bank, Hillsboro, Oregon, and for consent to establish the existing office of Tualatin Valley Bank as a branch of United Savings Bank;

Matters relating to the possible closing of certain insured banks;

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act; and

A personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 6, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-7828 Filed 3-6-88; 12.10 pm]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, April 14, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456, (202) 357-1100.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Request to Defer Further Action on the Definition of Risk Assets.
4. Central Liquidity Facility Report and Review of CLF Lending Rate.
5. Insurance Fund Report.
6. Request by Frankfort Arsenal Community Federal Credit Union to Expand its Communits Field of Membership.
7. Request by State of California for Exemption from NCUA Lending Rules.
8. Appeal of Non-standard Bylaw Amendment Denial by MacDill Federal Credit Union.
9. Final Amendments: NCUA Employee Responsibility and Conduct.

RECESS: 12 noon.

TIME AND PLACE: 1:00 p.m., Thursday, April 14, 1988.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456, (202) 357-1100.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Budget Reprogramming. Closed pursuant to exemptions (2) and (9)(B).
3. Proposed Purchase of Central Office PBX System. Closed pursuant to exemptions (2) and (9)(B).
4. Board Briefing: Review of Status of ADP Oversight Committee. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-7841 Filed 4-6-88; 2:04 pm]

BILLING CODE 7535-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Friday, April 1, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices)

MATTERS CONSIDERED: Administrative Housekeeping matters in respect to rulemaking in the Health Care Industry.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, April 5, 1988.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-7781 Filed 4-5-88; 4:27 pm]

BILLING CODE 7545-01-M

Corrections

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 340

[Docket No. 75N-0244]

Stimulant Drug Products for Over-the-Counter Human Use; Final Monograph

Correction

In rule document 88-4190 beginning on page 6100 in the issue of Monday, February 29, 1988, make the following corrections:

1. On page 6100, in the third column, in the first complete paragraph, in the 12th line, after "whether" insert "further".

2. On page 6101, in the third column, in the 11th line from the bottom, "Lastest" should read "Latest".

3. On page 6102, in the first column, in reference (4), in the first line, "Lastest" should read "Latest".

4. On the same page, in the second column, in the second complete paragraph, in the fifth line, "and need" should read "the need".

5. On page 6104, in the third column, in the first complete paragraph, in the 19th line, "310(p)" should read "201(p)".

6. On page 6105, in the first column, in the **Authority**, in the fourth line, "335" should read "355".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0046]

Vibrio Vulnificus as Related to Shellfish Sanitation and Shellfish-Growing Waters; Workshop

Correction

In notice document 88-4102 beginning on page 5836 in the issue of Friday, February 26, 1988, make the following corrections:

1. On page 5836, in the third column, in the third line, "federal" should read "fecal".

2. On the same page, in the same column, in the third complete paragraph, in the sixth line, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8178]

Income Taxes; Passive Foreign Investment Companies

Correction

In rule document 88-4446 beginning on page 6770 in the issue of Wednesday, March 2, 1988, make the following corrections:

1. On page 6772, in the first column, under "*Election to Extend Time for Payment of Tax*", in the first paragraph, in the 19th line, "or" should read "of".

2. On the same page, in the third column, the sixth line should read: "**Par. 2.** New § § 1.1291-0T, 1.1291-10T,".

§ 1.1297-3T [Corrected]

3. On page 6773, in the first column, in § 1.1297-3T, the first paragraph should read:

"(a) In general".

§ 1.1291-10T [Corrected]

4. On the same page, in the third column, in § 1.1291-10T(d),2)(vii), the section designation should read "§ 1.1295-1T(b)(5);".

§ 1.1294-1T [Corrected]

5. On the same page, in the same column, in § 1.1294-1T, in paragraph (a), in the 17th line "income" was misspelled; and the 23rd line should read "shareholder's share of the earnings shall be included in the shareholder's taxable year in which or".

6. On page 6774, in the first column, in the same section, in paragraph (b)(3)(ii), *Example (1)*(i), in the ninth line, "in includible in" should read "is includible in".

7. On the same page, in the third column, in the same section and paragraph, in *Example (2)*, paragraph (ii), in the fourth line from the bottom of that paragraph, "liability of" should read "liability on".

BILLING CODE 1505-01-D

Federal Register

Friday
April 8, 1988

Part II

Environmental Protection Agency

40 CFR Parts 264, 265, 268, and 271
Land Disposal Restrictions for First Third of Scheduled Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 268, and 271

[OSW-FR-88-005; FRL-3300-2]

Land Disposal Restrictions for Restrictions for First Third of Scheduled Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing its approach to implementing the congressionally mandated prohibitions on land disposal of hazardous wastes listed in 40 CFR 268.10. These actions are responsive to amendments to the Resource Conservation and Recovery Act (RCRA), enacted in the Hazardous and Solid Waste Amendments (HSWA) of 1984.

Today's notice proposes specific treatment standards and effective dates for some of the so-called "First Third" wastes. Additionally, the Agency is proposing its approach to implementing the land disposal restrictions provisions for those First Third wastes for which a treatment standard is not set. Also addressed in today's notice are the Agency's proposed modifications to the "no migration" petition process.

DATE: Comments on this proposed rule must be submitted on or before May 23, 1988.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (S-212) (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the Docket Number F-88-LDR7-FFFFF on your comments. The OSW docket is located in the EPA RCRA Docket Room (sub-basement), 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00, Monday through Friday, except for public holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. The public may copy a maximum of 50 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact Stephen Weil, or Mitch Kidwell, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770. For specific information on BDAT/treatment standards, contact Jim Berlow, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917. For specific information on capacity determinations/national variances, contact Jo-Ann Bassi, or Linda Malcolm, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7917.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. Brief Summary of the Hazardous and Solid Waste Amendments of 1984 (HSWA)
  - 1. Solvents and Dioxins
  - 2. California List Wastes
  - 3. Scheduled Wastes
  - 4. Newly Identified and Listed Wastes
- B. Summary of the Land Disposal Restrictions Framework
  - 1. Regulatory Framework
  - 2. Applicability
  - 3. Development of § 3004(m) Treatment Standards
  - 4. Application of the Toxicity Characteristic Leaching Procedures (TCLP)
  - 5. Determination of Alternative Capacity and Ban Effective Dates
    - a. Effective Dates Based on National Capacity Determinations
    - b. Case-by-Case Extensions
  - 6. Exemption for Treatment in Surface Impoundments
  - 7. Dilution Prohibition
  - 8. Storage Prohibition
  - 9. Variance from the Treatment Standard
  - 10. "No Migration" Exemption
  - 11. Permit Modifications and Changes During Interim Status
  - 12. Treatment Standards and Effective Dates for Restricted Wastes
  - 13. The California List

II. Summary of Today's Proposal
- A. Proposed Approach
- B. Best Demonstrated Available Technologies (BDAT)
- C. Waste Analysis Requirements
- D. Nationwide Variances from the Effective Date
- E. "Soft Hammer" Requirements
- F. "No Migration" Petition

III. Regulatory Approach for the First Third Wastes
- A. Determination of Treatability Groups and Development of BDAT Treatment Standards
  - 1. Waste Treatability Groups
  - 2. Demonstrated Treatment Technologies
  - 3. Selection of Facilities for Engineering Visits and Sampling
  - 4. Hazardous Constituents Considered and Selected for Regulation (BDAT List)
  - 5. Compliance with Performance Standards
  - 6. Identification of BDAT
  - 7. BDAT Treatment Standards for "Derived-From" and "Mixed" Wastes
    - a. Applicability of BDAT to "Derived-From" Wastes From Treatment Trains Generating Multiple Residues
    - b. Applicability of BDAT to Mixtures and Other Derived-From Residues
  - 8. Transfer of Treatment Standards
  - 9. "No Land Disposal" as the Treatment Standard
  - 10. Waste-Specific Treatment Standards
    - a. K061—Emission Control Dust/Sludge from the Primary Production of Steel in Electric Furnaces
    - b. K062—Spent Pickle Liquor Generated by Steel Finishing Operations of Facilities Within the Iron and Steel Industry (SIC Codes 331 and 332)
    - c. K016—Heavy Ends or Distillation Residues from the Production of Carbon Tetrachloride
      K018—Heavy Ends from the Fractionation in Ethyl Chloride Produciton
      K019—Heavy Ends from the Distillation of Ethylene Dichloride Production
      K020—Heavy Ends from the Distillation of Vinyl Chloride in Vinyl Chloride Monomer Produciton
      K030—Column Bottoms or Heavy Ends from the Combined Production of Trichloroethylene and Perchloroethylene
    - d. K024—Distillation Bottoms from the Production of Phthalic Anhydride from Naphthalene
    - e. K103—Process Residues from Aniline Extraction from the Production of Aniline
      K104—Combined Wastewater Streams Generated from Nitrobenzene/Aniline Production
    - f. K071—Brine Purification Muds from the Mercury Cell Process in Chlorine Production, where Separately Prepurified Brine is Not Used
    - g. K048—Dissolved Air Flotation (DAF) Float from the Petroleum Refining Industry
      K049—Slop Oil Emulsion Solids from the Petroleum Refining Industry
      K050—Heat Exchanger Bundle Cleaning Sludge from the Petroleum Refining Industry
      K051—API Separator Sludge from the Petroleum Refining Industry

K052—Tank Bottoms (Leaded) from the Petroleum Refining Industry
h. K069—Emission Control Dust/Sludge from Secondary Lead Smelting
i. K015—Still Bottoms from the Distillation of Benzyl Chloride
j. K037—Wastewater Treatment Sludges from the Production of Disulfoton
k. K004—Wastewater Treatment Sludge from the Production of Zinc Yellow Pigments
K008—Oven Residue from the Production of Chrome Oxide Green Pigments
K036—Still Bottoms from Toluene Reclamation Distillation in the Production of Disulfoton
K073—Chlorinated Hydrocarbon Waste from the Purification Step of the Diaphragm Cell Process Using Graphite Anodes in Chlorine Produciton
K100—Waste Leaching Solution from Acid Leaching of Emission Control Dust/Sludge from Secondary Lead Smelting
B. Testing and Recordkeeping
1. Waste Analysis
2. Notification Requirements
3. Recordkeeping Requirements for Storage Facilities
C. "Soft Hammer" Provisions
1. Applicability
2. Interpretation of Specific Terms
a. "Treatment"
b. "Facility"
c. "Certification by Owners or Operators as well as Generators"
3. Certification Requirements
4. Treatment of "Soft Hammer" Wastes in Surface Impoundments
5. Retrofitting Variances
D. Disposal of Restricted Wastes Subject to an Extension of the Effective Date
E. Relationship to California List Prohibitions
F. Determination as to the Availability of the Two-Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1% Total F001–F005 Solvent Constituents
G. Storage Prohibition
H. Petitions to Allow Land Disposal of Prohibited Wastes
1. Overview
2. Requirements of "No Migration" Petitions in the November 7, 1986 Final Rule
3. Regulatory Requirements of RCRA Sections 3004(f) and (g) November 7, 1986 Final Rule
4. Additional Requirements for "No Migration" Petitions for Surface Units
I. Proposed Approach To Comparative Risk Assessment
J. Determination of Alternative Capacity and Effective Dates for the First Third Wastes
1. Quantities of Wastes Land Disposed
2. Required Alternative Capacity
3. Capacity Currently Available and Effective Dates
4. Capacity Variances for "Derived-From" and "Mixed" Wastes
5. Capacity Variances for "Soft Hammer" Wastes
IV. Modifications to the Land Disposal Restrictions Framework
A. General Waste Analysis (§ 264.13 and § 265.13)
B. Operating Record (§ 264.73 and § 265.73)
C. Purpose, Scope, and Applicability (§ 268.1)
D. Treatment in Surface Impoundment Exemption (§ 268.4)
E. Case-by-Case Extensions (§ 268.5)
F. "No Migration" Petitions (§ 268.6)
G. Testing and Recordkeeping (§ 268.7)
H. Landfill and Surface Impoundment Restrictions (§ 268.8)
I. Waste Specific Prohibitions—First Third Wastes (§ 268.33)
J. Treatment Standards (§ 268.40, § 268.41, and § 268.43)
K. Storage Prohibition (§ 268.50)
V. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorizations
C. State Implementation
VI. Effects of the Land Disposal Restrictions Program on Other Environmental Programs
A. Discharges Regulated Under the Clean Water Act
B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)
C. Air Emissions Regulated Under the Clean Air Act
VII. Regulatory Analyses
A. Regulatory Impact Analysis
1. Purpose
2. Executive Order No. 12291
3. Basic Approach/Regulatory Alternatives
4. Methodology
5. Results
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Review of Supporting Documents
VIII. Implementation of the Part 268 Land Disposal Restrictions Program
IX. References
X. List of Subjects in 40 CFR Parts 264, 265, 268, and 271

I. Background

A. Brief Summary of the Hazardous and Solid Waste Amendments of 1984 (HSWA)

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, require the Agency to promulgate regulations that restrict the land disposal of hazardous wastes. Specifically, the amendments specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA sections 3004 (d)(1), (e)(1), (g)(5), 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)). Congress established a separate schedule for restricting the disposal by underground injection into deep injection wells of solvent- and dioxin-containing hazardous wastes and wastes referred to collectively as California list hazardous wastes (RCRA section 3004(f)(2), 42 U.S.C. 6924(f)(2)).

The amendments also require the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. The Agency can also grant a variance from a treatment by revising the treatment standard for a waste through rulemaking procedures. In addition, a hazardous waste that does not meet the treatment standard may be land disposed provided the "no migration" demonstration specified in sections 3004 (d)(1), (e)(1), and (g)(5) is made.

For the purposes of the restrictions, HSWA defines land disposal "to include, but not be limited to, any placement of * * * hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k), 42 U.S.C. 6924(k)).

Although HSWA defines land disposal to include injection wells, such disposal of solvents, dioxins, and the California list wastes is covered on a separate schedule. The disposal of such wastes in deep-wells is subject to the land disposal restrictions by August 8, 1988.

The land disposal restrictions are effective when promulgated unless the Administrator grants a national variance from the statutory date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which

protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). In addition, the Administrator may grant a case-by-case extension of the statutory deadline for up to one year, renewable once for up to one additional year, when an applicant "demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date" (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)).

The statute also allows treatment of hazardous wastes in surface impoundments that meet certain minimum technological requirements (certain exceptions are allowed). Treatment in surface impoundments is permissible provided the treatment residues that do not meet the treatment standard(s) (or applicable statutory prohibition levels where no treatment standards have been established) are "removed for subsequent management within one year of the entry of the waste into the surface impoundment" (RCRA section 3005(j)(11)(B), 42 U.S.C. 6925(j)(11)(B)).

In addition to prohibiting the land disposal of hazardous wastes, Congress also prohibited the storage of restricted wastes unless "such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal" (RCRA section 3004(j), 42 U.S.C. 6924(j).

1. Solvents and Dioxins

As of November 8, 1986, HSWA prohibits the land disposal (except by underground injection into deep wells) of the following wastes: dioxin-containing hazardous wastes numbered F020, F021, F022, and F023; and solvent-containing hazardous wastes numbered F001, F002, F003, F004, and F005 in 40 CFR 261.31 (RCRA sections 3004(e)(1), (e)(2), 42 U.S.C. 6924 (e)(1), (e)(2)). Effective August 8, 1988, the disposal of these wastes into deep injection wells is prohibited (RCRA sections 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, this prohibition does not apply to disposal of solvent- and dioxin-contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924(e)(3)).

2. California List Wastes

As of July 8, 1987, the statute prohibits further land disposal (except by deep well injection) of the following wastes listed or identifed under section 3001 of RCRA.

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/1.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) arsenic and/or compounds (as As) 500 mg/1;
(ii) cadmium and/or compounds (as Cd) 100 mg/1;
(iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/1;
(iv) lead and/or compounds (as Pb) 500 mg/1;
(v) mercury and/or compounds (as Hg) 20 mg/1;
(vi) nickel and/or compounds (as Ni) 134 mg/1;
(vii) selenium and/or compounds (as Se) 100 mg/1; and
(viii) thallium and/or compounds (as T1) 130 mg/1.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

(RCRA sections 3004 (d)(1), (d)(2), 42 U.S.C. 6924 (d)(1), (d)(2)). Effective August 8, 1988, the underground injection into deep wells of these wastes is prohibited (RCRA sections 3004 (f)(2), (f)(3), 42 U.S.C. 6924 (f)(2), (f)(3)). During the period ending November 8, 1988, there is no prohibition on the land disposal of California list wastes that are contaminated soil or debris resulting from a response action taken under section 104 or 106 of CERCLA or a corrective action taken under Subtitle C of RCRA (RCRA section 3004(e)(3), 42 U.S.C. 6924(e)(3)).

3. Scheduled Wastes

The amendments required the Agency to prepare a schedule, by November 8, 1986, for restricting the land disposal of all hazardous wastes listed or identified as of November 8, 1984 in 40 CFR Part 261, excluding solvent- and dioxin-containing wastes and California list wastes covered under the schedule set by Congress. The schedule, based on a ranking of the listed wastes that considers their intrinsic hazard and their volume, is to ensure that prohibitions and treatment standards are promulgated first for high volume hazardous wastes with high intrinsic hazard before standards are set for low volume wastes with low intrinsic hazard. The statute further requires that these determinations be made by the following deadlines:

(A) At least one-third of all listed hazardous wastes by August 8, 1988.

(B) At least two-thirds of all listed hazardous wastes by June 8, 1989.

(C) All remaining listed hazardous wastes and all hazardous wastes identified as of November 8, 1984 by one or more of the characteristics defined in 40 CFR Part 261 by May 8, 1990.

If EPA fails to set a treatment standard by the statutory deadline for any hazardous waste in the first-third or second-third of the schedule, the waste may be disposed in a landfill or surface impoundment provided the unit is in compliance with the minimum technological requirements specified in section 3004(o) of RCRA. In addition, prior to disposal, the generator must certify to the Administrator that he has investigated the availability of treatment capacity and has determined that disposal in such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. This restriction on the use of landfills and surface impoundments applies until EPA sets a treatment standard for the waste. The use of other forms of land disposal is not similarly restricted, and may continue to be used for disposal of untreated wastes until EPA promulgates treatment standards, or until May 8, 1990, whichever is sooner. If the Agency fails to set a treatment standard for any ranked hazardous waste by May 8, 1990, the waste is automatically prohibited from land disposal unless the waste is the subject of a successful "no migration" demonstration (RCRA section 3004(g), 42 U.S.C. 6924(g)). In a May 28, 1986 final rule (51 FR 19300), EPA published the schedule for setting treatment standards for the listed hazardous wastes, with all wastes that are identified as hazardous by characteristic being ranked in the third-third. This schedule is incorporated in 40 CFR 268.10, 268.11, and 268.12.

4. Newly Identified and Listed Wastes

RCRA requires the Agency to set a treatment standard for any hazardous waste that is newly identified or listed in 40 CFR Part 261 after November 8, 1984 within six months of the date of identification or listing (RCRA section

3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for an automatic prohibition on the land disposal of such wastes if EPA fails to establish treatment standards within the six-month period.

B. Summary of the Land Disposal Restrictions Framework

In this section EPA describes, for the readers' convenience, the existing land disposal regulations under 40 CFR Part 268. EPA, however, is not reopening any of these existing rules for public comment unless it explicitly says so elsewhere in the preamble.

1. Regulatory Framework

On November 7, 1986, EPA promulgated a final rule (51 FR 40572) establishing the regulatory framework for implementing the land disposal restrictions. Corrections to the November 7, 1986 final rule were included in a June 4, 1987 **Federal Register** notice (52 FR 21010) to clarify the Agency's approach to regulating restricted wastes. Some changes to the framework were made in the July 8, 1987 rulemaking that prohibited certain California list wastes (52 FR 25760). By each statutory deadline, and in accordance with the schedule promulgated on May 28, 1986 (51 FR 19300), the Agency must promulgate the applicable treatment standards under Part 268 Subpart D for each hazardous waste. Once the treatment standards are effective, restricted wastes may be land disposed in a Subtitle C hazardous waste facility if they meet the applicable treatment standards. However, if treatment standards are not promulgated by the statutory and scheduled deadlines, such wastes are prohibited from land disposal unless certain demonstrations are made by those who wish to continue land disposal. Such demonstrations are allowed only until May 8, 1990 (when wastes are automatically prohibited by statute), or until EPA promulgates treatment standards, whichever is sooner.

After the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards will be prohibited from continued placement in land disposal units unless a petition has been approved under § 268.6 demonstrating that there will be no migration of hazardous constituents from the land disposal unit or injection zone for as long as the waste remains hazardous. Also, EPA may grant an extension to the effective date under § 268.5 on a case-by-case basis.

2. Applicability

The land disposal restrictions apply prospectively to the affected wastes. In other words, hazardous wastes land disposed after the effective date are subject to the restrictions, but wastes land disposed prior to the applicable effective date are not required to be removed or exhumed for treatment. Similarly, the restrictions on storage of affected hazardous wastes apply only to wastes placed in storage after the effective date of an applicable land disposal restriction. If, however, wastes subject to the land disposal restrictions are removed from storage or land disposal after the effective date, such wastes would be subject to the restrictions and treatment standards.

The provisions of the land disposal restrictions apply to wastes produced by generators of 100 to 1,000 kilograms of hazardous waste (or greater than 1 kg of acute hazardous waste) in a calendar month. However, wastes produced by generators of less than 100 kilograms of hazardous waste (or less than 1 kg of acute hazardous waste) per calendar month are conditionally exempt from RCRA regulation, including the land disposal restrictions.

The land disposal restrictions apply to both interim status and permitted facilities, as well as those not regulated under RCRA. All permitted facilities are subject to the restrictions, regardless of existing permit conditions. The land disposal restrictions supersede 40 CFR 270.4(a), which currently provides that compliance with a RCRA permit constitutes compliance with Subtitle C.

3. Development of § 300 4(m) Treatment Standards

In the November 7, 1986 rulemaking, EPA promulgated a technology-based approach to establishing treatment standards under section 3004(m). These treatment standards are generally based on the performance of the best demonstrated available technology (BDAT) identified for the hazadous constitutents.

In developing the treatment standards, EPA characterizes the wastes and establishes treatability groups for wastes having similar physical and chemical properties and, thus, similar treatability characteristics. Once the treatability groups are established, EPA collects and analyzes data on identified technologies used to treat the wastes in each treatability group.

EPA identifies those technologies that are "demonstrated" by full-scale operations. The demonstrated technologies are then evaluated to determine whether they may be considered "available". To be considered "available," the Agency determines whether the demonstrated technologies (1) are commercially available, (2) do not present a clear increase in risk to human health and the environment when compared to land disposal of the untreated wastes, and (3) substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste.

The performance data on the demonstrated available technologies are then evaluated to determine whether the data is representative of well-designed and well-operated treatment systems. Only data from well designed and operated systems are included in determining BDAT. The performance data on well-designed and well-operated demonstrated available technologies are then statistically analyzed to determine the performance level representative of treatment by BDAT.

EPA may establish treatment standards as either a specific technology, or as a performance level of treatment monitored by measuring the concentration level of the hazardous constituents in the waste or treatment residual or an extract of the waste or treatment residual. When possible, EPA prefers to establish treatment standards as performance levels, allowing the regulated community greatest flexibility in meeting the treatment standard. When treatment standards are set as performance levels, the regulated community may use any technology (not otherwise prohibited, e.g., impermissible dilution) to treat the waste to meet the treatment standard and is not limited to only those technologies considered in determining BDAT. However, when treatment standards are expressed as specific treatment methods, such methods must be employed.

4. Application of the Toxicity Characteristic Leaching Procedure (TCLP)

In the November 7, 1986 final rule, EPA promulgated regulations requiring the regulated community to use the Toxicity Characteristic Leaching Procedure (TCLP) (Part 268 Appendix I) when developing an extract from a restricted solvent or dioxin-containing waste or treatment residual. This extract must be analyzed to determine whether the concentrations of hazardous constituents meet the applicable treatment standards (which are expressed in Table CCWE at § 268.41 as constituent levels in the TCLP extract). EPA notes that the TCLP has only been

promulgated for monitoring compliance with the treatment standards established for the F001–F005 spent solvent wastes and the F020–F023 and F026–F028 dioxin-contaminated wastes. The TCLP was not promulgated for monitoring compliance with the California list restrictions.

5. Determination of Alternative Capacity and Ban Effective Dates

a. Effective Dates Based on National Capacity Determinations. The Agency has the authority to grant national variances (not to exceed two years) to the statutory effective date based upon a lack of adequate alternative treatment, recovery or disposal capacity. To make this determination, EPA considers, on a nationwide basis, both the capacity of alternative treatment technologies (permitted and interim status facilities that will be on-line by the effective date) and the quantity of restricted wastes generated. If adequate capacity is available, the restriction on land disposal of that waste goes into effect by the statutory deadline. If there is a significant shortage of national capacity, EPA may establish an alternative effective date based on the earliest date on which adequate capacity for treatment, recovery or disposal that is protective of human health and the environment will be available.

During the period of the national variance, the waste is not subject to the land disposal prohibitions. However, if the waste is land disposed, it must be disposed in facilities in compliance with the minimum technological requirements of RCRA section 3004(o) (42 U.S.C. 6924(o)). (Note: EPA is proposing in today's notice to amend this provision to require that where such waste is disposed in a landfill or surface impoundment unit, the *unit* must be in compliance with the minimum technological requirements.)

b. *Case-by-Case Extensions.* The Agency will consider granting up to a 1-year extension (renewable only once) of a ban effective date on a case-by-case basis. The applicant must demonstrate (among other things stated in § 268.5) that a good faith effort has been made to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his wastes, and that he has entered into a binding contractual commitment to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond his control. During the period of the extension, the waste is not subject to the land disposal prohibitions. However, if the waste is land disposed, it must be disposed in units in compliance with the minimum technological requirements of RCRA section 3004(o) (42 U.S.C. 6924(o)). (Note: EPA is proposing in today's notice to amend this provision to require that where such waste is disposed in a landfill or surface impoundment unit, the *unit* must be in compliance with the minimum technological requirements.)

6. Exemption for Treatment in Surface Impoundments

Wastes that would otherwise be prohibited from one or more methods of land disposal may be treated in a surface impoundment that meets certain technological requirements (§ 268.4(a)(3)) as long as treatment residuals that do not meet the applicable treatment standard (or statutory prohibition levels where no treatment standards are established) are removed within one year of entry into the impoundment and are not placed into any other surface impoundment for subsequent management. The owner or operator of such an impoundment must certify to the Regional Administrator that the technical requirements have been met and must also submit a copy of the waste analysis plan that has been modified to provide for testing treatment residuals in accordance with § 268.4 requirements.

As promulgated in the July 8, 1987 California list final rule (52 FR 25760), evaporation of hazardous constituents as the principal means of treatment is not considered treatment for the purposes of this exemption (§ 268.4(b)).

7. Dilution Prohibition

As established in the November 7, 1986 rule, and slightly modified in the July 8, 1987 rule, dilution is prohibited as a substitute for adequate treatment in complying with the land disposal restrictions. This includes dilution in lieu of adequate treatment to meet established treatment standards, as well as dilution to circumvent the effective date of a prohibition, or dilution to otherwise avoid a prohibition (§ 268.3). However, dilution is permitted as a necessary part of the treatment process.

8. Storage Prohibition

Storage of restricted wastes is prohibited except where storage is solely for the purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal (§ 268.50). Treatment, storage, and disposal facilities may store restricted wastes for as long as needed, provided such storage is solely for this purpose. However, if the facility stores a restricted waste for more than one year, it bears the burden of proof that such storage was solely for this purpose (no notification of storage exceeding one year is required). For storage of less than one year, EPA bears the burden of proof that such storage was not for the sole purpose of accumulating such quantities of wastes as are necessary to facilitate proper treatment, recovery, or disposal. The prohibition on storage does not apply to wastes which meet the treatment standard, wastes which have been granted an extension to the effective date, and wastes which are the subject of a "no migration" exemption under § 268.6.

9. Variance From the Treatment Standard

EPA established the variance from the treatment standard to account for those wastes which are unable to be treated to meet the applicable treatment standards, even if well-designed and well-operated BDAT treatment systems are used (§ 268.44). Petitions must demonstrate (among other things) that the waste is significantly different from the wastes evaluated by EPA in establishing the treatment standard and that the waste cannot be treated in compliance with the applicable treatment standard. This variance procedure could result in the establishment of a new waste treatability group and corresponding treatment standard that would apply to all wastes meeting the criteria of the new waste treatability group.

10. "No Migration" Exemption

EPA will consider allowing the land disposal of a specific untreated restricted waste at a specific site if the Agency determines that the applicable land disposal method is protective of human health and the environment (§ 268.6). For the Agency to make this determination, a petitioner must demonstrate (among other things) that such disposal will not allow the migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous. (RCRA section 3004(d), 42 U.S.C. 2964(d)(1)). Today's notice includes the Agency's proposed amendments to the "no migration" petition requirements under § 268.6.

11. Permit Modifications and Changes During Interim Status

To facilitate the implementation of the land disposal restrictions, § 270.42 was modified in the November 7, 1986 rule to allow permitted treatment facilities more flexibility to treat restricted

wastes not previously specified in their permit Upon Federal or State approval of a minor permit modification (under § 270.42), treatment facilities may treat wastes prohibited from one or more methods of land disposal provided that treatment is in accordance with established treatment standards, that handling and treatment of the restricted wastes will not present substantially different risks from those wastes listed in the permit, and that no changes in the treatment process or physical equipment are made to accommodate these wastes.

The July 8, 1987 California list final rule allowed permitted facilities to use the minor modification process, under certain conditions, to obtain approval to change their facilities to treat or store restricted wastes in tanks and containers as necessary to comply with the land disposal restrictions. This rule also allowed interim status facilities to expand their operations by more than 50 percent, in terms of capital expenditures, to treat or store restricted wastes in tanks or containers as necessary to comply with the land disposal restrictions.

12. Treatment Standards and Effective Dates for Restricted Wastes

Treatment standards and effective dates for restricted wastes are discussed in detail in the November 7, 1986 rule on solvents and dioxins, and in the July 8, 1987 final rule on California list wastes. The applicable effective dates for restricted wastes are found at 40 CFR Part 268 Subpart C. The applicable treatment standards for restricted wastes are found at 40 CFR Part 268 Subpart D.

13. The California List

EPA promulgated the land disposal restrictions final rule for some California list wastes on July 8, 1987 (52 FR 25760). This rule promulgated treatment standards and corresponding effective dates for the California list hazardous wastes containing polychlorinated biphenyls (PCBs) and most of the California list wastes containing halogenated organic compounds (HOCs), and codified the statutory prohibition for certain corrosive wastes. This rule also established methods for determining compliance with the prohibitions and made some modifications (as discussed previously) to the land disposal restrictions framework promulgated November 7, 1986 (51 FR 40572).

No prohibition levels or treatment standards were established for the California list hazardous wastes containing metals or free cyanides. However, the statutory prohibitions took effect on July 8, 1987 by operation of the "hammer provision" in RCRA section 3004(d). A notice of data availability and request for comment, which outlines the Agency's findings with respect to establishing more stringent prohibition levels for the metal and cyanide wastes, was published on August 12, 1987 (52 FR 29992). A final rule establishing prohibitions for these wastes may be forthcoming.

The California list final rule requires that the Paint Filter Liquids Test (PFLT) be used to determine whether a waste, including a free cyanide or metal-bearing waste, is considered to be a liquid for purposes of the California list land disposal restrictions. This procedure is method 9095 in EPA Publication No. SW–846, "Test Methods for Evaluating Solid Waste."

To determine compliance with the statutory prohibition levels for the metal and free cyanide wastes, EPA will evaluate whether the PLFT filtrate contains the prohibited constituents in concentrations exceeding the specified levels. However, compliance with the HOC, PCB, and corrosive waste prohibitions requires the analysis of the entire waste, not a PFLT-generated filtrate.

The California list final rule integrated a number of TSCA PCB requirements into the RCRA framework. This ensures that where inconsistencies exist between TSCA and RCRA standards, the more stringent regulations govern.

The July 8, 1987 final rule established treatment standards as specified technologies for California list PCB and HOC wastes (except dilute HOC wastewaters). All liquid and nonliquid hazardous wastes containing HOCs (listed in Appendix III of Part 268) in total concentration greater than or equal to 1,000 mg/kg, except dilute HOC wastewaters (i.e., primarily water mixtures containing HOCs in concentrations greater than or equal to 1,000 mg/l but less than 10,000 mg/l), must be incinerated in accordance with the requirements of Part 264 Subpart O or Part 265 Subpart O. However, EPA determined that there is a nationwide lack of incineration capacity for these HOC wastes requiring incineration and, therefore, granted a 2-year variance from the treatment standard.

Treatment standards were not established for dilute HOS wastewaters. Dilute HOC wastewaters need not be incinerated, but they must be treated to below the 1,000 mg/l prohibition level. Dilute HOC wastewaters were not granted a variance and were prohibited from land disposal as of July 8, 1987.

Liquid hazardous wastes containing PCBs at concentrations greater than or equal to 50 ppm must be treated in accordance with existing TSCA thermal treatment regulations at 40 CFR Part 761. For PCB concentrations greater than or equal to 50 ppm but less than 500 ppm, incineration in accordance with the technical requirements of 40 CFR 761.70 or burning in high efficiency boilers in accordance with the technical requirements of 40 CFR 761.60 is required. For PCB concentrations greater than or equal to 500 ppm, incineration in accordance with the technical requirements of 40 CFR 761.70 is required. Thermal treatment for PCBs must also be in compliance with applicable regulations in Parts, 264, 265, and 266. No extension to the effective date was granted.

Wastes which are contaminated soil and debris resulting from response actions taken under sections 104 and 106 of CERCLA or corrective actions taken under Subtitle C of RCRA are not subject to these restrictions until November 8, 1988.

II. Summary of Today's Proposal

A. Proposed Approach

Today's notice describes the Agency's proposed approach to implementing the requirements of RCRA section 3004(g) with respect to certain of the listed hazardous wastes included in § 268.10, as promulgated on May 28, 1986 (51 FR 19300). Pursuant to RCRA, the Agency is required to promulgate regulations establishing conditions under which these so-called "First Third" wastes may be land disposed by the statutory deadline of August 8, 1988. August 8, 1988 is also the date by which the Agency must make determinations regarding the conditions under which the F001–F005 solvents and F020–F023 and F026–F028 dioxin-containing wastes (see 51 FR 40572), California list wastes (see 52 FR 25760), and First Third wastes may be land disposed by deep-well injection. The Agency's proposed approach to restricting the disposal of these wastes by deep-well injection will be addressed in a separate notice.

EPA is proposing treatment standards for only some of the First Third wastes in today's proposal. The Agency will continue to analyze treatment data on additional First Third wastes and will publish a supplementary proposal of treatment standards for these wastes in the near future. However, due to the lack of available data and the time constraints of the statutory schedule, EPA does not expect to promulgate treatment standards for all of the First Third wastes by August 8, 1988. Therefore, in accordance with the

provisions of section 3004(g)(6), the Agency is proposing regulations which allow continued land disposal of First Third wastes for which treatment standards or extensions to the effective date have not been established. These so-called "soft hammer" provisions (discussed in further detail in Section III. C. of today's proposal) will apply until May 8, 1990 or until treatment standards or extensions to the effective date are promulgated, whichever is sooner. On May 8, 1990, there is an automatic prohibition on land disposal of hazardous wastes listed or identified prior to the enactment of HSWA. Effective May 8, 1990, these wastes may be land disposed only if the waste: (a) Meets the applicable treatment standards; (b) is the subject of an extension to the effective date; or (c) is the subject of an approved "no migration" petition.

B. Best Demonstrated Available Technologies (BDAT)

In today's notice, the Agency defines the waste treatability groups by waste codes and identifies the Best Demonstrated Available Technology (BDAT) for each waste code (see Section III. A.). Treatment standards applicable to the specific waste code are based on the performance levels achievable by the corresponding BDAT identified for each waste code. However, any technology not otherwise prohibited (i.e., impermissible dilution) may be used to meet the concentration-based treatment standards.

Incineration is identified as BDAT for waste codes K015, K016, K018, K019, K020, K024, K030, K037, and K048–K052. Chromium reduction, chemical precipitation, and vacuum filtration is identified as BDAT for K062. Solvent extraction followed by incineration of the extract and followed by steam stripping and activated carbon adsorption is BDAT for K103 and K104. High temperature metals recovery is BDAT for K061. For K071, acid leaching and chemical oxidation is BDAT for nonwastewaters, and sulfide precipitation and filtration is BDAT for wastewaters. Total recycle is identified as BDAT for K069 wastes. Also, EPA has determined that the wastes K004, K008, K036, K073, and K100 are no longer being generated and disposed, and therefore, has not identified BDAT for these wastes.

C. Waste Analysis Requirements

Treatment standards for organic wastes and wastes for which destruction technologies are appropriate, are based on total constituent analysis. For those wastes for which stabilization or fixation is appropriate, treatment standards are based on concentrations in an extract developed by the Toxicity Characteristic Leaching Procedure (TCLP) (see Part 268 Appendix I).

D. Nationwide Variances From the Effective Date

Due to lack of sufficient alternative capacity to treat the wastes to the applicable treatment standards, a national capacity variance is proposed for several of the waste codes covered by today's notice. This determination is based on a comparison of the volumes of wastes requiring treatment to the amount of treatment capacity available for such treatment. Although EPA does not require BDAT technologies be used to meet the applicable treatment standards, capacity figures are derived based on technologies identified as BDAT, to ensure that adequate treatment is available to meet the treatment standards.

The Agency is proposing to grant a two-year national variance for the following waste codes: K016, K018, K019, K020, K024, K030, K037, K048–K052, K061, K071, K103, and K104. No variance is proposed for other wastes. A more detailed discussion is found in Section III. J. [Note: EPA has recently conducted a survey of treatment, storage, and disposal facilities. Capacity determinations based on this new data will be proposed and available for use in the final rule.]

E. "Soft Hammer" Requirements

Section III. C. 3. of this notice presents a more detailed discussion of the certification and demonstrations a generator (or owner or operator) is required to make to dispose of "soft hammer" wastes in landfills and surface impoundments. Generally, the generator (or owner or operator) must certify that there is no treatment that meaningfully reduces toxicity or mobility of the waste practically available, and that, therefore, disposal of these wastes in a landfill or surface impoundment unit that meets the minimum technological requirements of 3004(o) (double liner, leachate collection system, and ground water monitoring) is the only practical alternative. This certification also applies to those "soft hammer" wastes which have been treated to reduce toxicity or mobility and for which no further treatment is practically available, and thus, disposal of the treatment residuals in a landfill or surface impoundment unit that meets the minimum technological requirements is the only alternative.

F. "No Migration" Petition

Today's notice also proposes amendments to 40 CFR 268.6, the "no migration" petition process (see Section III. H.). These amendments to § 268.6 cover the demonstrations required in the petition and certain other requirements on the owner or operator of a waste management unit that is subject to a "no migration" exemption.

III. Regulatory Approach for the First Third Wastes

A. Determination of Treatability Groups and Development of BDAT Treatment Standards

1. Waste Treatability Groups

For the First Third wastes, EPA used the individual listed waste codes as the starting point for developing treatability waste groups. In cases where EPA believed that wastes represented by different codes could be treated to similar concentrations using identical technologies, the Agency combined the codes into one treatability group. EPA based its initial treatability group decisions primarily on whether the waste codes were generated by the same or similar industries from similar processes. EPA believes that such groupings can be made even with limited data because of the high likelihood that characteristics affecting treatment performance will be similar for these different waste codes. For example, the five waste codes pertaining to wastes produced by petroleum refining (K048–K052) were combined into a single treatability group. This analysis resulted in 15 treatability groups covering 24 waste codes that are the subject of today's proposed rulemaking.

2. Demonstrated Treatment Technologies

As discussed in EPA's promulgated methodology for BDAT (see November 7, 1986, 51 FR 40572), a technology is considered to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of that waste or a similar waste. For most of the First Third waste codes covered by today's proposal, EPA identified demonstrated technologies either through review of literature discussing current waste treatment practices or on the basis of information provided by specific facilities currently treating the waste or similar wastes.

In cases where the Agency did not identify any facilities currently treating wastes represented by a particular waste code, EPA identified demonstrated technologies in the

following manner. The Agency first characterized the parameters affecting treatment selection for the waste of interest. EPA then compared these parameters to other wastes for which treatment technologies are demonstrated; if the parameters were similar, the Agency considered the treatment technology also to be demonstrated for the waste of interest. For example, EPA considers rotary kiln incineration a demonstrated technology for many waste codes containing hazardous organic constituents, high total organic content and high filterable solids regardless of whether any facility is currently treating these wastes. The basis for this determination is data found in literature as well as data generated by EPA confirming the use of rotary kiln incineration on wastes having the above characteristics. EPA's rationale for determining demonstrated technologies for each of the waste treatability groups can be found in Section III. A. 10. (in the subsections for each specific treatability group).

3. Selection of Facilities for Engineering Visits and Sampling

In those instances where additional data were needed to supplement the Agency's current knowledge of treatment performance for the demonstrated technologies, EPA arranged engineering visits to facilities that treat wastes with a demonstrated technology that potentially could be the basis for the treatment standards. The purpose of the engineering visits was to confirm that candidates for sampling, in fact, met EPA's criteria of being well-designed facilities and that the necessary sampling points could be accessed. During the visit, EPA also confirmed that the facility appeared to be well operated, although the actual operation that occurs during sampling is the basis for EPA's decisions regarding proper operation of the treatment unit.

In general, the Agency considers a well-designed facility as one that contains all the unit operations necessary to treat the various hazardous constituents of the waste and any other nonhazardous materials in the waste that may affect treatment performance. For example, a waste containing hazardous metals and a high concentration of oil and grease would require removal of potentially nonhazardous oil and grease in order to facilitate the subsequent removal of the hazardous metals by precipitation. EPA also places considerable emphasis on the levels of performance the system is designed to achieve in determining whether to sample a particular treatment facility, since the facility will seldom exceed the goals of its original design.

In addition to ensuring that a system is reasonably well-designed, the engineering visit examines whether the facility appears to be well-operated and, just as importantly, has a measurable way of describing the operation of the treatment system during the time the waste is being treated. For example, EPA may choose not to sample a continuous treatment system for which an important design parameter cannot be continuously recorded through the use of a strip chart. In continuous systems, such instrumentation is important in determining whether the treatment system was operating within design requirements during the period when the waste was being treated.

In addition to the design and operation of the treatment system, EPA also bases its decision to sample a facility on whether the piping layout is such that all samples necessary to evaluate treatment performance can be collected. If piping is not suitable or cannot be easily modified, EPA would not perform a sampling visit.

In order to select potential sites for sampling, EPA has established a hierarchy for conducting its engineering visits. The hierarchy is (1) generators treating single wastes on site; (2) generators treating multiple wastes together on site; (3) comercial TSDFs; and (4) EPA in-house treatment. The basis of this hierarchy is founded on two concepts; (1) EPA believes, to the extent possible, that it should try to develop treatment standards from data produced by treatment facilities handling only a single waste, and (2) facilities that routinely treat a specific waste have had the best opportunity to optimize design parameters. Although excellent treatment can occur at many facilities that are not high in this hierarchy, EPA has adopted this approach to avoid, when possible, ambiguities related to the mixing of wastes. Therefore, EPA prefers on-site treatment facilities where the waste of interest is treated alone or as a major component of the waste handled. If well-designed generator facilities that meet EPA criteria are not available, the Agency then looks to commercial treatment facilities where mixing of many wastes is generally practiced but where extensive optimization of treatment may have still occurred. If no suitable TSDF facilities are identified, EPA then conducts in-house tests and optimizes the process itself on a more limited basis.

EPA used a number of data bases to determine if any generators were treating specific wastes on site or if there were any commercial TSDFs treating this waste. EPA's documentation for locating on-site generating facilities and/or commercial TSDFs for each waste can be found in the Docket for today's rulemaking. Although EPA's data bases provided potential sites of treatment of individual wastes, the data bases provided no data that would preferentially support the selection of one facility for sampling over another. In cases where several treatment sites appear to fall into the same level of the hierarchy, EPA selected sites for visits strictly on the basis of what facility could most expeditiously be visited and later sampled if justified by the engineering visit.

A secondary consideration involved with the selection of technologies for testing was the need to develop data within an ambitious statutory deadline. When selecting technologies to test for performance, these deadlines required that EPA, in some cases, select demonstrated technologies for performance tests based on its technical judgment. This judgment considered the underlying principles of operation of the various technologies and any available data pertaining to the performance of these technologies on specific types of wastes. EPA's rationale for selecting a given demonstrated technology is presented by a treatability group in Section III. A. 10. of the preamble.

4. Hazardous Constituents Considered and Selected for Regulation (BDAT List)

The target list of hazardous constituents to be regulated for all waste codes covered by today's rule is referred to by the Agency as the BDAT List. This list is derived from a composite of 396 compounds and/or classes of compounds that are presented in 40 CFR Part 261, Appendix VII and Appendix VIII. This composite number includes compounds selected by EPA as representatives of some of the classes. EPA then identified 175 of these 396 for which EPA could not perform an analysis of treatment performance due to one of three reasons: (1) EPA does not presently have an analytical method for such constituents; (2) there are no analytical standards available for calibrating the test instruments; or (3) the analytical method requires the use of an extraction solvent in which the compound would quickly dissociate. The remaining 221 compounds comprise the BDAT List.

For certain waste codes, the BDAT List was then shortened because it was unlikely that particular constituents would be present. EPA's rationale for

shortening the BDAT List for a given waste code or waste treatability group is presented in the Sampling and Analysis Plan (SAP) developed for each Agency sampling visit. The SAP for each tested waste code can be found in the On-Site Engineering Reports in the Docket for today's rulemaking.

The specific constituents that the Agency selected for regulation in each treatability group were, in general, those found in the untreated wastes at significant (i.e., treatable) concentrations. EPA does not propose to regulate constituents where data show that they would be effectively managed by regulation of other constituents (i.e., treatment of the regulated constituents naturally results in the treatment of other constituents). EPA's rationale for the selection of regulated constituents can be found in the BDAT background document for the treatability group in question.

5. Compliance with Performance Standards

All the treatment standards proposed in today's rule reflect performance achieved by the Best Demonstrated Available Technology (BDAT). As such, compliance with these standards only requires that the treatment value be achieved prior to land disposal; it does not require the use of any particular treatment technology. While dilution of the waste as a means to comply with the standard is prohibited, wastes that are generated in such a way as to naturally meet the standard can be land disposed without treatment. With the exception of treatment standards that prohibit any land disposal, all treatment standards proposed today are expressed as a concentration level.

In today's rulemaking, EPA has used both total constituent concentration and TCLP analyses of the treated waste as a measure of technology performance. EPA's rationale for when each of these analytical tests is used is explained below.

For all hazardous organic constituents, EPA is basing the treatment standards on the total constituent concentration found in the treated waste. EPA based its decision on the fact that technologies exist to destroy the various organic compounds. Accordingly, the best measure of performance would be the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment. [NOTE: EPA's land disposal regulation for F001–F005 spent solvents (51 FR 40572) uses the TCLP value as a measure of performance. At the time that EPA promulgated the treatment standards for F001–F005, useful data were not available on total constituent concentrations in treated residuals and, as a result, the TCLP data was considered to be the best measure of performance.]

For metal constituents, EPA is using both total constituent concentration and/or the TCLP as the basis for treatment standards. The total constituent concentration is being used when the technology basis includes a metal recovery operation. The underlying principle of metal recovery is the reduction of the amount of metal in a waste by separating the metal for recovery; therefore, total constituent concentration in the treated residual is an important measure of performance for this technology. Additionally, EPA also believes it important that any remaining metal in a treated residual waste not be in a state that is easily leachable; accordingly, EPA is also using the TCLP as a measure of performance. It is important to note then for wastes where treatment standards are based on a metal recovery process, the facility has to comply with both the total constituent concentration and the TCLP prior to land disposal.

In cases where treatment standards for metals are not based on recovery techniques but rather on stabilization, EPA is using the TCLP as a measure of performance. The Agency's rationale is that stabilization is not meant to reduce the concentration of metal in a waste but only chemically minimize the ability of the metal to leach.

6. Identification of BDAT

A detailed discussion of the Agency's general methodology for establishing BDAT standards is provided in EPA's land disposal restrictions rule of November 7, 1986, 51 FR 40572. This section discusses the specific application of the methodology to the First Third wastes, and, provides a summary of some of the principal elements of the BDAT methodology.

As a first step in the development of BDAT-based treatment standards, EPA screened the available treatment data for a particular treatability group with regard to the availability of information describing the design and operation of the system, the quality assurance/quality control analyses of the data, and the specific analytical tests used to assess treatment performance. This screening step is consistent with EPA's promulgated approach in the November 7, 1986 rulemaking for F001–F005 solvents. Also, this screening step recognizes the fact that different performance measures may be appropriate depending on the technology used (i.e., total constituent analysis for incineration vs. TCLP for stabilization) as discussed earlier. In contrast to the F001–F005 spent solvent rule, EPA was able to place a greater emphasis on the design and operation of the treatment system for the First Third wastes because its field tests have been modified to gather more detailed data to support these analyses. As discussed earlier, the EPA field tests include data describing the operating conditions of the treatment unit during the time that treatment samples were collected.

After the initial screening test, EPA adjusted all treated data values based on the analytical recovery values in order to take into account analytical interferences associated with the chemical make-up of the treated sample. For example, a treated residual data point of 0.2 mg/kg with a recovery value of 50% would be adjusted to 0.4 mg/kg. In developing recovery data (also referred to as accuracy data), EPA would first analyze a waste for a constituent and then add a known amount of the same constituent (i.e., spike) to the waste material. The total amount recovered after spiking minus the initial concentration in the sample divided by the amount added is the recovery value.

After adjusting the data, EPA then averaged the performance values for the various treatment operations and compared the mean values using the analysis of variance test (ANOVA), as described in the November 7, 1986 preamble (see 51 FR 40591), to determine if one technology performed significantly better. EPA's decisions regarding selection of one technology over another that resulted from this methodology can be found in the "Identification of BDAT" sections that follow for each treatability group.

7. BDAT Treatment Standards for "Derived-From" and "Mixed" Wastes

a. Applicability of BDAT to "Derived-From" Wastes From Treatment Trains Generating Multiple Residues. In a number of instances in this proposal, the proposed BDAT consists of a series of operations, each of which generates a waste residue. For example, the identified BDAT for wastes K103 and K104 is solvent extraction, steam stripping and activated carbon adsorption. Each of these treatment steps generates a waste requiring treatment, namely a solvent-containing stream from solvent extraction, a stripper overhead, and spent activated carbon. Treatment of these wastes may generate further residues: for instance, spent activated carbon (if not

regenerated) could be incinerated, generating an ash and possibly a scrubber water waste. Ultimately, additional wastes are generated that may require land disposal. With respect to these wastes, the Agency wishes to emphasize the following points:

1. All of the residues from treating the original listed waste are likewise considered to be the listed waste by virtue of the derived-from rule contained in 40 CFR 261.3(c)(2). Consequently, all of the wastes generated in the course of treatment would be prohibited from land disposal unless they satisfy the treatment standard or meet one of the exceptions to the prohibition.

2. The Agency's proposed treatment standards generally contain a concentration level for wastewaters and a concentration level for nonwastewaters. These treatment standards apply to all of the wastes generated in treating the original prohibited waste. Thus, all solids generated from treating K103 and K104 would have to meet the treatment standard for nonwastewaters. All derived-from wastes meeting the Agency definition of wastewater for this rule (i.e., less than 1% total organic carbon (TOC) and less than 1% total solids) would have to meet the treatment standard for wastewaters. EPA wishes to make clear that this approach is not meant to allow partial treatment only to change the applicable treatment standard. Therefore, treatment of wastes with greater than 1% TOC (and less than 1% solids) to less than 1% TOC does not necessarily make the wastewater treatment standard applicable.

The Agency has not performed tests, in all cases, on every waste that can result from every part of the treatment train. However, the Agency's treatability levels generally are based on treatment of the most concentrated form of the waste identified. Consequently, the Agency believes that the less concentrated wastes generated in the course of treatment also will be able to be treated to meet this level.

b. Applicability of BDAT to Mixtures and Other Derived-From Residues. There is a further question as to the applicability of the BDAT treatment levels to residues generated not from treating the waste (as discussed above), but generated instead from other types of management. Examples are contaminated soil or leachate that is derived from managing the waste. In these cases, the mixture is still deemed to be the listed waste, either because of the derived-from rule, the mixture rule (§ 261.3(a)(2)(iv)), or because the listed waste is contained in the matrix (see, e.g., § 261.33(d)). The prohibition for the particular listed waste consequently applies to this type of waste.

The Agency believes that the majority of these types of residues can meet the treatment standards for the underlying listed wastes (with the possible exception of contaminated soil and debris for which the Agency is currently investigating whether it is appropriate to establish a separate treatability subcategorization). For the most part, these residues will be less concentrated than the original listed waste. The Agency's treatability levels also make a generous allowance for process variability by assuming that all treatability values used to establish the standard are lognormally distributed (see 51 FR 40590–91, November 7, 1986). The waste also might be amendable to a relatively nonvariable form of treatment technology such as incineration. Finally, and perhaps most importantly, the rules contain a treatability variance which allows a petitioner to demonstrate that his waste cannot be treated to the level specified in the rule (see § 268.44). This provision provides a safety valve that allows persons with unusual waste matrices to demonstrate the appropriateness of a different standard. The Agency notes that to date, it has not received any petitions under this provision (for example, for residues contaminated with a prohibited solvent waste), indicating, in the Agency's view, that the existing standards are generally achievable.

8. Transfer of Treatment Standards

In today's notice, EPA is proposing some treatment standards that are not based on testing of the treatment technology of the specific waste subject to the treatment standard. Instead, the Agency determined that the constituents present in the waste can be treated to the same performance levels as observed in other wastes for which EPA has previously developed treatment data. As stated in previous BDAT rulemakings, EPA believes transferring treatment performance for use in establishing treatment standards for untested wastes is valid technically in cases where the untested wastes are generated from similar industries or from similar processing steps. As explained earlier in this preamble, transfer of treatment standards to wastes from similar processing steps requires little formal analysis because of the likelihood that similar production processes will produce a waste matrix with similar characteristics. However, in the case where only the industry is similar, EPA more closely examines the waste characteristics prior to concluding that the untested waste constituents can be treated to levels associated with tested wastes. The Agency's method for conducting this analysis is discussed below.

EPA's undertakes a two-step analysis when determining whether wastes generated by different processes within a single industry can be treated to the same level of performance. First, EPA reviews the available data on those parameters which are expected to affect treatment selection. EPA has identified some of the most important constituents and other parameters needed to select the treatment technology appropriate for a given waste. A detailed discussion of each analysis, including how each parameter was selected for each waste, can be found in the background document for each waste.

Second, when an individual analysis suggests that an untested waste can be treated with the same technology as a waste for which treatment performance data are already available, EPA then analyzes a more detailed list of constituents that represent some of the most important waste characteristics which the Agency believes will affect the performance of the technology. By examining and comparing these characteristics, the Agency determines whether the untested wastes will achieve the same level of treatment as the tested waste. Where the Agency determines that the untested waste can be treated as well as the tested waste, the treatment standards can be transferred. A detailed discussion of this transfer process for each waste can be found in the BDAT background document for each waste or waste treatability group.

9. "No Land Disposal" as the Treatment Standard

EPA is proposing "No Land Disposal" as the treatment standard for several of the First Third wastes. This standard is analogous to the no discharge standard established as BAT (best available treatment) under the Clean Water Act's effluent guideline program. It indicates that after examining available data, the Agency has identified that: (1) The waste can be totally recycled (i.e., on-site closed-loop recycling); (2) the waste is not currently being land disposed; or (3) the waste is no longer being generated.

An alternative to establishing "No Land Disposal" as the treatment standard would be to indicate that "0" is the BDAT treatment standard (i.e., concentration level) for hazardous constituents. This appears to the Agency to be a less desirable way to proceed,

given that the analytical limit of detection is always greater than zero. Because technologies exist that make land disposal for some wastes unnecessary, and because "0" really means the analytic detection limit and not truly zero, EPA believes that specifying "No Land Disposal" as the treatment standard is a better way of expressing its intention.

The Agency notes further that it could simply allow the statutory prohibition to take effect to achieve the intended result of no land disposal. The drawback with this approach is that it allows no possibility of granting a variance from a treatment standard for those wastes that might not be amenable to the BDAT treatment. (In the absence of a treatment standard, a person would have to initially petition the Agency to establish a treatment standard for the waste, a more cumbersome and time-consuming process than applying for a variance under § 268.44.) Accordingly, the Agency believes the best way to proceed is to establish "No Land Disposal" as the treatment standard where a no discharge treatment technology is identified as BDAT.

10. Waste-Specific Treatment Standards

This section describes the development of BDAT treatment standards for all of the First Third treatability groups covered by today's rule. It includes tables showing the specific constituents regulated, as well as the treatment standards.

a. K061—Emission Control Dust/Sludge from the Primary Production of Steel in Electric Furnaces

1. Industry Affected and Waste Description. The listed waste K061 is generated in the primary production of steel in electric furnaces. The Agency estimates that approximately 85 plants produce steel in electric furnaces. These facilities are primarily located in the Eastern and North Central parts of the United States.

The primary production of steel in electric furnaces results in the generation of particulate emissions which contain hazardous constituents present in the feed materials. The particulates captured by air pollution control devices constitute the listed K061 waste.

2. Demonstrated Treatment Technologies. K061 waste consists principally of iron and zinc. In addition to zinc, other BDAT list metals of concern include lead of approximately two percent and chromium ranging from 500 ppm to 10% (by weight). The water content of the waste is approximately 10% except where wet scrubbers are used to generate this waste. The demonstrated technologies that the Agency has identified for treatment of this waste are high temperature metals recovery and stabilization. High temperature metals recovery is currently used to recover metals such as zinc and chromium from the waste for reuse; this technology also results in the formation of a treated residual (i.e., slag) which was analyzed to determine the performance of this technology. Stabilization also is used directly to reduce the leachability of the metals in the K061 waste that has not been processed by metals recovery technology. EPA tested both of these technologies as part of the development of treatment standards for K061.

3. Data Base. The Agency has 55 data points for treatment of K061 wastes. Fifteen data points are from four facilities using high temperature metals recovery, seven of which were collected by EPA. Forty (40) data points represent the use of stabilization by two facilities, nine of which were collected by EPA.

EPA's screening of the data with regard to the design and operation of the treatment unit resulted in the deletion of twelve of the fifteen data points for high temperature metals recovery. Thirty-one of the stabilization data values were rejected because these data did not reflect testing by the TCLP procedure; the remaining nine were obtained using the TCLP and represent proper design and operation. Accordingly, these twelve data points were considered in the development of the treatment standards for K061.

4. Identification of BDAT. BDAT for K061 was determined to be high temperature metals recovery. As a result, EPA is proposing treatment standards for this waste based on the treatment residual (i.e., slag) generated by this technology.

The Agency performed an analysis of variance test for TCLP performance levels achieved by high temperature metals recovery and by stabilization. The results show that high temperature metals recovery provides significantly better reduction of lead and zinc than does stabilization, and equivalent reductions of cadmium, chromium, and mercury in the TCLP's leachate. The Agency believes that establishing high temperature metals recovery as BDAT is consistent with the national policy identified in HSWA to reduce the amount of hazardous waste generated.

The Agency is aware of at least four facilities in the United States and ten in foreign countries that use high temperature metals recovery to treat K061 waste. Therefore, EPA believes that high temperature metals recovery is demonstrated to treat K061. High temperature metals recovery is judged to be available to treat K061 waste because (1) this treatment technology is commercially available or can be purchased from the proprietor; and (2) high temperature metals recovery provides a substantial reduction in the level of regulated constituents described above.

The question of identifying BDAT for K061 also requires some discussion of several other sets of EPA regulations relating specifically to burning hazardous wastes for materials recovery in industrial furnaces, and relating more generally to the issue of when secondary materials are RCRA solid wastes under such circumstances. The most significant issue presented is whether EPA may permissibly establish a BDAT treatment standard for the slag which results from high temperature metal recovery of this waste.

The initial question is whether electric arc steel dust is a RCRA solid and hazardous waste when it is sent to an industrial furnace for high temperature metals recovery. Under the Agency's existing regulations, this activity is classified as the type of recycling known as "reclamation" because it involves recovery of metals contained in the electric arc furnace dust (see 40 CFR 261.1(c)(4)). Because the material is a listed sludge, it is therefore defined as a solid waste under § 261.2(c)(3).

The Agency believes that this is an appropriate classification because there is a strong element of waste treatment characterizing this recycling activity: these electric arc dusts are typically landfilled, and they are not reclaimed in continuous, on-going processes, but rather in processes different from steel production (most often primary zinc smelting or some type of secondary metal recovery). Storage practices preceding reclamation of this waste also can involve direct placement on the land (for instance, in open waste piles), another indication that the electric arc dust is a waste. For a more detailed discussion, see 50 FR 641 (January 4, 1985) which presents the decision factors to determine whether sludges and byproducts should be designated as solid wastes when they are to be reclaimed. EPA has recently proposed to codify these factors, with some modifications, in its regulations (53 FR 519 and 529, January 8, 1988).

The recent opinion of the District of Columbia Circuit Court of Appeals in *American Mining Congress v. EPA* (824 F. 2d 1177) does not change this analysis. The court stated that when a generator has a secondary material of no further use to him which he discards

by giving to another person for recycling, the material is a "discarded material" within the meaning of RCRA section 1004(27). An example, as used in the opinion, is used oil given by the original generator to a second person for recycling (824 F. 2d at n. 14). The electric arc furnace dust is similarly discarded by the generator when it is no longer useful to the original generator, is given to another entity for recycling, and is not recycled in the original process or even in another steel process. Thus, it is not the type of in-process, undiscarded material used in on-going, continuous processes found in the *American Mining Congress* case to be an undiscarded material (see generally, 53 FR 519, 520–521, and 522–523, January 8, 1988).

It should be noted that even if the K061 waste were not deemed to be a waste when it is reclaimed in processes unrelated to steel production, EPA still could establish BDAT standards for K061 that is being disposed, or otherwise ensure that the waste is recycled by high temperature metals recovery rather than by being land disposed. For example, the Agency could simply prohibit land disposal of the waste and indicate that high temperature metals recovery is BDAT. The Agency also could let the statutory prohibition for the waste take effect, which (as a practical matter) would have the same result.

Since the Agency can require recycling as a BDAT standard, it must consider whether it has authority to set treatment standards for the slag that results from high temperature metals recovery. The fact that K061 electric arc dust is a solid and hazardous waste when it it sent for high temperature metals recovery does not end the inquiry. The Agency has discussed in a number of preambles the question of whether a waste destined for material recovery in an industrial furnace continues to be a waste when it is actually fed into the furnace. The issue arises because industrial furnaces are normally used as essential components of industrial processes, and when they are actually burning secondary materials for material recovery can be involved in the very act of production, an activity normally beyond the Agency's RCRA authority (see 50 FR 630, January 4, 1985; 50 FR 49167, November 24, 1985: and 52 FR 16889–990, May 6, 1987). Accordingly, the Agency has stated that, even when secondary materials sent to be reclaimed in these devices are wastes before they are reclaimed; they cease to be wastes when they are actually placed in the industrial furnace for materials recovery. To retain authority over industrial furnaces where waste treatment is a driving element of the reclamation activity, however, the Agency has further stated that the secondary material being reclaimed in the industrial furnace must be "indigenous" to that furnace for it to cease being a waste. The Agency has proposed to define "indigenous" to be any material generated by the same type of furnace in which it will be reclaimed (see the proposed § 266.30(a), 52 FR 17034, May 6, 1987). The Agency suggested other possible alternatives in the May 6 proposal, and commenters suggested additional possibilities which the Agency is now considering.

The K061 electric arc furnace dust would be considered to be indigenous, under the May 6 proposal described above, to the high temperature metals recovery furnaces used as the basis for the proposed treatment standard. This is because the metals recovery furnaces are smelting furnaces, and the electric arc furnace is also a type of smelting furnace. Consequently, the K061 dust would cease to be a solid waste when it is resmelted were the Agency to finalize the propsoed definition of "indigenous". This would mean that the slag produced in the metals recovery furnace during the resmelting of the dust would no longer automatically be deemed to be a hazardous waste by virtue of the "derived-from" rule in 40 CFR 261.2(c), because it would no longer derive from treatment of a listed hazardous waste (the K061 waste would no longer be a hazardous waste at the moment of burning). Thus, the slag would be a hazardous waste only if it exhibited a characteristic of hazardous waste. (Depending upon the type of device doing the smelting, and the feed materials to that device, the slag might also presently be excluded from regulation as a waste from the mining, beneficiation or processing of an ore or mineral (see 52 FR 17012, May 6, 1987).) Under these circumstances, the Agency probably could not set treatment standards for the slag which does not exhibit a characteristic of hazardous waste (which would be the case for all of the slags the Agency sampled in evaluating BDAT for this waste), since the land disposal prohibitions apply only to "hazardous wastes". In addition, any prohibition for slag exhibiting a characteristic of hazardous waste would take effect on May 8, 1990, as a Third Third waste.

Thus, although the Agency has proposed treatment standards based on total and leachable metal concentrations in the slag, EPA solicits comment on these issues with the view that EPA will likely establish either "total recycle" or "no land disposal" as the treatment standard for K061 should it determine not to set treatment standards for the slag.

There is one further issue relating to this waste. Electric arc furnace dust is frequently recycled by being used as an ingredient in fertilizers, the end result being that the dust is placed directly on the land when the fertilizer is applied. Under the Agency's rules, both the electric arc furnace dust and the resulting waste-derived fertilizer are hazardous wastes (see 40 CFR 261.2(c)(1)). The recycling activity is an example of the "use constituting disposal" category of recycling. The *American Mining Congress* opinion does not affect the material's status as a solid waste because the recycling activity contains an element of discard: it is like a form of land disposal. The court in fact characterized a "use constituting disposal" recycling situation (direct reuse of a pesticide drum as a trash can) as a type of disposal involving solid waste (see 53 FR 521–522, January 8, 1988).

EPA's rules presently exempt the K061-derived fertilizer from substantive regulation. Because this exemption is contained in Part 261, K061 waste that is recycled in this way is also exempt from the land disposal prohibitions (see 40 CFR 268.1). The Agency solicits comment whether these fertilizers should be exempt from the land disposal prohibitions program. In choosing to exempt the fertilizers from regulation, the Agency indicated it was doing so only until it could determine an appropriate regulatory regime for the fertilizers (50 FR 647, January 4, 1985). Since the fertilizers could contain high concentrations of mobile toxic metals (materials in the record of the solid waste definition rulemaking now incorporated into the record for this proposed rule show high concentration levels of lead and cadmium in some of these waste-derived fertilizers), EPA was certainly not crafting an exemption based on an Agency determination that there would be no risk from applying these fertilizers. Consequently, the issue now facing the Agency is whether to continue the exemption which would allow this waste to be recycled in a manner arguably at odds with the statutory land disposal prohibitions provisions, by allowing continued placement of untreated hazardous waste on the land. Furthermore, the Agency has identified another type of recycling of this waste which does not involve placement of the waste on the land as

the basis for BDAT, so that any regulations which discourage use of the electric arc furnace dust in fertilizer would channel the waste to a (at least arguably) more environmentally beneficial type of recycling. The Agency consequently solicits comment on whether these waste-derived fertilizers should be subject to the land disposal restrictions and to the treatment standards, effective on the same date as all other prohibitions applicable to K061.

5. *Regulated Constituents and Treatment Standards.* The proposed regulated constituents for K061 are listed below. The Agency is proposing that facilities must comply with both the composition and TCLP values of slag resulting from high temperature metals recovery. EPA believes that both measures of performance are necessary to adequately reflect BDAT-type treatment because available data show that facilities could achieve the total constituent concentration in the slag and still have a high leachate value because of poor operation of the treatment system. The Agency is aware that requiring the waste to meet both measures will eliminate the possibility of using stabilization alone to meet the treatment standard in most, if not all, cases. The Agency is specifically asking for comment on the use of both measures (as opposed to only one). (As discussed above, however, the Agency also is soliciting comment on whether it should set treatment standards for the slag, or find an alternative regulatory means of ensuring that treatment residues achieve total concentration and leachable metal concentrations achievable by high temperature metals recovery.)

EPA is proposing "No Land Disposal" as the treatment standard for K061 wastewaters because the Agency is not aware of any such waste being generated. The establishment of such a "treatment standard" results in the same effect as a prohibition, only it allows for the possibility of a variance from this treatment standard in case such a waste is generated.

For K061 nonwastewaters, EPA proposes the following treatment standards:

BDAT TREATMENT STANDARDS FOR K061

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Cadmium	44.0	0.19
Total chromium	1730.0	0.33

BDAT TREATMENT STANDARDS FOR K061—Continued

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Lead	20,300.0	0.09
Mercury	0.28	0.02
Zinc	24,100.0	0.50

b. K062—Spent Pickle Liquor Generated by Steel Finishing Operations of Facilities Within the Iron and Steel Industry (SIC Codes 331 and 332)

1. Industries Affected and Waste Description. The listed waste K062 is generated by the iron and steel industry (SIC Codes 331 and 332) from steel finishing operations. The Agency estimates that 978 facilities have steel finishing operations that may be generating the listed waste K062. These facilities are primarily located in the Eastern and North Central portions of the U.S.

In steel finishing operations, oxide scale on steel products is removed with a heated solution of concentrated acid or acids in a process called pickling. When the acid solution (called pickle liquor) loses its effectiveness through use, it is referred to as "spent". This is the listed K062 waste.

2. Demonstrated Treatment Technologies. K062 waste contains 4 BDAT metals at significant concentrations, has a dissolved solids of approximately 12 percent, and a water content of approximately 85 percent. The BDAT metals are chromium, nickel, copper, and lead with approximate respective concentrations of 7000, 3000, 400, and 200 ppm. The technology that the Agency has identified to treat this waste consists of a preliminary step for reduction of hexavalent chromium followed by chemical precipitation and some form of solids removal and dewatering, which may include settling and/or mechanical operations such as vacuum filtration. The metals in the precipitated solids may be treated by stabilization to reduce their leachability or high temperature metals recovery.

A comment received on the August 12, 1987 Notice of Data Availability and Request for Comments (52 FR 29992) suggested that K062 can be treated by high temperature metals recovery. The Agency, therefore, is including high temperature metals recovery as a demonstrated technology for K062 wastewaters and nonwastewaters. EPA requests comment on the types and quantities of K062 wastes treated by recovery technologies, and specifically asks for data describing the performance achievable by metals recovery. Upon review of those data, the Agency may promulgate final standards based on metals recovery.

The specific technology that the Agency tested for K062 consisted of chromium reduction, chemical precipitation with lime and sulfide and vacuum filtration.

3. Data Base. (i) Wastewaters. The Agency has collected 11 data points from one facility using the treatment system noted above. All 11 data points represent a well-designed and well-operated treatment system and were used in the development of treatment standards. The Agency has extensive data on wastewaters that would be classified as K062 under the "derived from" rule, but these data were not used. EPA determined that these untreated waste concentrations were considerably lower than K062 as generated, and therefore, not fully representative of K062. That is, treatment standards based on treating these unconcentrated residues might not be achievable for the more concentrated K062, as generated.

(ii) Nonwastewaters. The Agency has 11 TCLP data points for nonwastewaters (dewatered sludges) generated at the same facility where the wastewater test was conducted. The sludges were generated by lime and sulfide precipitation and dewatering the sludge with vacuum filtration. Because all 11 data points appear to represent well-designed and well-operated treatment, none of the points were excluded from the development of the treatment standards.

4. Identification of BDAT. BDAT for K062 was determined to be chromium reduction followed by chemical precipitation and vacuum filtration. This technology is a well demonstrated wastewater treatment technology that is used at numerous facilities throughout the country. Therefore, EPA believes that this technology is demonstrated to treat K062 waste. The Agency has no data for treatment of this waste using any other technology.

This treatment technology is judged to be available to treat K062 waste because (1) this treatment technology is commercially available or can be purchased from the proprietor; and (2) this treatment technology provides a substantial reduction of hazardous constituents.

5. Regulated Constituents and Treatment Standards. The regulated constituents for K062 and the treatment standards for wastewater and nonwastewater are listed below. EPA's

rationale for selection of the regulated constituents is presented in the *BDAT Background Document for First Third Wastes—K062*. For reasons presented in Section III. A. 7., the standards shown below apply to all K062 wastewaters and nonwastewaters with the following exception. Under 40 CFR 261.3(c)(2)(ii), residues generated as a result of lime ($Ca(OH)_2$) treatment are not hazardous wastes and, therefore, any such dewatered residues would not have to comply with the treatment standards. The treatment standards do apply, however, to residues generated by other than lime precipitation.

BDAT TREATMENT STANDARDS FOR K062 (NONWASTEWATER)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Metals:		
Total chromium	[1]	0.094
Lead	[1]	0.37

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K062 (WASTEWATER)

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Metals		
Total chromium	0.32	[1]
Copper	0.42	[1]
Nickel	0.44	[1]
Lead	0.04	[1]

[1] Not applicable.

c. K016—Heavy Ends or Distillation Residues from the Production of Carbon Tetrachloride
K018—Heavy Ends from the Fractionation in Ethyl Chloride Production
K019—Heavy Ends from the Distillation of Ethylene Dichloride Production
K020—Heavy Ends from the Distillation of Vinyl Chloride in Vinyl Chloride Monomer Production
K030—Column Bottoms or Heavy Ends from the Combined Production of Trichloroethylene and Perchloroethylene

1. Industries Affected and Waste Descriptions. These five listed hazardous wastes are generated in the production of chlorinated chemicals in the organic chemical industry. The Agency estimates that there are 52 plants which may produce the listed wastes. These facilities are located primarily in the south central portion of the United States. Brief descriptions of processes which may generate each of the listed wastes are given below.

Carbon tetrachloride is produced commercially via the chlorination of hydrocarbon and/or chlorocarbon feedstocks, methane, or carbon disulfide. The distillation of the crude carbon tetrachloride results in distillation residues (heavy ends). These distillation residues are the listed waste K016.

Ethyl chloride is produced commercially by the catalytic hydrochlorination of ethylene. Crude ethyl chloride is further refined by fractionation. The heavy ends from the fractionation column composes the listed waste K018.

Ethylene dichloride is produced separately or by a combined process involving the chlorination of ethylene and the oxychlorination of ethylene via hydrogen chloride. The process includes the distillation of the crude ethylene dichloride which results in distillation bottoms (heavy ends) which contain treatable quantities of organic constituents. These distillation bottoms are the listed waste K019. It should not noted that the May 28, 1986 schedule for restricting the listed hazardous wastes from land disposal (51 FR 1900) lists K019 in the second third of listed wastes. Therefore, K019 was not originally scheduled for regulation under 40 CFR Part 268 until June 8, 1989. However, due to the similarity between K019 and the other wastes in this treatability group, the Agency has chosen to accelerate the schedule for this waste, and will address K019 in this proposed rulemaking.

Vinyl chloride monomer is produced by the thermal cracking of ethylene dichloride or the hydrochlorination of acetylene. The process includes the purification of crude vinyl chloride monomers via distillation which results in heavy ends. The heavy ends compose the listed waste K020.

The combined production of perchlorethylene and trichloroethylene is accomplished by the direct chlorination or oxychlorination of ethylene dichloride or other chlorinated ethane or ethylene feedstocks. The listed waste K030 is generated when recycled streams from the chlorination or oxychlorination processes become contaminated and must be removed and disposed.

2. Demonstrated Treatment Technologies. The K016, K018–K020, K030 waste group generally contains 5 percent water, 5 percent chlorinated organic constituents and 90 percent other nonchlorinated organic constituents. These wastes generally contain high levels of filterable solids. The technologies that the Agency has identified for treatment of these wastes are (1) incineration technologies including rotary kiln and fluidized bed incineration and (2) solvent extraction followed by stabilization or high temperature metal recovery for metals. Fluidized bed incineration or rotary kiln incineration is a destruction technology applicable to organic bearing wastes with solids concentrations that prevent use of liquid injection incineration. Solvent extraction removes organic constituents from a waste by exploiting the relatively high solubilities of the waste constituents in a particular solvent.

The Agency tested rotary kiln incineration for treatment of this treatability group. The Agency also considered testing fluidized bed incineration of this waste; however, EPA was unable to identify any facilities that were incinerating these wastes in a fluidized bed incinerator.

3. Data Base—i. Nonwastewaters. For waste code K019, the Agency has six untreated and treated data points from one plant. These data sets include both total constituent concentration and TCLP leachate values. All data sets were used in the development of the treatment satndards because data show that the unit was properly operated during the time the waste was treated.

For K016, K018, K020, and K030, the Agency has data characterizing the constituents for each waste code from sampling and analysis conducted by EPA's hazardous waste listing program. Due to the physical and chemical similarity between these wastes and K019, treatment standards from waste code K019 are being transferred to waste codes K016, K018, K020, and K030. (EPA's analysis regarding the transfer of treatment standards can be found in the *BDAT Background Document for Chlorinated Organics*, Volume III. There is also a discussion in Section III. A. 8. in this preamble.)

ii. Wastewaters Generated from Incineration. The Agency has six scrubber water data points which represent destruction of BDAT organic compounds in the afterburner of the rotary kiln incinerator. The data reflect total constituent analyses; all data were used in the development of treatment standards because data collected by EPA during treatment showed that the afterburner was properly operated during the treatment test.

4. Identification of BDAT. BDAT for waste group K016, K018–K020, K030 was determined to be rotary kiln incineration. This technology was the only technology for which the Agency has treatment data as noted in the previous subsection (Data Base). The Agency believes, however, that a well designed and operate fluidized bed incineration wil meet the BDAT standards. While a rotary kiln incinerator generally operates at higher temperatures and longer residence times, the increased turbulence (mixing) of a fluidized bed incinerator should allow this technology to achieve the same results. Accordingly, EPA will include fluidized bed incineration in its capacity estimates for K016, K018–K020, and K030.

Incineration is demonstrated at over 250 facilities and the Agency is aware of two facilities that use rotary kiln incineration to treat K019 waste. Therefore, the Agency believes incineration is demonstrated to treat K019. The Agency also believes this technology is available because (1) incineration technologies are commercially available or can be purchased from a proprietor; and (2) incineration provides substantial reduction of the concentration of organic hazardous constituents. For a detailed description of the reductions exhibited by treatment of these wastes, refer to the *BDAT Background Document for First Third Wastes—K016, K018–K020, K030.*

5. Regulated Constituents and Treatment Standards. Below are listed the regulated constituents for K016, K018–K020, K030 and the treatment standards for wastewaters and nonwastewaters. For reasons discussed earlier in this preamble, the treatment standards apply to all wastewaters and nonwastwaters classified as K016, K018, K019, K020, and/or K030.

BDAT TREATMENT STANDARDS FOR K016

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Tetrachloroethene	5.96	[1]
Hexachlorobenzene	27.2	[1]
Hexachlorobutadiene	5.44	[1]
Hexachlorocyclopentadiene	5.44	[1]
Hexachloroethane	27.2	[1]

[1] Not applicable

BDAT TREATMENT STANDARDS FOR K016

(Wastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Tetrachloroethene	0.007	[1]
Hexachlorobenzene	0.033	[1]
Hexachlorobutadiene	0.007	[1]
Hexachlorocyclopentadiene	0.007	[1]
Hexachloroethane	0.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K018

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroethane	5.96	[1]
1,1-Dichloroethane	5.96	[1]
1,2-Dichloroethane	5.96	[1]
1,1,1-Trichloroethane	5.96	[1]
Hexachlorobenzene	27.2	[1]
Hexachloroethane	27.2	[1]
Hexachlorobutadiene	5.44	[1]
Pentachloroethane	5.44	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K018

(Wastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chloroethane	0.007	[1]
Chloromethane	0.007	[1]
1,1-Dichloroethane	0.007	[1]
1,2-Dichloroethane	0.007	[1]
1,1,1-Trichloroethane	0.007	[1]
Hexachlorobenzene	0.033	[1]
Hexachlorobutadiene	0.007	[1]
Pentachloroethane	0.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K019

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Chloroform	5.96	[1]
1,2-Dichloroethane	5.96	[1]
Tetrachloroethane	5.96	[1]
1,1,1-Trichloroethane	5.96	[1]
Bis(2-chloroethyl)ether	5.44	[1]
Hexachloroethane	27.2	[1]
Naphthalene	5.44	[1]
Phenanthrene	5.44	[1]
1,2,4-Trichlorobenzene	18.7	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K019

(Wastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Chlorobenzene	0.006	[1]
Chloroform	0.007	[1]
1,2-Dichloroethane	0.007	[1]
Tetrachloroethane	0.007	[1]
1,1,1-Trichloroethane	0.007	[1]
Bis(2-chloroethyl)ether	0.007	[1]
p-Dichlorobenzene	0.008	[1]
Hexachloroethane	0.033	[1]
Naphthalene	0.007	[1]
1,2,4,5-Tetrachlorobenzene	0.017	[1]
1,2,4-Trichlorobenzene	0.023	[1]
Fluorene	0.007	[1]
Phenanthrene	0.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K020

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
1,2-Dichloroethane	5.96	[1]
1,1,2,2-Tetrachloroethane	5.44	[1]
Tetrachloroethane	5.96	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K020

(Wastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
1,2-Dichloroethane	0.007	[1]
1,1,2,2-Tetrachloroethane	0.007	[1]
Tetrachloroethene	0.007	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K030

(Nonwastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Tetrachloroethene	5.96	[1]
Hexachlorobutadiene	5.44	[1]
Hexachloroethane	27.2	[1]
Hexachlonopropene	18.7	[1]
Pentachlorobenzene	27.2	[1]
Pentachloroethane	5.44	[1]
1,2,4,5-Tetrachlorobenzene	13.6	[1]
1,2,4-Trichlorobenzene	18.7	[1]

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K030

(Wastewater)

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Tetrachloroethene	0.007	(1)
Hexachlorobutadiene	0.007	(1)
Hexachloroethane	0.033	(1)
Pentachloroethane	0.007	(1)
1,2,4,5-Tetrachlorobenzene	0.017	(1)
1,2,4-Trichlorobenzene	0.023	(1)
o-Dichlorobenzene	0.008	(1)
p-Dichlorobenzene	0.003	(1)

[1] Not applicable.

d. K024—Distillation Bottoms from the Production of Phthalic Anhydride from Naphthalene

1. Industries Affected and Waste Description. The listed waste K024 is generated in the production of phthalic anhydride from naphthalene in the organic chemical industry. The Agency believes that only one facility produces phthalic anhydride using naphthalene as a feed stock.

The manufacturing process includes the distillation of crude phthalic anhydride which results in distillation bottoms (heavy ends) which contain treatable levels of organic constituents. The distillation bottoms are the listed waste K024.

2. Demonstrated Treatment Technologies. The listed waste K024 has a high organic solids concentration with phthalic anhydride as the principal BDAT constituent. The demonstrated technologies that the Agency has identified for treatment of this waste are incineration technologies including fluidized bed and rotary kiln incineration. Fluidized bed incineration and rotary kiln incineration are destruction technologies demonstrated for organic bearing wastes with solids concentrations that prevent liquid injection incineration.

The Agency tested rotary kiln incineration for K024. EPA did not locate any facilities using fluidized bed incineration for K024.

3. Data Base. i. Nonwastewaters. For waste code K024 the Agency has treatment data from one plant. At this plant, the Agency has 6 data points representing residual concentrations found in the ash from rotary kiln incineration. These data reflect composition and TCLP analysis of organics.

ii. Wastewaters Generated from Incinerator. The Agency has six scrubber water data points which represent destruction of BDAT organic compounds in the afterburner of the rotary kiln incinerator. These data reflect total constituent analyses.

4. Identification of BDAT. BDAT for K024 waste was determined to be rotary kiln incineration. This technology was the only technology for which the Agency has treatment data as noted in the previous section (Data Base).

Rotary kiln incineration is demonstrated at over 50 facilities. The Agency is not aware of any generator or TSDF facilities currently using rotary kiln incineration for treatment of K024. However, EPA believes rotary kiln incineration is demonstrated for K024 in that it is being used to treat wastes similar to K024 with regard to parameters affecting treatment selection for K024, including low water content and high organic solids concentration. EPA has confirmed this judgement by demonstrating the actual performance achievable when K024 was incinerated in EPA's own in-house rotary kiln.

Rotary kiln incineration is judged to be available to treat K024 because (1) this technology is commercially available and (2) rotary kiln incineration provides a substantial reduction in the concentration of BDAT organic constituents present in K024 . For a detailed description of the reductions exhibited by treatment of these wastes, refer to the *BDAT Background Document for First Third Wastes—K024.*

While EPA does not have performance data for technologies other than rotary kiln incineration, the Agency believes that a well designed and operated fluidized bed incinerator will also achieve the treatment standards. For the reasons presented in the discussion of the K016, K018–K020, and K030 treatability group, EPA will consider fluidized bed incineration in its capacity determinations.

5. Regulated Constituents and Treatment Standards. As noted below, EPA is regulating phthalic acid for K024. This constituent, although not listed as a hazardous constituent in Part 261 Appendix VIII, is being regulated as a surrogate for phthalic anhydride. Phthalic anhydride is a hazardous constituent; however, it cannot be easily analyzed, in that, the analytical method readily hydrolyzes the compound to phthalic acid. The treatment standards for all K024 wastewaters and nonwastewaters are presented below.

BDAT TREATMENT STANDARDS FOR K024

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/1)
Phthalic acid	6.0	(1)

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K024

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/1)	TCLP (mg/1)
Phthalic acid	0.08	(1)

[1] Not applicable.

e. K103—Process Residues from Aniline Extraction from the Production of Aniline

K104—Combined Wastewater Streams Generated from Nitrobenzene/Aniline Production

1. Industries Affected and Waste Description. The listed wastes K103 and K104 are generated by production of aniline and from the combined production of aniline/nitrobenzene, respectively. The Agency estimates that six facilities in the central and eastern states are actively involved in aniline production which could generate K103. Four of these facilities are actively co-producing aniline and nitrobenzene, which also could result in the generation of K104 waste.

2. Demonstrated Treatment Technology. The K103 wastewater primarily consists of water (94.7 percent) and aniline (4.3 percent). The K104 wastewater principally consists of water (98.7 percent), nitrobenzene (0.3 percent), and small amounts of cyanides. For both K103 and K104 wastewater the Agency believes the following treatment technology train is demonstrated; solvent extraction, which separates the organic components from the aqueous components by exploiting the relatively high solubilities of the organic constituents in the particular solvent; steam stripping, which further

removes organics from the liquid phase through volatilization; and activated carbon adsorption, which uses carbon granules to remove contaminants. The solvent-containing stream from solvent extraction potentially can be recycled to recover nitrobenzene and aniline, or incinerated. The steam stripper overheads are condensed and decanted with the organic constituents recycled back to the process. The spent carbon from the activated carbon adsorption column is sent off-site for thermal regeneration. While the incineration component of this technology is not demonstrated for K103 and K104, available information shows that it is demonstrated on wastes similar to the contaminated solvent stream from extraction. Because the solvent-contaminated stream potentially contains a significant amount of an explosive compound (picric acid), EPA is concerned that it may not be possible to safely use incineration. Accordingly, the Agency seeks comment regarding its determination that the incineration component of BDAT for K103 and K104 is demonstrated.

Other treatment technologies which may be applicable to K103 and K104 are steam stripping followed by activated carbon adsorption, and steam stripping followed by biological treatment which involves the use of microorganisms to degrade organic compounds.

The technology tested by the Agency was the system consisting of solvent extraction followed by steam stripping and activated carbon adsorption. The three-step treatment train was chosen over applicable two-step treatment processes because the incremental solvent extraction step provides additional reduction in the level of organics.

3. Data Base. The Agency has 5 data points for treated and untreated K103 and K104 wastes from one facility. Data collected during the test show that one of the 5 data points did not reflect proper operation; therefore, this value was not included in the calculation of the treatment standards.

4. Identification of BDAT. BDAT for K103 and K104 wastes was determined to be solvent extraction followed by steam stripping and activated carbon adsorption. Additionally, BDAT includes incineration of the solvent-contaminated stream from the extraction component of the treatment train. The Agency is aware of at least one facility that has used the wastewater technology train to treat K103 and K104. Therefore, EPA believes that solvent extraction, followed by steam stripping and activated carbon adsorption is demonstrated on K103 and K104. Additionally, these units are widely used to treat wastes having similar parameters affecting treatment selection.

This three-step treatment system is judged to be available to treat K103 and K104 because (1) the treatment system is commercially available; and (2) the system provides a substantial reduction in the K103 and K104 constituents described above.

5. Regulated Constituents and Treatment Standards. Below are listed the regulated constituents for K103 and K104. The following treatment standards apply to all wastewaters and nonwastewaters. In the case of K103 and K104 nonwastewaters, the treatment standards have been transferred as discussed in Section III. A. 8. of this preamble.

BDAT TREATMENT STANDARDS FOR K103 AND K104

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP(mg/1)
Aniline	5.44	[1]
Benzene	5.96	
2,3-Dinitrophenol	5.44	
Nitrobenzene	5.44	
Phenol	5.44	
Total cyanides (for K104 only)	1.48	

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K103 AND K104

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Benzene	0.147	[1]
Aniline	4.450	
2,3-Dinitrophenol	0.613	
Nitrobenzene	0.073	
Phenol	1.391	
Total Cyanides (for K104 only)	2.683	

[1] Not applicable.

f. K071—Brine Purification Muds from the Mercury Cell Process in Chlorine Production, where Separately Prepurified Brine is Not Used

1. Industries Affected and Waste Description. The listed waste K071 is generated in chlorine production by the mercury cell process where prepurified brine is not used. The Agency estimates that there are 14 facilities that use this process and do not use prepurified brine as a raw material. These facilities are distributed throughout the country, with 50 percent being located in the Southeast.

Chlorine is produced by the electrolytic decomposition of a saturated sodium chloride brine solution. The principal raw material is the rock salt that contains impurities that dissolve in the brine. Treatment of the saturated brine to remove these impurities results in a treatment residual, which is listed as K071.

2. Demonstrated Treatment Technologies. K071 waste consists primarily of sodium chloride, calcium sulfate, and calcium carbonate; the principal BDAT constituent of this waste being mercury. The water content of the waste is over 60 percent and the filterable solids content is 20–35 percent (for a detailed analysis of this waste stream, see the *BDAT Background Document for First Third Wastes—K071).* The demonstrated technologies that the Agency has identified to treat K071 nonwastewaters are (1) a treatment train consisting of acid leaching followed by chemical oxidation followed by a washing and dewatering step for solids, (2) water washing followed by a dewatering step, and (3) stabilization for nonwastewaters. For wastewaters, EPA has identified chemical precipitation followed by filtration. Acid leaching followed by chemical oxidation converts the mercury present in the waste to a soluble form, which is separated from the solid portion of the waste by washing and dewatering. The solid portion is regulated under this rule as a treated K071 waste. The filtrate is then treated by chemical precipitation and filtration to remove the mercury solubilized in the leaching and oxidation steps; the filtrate from this step is regulated under this rule as a treated K071 waste. The precipitated residue, however, is another listed waste, K106.

Of the technologies described above, the Agency tested acid leaching and chemical oxidation followed by dewatering and washing, followed by sulfide precipitation and filtration. The Agency did not test stabilization because it does not reduce the total concentration of the mercury as does acid leaching and chemical oxidation.

3. Data Base. i. Wastewaters. The Agency has three data points from one facility on treated wastewaters. This facility was tested by EPA and the treatment consisted of sulfide precipitation followed by filtration. Data collected during treatment show that all treated data represent proper operation;

accordingly, all data were used in the development of the standards.

ii. Nonwastewaters. The Agency has 44 data points from 3 facilities representing total constituent concentration of the treated K071 nonwastewater, 10 data points from 2 facilities representing mercury concentrations found in the TCLP leachate of the treated K071 nonwastewater, and 268 data points from 3 facilities representing mercury concentrations in the leachate from the Extraction Procedure (EP) test. The Agency has 44 data points from 3 facilities providing total mercury concentration values for treated K071 nonwastewaters. Of these 44, seven were generated by EPA testing acid leaching followed by chemical oxidation and a washing and dewatering step. EPA also generated one data point using a technology consisting of a one-step acid leaching process. This technology was used to treat a waste defined as K071, but significantly less contaminated with mercury and also having larger particle sizes. The 36 data points submitted by two facilities represent treatment using a water wash/dewatering process.

Of the 10 data points reflecting TCLP analysis, eight were generated by EPA using the treatment technologies described above. The remaining two data points representing TCLP analysis were submitted by one of the facilities using the water wash/dewatering process mentioned above.

The 268 EP leachate data points were submitted to EPA by three facilities using the water wash/dewatering process. Two of the three facilities are the same companies that supplied the total mercury concentration and TCLP values for the treated K071.

EPA did not use the 268 EP data points in the development of the treatment standards because data reflecting performance as measured by the TCLP are available. The TCLP is a better measure of evaluating BDAT in this case because it is a more aggressive leachate test than the EP (Extraction Procedure). All remaining data were consisdered using the Agency's statistical test (ANOVA) for comparing different treatment technologies.

4. Identification of BDAT. BDAT for K071 was identified as acid leaching and chemical oxidation followed by washing/dewatering for nonwastewaters and sulfide precipitation followed by filtration for wastewaters. For nonwastewaters, EPA compared the mean value of the data representing acid leaching and chemical oxidation and washing/dewatering to the mean value of the treatment data from the water washing process. This comparison was done using the analysis of variance test for both the total constituent and TCLP data. In both instances, the acid leaching/chemical oxidation process was shown to provide significantly better treatment.

The BDAT treatment train for nonwastewaters is demonstrated at two facilities; additionally the various treatment components are well-demonstrated on wastes similar to K071 with regard to parameters used to select treatment. The Agency believes that this technology is available to treat K071 wastes because (1) this technology is commercially available, and (2) this technology provides substantial reduction of hazardous constituent concentrations.

5. Regulated Constituents and Treatment Standards. Below are listed the regulated constituents and associated treatment standards for K071 wastewater and nonwastewater. Facilities that land dispose of nonwastewaters have to comply with both the total concentration and the TCLP value.

BDAT TREATMENT STANDARDS FOR K071

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Mercury	4.6	0.0025

BDAT TREATMENT STANDARDS FOR K071

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Mercury	0.030	[1]

[1] Not applicable.

g. K048—Dissolved Air Flotation (DAF) Float from the Petroleum Refining Industry

K049—Slop Oil Emulsion Solids from the Petroleum Refining Industry

K050—Heat Exchanger Bundle Cleaning Sludge from the Petroleum Refining Industry

K051—API Separator Sludge from the Petroleum Refining Industry

K052—Tank Bottoms (Leaded) from the Petroleum Refining Industry

1. Industries Affected and Waste Descriptions. The above five listed hazardous wastes are generated by the petroleum refining industry. The Agency estimates that there are 200 refineries which may produce the listed wastes K048 through K052. Many of these facilities are located in the South Central and Pacific areas of the United States.

Petroleum refining consists of many unit operations, the configuration of which depends on the refinery and the desired finished products. Many sources of waste exist throughout the refining process. Treatment of these wastes in a centralized wastewater treatment system and other unit operations result in the generation of the K048–K052 waste as described below:

Dissolved air flotation (DAF) is used by petroleum refineries for separating suspended and colloidal materials from process wastewater, including suspended solids and insoluble oily wastes. The material skimmed from the surface of a DAF unit is the listed waste K048.

Process wastewater from refining operations is in many cases treated in an oil/water/solids separator where the waste separates by gravity into a multiphase mixture. The skimmings from the separator are collected in a "slop oil system," where the three phases, water, oil, and an emulsified layer, are separated. The emulsified layer is the listed waste K049.

Heat exchanger bundles (tubes) from petroleum refining operations are periodically cleaned to remove deposits of scale and sludge. The solids resulting from this cleaning operation are listed as K050.

API separators are used in petroleum refining operations to remove floating oil and suspended solids from the wastewater. Solids that settle out of the water are the listed waste K051.

Storage tanks which have contained leaded petroleum products are periodically cleaned to remove deposits. The solids resulting from this cleaning operation are listed as K052.

2. Demonstrated Treatment Technologies. The K048–K052 waste group generally contains high percentages of water, oil, and sand and

other solids; the concentration ranges of these constituents vary considerably, depending upon the particular waste. BDAT organic and metal constituents generally comprise less than one percent of the waste stream. For a detailed analysis of these wastes see the *BDAT Background Document for First Third Wastes—K048–K052.* The demonstrated technologies that the Agency has identified for treatment of these wastes are: incineration technologies including fluidized bed and rotary kiln incineration; solvent extraction followed by recovery or incineration of the contaminated solvent; thermal drying; and pressure filtration followed by oil recovery from the filtrate. These technologies provide varying degrees of treatment of the organic constituents present in the waste.

Fluidized bed incineration or rotary kiln incineration are destruction technologies which destroy the organic components in the waste feed. Solvent extraction removes organic constituents from a waste by exploiting the relatively high solubilities of the waste constituents in a particular solvent. Thermal drying removes water and volatile organics through the application of heat. Pressure filtration mechanically separates solids from liquids allowing the oils in the liquid phase to be recovered; further treatment being required for the wastewater stream.

All of the organic treatment technologies generate both nonwastewater and wastewater residuals that require treatment for metals. For metals in the nonwastewater residuals, EPA has determined stabilization to be demonstrated. Stabilization immobilizes the metal constituents to minimize migration.

For metals in the wastewater residuals, EPA has identified chromium reduction followed by chemical precipitation and, finally, stabilization of the precipitated residuals as demonstrated technologies. These technologies are commonly employed for metal-containing wastewaters. Chromium reduction reduces hexavalent chromium to the less toxic trivalent form. Chemical precipitation transfers metals from the wastewater to a sludge form suitable for stabilization.

The Agency tested fluidized bed incineration for the K048–K052 waste group. Additionally, stabilization of the residual ash was selected for testing because metal stabilization forms chemical bonds or a lattice structure that minimizes the ability of a metal to leach. Stabilization testing was performed at an EPA test facility since no commercial facilities were identified performing stabilization of these wastes.

Rotary kiln incineration was considered for testing; however, the Agency was not aware of any generator facilities treating these K048–K052 wastes using a rotary kiln incinerator. The other technologies applicable to these wastes were not selected for testing for the following reasons. Solvent extraction was not tested because it results in a residual that may subsequently require incineration to reduce the levels of organics in the waste to be disposed. Even though thermal drying operates on the same principle as incineration (the application of energy in the form of heat to volatilize organic constituents from the waste), it would not be expected to perform better than fluidized bed incineration since it is operated at significantly lower temperatures (250–550 °F versus 1200–1400 °F). Therefore, thermal drying was not selected for testing. Pressure filtration physically separates solids and liquids and would provide for the removal of the organics in the liquid portion of the waste but would not remove organics present in the solids. Therefore, pressure filtration would not be expected to perform better than fluidized bed incineration. Metals recovery technologies were not tested because the Agency was not aware at the time of any facilities performing metals recovery on these wastes.

3. Data Base. For wastes K048 and K051, the Agency collected data from one facility. These data consist of six untreated and treated data points representing fluidized bed incineration. Operating data collected during the testing of the incinerator show that the technologies were properly operated; accordingly, all of the above described data were used in the development of the treatment standards.

For wastes K048, K049, K051, and K052 the Agency also has substantial treatment data from industry. Most of the data addressing BDAT organic constituents reflect performance as measured in the leachate from the TCLP; EPA did not evaluate these data because the Agency is proposing treatment standards based on the total constituent concentration. These data represent a range of demonstrated treatment systems including solvent extraction, thermal drying, and pressure filtration. To the extent that total composition data become available, EPA will evaluate these systems prior to promulgation.

EPA also received total composition data from one facility representing 10 data points for residuals from solvent extraction. EPA compared these data to treatment data obtained by fluidized bed incineration and found that fluidized bed incineration provided significantly better treatment for most of the constituents.

For wastes K049 and K052 the Agency has data characterizing the constituents of these wastes from one plant. Using these data, EPA confirmed its judgement that these wastes were similar to the treated waste (because of similar generation processes) through use of the analyses described earlier in this section of the preamble.

For K050 waste, the Agency does not have data that represents an analysis of all BDAT organic and metal constituents. However, the Agency does have a limited analysis of BDAT organics and metals from one facility. Based on these data and information regarding the generation of this waste, EPA believes it would be similar in composition to wastes K048 and K051, and therefore, EPA transferred treatment standards to this waste.

For metals in the incinerator ash, the Agency has 9 treated data points representing the amount of metals found in the TCLP leachate after stabilization from one facility. Operating data collected during this testing show that the technology was properly operated; accordingly, all of the data were used in the development of the treatment standards.

EPA received 10 data points from industry representing metals stabilization. EPA did not use these data in the development of treatment standards for the BDAT metals because the TCLP values in the untreated and treated waste did not show treatment to occur (i.e., there was no indication of reductions in the leachate concentrations).

Fluidized bed incineration also generates a scrubber water stream. EPA currently has no data on BDAT list organics in this residual that specifically reflects treatment of K048–K052 wastes. The Agency does have six scrubber water residual data points generated from incineration of wastes that EPA believes are similar to K048–K052 relative to the level of performance that can be achieved. Operating data collected during this testing show that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards.

EPA does not have data that specifically reflect metal wastewater treatment of K048–K052. The Agency does have performance data, however, on wastes that it believes are sufficiently similar to K048–K052 such that the level of performance can be transferred. These data consist of 11

untreated and treated analyses for each of the following metals: chromium, lead, and zinc. The data were collected by EPA from one facility using chromium reduction followed by lime and sulfide precipitation and, finally, vacuum filtration. Operational data collected during this treatment testing indicate that the technology was properly operated; accordingly, all of the data were used in the development and transfer of treatment standards.

The Agency has recently collected six scrubber water residual samples generated from incineration of K048 waste and is currently analyzing these samples to determine the level of performance achieved. Depending on the results of these analyses, the Agency may adjust the wastewater standards for BDAT organics and metals before the promulgation of this rule.

4. Identification of BDAT. EPA has determined that for BDAT organics in the K048–K052 wastes, fluidized bed incineration achieves a level of performance that represents treatment by BDAT. While BDAT is not identified as rotary kiln incineration, EPA believes that a well-designed and well-operated rotary kiln incinerator will achieve the applicable treatment standards for K048–K052. Accordingly, EPA will use rotary kiln incineration in its estimates of available treatment capacity.

For metals in the incinerator ash, EPA has determined that stabilization using a lime/flyash binder achieves a level of performance that represents BDAT. Other binders tested were cement and kiln dust; EPA determined that use of both of these binders resulted in less effective treatment than the use of the lime/flyash binder. (EPA's analysis of these data can be found in BDAT background document for K048–K052.)

For BDAT list metals in the wastewater, EPA has identified chromium reduction followed by chemical precipitation and vacuum filtration as BDAT for metals.

Incineration followed by metal stabilization for the nonwastewater K048–K052 and chromium reduction followed by chemical precipitation and filtration for the wastewater K048–K052 are judged to be available to treat K048–K052 because (1) these technologies are commercially available, and (2) these technologies provide substantial reduction of both organic and metal hazardous constituents. For a detailed description of the reductions exhibited by treatment of these wastes, refer to the *BDAT Background Document for First Third Wastes—K048–K052.*

5. Regulated Constituents and Treatment Standards. Below are listed the regulated constituents for K048–K052 and the associated treatment standards. For organic constituents, the standards are expressed as total constituent concentration, and for the metals, the standards reflect concentrations in the leachate developed by using the TCLP.

BDAT TREATMENT STANDARDS FOR K048

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Bis(2-ethylhexyl)phthalate	4.18	(1)
Toluene	3.93	(1)
Chrysene	0.84	(1)
Xylene	8.54	(1)
Di-n-butyl phthalate	4.18	(1)
Naphthalene	0.84	(1)
Phenanthrene	0.84	(1)
Phenol	0.84	(1)
Cyanide	1.48	(1)
Total chromium	(1)	1.68
Arsenic	(1)	0.006
Copper	(1)	0.013
Nickel	(1)	0.048
Selenium	(1)	0.025
Vanadium	(1)	0.18
Zinc	(1)	0.141

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K048

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Phenol	0.007	(1)
Fluorene	0.007	
Toluene	0.007	
Xylene	0.007	
Naphthalene	0.007	
Phenanthrene	0.007	
Total chromium	0.20	
Lead	0.037	
Zinc	0.40	

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K049

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Benzene	3.93	(1)
Chrysene	0.84	(1)
Xylene	8.54	(1)
Toluene	3.93	(1)
Naphthalene	0.84	(1)
Phenanthrene	0.84	(1)
Phenol	0.84	(1)
Pyrene	1.06	(1)
Cyanide	1.48	(1)
Total chromium	(1)	1.68
Arsenic	(1)	0.006

BDAT TREATMENT STANDARDS FOR K049—Continued

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Copper	(1)	0.013
Nickel	(1)	0.048
Selenium	(1)	0.025
Vanadium	(1)	0.18
Zinc	(1)	0.141

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K049

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total Composition (mg/kg)	TCLP (mg/l)
Anthracene	0.007	(1)
Xylene	0.007	
2,4-Dimethylphenol	0.007	
Benzene	0.023	
Toluene	0.007	
Naphthalene	0.007	
Phenanthrene	0.007	
Phenol	0.007	
Total chromium	0.20	
Lead	0.037	
Zinc	0.40	

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Benzo(a)pyrene	0.84	(1)
Phenol	0.84	(1)
Cyanide	1.48	(1)
Total chromium	(1)	1.68
Arsenic	(1)	0.006
Copper	(1)	0.013
Nickel	(1)	0.048
Selenium	(1)	0.025
Vanadium	(1)	0.18
Zinc	(1)	0.141

(1) Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phenol	0.007	(1)
Total chromium	0.20	
Lead	0.037	

BDAT TREATMENT STANDARDS FOR K050—Continued

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Zinc	0.40	.....

(1) Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Toluene	3.93	(1)
CHrysene	0.84	(1)
Xylene	8.54	(1)
Di-n-butyl phthalate	4.18	(1)
Naphthalene	0.84	(1)
Phenanthrene	0.84	(1)
Phenol	0.84	(1)
Pyrene	1.06	(1)
Cyanide	1.48	(1)
Total chromium	(1)	1.68
Arsenic	(1)	0.006
Copper	(1)	0.013
Nickel	(1)	0.048
Selenium	(1)	0.025
Vanadium	(1)	0.18
Zinc	(1)	0.141

(1) Not applicable.

BDAT TREATMENT STANDARDS FOR K050

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Fluorene	0.007	(1)
Acenaphthene	0.007	(1)
Toluene	0.007	(1)
Xylene	0.007	(1)
Naphthalene	0.007	(1)
Phenanthrene	0.007	(1)
Phenol	0.007	(1)
Total chromium	0.20	(1)
Lead	0.037	(1)
Zinc	0.40	(1)

(1) Not applicable.

BDAT TREATMENT STANDARDS FOR K052

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Toluene	3.93	(1)
Xylene	8.54	(1)
o-Cresol	0.84	(1)

BDAT TREATMENT STANDARDS FOR K052—Continued

[Nonwastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
p-Cresol	0.84	(1)
Naphthalene	0.84	(1)
Phenanthrene	0.84	(1)
Phenol	0.84	(1)
Cyanide	1.48	(1)
Total chromium	(1)	1.68
Arsenic	(1)	0.006
Copper	(1)	0.013
Nickel	(1)	0.048
Selenium	(1)	0.025
Vanadium	(1)	0.18
Zinc	(1)	0.141

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K052

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Phenanthrene	0.007	(1)
2,4-Dimethylphenol	0.007	(1)
Benzene	0.023	(1)
Xylene	0.007	(1)
o-Cresol	0.007	(1)
p-Cresol	0.007	(1)
Naphthalene	0.007	(1)
Phenol	0.007	(1)
Total chromium	0.20	(1)
Lead	0.037	(1)
Zinc	0.40	(1)

[1] Not applicable.

h. K069—Emission Control Dust/Sludge from Secondary Lead Smelting

1. Industries Affected and Waste Description. The listed waste K069 is generated in the secondary lead smelting process. The Agency estimates that 69 facilities are secondary lead smelters. Most of these facilities are located in the South Central and Midwest parts of the United States. Secondary lead smelting generates particulate emissions which contain hazardous constituents present in feed materials. Metals are entrained in furnace fumes and are collected by air pollution control devices. The emission control dust generated is the listed waste K069.

2. Demonstrated Treatment Technologies. K069 waste principally consists of lead, cadmium, and chromium. The Agency is aware of three technologies applicable to the treatment of K069 waste: Total recycling, high temperature metals recovery, and stabilization. Because the waste contains recoverable quantities of lead, it can be totally recycled as a feedstock for resmelting. High temperature metals recovery can be applied to recover metal constituents from the waste. Stabilization treatment reduces the leachability of the metals in the waste slag that results from resmelting.

EPA verified the use of recycling through information requests under RCRA section 3007. EPA did not test other applicable technologies because they generated residuals that still contain some level of contamination.

3. Data Base. The Agency has data from 7 facilities stating that total recycling of K069 is practiced and that K069 is not land disposed. Of nine RCRA section 3007 letters sent to generators at 13 plants, seven responded confirming the fact that total recycling is used. Of the two others, one exports the waste to be recycled and the other company did not respond. A letter was also received from the Secondary Lead Smelters Association which stated that total recycling of the baghouse dust is practiced throughout the industry and that land disposal of K069 does not occur.

4. Identification of BDAT. BDAT for K069 is total recycling. Total recycling is demonstrated at more than 10 facilities and confirmed by the Secondary Lead Smelters Association as the waste management technique practiced throughout the industry.

Total recycling is judged to be available to treat K069 waste because (1) the Agency does not have information showing that recycling poses a greater total risk to human health and the environment than land disposal; (2) it is commercially available; and (3) this treatment technology provided a substantial reduction of hazardous constituents because it eliminates the need for land disposal of K069.

Designating a form of recycling technology as the basis for BDAT raises issues analogous to those involving K061 waste. EPA will summarize its conclusions here, subject to public comment:

- EPA may prohibit land disposal of K069 waste, whether or not it would be a solid waste when recycled;
- Even under the *American Mining Congress* opinion, the K069 being reclaimed could be viewed as a solid waste, because it derives from treatment of discarded materials (scrap lead, discarded batteries and the like) (see, e.g., 824 F. 2d at 1188);
- Under the Agency's May 6, 1987 proposal, K069 waste, however, would be considered to be indigenous to the

secondary lead smelting process and therefore would cease being a waste at the moment it is reintroduced to the smelting furnace; and therefore,

• Any slag resulting from high temperature metals recovery of this waste (in a secondary lead smelter) would not automatically be a hazardous waste (i.e., the "derived from" rule would not apply), and would be hazardous only if it exhibits a characteristic of hazardous waste (assuming the Agency does not alter its proposal with regard to indigenous wastes). The Agency consequently is not proposing a treatment standard for the slag at this time, nor would a prohibition necessarily apply (assuming the slag is hazardous) until the "Final Third" prohibition date of May 8, 1990.

The proposed treatment standard for K069 is "No Land Disposal" (see discussion of the significance of this treatment standard in Section A. 9. above). Rather than simply prohibiting the waste from land disposal, setting this "treatment standard" achieves the Agency's intent to prohibit the land disposal of these wastes, while at the same time allows for the possibility of a variance from the treatment standard. Should a waste be generated that is unable to be totally recycled (e.g., such as a waste generated at a CERCLA site) such a waste may be eligible for a variance from the treatment standard. A waste is not eligible for a variance from the treatment standard if no treatment standard has been established. An interested party would have to petition the Agency for a treatment standard, a more cumbersome and time-consuming process.

i. K015—Still Bottoms From the Distillation of Benzyl Chloride

1. Industries Affected and Waste Description. The Agency estimates that three facilities produce the listed waste K015. These facilities are located in New Jersey and Tennessee.

Benzyl chloride is produced by the chlorination of toluene in a reactor (or series of reactors). Unreacted toluene is recycled back to the reactor, while the reaction products containing crude benzyl chloride are distilled. The still bottoms are the listed waste K015.

2. Demonstrated Treatment Technologies. K015 waste generally contains greater than 88 percent benzal chloride, less than 12 percent benzotrichloride and other chlorinated benzenes, less than 5 percent benzyl chloride, less than 1 percent toluene, less than 1 percent other BDAT constituents, and less than 1 percent water. The demonstrated technologies that the Agency has identified for treatment of K015 waste are liquid injection incineration, fuel substitution, and recovery.

The Agency tested liquid injection incineration of K015. EPA did not locate any facilities using fuel substitution, and data on recovery were not available.

3. Data Base. Wastewaters Generated From Incineration. For K015 waste, the Agency has data from one facility. EPA has three scrubber water data points which represent destruction of BDAT organic compounds by liquid injection incineration. The data reflect total constituent analyses; all data were used in the development of treatment standards because EPA collected data showing that the incinerator was properly operated during the treatment tests.

4. Identification of BDAT. BDAT for K015 waste is identified as liquid injection incineration. This technology is the only technology for which the Agency has treatment data, as noted above. Although only liquid injection incineration was tested, EPA believes that well designed and operated fuel substitution systems can achieve the treatment standards. Accordingly, EPA is considering these technologies in its capacity determinations.

Liquid injection incineration is demonstrated at approximately 250 facilities. The Agency is not aware of any generator or TSD facility currently using liquid injection incineration for treatment of K015; however, EPA believes liquid injection incineration is demonstrated for K015 in that the technology is being used to treat wastes similar to K015 with regard to parameters affecting treatment selection including: BTU content, filterable solids, total organic carbon, viscosity, and water content. EPA has confirmed its judgment by demonstrating achievable performance in a test burn. The Agency also believes this technology is available because (1) incineration technologies are commercially available or can be purchased from a proprietor, and (2) incineration provides substantial reduction of the concentration of organic hazardous constituents. For a detailed description of the reductions exhibited by treatment of these wastes, refer to the *BDAT Background Document for First Third Wastes—K015.*

5. Regulated Constituents and Treatment Standards. EPA is proposing "No Land Disposal" as the treatment standard for K015 nonwastewaters because the Agency is unaware of any nonwastewater residuals from the treatment of K015. (EPA solicits comment to the contrary.) Should such a waste be generated in the future, such waste may be eligible for a variance from this tratment standard.

Below are listed the regulated constituents for K015 and the treatment standards for wastewater.

BDAT Treatment Standards for K015

[Wastewater]

Constituent	Maximum for any single grab sample	
	Total composition (mg/l)	TCLP (mg/l)
Anthracene	1.02	(1)
Benzal chloride	0.28	.....
Benzo (b and/or k) fluoranthene	0.29	.....
Phenanthrene	0.27	.....
Toluene	1.00	.....
Total chromium	0.30	.....
Nickel	0.44	.....

[1] Not applicable.

j. K037—Wastewater Treatment Sludges from the Production of Disulfoton

1. Industry Affected and Waste Description. The listed waste K037 is defined as wastewater treatment sludge from the production of disulfoton. The Agency estimates that one facility produces disulfoton and produces K037 waste.

2. Demonstrated Treatment Technologies. The K037 waste generally contains less than 5 percent water, 20 percent disulfoton, 75 percent solids and 0.2 percent toluene. The waste contains high levels of filterable solids. The Agency has identified and tested rotary kiln incineration for treatment of this waste. Rotary kiln incineration is a destruction technology applicable to organic bearing wastes with solids concentrations that prevent the use of liquid injection incineration.

3. Data Base. i. Non wastewaters. For K037, the Agency has six untreated and treated data points from one plant. These data sets include both total constituent concentration and TCLP leachate values. All data sets were used in development of treatment standards because data show that the unit was properly operated during the time the waste was treated.

ii. Wastewaters Generated from Incineration. The Agency has six scrubber water data points which represent destruction of BDAT compounds in the afterburner of the rotary kiln incinerator. The data reflect total constituent analyses; all data were used in the development of treatment standards because data show that the afterburner was properly operated during the treatment test.

4. Identification of BDAT. BDAT for waste K037 was determined to be rotary kiln incineration. This technology was the only technology for which the Agency has treatment data, as noted in the previous subsection (Data Base).

EPA is not aware of any generator or TSDFs currently using rotary kiln incineration for treatment of K037. However, EPA believes rotary kiln incineration is demonstrated to treat K037 in that it is being used to treat wastes similar to K037 with regard to parameters affecting treatment selection, including low water content and high solids concentration. EPA has confirmed this judgement by demonstrating the actual performance achievability when K037 was incinerated in EPA's in-house rotary kiln incinerator.

Rotary kiln incineration is judged to be available to treat K037 because (1) this technology is commercially available or can be purchased from a proprietor, and (2) incineration provides substantial reduction of the concentration of organic hazardous constituents. For a detailed discussion of the reductions exhibited by treatment of this waste, refer to the *BDAT Background Document for First Third Wastes—K037.*

5. Regulated Constituents and Treatment Standards. The regulated constituents for K037 and the treatment standards for wastewaters and nonwastewaters are listed below.

BDAT TREATMENT STANDARDS FOR K037 (NONWASTEWATER)

Constituent	Maximum for any single grab sample	
	Total composition (mg/kg)	TCLP (mg/l)
Disulfoton	0.1	[1]
Toluene	28.0	

[1] Not applicable.

BDAT TREATMENT STANDARDS FOR K037 (WASTEWATER)

Constituent	Maximum for any single grab sample	
	Total composition (mg/1)	TCLP (mg/1)
Disulfoton	0.003	[1]
Toluene	0.028	

[1] Not applicable.

k. K004—Wastewater Treatment Sludge from the Production of Zinc Yellow Pigments

K008—Oven Residue from the Production of Chrome Oxide Green Pigments

K036—Still Bottoms from Toluene Reclamation Distillation in the Production of Disulfoton

K073—Chlorinated Hydrocarbon Waste from the Purification Step of the Diaphragm Cell Process Using Graphite Anodes in Chlorine Production

K100—Waste Leaching Solution from Acid Leaching of Emission Control Dust/Sludge from Secondary Lead Smelting

Based on available information, the Agency believes that these wastes are no longer generated, and therefore, not currently land disposed. (EPA solicits comment to the contrary.) The Agency is prohibiting land disposal of these wastes. This approach ensures that these wastes will not be land disposed in the future.

The proposed treatment standard for these wastes is "No Land Disposal", allowing for the possibility that these wastes may be generated at a CERCLA site and may require a variance from the treatment standard. For a more detailed discussion on the significance of this treatment standard, see Section III. A. 9.

It should also be noted that the May 28, 1986 schedule for restricting the listed hazardous wastes from land disposal (51 FR 19300) lists K100 in the final third. Therefore, K100 was not originally scheduled for regulation under 40 CFR Part 268 until May 8, 1990. However, because EPA has determined that this waste is no longer generated, the Agency has decided to accelerate the schedule for this waste and proposes to set the "No Land Disposal" treatment standard for this waste by August 8, 1988.

B. Testing and Recordkeeping

1. Waste Analysis

The treatment standards proposed in today's notice are expressed as either (1) concentration levels in an extract developed by use of the Toxicity Characteristic Leaching Procedure (TCLP); (2) a total composition waste analysis; or (3) both. How these treatment standards are measured depends upon the technology (or combination of technologies) identified as BDAT for the specific waste.

Basically, for destruction (for organics) or removal (for metals) technologies, the Agency believes that a total composition analysis is designed to provide an accurate measure of the performance of the technology identified as BDAT. Congress in fact expected that treatment would destroy organic constituents in hazardous wastes [Vol. 130, Cong. Rec. S 9179 (daily ed. July 25, 1984)], and the logical way to measure destruction is to analyze total concentration of waste constituents. Conversely, where stabilization or fixation technologies (i.e., technologies which decrease waste constituent mobility) are identified as BDAT, the TCLP is a better measure of performance because it is designed to measure the mobility of hazardous constituents from a waste matrix.

In cases where the combination of both destruction or removal technologies, and stabilization or fixation technologies is identified as BDAT, both analyses must be employed to monitor compliance with the treatment standards. In such cases, neither test alone is designed to ensure that the treatment standard has been met. For example, where a waste contains organic constituents amenable to destruction and metals amenable to fixation, the total composition analysis may demonstrate that the organics have been treated to the applicable concentration level; however, reduction in the mobility of metals must also be ensured. Likewise, use of the TCLP may demonstrate that the metals have been treated to the applicable concentration levels in the extract, yet does not indicate whether the organics have been destroyed in compliance with the applicable treatment standard. Both tests must be used to ensure that the "dual" treatment standard has been met.

The Agency considered the use of only the TCLP where BDAT includes a stabilization or fixation technology. It appears more logical to the Agency that because the TCLP is not designed to evaluate destruction, total waste analysis be used if part of the BDAT treatment train includes destruction (or removal) technologies. However, EPA is soliciting comment on this approach.

2. Notification Requirements

Today's proposal extends the existing notification requirements in § 268.7—which create tracking, certification, and recordkeeping requirements for managers of restricted wastes—to apply to First Third wastes, whether or not treatment standards have been established. For First Third wastes where EPA has established a treatment standard or effective date, the requirements are the same as for other restricted wastes and, therefore, no additional language is needed. Because the statutory waste management requirements applicable to "soft hammer" wastes are somewhat different than existing requirements for other

restricted wastes (namely, a RCRA section 3004(g)(6) certification to EPA is not required for these wastes when land disposed in units other than landfills or surface impoundments), the Agency is proposing new requirements in § 268.7 to account for these differences.

The basic difference between the notification applicable to the "soft hammer" wastes and the notification applicable to other restricted wastes is that rather than requiring notice of the applicable treatment standard or applicable prohibition (see existing § 268.7(a)(1) [the generator notifies the treatment facility of the applicable prohibitions and treatment standards for restricted wastes sent to the treatment facility]), the notice for "soft hammer" wastes would require the generator to notify the receiving facility of the "soft hammer" prohibitions codified in § 268.33 (i.e., that such wastes are prohibited from land disposal in landfill and surface impoundment units unless accompanied by a valid certification (and demonstration, if applicable) in accordance with the requirements of § 268.8, relating to the practical unavailability of treatment technologies). The EPA Hazardous Waste Number, the manifest number associated with the waste shipment, and any available waste analysis data must also be included in this "soft hammer" notice.

The Agency believes such notification is necessary because of the importance of having a consistent tracking and identification mechanism for all restricted wastes. The notification thus informs treatment facilities (and other handlers) of the obligation to treat "soft hammer" wastes destined for disposal in landfill or surface impoundment units (to the extent treatment is practically available). Notification also informs managers of these wastes that the storage prohibition in § 268.50 is applicable to the waste.

3. Recordkeeping Requirements for Storage Facilities

The Agency is also proposing today to correct an unintended oversight in the recordkeeping regulations of § 268.7 to indicate that the section applies to facilities that store prohibited wastes. As currently drafted, the provision applies to generators, treatment facilities, and land disposal facilities but omits another possible actor in the chain, the facility that simply stores prohibited wastes without treating them. There is no reason for such facilities not to be covered by the provision, which is intended to track prohibited wastes from cradle to grave, and to ensure that all facilities receiving such wastes be on notice that the waste is prohibited and what the applicable treatment standard (or applicable prohibition) for the waste is. These purposes are thwarted if storage facilities are not covered by the provision. Consequently, the Agency is proposing today to remedy this deficiency by including storage facilities under the recordkeeping requirements of § 268.7. This requirement would apply to all prohibited wastes, not only to those affected by today's proposal.

In addition to the "generator-to-storage" scenario discussed above, this notice also proposes to apply the notification requirement to a treatment, storage or disposal facility that sends a restricted waste (or treatment residue) off-site to another treatment or storage facility. The Agency believes this change will adequately track all restricted waste from cradle to grave.

Another change to the current regulatory language to facilitate the "cradle-to-grave" tracking system is an amendment of section 268.7(a)(3). This provision of the regulation concerns the case where a generator determines that his restricted waste is eligible for land disposal because it is subject to an extension of the effective date or a "no migration" exemption (i.e., the waste may be land disposed, but not because the waste meets the applicable treatment standards). In this case, the generator would be required to notify the disposal facility of the status of his waste. Here again, the Agency overlooked the possibility that the waste may not be sent directly to the land disposal facility, and may in fact be going to treatment or storage. Therefore, to avoid any confusion, EPA proposes to amend § 268.7(a)(3) to require that the notice be sent with each shipment of waste to the receiving facility.

C. "Soft Hammer" Provisions

1. Applicability

RCRA section 3004(g)(6) (42 U.S.C. 6924(g)(6)) provides that if EPA fails to set treatment standards for any hazardous waste included in the schedule promulgated on May 28, 1986 (51 FR 19300) by the statutory deadline, such waste may be land disposed in a landfill or surface impoundment only if:

(i) such facility is in compliance with the requirements of subsection (o) which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator. (RCRA section 3004(g)(6)(A))

This so-called "soft hammer" applies until May 8, 1940, at which time such wastes will automatically be prohibited from all methods of land disposal that are not otherwise determined to be protective through the "no migration" petition process (§ 268.6).

As a preliminary matter, it is important to note that these "soft hammer" provisions, including the demonstrations, certifications, notifications, and treatment requirements are only applicable to First Third wastes for which treatment standards have not been established, and are only applicable until May 8, 1990. During the period of the "soft hammer" provision, those wastes which are currently subject to the California list restrictions would remain so, and thus might be prohibited from land disposal even though they are also a "soft hammer" waste. This result is consistent with statements in previous preambles. The Agency indicated that waste-specific prohibitions, treatment standards, and effective dates would supersede California list prohibitions, treatment standards, and effective dates (52 FR 25773, 25776, and § 268.32(h), July 8, 1987). This is because where the Agency has made a waste-specific determination, it is likely to be a more accurate and a more considered regulatory judgment than for the generically designated California list wastes. The Agency has made no such considered judgment with respect to "soft hammer" wastes, however. In the absence of any such specific regulatory determination, it makes sense that these wastes be treated at least to the extent necessary to comply with the California list prohibitions and treatment standards (where applicable). California list capacity determinations likewise would supersede the "soft hammer" provisions, since these capacity determinations are tied directly to the specific treatment standards, and represent a specific Agency determination.

2. Interpretation of Specific Terms

Because EPA does not expect to establish treatment standards for all of the First Third wastes, the Agency is proposing the regulatory framework for management of these "soft hammer" wastes until May 8, 1990, or until treatment standards are promulgated, whichever is sooner. To facilitate the implementation of these provisions, the Agency is discussing its interpretation of the terms "treatment" and "facility" as stated in section 3004(g)(6), and requesting comment on these interpretations.

a. "Treatment" For the purposes of the "soft hammer" provision, the Agency is interpreting "treatment" to mean processing which reduces a waste's toxicity or which reduces the likelihood of migration of hazardous constituents from the waste. By not quantifying the term, the Agency thus would require that "soft hammer" wastes be treated by any current treatment methods which are practically available and which achieve meaningful (i.e., environmentally beneficial) reductions of waste constituent toxicity and/or mobility. Treatment would continue so long as further meaningful reductions in toxicity and/or mobility can be achieved (again assuming that treatment alternatives are practically available). Where the "best" treatment is not currently available, the "next best" treatment will be required. Thus, even if a waste has been treated, the requirement to treat to reduce the toxicity of the waste or the likelihood of migration of hazardous constituents from the waste would still apply. Further treatment that achieves meaningful reductions, is practically available, would have to be employed.

Congress clearly wished to require treatment prior to disposal of section 3004(g) wastes in impoundments and landfills—two forms of surface disposal singled out for special mandated minimum technological requirements. By taking a relatively stringent view of what constitutes treatment, the Agency is furthering this congressional purpose. In addition, the Agency believes that Congress intended that, during the period of the "soft hammer", only wastes treated to the most protective levels achievable by practically available technologies may go to land disposal in landfills or surface impoundments. Therefore, the Agency believes that defining "treatment" for the purposes of the "soft hammer" provision as a reduction of toxicity or likelihood of migration of hazardous constituents is consistent with the intent of Congress.

The Agency realizes that this approach could be interpreted to imply that residuals from treatment would have to be continually treated by the same process, or past the point where meaningful reductions can occur. This is not the Agency's intention (i.e., the Agency does not intend to require solely for the sake of treatment). EPA solicits suggestions as to the best means of expressing the intention that treatment achieve some meaningful degree of environmental benefit to avoid requiring sequential treatment that achieves only minimal reductions. EPA could limit such treatment by requiring that a single process be used only once. Another approach to limiting treatment is to set a performance limit by which treatment would be defined. For example, treatment could be defined by limiting the scope of available technologies to those technologies that yield a reduction of 20% in concentration or mobility of toxic constituents (or another designated percentage of reduction). Those technologies that do not yield at least a 20% reduction in toxicity of the waste or likelihood of migration of hazardous constituents from the waste would not be considered to be practically available "treatment" for this purpose. (Were the Agency to adopt this approach, such a standard would not imply that EPA would be setting a surrogate treatment standard of 20% reduction. The level of treatment would not be a 20% reduction, but rather the performance level achievable by the treatment technology used.)

The Agency's chief objective in interpreting the statutory reference to treatment is to prohibit certifications for "soft hammer" wastes that have only been treated minimally when meaningful reductions can be achieved by a practically available treatment technology. The Agency therefore solicits comment on an approach that would address this problem directly by requiring that "soft hammer" wastes be treated so as to achieve meaningful reductions of wastes' toxicity or mobility (the statutory section 3004(m)(1) standard) and by stating that sham or *de minimus* treatment cannot give rise to a valid certification (assuming legitimate treatment is practically available at the time of certification). An example of sham treatment would be adding dirt to a waste to reduce its mobility.

This approach would differ from the one proposed by not necessarily requiring sequential treatment to reduce further increments of wastes' toxicity or mobility. It could have a practical advantage of removing one complicated feature from the rule, since the regulated community and EPA officials would no longer need to struggle to determine how much treatment is needed. It would also focus regulatory efforts on the problem of sham treatment, rather than diffusing such efforts over issues of further incremental reductions.

The Agency solicits comment on these alternatives, and, in general, on its interpretation of "treatment", as it applies to the "soft hammer" provision in § 268.8.

b. "Facility". Section 3004(g)(6) states that "soft hammer" wastes may be disposed in surface impoundments and landfills "only if such facility is in compliance with the requirements of section (o) which are applicable to new facilities." EPA is interpreting "facility" in section 3004(g)(6) to refer to the individual landfill or surface impoundment "unit". EPA is persuaded that this is the best reading of the provision based on the language of the statute, and on evident congressional policy reflected in the statutory language and in the legislative history.

First, the reference in the provision to facilities appears to be linked directly to landfills and surface impoundments. Thus, the statutory reference to "*such* facility" (emphasis added) refers to the landfill or surface impoundment units mentioned immediately previously.

Second, and even more importantly, the statute requires that "such facility" be in compliance with the minimum technological requirements "which are applicable to new facilities." New landfills and surface impoundments, or new landfill and surface impoundment units at existing facilities, however, must have double liners, leachate collection systems, and groundwater monitoring. Congress thus appears to be saying that if landfills and surface impoundments are to receive "soft hammer" wastes, then they must meet the minimum technological requirements that would apply if they were new.

This reading seems to the Agency to be most in accord with the intent of the provision. If the Agency fails to establish a treatment standard for a section 3004(g) waste, and these wastes are destined for disposal in units about which Congress had particular concerns, then, at the least, these units should meet the minimum technological requirements. The alternative is to sanction disposal of untreated wastes (assuming there is no practically available treatment technology) in landfills and impoundments not meeting minimum technological requirements, a result EPA does not believe Congress intended. In this regard, the legislative history indicates that Congress intended that landfills and impoundments receiving prohibited wastes for which the Agency failed to establish treatment standards meet the minimum technological requirements:

> Only after a generator certifies to EPA that such generator has investigated the availability of treatment capacity and determined that the use of a landfill or surface impoundment is the only practical alternative to treatment currently available may such waste be placed in a landfill or surface impoundment. *A further limitation is the condition that such landfill or surface*

impoundment must satisfy the minimum technological requirements for new facilities. [S. Rep. No. 284, 98th Cong., 1st Sess. 21 (1983), (emphasis added) (explaining language later adopted in section 3004(g)(6))]

It also bears mention that the language in section 3004(o) does not refer to new *facilities*, but rather, it addresses new, replacement, or lateral expansion landfill or surface impoundment *units* at an existing facility. This language likewise suggests that Congress meant section 3004(g)(6) to apply to units rather than facilities; otherwise, section 3004(g)(6) would have no meaning at all.

An alternative interpretation of the statutory language is that the reference to "* * * requirements * * * applicable to new facilities * * *" would apply to the entire facility. This would give the term "facility" its literal meaning, but does not appear to reflect congressional intent. Under this interpretation, each unit as a facility would have to be in compliance with the minimum technological requirements of section 3004(o) since those are the requirements that would be applicable to a new, or "green-field", facility. EPA does not consider this to be a viable option because there are very few, if any, such facilities. Thus, this interpretation of the "soft hammer" provision could result in a "hard hammer", which the Agency does not believe was the intent of Congress in providing for section 3004(g)(6). If Congress had intended to prohibit land disposal of these wastes in landfills or impoundments, it could have said so directly as it did in section 3004(g)(6)(C).

A third option would be to interpret section 3004(g)(6) the same way as the Agency previously interpreted section 3004(h)(4) (see existing § 268.5(h)) (i.e., the facility as a whole must be in compliance with the requirements of section 3004(o), meaning that all new, replacement, or lateral expansion landfill or surface impoundment units must meet the minimum technological requirements, but that the waste could go into any unit at such a facility, e.g., existing units not meeting the minimum technological requirements). While this would be consistent with the Agency's current interpretation of "facility" in section 3004(h)(4)—which concerns the disposal of wastes subject to an extension of the effective date—it would ignore the additional language in section 3004(g)(6) (i.e., "* * * requirements * * * which are applicable to new facilities * * *", rather than "requirements of subsection (o)"). In addition, this would allow untreated "soft hammer" wastes with a valid certification to be disposed in the same types of units as those First Third wastes which meet the applicable treatment standards. EPA does not believe that this is what Congress intended; however, the Agency is requesting comment on this interpretation. Also, as discussed in greater detail in Section III. D., the Agency has reconsidered its interpretation of section 3004(h)(4) and is proposing to require wastes which are subject to an extension to the effective date to be disposed in landfills and surface impoundments only if such *units* are in compliance with the minimum technological requirements of section 3004(o).

c. *Certification by Owners or Operators as Well as Generators.* The statute provides that generators of "soft hammer" wastes certify to the Agency that disposal in a landfill or impoundment is the only practical alternative to treatment currently available. This language raises two potential problems: (1) Are generators the only entity that can certify; and (2) can a certification be filed for land disposal of *treated* "soft hammer" wastes.

With respect to the first problem, the Agency sees no reason to restrict certification to generators. There are situations where owners and operators of a treatment or storage facility may be more knowledgeable as to what treatment is available, or may otherwise be more sophisticated in the nuances of administrative recordkeeping than a generator. The Agency does not believe that the underlying policy of the "soft hammer" provision would be subverted by allowing these entities the option of submitting a certification.

With respect to the second problem, although the statute does not address the issue of certification for treatment residuals, the Agency is of the view that the certification provisions would apply. This reading is necessary to avoid the anomalous result of "soft hammer" waste treatment residues being prohibited from land disposal but untreated wastes being land disposed in impoundments and landfills after filing a certification. Congress could not have intended this result. Consequently, the Agency is proposing that the "soft hammer" certification apply to both untreated wastes and treatment residuals. A certification for a treatment residue would also state that there is no treatment practically available to achieve meaningful reductions in toxicity or mobility at the time of certification.

3. Certification Requirements

EPA believes the intent of Congress was to ensure that wastes for which treatment standards or extensions to the effective date were not established would nevertheless be treated to reduce the toxicity or mobility of the hazardous constituents by practically available treatment technologies prior to disposal in landfill or surface impoundment units that meet the minimum technological requirements. As stated earlier, EPA interprets this to mean that where the "best" demonstrated treatment is not currently available, the "next best" demonstrated treatment is required, so long as meaningful reductions can be achieved. The Agency also interprets this to mean that this requirement is not necessarily fulfilled by a single treatment step. Because a waste has been treated does not mean that further meaningful reduction of toxicity or mobility is not available. Before a treated "soft hammer" waste may be disposed in a landfill or surface impoundment, the generator or owner or operator thus must still certify that there is no practically available treatment that meaningfully reduces the toxicity or mobility of the hazardous constituents.

The Agency is also proposing to require generators or owners or operators to certify that they have utilized the practically available "treatment" (or train of treatment) that *most* reduces the toxicity or mobility of the hazardous constituents. Therefore, where more than one treatment technology is available, the treatment which provides the most meaningful reduction in toxicity or mobility is required. This interpretation precludes some forms of treatment where "better" treatment is available. For example, a waste may be amenable to meaningful treatment by two available technologies, incineration and stabilization, where incineration yields the greater reduction in toxicity or mobility. If incinerated, the residuals may still require further treatment by stabilization before they are eligible for disposal in a landfill or surface impoundment unit. However, if the waste is first stabilized, incineration may no longer be available for the residual. Such stabilization as the initial treatment would not provide the most meaningful reduction in toxicity or mobility, and the Agency thus would not accept a certification to this effect, assuming incineration remains practically available. EPA is soliciting comments on this interpretation.

The Agency thus is proposing in § 268.8 that the following requirements be met before a "soft hammer" waste is

eligible for land disposal in a landfill or surface impoundment unit:

(1) The generator has made a good faith effort to locate and contract with treatment or recovery facilities which can meaningfully reduce the toxicity or mobility of hazardous constituents in the waste.

(2) If the waste has been treated, the generator or owner or operator demonstrates that no treatment is practically available to provide further meaningful reductions in the toxicity or mobility of hazardous constituents in the residual at the time of certification.

(3) The generator or owner or operator certifies that the above conditions have been met and sends the Regional Administrator the certification and supporting documentation, and keeps the same documentation on-site.

(4) Following certification to the Regional Administrator, the generator or owner or operator must send a copy of the certification and supporting documentation to the disposal facility with the initial waste shipment, and continue to send the certification itself with each shipment of waste thereafter.

(5) The owner or operator of the disposal facility must

(a) keep all information and documentation received with the waste in the operating record, and

(b) ensure that such waste is only placed in a landfill or surface impoundment unit that meets the minimum technological requirements of RCRA section 3004(o) (i.e., double liner, leachate collection system, and ground-water monitoring or compliance with a statutory variance from these requirements).

4. Treatment of "Soft Hammer" Wastes in Surface Impoundments.

Under § 268.4 (which implements RCRA section 3005(j)(11)), restricted wastes may be treated in surface impoundments that meet the section 3004(o) minimum technological requirements provided that, among other things, residuals not meeting the applicable treatment standards (or statutory prohibition levels where treatment standards are not established) are removed within one year of placement in the impoundment. Because no treatment standards have been set for "soft hammer" wastes, removal of these residuals would seemingly be required.

There is an anomaly with this result, however. Were the owner or operator to consider the unit to be a disposal impoundment he could certify that no practical alternative to disposal exists and dispose of them in the same impoundment. Or, he could remove the residues, and, making the same certification, put them back. Provided that no further treatment is practically available, these residuals would be eligible for disposal in the same surface impoundment unit from which they were removed (since the minimum technological requirements for disposal of "soft hammer" wastes in a surface impoundment and for treatment of restricted wastes in a surface impoundment are identical).

The Agency believes that requiring such removal of treatment residuals of "soft hammer" wastes (which may then be eligible for *disposal* in the same type of unit, or indeed, the very same unit) would simply impose costs with no environmental benefit. In such cases, therefore, the Agency is proposing that the certification required for disposal may be made without removal of the residuals provided that no treatment to further meaningfully reduce the toxicity or mobility of hazardous constituents is practically available. This certification may be made by the generator or owner or operator at the time of placement in the impoundment for treatment.

5. Retrofitting Variances

There is one final interpretive issue regarding the "soft hammer" provision on which the Agency solicits comment. The question is whether surface impoundments that do not meet minimum technological requirements (MTRs) applicable to new facilities, but which do satisfy one (or more) of the variances for impoundment retrofitting in section in 3005(j) can nevertheless receive "soft hammer" wastes. The Agency believes that this is a complicated question, but that the best reading is the following.

First, under section 3004(g)(6), landfills or impoundments that receive "soft hammer" wastes must be in compliance with the MTRs for new facilities. These require either double liners and leachate collection systems, or, as provided in section 3004(o)(2), alternative design and operating practices and location characteristics that prevent migration of hazardous constituents at least as effectively as double liners and a leachate collection system.

Interim status surface impoundments in existence on November 7, 1984 may receive a waiver from retrofitting the units to meet the same MTRs, but for different reasons. Thus, the following types of impoundments need not retrofit; single-lined interim status units located no closer than one-quarter mile from an underground source of drinking water, which are in compliance with applicable groundwater monitoring requirements (section 3005(j)(2)); aggressive biological treatment facilities in compliance with applicable Clean Water Act permit requirements and groundwater monitoring requirements (section 3005(j)(3)); units that are designed, operated, and located to prevent migration of hazardous constituents to groundwater or surface water (section 3005(j)(4)); or units operating pursuant to a consent decree providing equivalent environmental protection as MTRs (section 3005(j)(13)).

These section 3005 variances may or may not be equivalent to the MTR variance standard in section 3004(o)(2). "no migration" impoundments in section 3005(j)(4), for example, would almost certainly satisfy the 3004(o)(2) standard; aggressive biological treatment impounds operating without liners might not. For this reason, the Agency does not believe that the statute automatically allows placement of "soft hammer" wastes into these types of impoundments. They do not necessarily meet the MTRs for new landfills and surface impoundments, as required by section 3004(g)(6).

Second, the Agency believes that if any section 3005(j) impoundment would actually make the demonstration called for in section 3004(o)(2), it could then receive "soft hammer" wastes. In this case, the impoundment would be satisfying the MTR applicable to new surface impoundments and should not be prohibited from receiving "soft hammer" wastes.

Third, section 3005(j)(11) provides that otherwise prohibited wastes can be placed in surface impoundments for treatment provided, among other conditions, that the impoundment either meets MTRs or satisfies the conditions of section 3005(j)(2) or (4) (single liner, one-quarter mile from an underground drinking waster source, or "no migration" to groundwater or surface water). The Agency reads this provision as allowing continued receipt of "soft hammer" wastes in such impoundments; there is no apparent reason that solvent, dioxin, and California list wastes can be placed in such impoundments, but not "soft hammer" wastes. A consequence of this rewarding would be that treatment impoundments satisfying section 3005(j)(2) or (4), but not MTRs, and not making the MTR equivalence demonstration would be able to continue receiving "soft hammer" wastes. Section 3005(j)(3) and (13) treatment impoundments, however, would remain ineligible because these impoundments are excluded from section 3005(j)(11) eligibility. This reading is consistent with the Agency's general interpretation of section 3005(j)(11) to exclude section 3005(j)(3) and (13) impoundments. (See 51 FR 1609, January 14, 1986).

D. Disposal of Restricted Wastes Subject to an Extension of the Effective Date

RCRA section 3004(h)(4) states that a restricted waste subject to an extension of the effective date "* * * may be disposed of in a landfill or surface impoundment only if such *facility* is in compliance with the requirements of subsection (o)." [Emphasis added]. Section 3004(o) refers only to new, replacement, or lateral expansion landfill or surface impoundment units.

In the November 7, 1986 rulemaking (51 FR 40572), EPA interpreted the word "facility" to refer to the facility as a whole. This interpretation allows for the disposal of such wastes in landfill and surface impoundment units that do not meet the minimum technological requirements provided that all new, replacement, or lateral expansion units at the facility (if any) are in compliance with the minimum technological requirements of RCRA section 3004(o).

EPA has reevaluated its original interpretation, and now believes that Congress intended the term "facility" to refer to "unit", which is consistent with the Agency's interpretation of "facility" in section 3004(g)(6), which refers to the disposal of First Third wastes for which no treatment standards have been established. Although section 3004(g)(6) is linguistically distinguishable (since it refers to the minimum technological requirements applicable to new facilities), the Agency's initial reaction is that Congress did not intend a different result for restricted wastes subject to capacity variance and "soft hammer" provisions. Both provisions, for example, deal with the same type of situation where treatment capacity is unavailable and restricted wastes are being disposed in a type of unit for which Congress showed particular concern. In addition, section 3004(h)(4) also refers to "such faciliti[es]" immediately after mentioning landfills and surface impoundments, thus indicating that the reference to facility was intended to apply to the specific unit. Furthermore, EPA believes it is the intent of Congress to require untreated wastes to be disposed in landfill and surface impoundment units that are presumably more protective than units that do not meet the minimum technological requirements. Legislative history to section 3004(h)(4) in fact states that Congress meant to prohibit disposal of restricted wastes subject to a capacity variance in all surface impoundments or landfills except those meeting minimum technological requirements applicable to new facilities—the same language as used in section 3004(g)(6) which the Agency views as clearly requiring the landfill and impoundment units to meet the minimum technological requirements. (See H.R. Conf. Rep. No. 1133, 98th Cong., 2d Sess., 87)(This passage in the Conference report actually refers to disposal of waste subject to a one-year case-by-case capacity variance under section 3004(h)(3), but the Agency sees no basis for not applying it to section 3004(h)(2) as well.

In justifying its original interpretation in the November 7, 1986 final rule, EPA expressed concern with the inconsistency of requiring wastes which have been granted an extension to the effective date due to a lack of sufficient treatment capacity, to go to units that were considered in determining whether treatment capacity was available, namely treatment surface impoundments required by section 3005(j)(11) to meet minimum technological requirements. This inconsistency no longer exists because the retrofitting requirements for surface impoundments become effective in November 1988. These requirements are the same whether the unit is used for disposal or treatment. Also, as old landfills (or old cells at landfills) are closed, new landfills (or new cells) will meet the minimum technological requirements. Thus, the number of units available that do not meet the minimum technological requirements has diminished and will continue to do so. Therefore, the Agency is proposing that all restricted wastes subject to an extension of the effective date be disposed of in landfills and surface impoundments only when such units meet the minimum technological requirements.

E. Relationship to California List Prohibitions

As discussed in the July 8, 1987 California list final rule preamble (52 FR 25773), and as reflected in § 268.32(h) (i.e., the overlap of the HOCs and other prohibited wastes), where the Agency makes a waste-specific determination that is more specific than the California list determination, such determinations will supersede the California list treatment standards and effective dates. The Agency intends this principle to apply to the restrictions on the land disposal of First Third wastes. While it is clear that Agency-established treatment standards or effective dates for First Third wastes are more specific than California list determinations, there is some ambiguity surrounding the applicability of the California list restrictions to "soft hammer" wastes.

Until promulgation of the restrictions on land disposal of First Third wastes, many of these wastes are subject to the California list restrictions. Once treatment standards and effective dates have been promulgated for such wastes, the California list restrictions clearly will be superseded. However, no treatment standards will have been promulgated for "soft hammer" wastes. EPA is therefore proposing that "soft hammer" wastes which are otherwise subject to the California list restrictions remain subject to the California list treatment standards and effective dates. It should be noted that if a national capacity variance has been granted for a "soft hammer" waste under the California list final rule, such a waste would remain subject to the demonstration and certification requirements of § 268.8 (as discussed in Section III. C.). This approach not only recognizes that the California list treatment standards are not actually effective for such a waste (due to the national capacity variance), but also remains consistent with the Agency's intent that where more than one regulatory requirement applies, the more stringent requirement will apply. The Agency solicits comment on its approach to the applicability of the California list prohibitions to "soft hammer" wastes.

EPA is also considering a change in the approach on the applicability of California list restrictions to wastes for which a more specific determination has been made. For First Third wastes for which treatment standards have been established, but for which the Agency has granted a national capacity variance due to inadequate capacity to treat the waste to the treatment standard, the Agency is considering an approach where such First Third wastes would remain subject to the California list prohibitions during the period of the national variance. For example, assume that a liquid metal-containing First Third waste (otherwise subject to the California list restrictions) has been granted a national capacity variance because of inadequate capacity to treat the waste to the treatment standard, yet was not granted a variance under the less stringent (in terms of concentration levels of the metal) California list prohibitions that are in effect at this time. The Agency would determine that, because capacity exists to treat the "California list" waste to allow for land disposal, the California list prohibitions still apply and the "First Third" waste would be required to comply with the California list prohibitions. The First Third treatment standard would then be

applicable on the First Third effective date.

Granting a national variance for the First Third waste in the above example based on inadequate treatment capacity could allow the land disposal of untreated wastes which may have metal concentrations exceeding that of the otherwise applicable California list prohibition levels, for which the Agency has determined that treatment to meet at least California list prohibitions is available. This approach would vitiate the measure of environmental protection achieved by treating the waste to below California list levels (or rendering the waste non-liquid). Similarly, if the Agency were to establish treatment standards for California list metals and cyanides and promulgated capacity variances because of a lack of sufficient treatment capacity to meet these standards, the wastes would still be required to be treated to meet the California list statutory prohibitions (see generally 52 FR 29992, August 12, 1987). However, EPA realizes that this constitutes a change in approach from that stated in the California list final rule (52 FR 25773) and therefore solicits comment.

F. Determination as to the Availability of the Two-Year Nationwide Variance for Solvent Wastes Which Contain Less Than 1 percent Total F001–F005 Solvent Constituents

In a June 4, 1987 technical correction notice (52 FR 21010) to the November 7, 1986 final rule prohibiting land disposal of certain spent solvent and dioxin-containing hazardous wastes, EPA promulgated an amendment to § 268.30(a)(3) reclarifying that solvent wastes that are prohibited in the hands of their initial generator—i.e., that are not subject to any applicable variance—cannot be permissibly land disposed until treated to meet the § 268.41 treatment standards. This principle applies to all residues from treatment (unless they are part of a different treatability group for which EPA has determined that no treatment capacity exists). (See 52 FR 21012, June 4, 1987 and also 52 FR 22356–22357, June 11, 1987.) Because questions have been raised regarding the policy basis for the action, and because the underlying principle is an important one which warrants the fullest consideration, EPA has decided to seek further comment on this issue, and (if comment warrants) to revise its current approach accordingly.

The Agency has stated many times that a determination as to whether a waste is restricted from land disposal is to be determined at the initial point of generation in order to avoid compromising the integrity of the Part 268 Subpart D treatment standards (see 51 FR 41620, November 7, 1986 and 52 FR 25765, July 8, 1987). Determining the applicability of a prohibition at any later point could result in the treatment standard being supplanted.

In the case of the prohibited solvent wastes, EPA established an effective date of November 8, 1988 for restricted solvent wastes containing less than 1% total restricted solvent constituents (40 CFR 268.30(a)(3)). The determination should be made by the initial generator at the point of generation so that the § 268.41 treatment standards—which are based on data showing that these solvents' mobility can be very significantly reduced with proper treatment normally involving incineration—not be supplanted by the 1% national capacity variance level. This could occur if solvent treatment residues treated to 1% solvent constituents then became eligible for a national capacity variance; the 1% level would become a *de facto* treatment level, whereas the true, achievable treatment level would, in most cases, be orders of magnitude lower. Where capacity exists to treat the residues, this result is simply at odds with the statutory scheme embodied in section 3004(m). (See 51 FR 44620, November 7, 1986.)

There would be no reason for treatment facilities to continue treating restricted solvent wastes below the 1% level. For instance, the Agency noted that the BDAT treatment train for many restricted solvent wastes involves distillation of the solvents followed by incineration of the still bottoms from distillation. The residues of incineration should then meet the Subpart D treatment standards (assuming that incineration is conducted properly). (See 51 FR 1727, January 14, 1986.) Were the prohibition point to be determined anywhere but the point of generation of the spent solvent, there would be no reason to continue treating solvent still bottoms that contain less than 1% of the restricted solvents, even though the still bottoms are amenable to further treatment and the Subpart D treatment standards are based on further treatment.

The Agency also has indicated that where it has determined that no treatment capacity exists to treat a particular residue from treatment, then the capacity variance would apply to the residue from treatment. This could occur most normally when treatment generates a residue which belongs in a new treatability group for which the Agency has determined that there is no existing treatment capacity (see 52 FR 22357, June 11, 1987). The Agency continues to believe that this is a sound principle.

With respect to solvent distillation bottoms, however, EPA's data indicate that a capacity variance is unwarranted. Since the initial January 14, 1986 proposal, the Agency has stated that distillation bottoms have to be treated further before they could be land disposed (see 51 FR 1724). The Agency also has found that incineration treatment capacity exists for these residues from solvent distillation. (See 51 FR 1724, 1727, and 1729, January 14, 1986; 51 FR 40615, November 7, 1986; and Capacity Background Document for November 7, 1986, Solvent Rule, pp. 63–64, 66.)

These passages all indicate that the Agency assessed the volume of distillation bottoms resulting from distillation of restricted solvent wastes and determined that there was adequate incineration capacity to treat them. These conclusions were not challenged during the solvent land disposal prohibition rulemaking, but the Agency again solicits comment, in light of operating experience since promulgation of the November 7, 1986 rule, as to whether there is adequate treatment capacity to treat residues from treatment of restricted solvent wastes where such residues contain less than 1% total solvent constituents but do not meet the applicable Subpart D treatment standards. If commenters believe that this may be the case (based on appropriate data), the Agency solicits further comment as to whether there is any basis for considering these residues to be a different treatability group.

In proposing regulatory language and soliciting comment on this issue, the Agency is not withdrawing its existing regulation. The Agency notes, however, that its earlier actions on this issue were prospective only. (See 52 FR 21010, stating that the revisions are effective on June 4, 1987.) Thus, the June 4, 1987 revisions to § 268.30(a)(3) have no applicability to any certifications made before that date or to any treatment residues land disposed before that date. (See 52 FR 21012, June 4, 1987 (item #16); *id.* at 21017 (item #62).)

G. Storage Prohibition

The storage prohibition in § 268.50 is applicable to all First Third wastes, including those wastes for which treatment standards have not been established (i.e., "soft hammer" wastes). The statutory language in RCRA section 3004(j) states that:

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

Under RCRA section 3004(g)(6), "soft hammer" wastes are prohibited from disposal in landfills and surface impoundments unless the generator certifies that such disposal is the only practical alternative to treatment available to the generator. Therefore, "soft hammer" wastes are prohibited from "one or more methods of land disposal", and are subject to the storage prohibition.

EPA does not believe that Congress intended the storage prohibition to apply to wastes which are no longer prohibited from "one or more methods of land disposal". Should a "soft hammer" waste be subject to the certification set forth in § 268.8, this waste would no longer be prohibited from any form of land disposal. The Agency is proposing that the storage prohibition would no longer be applicable, and § 268.50 would be amended to reflect this interpretation. This is consistent with the Agency's approach to wastes which are subject to an extension of the effective date, which are also not subject to the storage prohibition.

H. Petitions To Allow Land Disposal of Prohibited Wastes

1. Overview

The statutory language of RCRA 3004 (d), (e), and (g) includes provisions allowing an interested party to petition to dispose of prohibited wastes in land disposal units, including deep injection wells, provided that the petitioner demonstrates to the Administrator "to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." Land disposal of otherwise prohibited hazardous wastes may be allowed only where it can be demonstrated, to a reasonable degree of certainty, that the statutory standard will be met.

On November 7, 1986, EPA promulgated regulations (51 FR 40572) that provided procedures for submittal of petitions to allow land disposal of a waste prohibited under Subpart C of Part 268. The regulation (40 CFR 268.6) included the information that must be provided in a "no migration" demonstration, the criteria the demonstration must meet, and the Agency's review and approval procedures.

Since promulgation of the November 7, 1986 final rule, the Agency has had several inquiries regarding the appropriate content of "no migration" petitions. In response to these questions, EPA is proposing additional requirements in today's rule. This rule does not, however, present the Agency's interpretation of the statutory "no migration" language of RCRA 3004 (d), (e), and (g). The Agency hopes to further address this question at a later date.

Today's notice discusses additional requirements relating to:

(1) Other applicable laws;
(2) Monitoring plans;
(3) Variance departures; and
(4) Detection of hazardous constituent migration.

A detailed discussion of these requirements is provided in Section 4.

2. Requirements for "No Migration" Petitions in the November 7, 1986 Final Rule

In the final rule published on November 7, 1986, the Agency promulgated procedures and criteria for "no migration" petitions for surface disposal units. As codified in 40 CFR 268.6 (d) through (j), EPA requires all "no migration" petitions to be submitted to the Administrator containing information that describes: (1) specific wastes and specific unit(s) involved, (2) chemical and physical characteristics of the wastes, and (3) comprehensive characterization of the disposal unit and environment.

A successful petition must meet the following criteria that form the basis for the Agency's evaluation of the demonstration for compliance with the statutory language:

(1) Waste and environmental sampling, testing, and analysis data are accurate and reproducible;

(2) Sampling, testing, and estimation methods for determining chemical and physical properties of wastes and environmental parameters are explained;

(3) Simulation models used in the demonstration must be calibrated for specific waste and site conditions;

(4) Quality assurance and quality control plan must be submitted that addresses all aspects of the demonstration;

(5) An analysis must be performed to identify and quantify any aspects of the demonstration that contribute significantly to uncertainty. This analysis must include an evaluation of the consequences of predictable future events, including, but not limited to, earthquakes, floods, severe storm events, droughts, or other natural phenomena; and

(6) A statement must be prepared and signed that verifies the petitioner's familiarity with all information in the petition and that the data and information is true, accurate and complete to the extent possible.

In addition to these requirements, the following provisions are applicable to units that have received a variance from the land disposal prohibitions;

(1) The petition will apply only to land disposal of specific restricted wastes at that disposal unit;

(2) The effective period of the petition can be no longer than the term of the RCRA permit if the unit is operating under a RCRA permit, or up to a maximum of 10 years from the date of approval if the unit is operating under interim status. Terms of the petition in either case will expire upon termination or denial of a RCRA permit, or upon the termination of interim status (except when interim status is terminated by the issuance of a permit), or when the waste volume limit of the disposal unit during the effective period of the petition is reached; and

(3) The petition does not relieve the petitioner of his responsibilities in the management of hazardous waste under 40 CFR Parts 260 through 271.

The applicants are required to comply with all restrictions on land disposal that are in effect during the time period in which the petition is being prepared, submitted, and reviewed until a final decision by the Administrator is made. The Administrator may request additional information as needed to evaluate the demonstration. After completing review of the application, the Administrator will announce to the public and solicit comments on his intent to approve or deny the petition in the **Federal Register.** After review of public comments, he will then publish his final decision on the petition in the **Federal Register.**

3. Regulatory Requirements of RCRA Sections 3004 (f) and (g) November 7, 1986 Final Rule

The Agency recently proposed rules to implement the land disposal restrictions of section 3004 (f) and (g) of RCRA for waste disposal in deep injection wells (52 FR 32446, August 27, 1987). While the standards applied to owners or operators of deep injection wells in these proposed rules are the same as those in today's proposal, the criteria, content, and procedures are different in that they specifically pertain to unique

technological and hydrogeologic conditions associated with injection. The reader should refer to these August 27, 1987 proposed rules for complete discussion of how the Agency intends to apply the "no migration" standards in deep injection wells.

4. Additional Requirements for "No Migration" Petitions for Surface Units

Based on review of the inquiries and comments received on the subject of "no migration" petitions, the Agency is proposing additional requirements to be effective on the date of promulgation. These requirements would be added to those already codified in 40 CFR Part 268 for "no migration" petitions for surface disposal units. Today's proposed rule provides further procedural and informational requirements applicable to those surface disposal units for which a variance from the land disposal restrictions is being sought, and does not interpret the statutory language of RCRA sections 3004 (d), (e) and (g) regarding "no migration" demonstrations. Specific information and procedural requirements of today's proposal are discussed below.

(1) Other Applicable Laws: EPA is proposing to require the petitioner to provide sufficient information in the petition demonstration to assure the Administrator that land disposal of the prohibited waste(s) (in the petition) will comply with other applicable Federal, State, and local laws (Section 268.6(d)(1)). The petitioner must review Federal, State and local laws to determine if stricter regulations must be applied to the unit for which the petition is submitted. This review is necessary to reveal environmentally sensitive areas and endangered species which must be protected. The review of Federal laws should include, but not be limited to, the Clean Air Act; the Clean Water Act; the Safe Drinking Water Act; the Endangered Species Act; the National Historic Preservation Act; the Wild and Scenic Rivers Act; the Coastal Zone Management Act; the Fish and Wildlife Coordination Act; the Atomic Energy Act; and the Marine Protection, Research, and Sanctuary Act. The review of State and local laws must be determined on a case-by-case basis. Under 40 CFR 270.3, an owner or operator seeking a RCRA permit for a unit must demonstrate compliance with several Federal laws, including some of those listed above. The Agency does not foresee that an owner or operator satisfactorily making a timely demonstration for those laws covered under § 270.3 in order to obtain a permit, will have to make another demonstration of compliance with those same laws for the purposes of obtaining a "no migration" variance.

(2) Monitoring Plan: Under Section 268.6(d)(2) of today's proposal, EPA is proposing that petitioners submit a monitoring plan to the Administrator that describes the monitoring program installed at and/or around the unit to verify continued compliance with conditions of the variance.

This monitoring plan must be submitted as part of the "no migration" petition and must provide information on the monitoring of the unit and/or the appropriate environment around the unit, or, if monitoring the unit or the environment around the unit is either technically infeasible or impracticable, the rationale supporting the determination of infeasibility or impracticability. If the petitioner asserts that monitoring is impractical or infeasible, no monitoring plan (for the unit or environment as appropriate) need be submitted. However, the Administrator will decide if monitoring of the unit itself or monitoring of the environment around the unit, or both, is required, based on the factors supporting the variance and other information provided. If EPA decides that such a plan is necessary, the petitioner will be required to submit a plan before the final decision on the petition will be made.

If a monitoring plan is required, the petitioner must submit as part of that plan the following information:

a. The media monitored, in cases where monitoring of the environment around the unit is required;

b. The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

c. The location of the monitoring stations;

d. The monitoring interval (frequency of monitoring at each station);

e. The specific hazardous constituents to be monitored;

f. The implementation schedule for the monitoring program;

g. The equipment used at the monitoring stations;

h. Sampling and analytical techniques employed;

i. Data recording/reporting procedures.

The plan must include discussion of the rationale for the design of the monitoring program and demonstrate that monitoring will be positioned so as to detect migration from the unit at the earliest practicable time. Specifically, the plan must provide discussion of the monitoring program with respect to the following points

a. Mobility and persistence of hazardous waste constituents managed in the unit;

b. Possible migration pathways from the unit, both during the active life of the facility and through the post-closure care period;

c. Operations at the unit;

d. Strength of engineered and natural material components of the unit and any weak points in the unit design.

e. Optimum location of the monitoring stations to detect any migration of hazardous constituents at the earliest practicable time.

The Agency believes that monitoring programs, either for the unit itself or the environment around the unit, or both will be required in most cases. Only in a very few instances does the Agency feel that monitoring of the unit itself or the environment around the unit may not be appropriate or technically feasible. One such case may be hazardous waste repositories in geologic formations that are so extensive that installation of monitoring wells around the formation itself may not allow detection of migration at the earliest time, and installation of monitoring wells in the formation may damage the integrity of the formation. Monitoring the repository itself (e.g., pressure monitoring of fluids between well-casings in solution-mined caverns, or leachate sumps and pumps in room-and-pillar mines) may be suitable in this case.

A monitoring program should include monitoring the behavior of wastes in the unit to detect any changes in the waste that may affect the potential for migration of hazardous constituents over time. Examples of this type of monitoring include periodic testing of the waste in a unit; leachate collection systems in surface impoundments, landfills, and room-and-pillar mines; and fluid or gas pressure monitoring in well casings above solution-mined caverns in salt domes. To avoid monitoring systems within the unit, the petitioner must show that the available technology for monitoring the unit would adversely affect the structural integrity or the waste isolation capability of the unit.

The locations of the monitoring stations in the different media outside of the unit (if applicable) and/or within the unit itself (if applicable) must be specified in the monitoring plan. Selection of the monitoring points in the media around the unit and within the unit should be based on an assessment of pollutant fate and transport and should provide for detection of releases of hazardous constituents at the earliest practicable time.

Groundwater monitoring systems must consist of a sufficient number of wells installed at appropriate locations and depths to detect migration to the ground water at the earliest practicable time. The groundwater monitoring program for conventional land disposal units, such as surface impoundments and land treatment units, should comply with 40 CFR Parts 264 and 265 standards and requirements as well as technical guidance issued by EPA to properly locate, design, drill, develop, and operate groundwater monitoring wells. Monitoring systems must consist of a sufficient number of devices located so as to detect migration of hazardous constituents from the unit at the earliest practicable time. All monitoring systems and their capabilities must be specified in the monitoring plan of the petition and approved by the Administrator.

A petitioner may be able to incorporate into his monitoring plan part or all or a groundwater monitoring program established for the purpose of complying with 40 CFR Parts 264 and 265 Subpart F. For example, a petitioner may be able to use all or some of his monitoring wells if they will detect migration at the earliest practicable time, and may only have to increase the frequency of monitoring.

The monitoring interval specified in the monitoring plan (§ 268.6(d)(2)) must provide detection of migration of hazardous constituents at the earliest practicable time. The owner or operator must submit a suggested monitoring interval for all monitoring stations and demonstrate that the frequency of monitoring at that station is adequate to detect releases of hazardous constituents at the earliest practicable time. The demonstration may be based on computer simulations or other assessments of pollutant fate and transport in the particular media. The Administrator will determine if the suggested interval is appropriate based on the evaluation of the demonstration. The monitoring interval will vary depending on the media being monitored and other site-specific factors. These factors may include climatology, environmental setting, unit design characteristics, and waste characteristics.

The Appendix VIII constituents to be monitored must be specified in the monitoring plan (§ 268.6(d)(2)). The constituents to be monitored in the unit should be determined based on knowledge of waste composition and mobility of waste components. For groundwater, the constituents to be monitored may be analogous to those monitored under Parts 264 and 265 Subpart F. Under Subpart F, depending on whether the monitoring program is in a detection, compliance, or corrective action monitoring phase, an owner or operator may be monitoring for indicator parameters, all Appendix IX constituents, or specific waste constituents. A monitoring program undertaken to demonstrate "no migration" may be able to make use of Subpart F monitoring data. Although monitoring indicator parameters under Subpart F may be helpful to demonstrate "no migration", the actual constituents to be monitored must be determined based on an analysis of the waste.

Monitoring outside the unit in the different media should include, but is not necessarily limited to, the most mobile constituents for the particular media.

Where applicable, the monitoring program described in the petition monitoring plan must be in place for a period of time specified by the Administrator prior to receipt of waste at the unit (§ 268.6(e)) or as indicated in an alternative schedule as approved by the Administrator. The monitoring program must be implemented during the time which the unit is receiving restricted waste which does not meet the treatment standards under 3004(m) and may also be necessary, in part or in total, during the post-closure care period. Although the approved petition is valid for only as long as the owner's and operator's operating permit (10 years maximum), the monitoring of media to which the wastes could potentially migrate may continue for as long as the waste remains hazardous. The objective of a monitoring program for "no migration" variances is to allow detection of migration of hazardous constituents at the earliest practicable time. During the operating life of the unit, such a detection of migration will prevent the unit from continuing to receive waste not meeting standards under 3004(m) (see discussion below). During the post-closure care period, however, the unit is no longer receiving restricted untreated waste, and the objective of *any* monitoring is to detect the need for corrective action. Thus, in most cases, groundwater monitoring other than that already required for post-closure care under §§ 264.117 and 265.117 will not be necessary. Monitoring of additional media may be necessary during the post-closure care period if the activities conducted under post-closure do not adequately protect against migration. However, the Agency does not envision that a disposal unit which has been properly closed will pose a threat of migration through other media.

Monitoring of unit parameters, such as temperature or pressure, will not be required after closure if the monitoring activities would compromise the isolation capability of a disposal unit or would not provide data of significance to assess the unit's integrity after closure.

The monitoring program must meet the criteria in § 268.6(f):

a. All testing, sampling and analytical techniques must be conducted according to methods contained in EPA Publication SW–846 Solid Waste Testing Methods or must be approved by the Administrator, and all data must be accurate and reproducible;

b. Sampling, testing, estimation and modeling techniques must be provided and approved by the Administrator; and

c. A Quality Assurance and Quality Control plan must be approved by the Administrator.

The Agency believes that the reporting of monitoring data should occur regularly, but that frequent reporting of monitoring data imposes a significant administrative burden on the owner or operator and the petition reviewer. The Agency believes that monitoring data which is collected for the purposes of demonstrating compliance with the variance and which does not reveal migration or significant changes to the site, should be reported annually to the Administrator. A schedule for reporting the data should be proposed in the petition and approved by the Administrator. The Agency is requesting comment on whether data should be reported annually, or more frequently. The Agency further believes that monitoring data may be reported to the Administrator or kept on-site as part of the operating log. The Agency is soliciting comment as to whether the monitoring data should be reported to the Administrator, kept in the operating log on-site, or both.

(3) Changes from Conditions of the Variance: Under 268.6(1) of this proposal, if there is a change from the reported conditions at or around the unit or any change affecting the unit or the area around the unit for which the petition has been granted, this change must be reported to the Administrator at the earliest practicable time. The Agency believes that any changes made at the facility that may affect any part of the unit must be reported. For example, if the owner/operator proposes to make engineering changes at the unit, these must be reported to the Administrator at least 30 days prior to the change being

made. If the monitoring plan for the unit needs to be changed or upgraded to better reflect actual conditions at the site, it must be reported to the Administrator at least 30 days prior to this proposed change. If site conditions change (i.e., environmental changes), the Administrator must also be notified of this change. The Agency realizes that some petitions will be submitted and approved prior to a unit being built. As such, the Agency believes that it is necessary to provide flexibility to change some conditions of the petition if necessary to protect against migration, or to adequately detect a release.

The Agency also realizes that conditions upon which the "no migration" variance has been granted may prove to be different once the unit is operating. For example, a petitioner may predict, based on modeling, that leachate concentration will be at a certain level and the petition was approved conditional upon that concentration. However, actual monitoring of the leachate after the unit receives restricted waste may show that levels are above those predicted. Such a change in the conditions of the variance should be reported to the Administrator. The Agency realizes that some changes may not be significant enough to warrant action, but believes that *all* changes to the unit or area around the unit, or changes that may affect unit or area around the unit must be reported, both for pending petitions and facilities already granted waivers. The Administrator will determine if such changes warrant actions such as submittal of a new petition, modifications to the variance, revocation of the variance, or no changes to the variance, among others. At this time, the Agency is unable to delineate changes which would be considered minor in their effect on the variance. As such, the Agency proposes requiring notification of *all* changes. The Agency is soliciting comment on what changes should or should not be reported. The Agency is also soliciting comment as to whether all changes or some changes need to be reported immediately or can be submitted as part of the reporting requirements for monitoring.

(4) Detection of Hazardous Constituent Migration: Under proposed § 268.6(m), if the owner or operator determines that there is a migration of hazardous constituents from the unit, the owner or operator must immediately suspend receipt of restricted wastes at the unit and notify the Administrator, in writing, within 10 days of the determination. EPA believes that ten days is a reasonable time period for notifying the Administrator of a migration of hazardous constituents. The Agency, however, is interested in receiving comments from the public on the appropriate time period for the notification of the Administrator. EPA also believes that immediate suspension of receipt of restricted wastes is necessary in order not to compound the problem of migration.

In the notification of migration (applying to all media), the owner/operator must provide analytical data on the constituents, and an initial assessment of the cause of migration. The notification may include the owner or operator's planned response to the release. The planned response may include additional monitoring, corrective actions to remediate the release, and design or operating modifications to prevent a recurrence of the release. The notification may also suggest what response by the Agency would be appropriate.

A brief summary of the information required in a notification is provided below:

a. The analytical data to be provided must include but is not necessarily limited to the following: (1) the owner or operator must provide the constituents detected and the concentrations at which they were detected; and (2) the owner or operator must provide modeling data (if applicable) that estimates the levels of hazardous constituent migrating from the unit.

b. The notification must provide an initial assessment of possible causes of the migration. This assessment may include an evaluation of engineered components (i.e., deterioration, construction deficiencies, etc.), changes in environmental factors (i.e., climate, groundwater fluctuation, etc.), and other appropriate factors.

Following receipt of the owner or operators' notification of migration, the Administrator will determine the actions to be taken within 60 days of receiving the notification. The Administrator will make this decision based upon information provided in the monitoring plan, the "no migration" petition, and the notification. Possible responses to the notification may include revoking the owner or operator's variance, partial closing of the unit, additional monitoring, operational changes, or other appropriate responses. A petitioner would then be afforded further opportunity to comment on the Agency's decision. However, EPA believes that the Agency's (and public's) interest in having only treated wastes disposed in surface disposal units other than "no migration" units appears to outweigh any private interest in continued land disposal of untreated wastes, and thus, justifies immediate Agency action without further right to comment before the decision.

If a final decision cannot be reached by the Agency within 60 days, the Administrator will issue a draft decision specifying temporary measures to be in effect until a final decision is reached. Temporary measures that may be specified by the Administrator include, but are not limited to, restrictions on waste types or quantities placed in the unit, additional monitoring, or unrestricted continued operations.

I. Proposed Approach to Comparative Risk Assessment

Within the regulatory framework established for implementing the land disposal restrictions, EPA included certain criteria in the determination of "available" treatment technologies. One criterion required that treatment technologies not present greater total risks than land disposal waste management practices. Although the Agency utilized comparative risk assessments in the development of regulations prohibiting land disposal of certain solvent-containing and dioxin-containing hazardous wastes (November 7, 1986 final rule) and California list wastes (July 8, 1987 final rule), the analysis did not affect the determinations that treatment was available.

Upon further consideration of the existing comparative risk analysis, the Agency believes that the approach in which the risks of land disposal are compared to the risks from alternative treatment technologies is flawed. In cases where the land disposal practice could be found to be less risky than any of the treatment alternatives, the analysis could lead to anomalous results. For example, in a situation where the comparative risk analysis indicated that land disposal was the least risky alternative available, there would be no specified treatment technology for the wastes. At the same time, land disposal would be prohibited by statute. Thus, the generator could not land dispose the wastes, even though treatment could be conducted pursuant to other regulatory standards that assure protection of human health and the environment.

A second anomaly is that unless EPA actually specifies a treatment method as the treatment standard—normally an undesirable option (see 51 FR 44725, December 11, 1986)—the regulated community may still use treatment technologies identified as riskier than land disposal to comply with the treatment standards. In this respect, the

comparative risk assessments would not deter the use of treatment found to present greater total risk.

In light of these legal and practical considerations, EPA does not believe the existing comparative risk assessment approach is warranted as a decision tool for this rulemaking in the determination of "available" treatment technologies. In the future the Agency may conduct risk analyses to distinguish between the overall degree of risk posed by alternative treatment technologies and to make determinations concerning the "best" technology based on net risk posed by the alternative practices. The Agency solicits comment on this new approach.

J. Determination of Alternative Capacity and Effective Dates for First Third Wastes

1. Quantities of Wastes Land Disposed

EPA has estimated the total quantities of First Third wastes land disposed annually based on the results of the OSW RIA Mail Survey of Treatment, Storage, and Disposal Facilities regulated in 1981. The Agency acknowledges that data from this survey are not current and may limit the accuracy of capacity analyses, but believes that this database is the only comprehensive information currently available that is specific enough to allow EPA to determine required alternative treatment capacity. EPA is developing a new database that will be used for capacity determinations. The new database will be comprised of information taken from responses to a 1987 survey of treatment, storage, disposal, and recycling facilities. Since this new capacity database will not be available until early in 1988, the capacity analyses for this propsoed rule are based on the 1981 survey data. When the 1987 survey data become available EPA will reassess capacity.

Four methods of land disposal are included in the table below: Disposal in landfills; storage in waste piles; disposal by land application; and treatment, storage, and disposal in surface impoundments. Deep well injection, another method of land disposal, will be addressed in a separate Federal Register notice. Other methods of land disposal that are affected by today's proposal (utilization of salt dome and salt bed formations and underground mines and caves) are not addressed in the capacity analyses because of insufficient data. Similarly, there is not enough data to estimate the capacity requirements for land disposed First Third wastes generated by Small Quantity Generators (SQGs) and form CERCLA response actions and RCRA corrective actions.

TOTAL VOLUME OF FIRST THIRD WASTES LAND DISPOSED EXCLUDING DEEP WELL INJECTED WASTES (MILLION GALLONS/YEAR)

Disposal method	Volume
Landfill	600
Land application	100
Storage in waste piles	70
Surface impoundments:	
Storage only	990
Treatment only	1130
Storage and treatment	300
Disposal	250
Total	3440

About 250 million gallons of First Third wastes are disposed in surface impoundments annually. Ultimately, all of this waste will require alternative treatment capacity.

Approximately 990 million gallons of First Third wastes are stored in surface impoundments annually. Since storage implies a temporary containment of waste, EPA has assumed that stored wastes are eventually treated, recycled or permanently disposed of in other units. To avoid double-counting of such wastes, the volumes of wastes reported as being stored in surface impoundments were not included in the estimates of volumes requiring alternative treatment capacity. However, the Agency recognizes that, because of the restrictions on placement of wastes into surface impoundments, these wastes will eventually require alternative storage capacity.

In addition to the wastes stored, about 1.4 billion gallons for First Third wastes are treated or treated and stored concurrently in surface impoundments annually. These wastes may still be treated this way, provided that the impoundments meet the minimum technological requirements under RCRA by November 1988. However, while there are not data available to estimate the quantity of waste treated in impoundments that meet the minimum technological requirements, EPA believes that the volume is relatively small. Therefore, EPA has assumed that all First Third wastes being treated or treated and stored simultaneously in surface impoundments will require alternative treatment and storage capacity, usually in the form of either retrofitted impoundments or new tank treatment systems.

2. Required Alternative Capacity

In order to assess the requirements for alternative treatment capacity that will result from the restrictions of today's proposed rule, the Agency first characterized the volume of First Third wastes that require alternative treatment capacity on the basis of land disposal method, waste code, and physical/chemical form. Using this information, it was then possible to determine which treatment technologies are applicable to the waste volumes and to determine the volume of alternative treatment capacity that will be required when owners/operators comply with the land disposal restrictions being proposed today.

Due to time constraints, as explained previously, Best Demonstrated Available Technology (BDAT) analyses have not been completed for all of the scheduled First Third wastes. Capacity analyses have not been performed for "soft hammer" wastes (P and U waste codes) or First Third E and K wastes for which treatment standards are not being proposed today. Furthermore, the Agency has determined that generators of the waste K069 are able to totally recycle the waste volumes generated and that the First Third wastes K004, K008, K036, K073 and K100 are no longer being generated. Since the treatment standard is set as "No Land Disposal" for wastes that are no longer generated or are totally recycled, no capacity analyses were necessary for these wastes. The table below lists the amount of waste land disposed for those First Third wastes for which treatment standards are being proposed today.

VOLUME OF FIRST THIRD WASTES, EXCLUDING DEEP WELL INJECTED WASTES, AFFECTED BY THE PROPOSED RULE (MILLION GALLONS/YEAR)

Disposal method	Volume
Landfill	220
Land application	90
Storage in waste piles	50
Surface impoundments:	
Storage only	50
Treatment only	55
Storage and treatment	30
Disposal	85
Total	580
Total (excluding Storage only)	530

Based on our analysis, EPA estimates that today's proposed rule would potentially affect about 530 million gallons of First Third wastes that are land disposed annually that will require treatment capacity.

As explained elsewhere in this preamble, EPA today is proposing treatment standards that are expressed as concentration limits and is identifying

the technology basis of the standards. EPA is not requiring that the specified treatment technologies be used to comply with standards. However, in order to evaluate the treatment capacity required for First Third wastes, EPA is assuming that the entire volume of waste estimated for each waste code will be treated using the same type of technology that forms the basis of the proposed treatment standards.

The treatment technologies used to establish proposed treatment standards fall under six categories: fluidized bed or rotary kiln incineration for K016, K018–K020, K024, K030, K037, and K048–K052, liquid injection incineration for K015, wastewater treatment for K062, wastewater treatment and incineration for K103 and K104, chemical treatment for K071 and high temperature metals recovery for K061. The volumes of First Third wastes that will require alternative treatment capacity are listed for each category in the table below.

REQUIRED TREATMENT CAPACITY FOR FIRST THIRD WASTES AFFECTED BY THE PROPOSED RULE (MILLION GALLONS/YEAR)

Technology	Required treatment capacity
Fluidized Bed or Rotary Kiln Incineration	170
Liquid Injection Incineration	<1
Wastewater Treatment for K062	230
Wastewater Treatment and Incineration for K103 and K104	30
Chemical Treatment	10
High Temperature Metals Recovery	90
Total	530

3. Capacity Currently Available and Effective Dates

Fluidized Bed, Rotary Kiln and Liquid Injection Incineration

EPA estimates that about 170 million gallons per year of First Third wastes will require fluidized bed or rotary kiln incineration capacity as a result of today's proposed standards.

EPA has identified rotary kiln incineration as BDAT for the wastes: K016, K018, K019, K020, K024, K030 and K037. While the treatment standards for these wastes are based on rotary kiln incineration, the Agency believes that a well-designed and well-operated fluidized bed incinerator will also achieve the treatment standards. Therefore, fluidized bed incineration capacity was included in the estimates of treatment capacity.

EPA has identified fluidized bed incineration followed by stabilization of metals in the ash as BDAT for the K048, K049, K050, K051, and K052 wastes. While the treatment standards for these wastes are not based on rotary kiln incineration, EPA believes that rotary kiln incineration in a well-designed and well-operated unit followed by stabilization of metals in the ash will also achieve the treatment standards. Therefore, rotary kiln incineration capacity was included in the estimates of treatment capacity.

Liquid injection incineration was used to establish the treatment standard for K015. While BDAT is identified as liquid injection incineration, the Agency believes that incineration in a well-designed and well-operated industrial furnace (e.g., a cement kiln) will also achieve the treatment standard. Therefore, industrial furnace capacity was included in the estimate of treatment capacity for this waste.

As the Agency determined for the Solvents and Dioxins Rule (51 FR 40572), there is not enough commercial fluidized bed or rotary kiln incineration capacity for wastes requiring these technologies and EPA lacks the information necessary for estimating on-site incineration capacity at facilities that generate these wastes. Therefore, EPA assumes that capacity is inadequate and proposes to grant a two-year national capacity variance from the effective date for the following wastes: K016, K018, K019, K020, K024, K030, K037, K048, K049, K050, K051, and K052. It should be noted that capacity analyses will be reviewed when the new data become available.

The Agency has determined that there is adequate liquid injection incineration capacity (including cement kilns) commercially available to treat K015 wastes. Therefore, EPA does not propose to grant a capacity variance for this waste.

Wastewater Treatment for K062

EPA estimates that about 230 million gallons per year of the First Third waste K062 would require wastewater treatment as a result of today's proposed rule. BDAT for K062 is identified as chromium reduction, chemical precipitation and vacuum filtration. The Agency believes that this treatment is generally available on-site and has determined for previous rules (51 FR 40572 and 52 FR 25760) that some available commercial capacity exists. Furthermore, approximately 42 percent of the K062 waste is currently being managed in surface impoundments that are subject to the minimum technological requirements under RCRA. The Agency believes that some of these impoundments may either be retrofitted to meet the minimum technological requirements or may be replaced by newly-installed tank treatment systems. Consequently, EPA believes that adequate capacity for K062 exists or will exist prior to promulgation of the final rule. Therefore, no variance is proposed for K062.

Wastewater Treatment and Incineration for K103 and K104

EPA estimates that approximately 30 million gallons per year of the First Third wastes K103 and K104 would require wastewater treatment and incineration as a result of today's proposed rule. BDAT for these wastes is solvent extraction followed by incineration of the solvent contaminated extract and followed by steam stripping and carbon adsorption of the wastewater. The Agency estimates that about four million gallons per year (approximately 13 percent of the original volume) of solvent contaminated extract will require incineration and that the entire volume of waste will require solvent extraction followed by steam stripping and carbon adsorption.

The Agency has determined that there is adequate incineration capacity commercially available to treat the volumes of K103 and K104 generated (this includes industrial kiln capacity as well as liquid injection incineration capacity). However, EPA has determined that there is not enough solvent extraction/steam stripping/carbon adsorption capacity commercially available to treat the volumes of K103 and K104. Therefore, even though incineration capacity is available, these wastes cannot be treated to the treatment standards. Since capacity for some treatment steps is inadequate, EPA proposes to grant a two-year national capacity variance from the prohibition effective date for K103 and K104.

High Temperature Metals Recovery for K061

EPA estimates that approximately 90 million gallons of the First Third waste K061 will require high temperature metals recovery capacity annually (even though K061 is a dust, the volume is given in gallons because all volumes were reported as gallons in the RIA Mail Survey). Available data indicate that generators are not equipped to treat K061 on-site and that there is not enough commercial capacity available to treat the amount generated. Therefore, EPA proposes to grant a two-year national

capacity variance from the prohibition effective date for K061.

Chemical Treatment for K071

EPA estimates that about 10 million gallons of the First Third waste K071 would require chemical treatment annually as a result of today's proposed rule. BDAT for K071 is acid leaching and chemical oxidation for nonwastewaters and sulfide precipitation followed by filtration for wastewaters. The available data indicate that there are no commercial treatment facilities that manage this waste and that most generators are not equipped to treat K071 on-site. Therefore, EPA proposes to grant a two-year national capacity variance from the prohibition effective date for K071.

4. Capacity Variances for "Derived-From" and "Mixed" Wastes

In developing estimates of the quantity of a waste that requires treatment as a result of the land disposal restrictions, EPA attempts to define all such wastes including "derived-from" and "mixed" wastes. However, EPA's estimates of treatment capacity usually assume that all waste is treated using the same type of treatment technology that is determined to be the basis for the BDAT treatment standards.

As explained earlier in this preamble, EPA's treatment standards will apply to a range of wastes with physical and/or chemical characteristics potentially different from the waste tested. In cases where the facility believes that the appropriate treatment technology is different from the technology determined to be BDAT or that the associated effective date is inappropriate, the facility can petition for either a variance from the treatment standard or a case-by-case capacity extension. (A case-by-case extension could be granted even if a variance from the treatment standard was not requested or was denied.)

5. Capacity Variances for "Soft Hammer" Wastes

The Agency is not barred from granting capacity variances for "soft hammer" wastes, i.e. First Third wastes for which there is no treatment standard (52 FR 25774–775, July 8, 1987). The Agency, however, has discretion as to whether or not to grant such variances. [See RCRA section 3004(h)(2) ("The Administrator *may* establish an effective date different from the effective date which would otherwise apply * * *" (emphasis added)).] The Agency believes it inappropriate to consider capacity variances for "soft hammer" wastes because section 3004(g)(6) functions as an individualized capacity determination. Generators of wastes destined for disposal in landfills or impoundments, in effect, must make their own search of practically available treatment and certify the results. The Agency thus believes it would be an inefficient use of its own resources (and possibly an undermining of the "soft hammer" scheme) if it were to undertake its own independent capacity determination for "soft hammer" wastes.

IV. Modifications to the Land Disposal Restrictions Framework

Today's proposal does two things. First, it proposes the Agency's approach to restricting the land disposal of First Third wastes, presenting the conditions under which land disposal of these wastes may be continued. Second, it proposes modifications to the existing framework of the Land Disposal Restrictions Program, as first promulgated on November 7, 1986 (51 FR 40572) and subsequently modified in the July 8, 1987 California list final rule (52 FR 25760). Unless otherwise specified, these proposed modifications will apply to all other restricted wastes. This section of today's proposal summarizes these modifications and refers to more detailed discussions in other sections of this preamble.

A. General Waste Analysis (§§ 264.14 and 265.13)

The Agency has proposed modifications to §§ 264.13 and 265.13 to reflect provisions for the treatment of "soft hammer" wastes in surface impoundments. The framework promulgated November 7, 1986 provided for an exemption allowing treatment of restricted wastes in surface impoundments meeting the minimum technological requirements (i.e., double liner, leachate collection system, and groundwater monitoring), provided that residuals that do not meet the treatment standard are removed annually. As discussed in Section III. C. 3., this exemption is extended to allow for wastes subject to the "soft hammer" provision (i.e., wastes for which no treatment standard has been established). Nonsubstantive modifications are also proposed to make these sections more readable.

B. Operating Record (§ 264.73 and § 265.73)

The Agency is proposing to modify § 264.73 and § 265.73 to require retention of the § 268.8 certification, i.e. the certification applicable to "soft hammer" wastes. EPA is also proposing to require that facilities retain the new tracking notice required under § 268.7 for generators sending "soft hammer" wastes to receiving facilities, and for treatment facilities sending "soft hammer" wastes to a disposal facility. The proposed notice and certification is discussed further in Sections III. B. 2. and III. C. 2. respectively.

C. Purpose, Scope, and Applicability (§ 268.1)

The Agency is proposing to modify § 268.1 only to include the "soft hammer" wastes in the applicability of the land disposal restrictions, and to allow the disposal of such wastes in landfill and surface impoundment units meeting the minimum technological requirements provided such wastes are the subject of a valid certification under § 268.8.

D. Treatment in Surface Impoundment Exemption (§ 268.4)

The proposed modifications to the requirements of § 268.4 reflect the special conditions for allowing this exemption to apply to First Third wastes for which no treatment standards have been established. Certain nonsubstantive modifications have also been proposed to improve the readability of the section. The conditions relating to the disposal of "soft hammer" wastes are discussed in Section III. C. 3.

E. Case-by-Case Extensions (§ 268.5)

The modification to § 268.5 reflects the Agency's new interpretation of RCRA section 3004(h)(4), that wastes subject to a case-by-case extension of the effective date, if disposed in a landfill or surface impoundment, must be disposed in a *unit* that meets the minimum technological requirements. EPA's earlier interpretation was that Congress intended such wastes to be disposed in a *facility* that meets the minimum technological requirements. The discussion for this proposed change is found in Section III. D.

F. "No Migration" Petitions (§ 268.6)

As discussed in Section III. H., the Agency is proposing modifications to the existing requirements for petitioning EPA for a "no migration" exemption under § 268.6.

G. Testing and Recordkeeping (§ 268.7)

The proposed modifications to § 268.7 extend the notification and certification requirements to include the First Third wastes. EPA is also proposing to apply the recordkeeping requirements of this section to treatment and storage

facilities not already included in the "cradle-to-grave" paper trail, including an additional change addressing wastes that may be land disposed under an extension, exemption, or variance. Also, a new notification is proposed for "soft hammer" wastes. The discussion for these proposed modifications is found in Section III. B.

Testing requirements for wastes in § 268.43 (i.e., wastes for which the treatment standards are expressed as concentration levels in the waste, rather than in the waste extract) have been proposed. And finally, other nonsubstantive modifications are being proposed to improve the readability of this section.

H. Landfill and Surface Impoundment Disposal Restrictions (§ 268.8)

The Agency is proposing a new § 268.8 which addresses the prohibition on disposal of First Third wastes for which treatment standards have not been established. An extensive discussion in Section III. C. presents the Agency's interpretation of RCRA section 3004(g)(6)(A), which is applicable to the disposal of such wastes in landfills and surface impoundments, and also proposes EPA's approach to the type of information which must be supplied and certified to prior to such disposal.

I. Waste Specific Prohibitions—First Third Wastes (§ 268.33)

Section 268.33 proposes the actual prohibitions on the land disposal of First Third wastes (wastes listed in § 268.10) for which EPA has proposed treatment standards, and also proposes effective dates based on the availability of capacity to treat these wastes. Section III. A. describes the development of these proposed treatment standards, and Section III. J. presents the capacity data and assumptions on which the proposed effective dates are based. Section 268.33(e) proposes the prohibitions placed on "soft hammer" wastes, as discussed in Section III. C.

It should be noted that the schedule for waste K019 (a Second Third waste listed in § 268.11) has been accelerated to include this waste in the First Third. K100 (a Third Third waste listed in § 268.12) is also included in the First Third.

J. Treatment Standards (§ 268.40, § 268.41, and § 268.43)

Proposed treatment standards, expressed as concentration levels in both the waste (§ 268.43, as expressed in a new Table CCW) and in a waste extract developed by using the TCLP, are presented in proposed amendments to Subpart D. The treatment standards are discussed in Section III. A.

K. Storage Prohibition (§ 268.50)

Only a slight modification to the existing storage prohibition in § 268.50 is proposed to account for the Agency's interpretation of RCRA section 3004(j), as applicable to "soft hammer" wastes which are the subject of a certification under § 268.8. This interpretation is presented in Section III. G. of this notice.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is proposed pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924). Therefore, it will be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section. When this rule is promulgated, Table 2 in 40 CFR 271.1(j) will be modified also to indicate that this rule is a self-implementing provision of HSWA.

B. Effects on State Authorizations

As noted above, EPA will implement today's proposal in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modification to EPA for approval. The deadline for the State to modify its program for this proposed regulation will be determined by the date on which this regulation is promulgated in final form. Since final rule promulgation will be after July 1, 1987, State program modifications must be made by July 1, 1991, if only regulatory changes are necessary or July 1, 1992, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see § 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's proposal. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations may be approved without including equivalent standards. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

The amendments being proposed today need not effect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer these amendments. However, a State which wished to implement Part 148 and receive authorization to grant exemptions from land disposal would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized above, and are discussed in 50 FR 28728, et seq., July 15, 1985.

C. State Implementation

There are three unique aspects of today's proposal which affect State implementation and impact State actions on the regulated community:

1. Under Part 268, Subpart C, EPA is proposing land disposal restrictions for all generators and disposers of certain types of hazardous waste. In order to retain authorization, States must adopt the regulations under this Subpart since State requirements can be no less stringent than Federal requirements.

2. Also under Part 268, EPA may grant a national variance from the effective date of land disposal prohibitions for up to two years if it is found that there is insufficient alternative treatment capacity. Under § 268.5, case-by-case extensions of up to one year (renewable for one additional year) may be granted for specific applicants lacking adequate capacity.

The Administrator of EPA is solely responsible for granting variances to the effective date because these determinations must be made on a national basis. In addition, it is clear that RCRA section 3004(h)(3) intends for the Administrator to grant case-by-case extensions after consulting the affected States, on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program.

3. Under § 268.44, the Agency may grant a waste-specific variance from a treatment standard in cases where it can be demonstrated that the physical or chemical properties of the waste differ significantly from wastes analyzed in developing the treatment standard, and, the waste cannot be treated to specified levels or treated by specified methods.

The Agency is solely responsible for granting such variances since the result of such an action will be the establishment of a new waste treatability group. All wastes meeting the criteria of this new waste treatability group will also be subject to the variance, and thus, granting such a variance has national impacts. Therefore, this aspect of the program is not delegated to the States.

4. Under § 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous waste where it can be demonstrated that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

States which have the authority to impose bans may be authorized under RCRA section 3006 to grant petitions for exemptions from bans. Decisions on site-specific petitions do not require the national perspective required to ban waste or grant extensions. However, the Agency expects few "no migration" petitions and so will be handling them at Headquarters, though the States may be authorized to grant these petitions in the future. The Agency expects to gain valuable experience and information from review of "no migration" petitions which may affect future land disposal restrictions rulemakings. In accordance with RCRA section 3004(i), EPA will publish notice of the State's final decision on petitions in the **Federal Register.**

States are free to impose their own disposal bans if such actions are more stringent or broader in scope than Federal programs (RCRA section 3009 and 40 CFR 271.1(i)). Where States impose such prohibitions, the broader and more stringent State ban governs.

VI. Effects of the Land Disposal Restrictions Program on Other Environmental Programs

A. Discharges Regulated Under the Clean Water Act

As a result of the land disposal restrictions program, the regulated community might switch from treatment (BDAT) and land disposal for some restricted First Third wastes to discharge to publicly owned treatment works (POTWs); this switch would be based on waste management costs and treatment availability after the land disposal restrictions took effect. In shifting from treatment and land disposal to discharge to POTWs, an increase in human and environmental risks could occur. Also as a result of the land disposal restrictions, hazardous waste generators could illegally discharge their wastes to surface water without treatment, which could cause damage to the local ecosystem.

Some generators might treat their wastes prior to discharging to a POTW, but the treatment step itself could increase risks to the environment. For example, if incineration were the pretreatment step, metals and other hazardous constituents present in air scrubber waters could be discharged to surface water. However, the amount of First Third waste shifted to POTWs would be limited by such factors as the physical form of the waste, the degree of pretreatment required prior to discharge, and State and local regulations.

B. Discharges Regulated Under the Marine Protection, Research, and Sanctuaries Act (MPRSA)

Management of some First Third wastes could be shifted from treatment (BDAT) and land disposal to ocean dumping and ocean-based incineration. If the cost of ocean-based disposal plus transportation were lower than the cost of land-based treatment, disposal, and transportation, this option could become an attractive alternative. In addition, ocean-based disposal could become attractive to the regulated community if land-based treatment capacity were not available.

An increase in ocean-based disposal could lead to an increase in risk to the marine environment. For example, ocean dumping of toxic hazardous wastes could cause increased risks for sensitive marine organisms. Stack emissions from ocean-based incinerators might contain metals and persistent organic chemicals that could be deposited in the ocean and have potentially toxic effects on marine life. In addition, accidental spills and releases in the ocean could have severe effects on coastal and marine resources.

Management of restricted First Third wastes could not be automatically shifted to ocean dumping and ocean-based incineration based on costs alone. Both technologies require permits, which could be issued only if technical requirements (e.g., physical form and heating value) and MPRSA environmental criteria (e.g., constituent concentrations, toxicity, solubility, density, and persistence) were met. MPRSA requires that nine specific factors, including the availability and impacts of land-based disposal

alternatives, be considered before permits can be issued for ocean disposal.

C. Air Emissions Regulated Under the Clean Air Act

Some treatment technologies applicable to First Third wastes could result in cross-media transfer of hazardous constituents to air. For example, incineration of metal-bearing wastes could result in metal emissions to air. Some constituents, such as chromium, can be more toxic if inhaled than if ingested. As a result, it might be necessary to issue regulatory controls for some technologies to ensure they are operated properly.

The Agency has taken several steps to address this issue. EPA has initiated a program to address metal emissions from incinerators. It has also initiated two programs under section 3004(n) to address air emissions from other sources. The first program will address fugitive emissions from equipment such as pumps, valves, and vents from units processing concentrated organic waste streams. The second program will address other sources of air emissions, such as tanks and waste transfer and handling.

VII. Regulatory Analyses

A. Regulatory Impact Analysis

1. Purpose

The Agency estimated the costs, benefits, and economic impacts of today's proposed rule. These analyses are required for "major" regulations as defined by Executive Order No. 12291. The Agency is also required under the Regulatory Flexibility Act to assess small business impacts resulting from the proposed rule. The cost and economic impact analyses serve, additionally, as a measure of the practical capability of facilities to comply with the proposed rule.

The results indicate that today's rule is a major rule. This section of the preamble discusses the results of the analyses of the proposed rule as detailed in the draft Regulatory Impact Analysis (RIA) for the proposed rule. The draft RIA is available in the public docket for this proposal.

The analyses presented in this section and in the draft RIA do not fully reflect the current status of the proposed rule. Certain wastes were included in the RIA, but, due to the additional time required to set treatment standards for the wastes, were not part of the proposed rule. Treatment standards were set in the proposed rule for other wastes which did not appear in the database used for the RIA. In addition, for a few wastes, the treatment standards presented in the proposed rule differ, in varying degrees, from those assumed initially in the RIA. These discrepancies will be addressed in the RIA for a subsequent First Third proposed rule.

2. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of proposed Agency actions and alternatives during the development regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis (RIA) for major rules. Major rules are defined as those likely to result in:

- An annual cost to the economy of $100 million or more; or
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has prepared an RIA which compares the proposed rule with a regulatory alternative, as discussed in the following sections. Based on this analysis, the Agency has concluded that this proposed regulation is a major rule with an annual cost to the economy ranging from $681–696 million per year.

3. Basic Approach/Regulatory Alternatives

EPA is proposing to set treatment standards for a subset of the First Third K wastes and to let "soft hammers" fall on all First Third P and U wastes. As indicated earlier in the preamble, the Agency will continue to analyze treatment data for additional First Third F and K wastes and will publish a supplemental proposal. When the proposal is published, the impacts of meeting the land disposal restrictions requirements for these wastes will be identified.

The "soft hammers" place restrictions on the land disposal of First Third wastes for which no treatment standards have been set by August 8, 1988. The "soft hammer" provisions would be in effect until "hard hammers" fell (on May 8, 1990) or for an even shorter period if treatment standards or extensions of the effective date were promulgated. The effect of "hard hammers" falling on wastes and of extensions of the effective date were not examined as part of this analysis. The "soft hammers", as well as the proposed rule as a whole, are discussed in greater detail in Section III of this preamble.

EPA estimated the costs, benefits, and potential economic impacts of the proposed rule and of a major regulatory alternative to it. However, only the impacts of the proposed rule are presented here. Results for the regulatory alternative are discussed in the RIA.

Provisions of the proposed rule, as analyzed in the RIA, are as follows:

Proposed Rule:

- Treatment standards are established for 30 F and K wastes, and
- "Soft hammers" are allowed to fall on P and U wastes.

The costs and benefits of two "soft hammer" scenarios were examined:

Scenario 1:

- "Soft hammers" fall on P and U wastes and treatment capacity is assumed not to exist;
- Therefore, P and U wastes may continue to be land disposed in units meeting minimum technological requirements.

Scenario 2:

- "Soft hammers" fall on P and U wastes and treatment capacity is assumed to exist;
- Therefore, P and U wastes must meet "approximate treatment standards" (treatment that will reduce the mobility and toxicity of hazardous consituents).

It was assumed that the "soft hammers" would apply to wastes disposed of in landfills, surface impoundments, waste piles, and land farms. While neither scenario corresponds exactly to the proposed rule, it was assumed that the two scenarios would establish upper and lower bounds on the effects of the proposed rule. The scenarios were also used to explore some of the implications of varying "soft hammer" requirements.

The effects of the proposed rule (with "soft hammer" scenarios) were estimated by comparison of post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. The baseline is continued land disposal of wastes in units meeting minimum technological requirements.

4. Methodology

a. Determination of Affected Population and Waste Management Practices. The first step in determining the populations of affected wastes and facilities was to characterize waste streams based on available characterization reports and professional judgment. (See Section D for references.) This characterization

data was matched with information on waste quantities and management practices from the 1981 RIA Mail Survey and the 1984 Small Quantity Generator Survey to determine the waste streams and facilities potentially affected by the proposed rule. Waste quantities and numbers of facilities from each survey were scaled up, by means of weighting factors, to represent the national population of wastes and facilities.

Next, it was necessary to adjust the affected waste and facility populations by considering the cost of compliance with regulations which have taken effect since the 1981 RIA Mail Survey was conducted. In particular, EPA adjusted reported waste management practices to reflect compliance with the provisions of 40 CFR Part 264, which apply to permitted treatment, storage, and disposal facilities. In making this adjustment, the Agency assumed the facilities would elect the least costly methods of compliance.

This adjustment defines not only baseline management practices and costs associated with them, but also the number of facilities and waste streams in the affected population. For example, for some facilities, the costs of land disposing of certain wastes may have been driven so high by the minimum technological requirements that other management modes became less expensive. EPA assumes that these facilities no longer land dispose of these wastes and that these wastes are no longer part of the population of waste streams that may be affected by any restrictions on land disposal.

Finally, it was necessary to consider the overlap between First Third wastes and California list, solvent, and dioxin wastes. A number of First Third wastes are California list wastes, and a few First Third mixed wastes contain solvents and dioxins. To isolate the impacts of this proposed rule, it was necessary to "net out" the costs, economic impacts, and benefits stemming from treatment standards established under other rules; in some cases this resulted in waste streams and facilities being dropped from the affected population for this rule.

The logic used to net out overlapping costs, economic impacts, and benefits is illustrated for First Third wastes which are also California list wastes:

If:	Then:
The First Third treatment for the waste tream is the same as the California list treatment	Drop the waste stream from the analysis (since there would be no incremental impacts due to the First Third proposed rule).
The First Third treatment adds one or more steps to the California list treatment.	Include the waste in the analysis; estimate the incremental costs; economic impacts, and benefits due to the added treatment step(s).
The First Third treatment differs substantially from the California list treatment.	Include the waste in the analysis; estimate the incremental costs, economic impacts, and benefits due to the new treatment.

The population of wastes which would be affected by the proposed rule may include some wastes from CERCLA responses or RCRA corrective actions. However, there are insufficient data at present to estimate these quantities. Underground injected wastes were excluded from this analysis; these wastes will be dealt with in the RIA for a separate rule.

The population of affected facilities includes:

- Commercial hazardous waste treatment, storage, and disposal facilities (commercial TSDFs), which charge a fee for hazardous waste disposal;
- Non-commercial TSDFs, which provide disposal services for wastes generated on-site or off-site by their parent firms;
- generators, which send their waste off-site to commercial TSDFs for disposal; and
- small quantity generators (SOGs), which send their waste off-site to commercial TSDF.

b. Cost Methodology. Once waste quantity, type and method of treatment were known for the affected population, EPA developed estimates of costs of compliance for individual facilities. The analysis detailed in this section is based on cost estimates for surveyed facilities representing the affected population. EPA estimated baseline and compliance waste management costs using engineering judgment. Wastes amenable to similar types of treatment were grouped to identify economies of scale available through co-treatment and disposal.

Facilities face several possible options if they may no longer land dispose of their wastes. EPA applied the same rationale in predicting facility choice among these options as it did in establishing the affected population: facilities were assumed to elect the least costly method of complying with the requirements of this rule. Costs of compliance were derived by predicting the minimum-cost method of compliance with land disposal restrictions for each facility and calculating the increment between that and baseline disposal costs. As in the analysis of baseline costs, economies of scale in waste management were considered. Shipping costs for wastes sent off-site for management were also considered.

EPA developed facility-specific compliance costs in two components, which were weighted and then summed to estimate total national costs of the rule. The first component of the total compliance cost is incurred annually for operation and maintenance (O&M) of alternative modes of waste treatment and disposal. The second component of the compliance cost is a capital cost, which is an initial outlay incurred for construction and depreciable assets. Capital costs were restated as annual values by using a capital recovery factor based on a nominal interest rate of 9 percent. These annualized capital costs were then added to yearly O&M costs to derive an annual compliance cost.

c. Economic Impact Methodology. (1) Non-Commercial TSDFs and SQGs. EPA assessed economic impacts on non-commercial TSDFs and SQGs in several steps. First, the Agency employed a general screening analysis to compare facility-specific incremental costs to financial information about firms, disaggregated by Standard Industrial Classification (SIC) and number of employees per facility. (See Section D for references.) This comparison was based on two ratios, which were used to identify facilities likely to experience adverse economic effects. The first is a ratio of individual facility compliance costs to costs of production. This ratio represents the percent product price increase for facility output that occurs if the entire compliance cost—accompanied by facility profit—is passed through to customers in the form of higher prices. A change exceeding five percent is considered to imply a substantial adverse economic effect on a facility. The second is a coverage ratio cash from operations to costs of compliance. This ratio represents the number of times that facility gross margin covers the regulatory compliance cost if the facility fully absorbs the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse effect. The coverage ratio is the more stringent of the two ratios, but exceeding the critical level in either one suggests that a facility is likely to be significantly affected. These ratios bound possible effects on individual firms. This analysis considers only pre-tax costs, because Census data are stated in pre-tax terms.

Once facilities experiencing adverse economic effects were identified using

the two screening ratios, a more detailed financial analysis was performed to verify the results and to focus more closely on affected facilities. For this subset of facilities, the coverage ratio was adjusted by allowing a portion of costs to be passed through. Economic effects on individual facilities were examined assuming that product price increases of one and five percent were possible. Those facilities for which the coverage ratio was less than two were considered likely to close.

(2) Commercial TSDFs. For this group of facilities, there exists no Census SIC from which to draw financial information. Two SICs which might be used as proxies, 4953 and 4959, do not distinguish between financial data for hazardous waste treatment firms and for firms managing municipal and solid wastes. Consequently, the analysis of economic effects on commercial facilities was qualitative. This analysis included an examination of the quantity of waste each facility received from the waste group restricted by today's rule. EPA also examined the ability of each facility to provide the additional treatment required once these restrictions were promulgated, and thus to retain or expand that portion of its business generated by restricted wastes.

(3) Generators. EPA's analysis of the economic effects of this rule on generators disposing of large quantities of affected wastes off-site assumed that commercial facilities could entirely pass on to them the costs of compliance with this regulation in the form of higher prices for waste management services. Because of data limitations in the RIA Mail Survey, EPA did not develop plant-specific waste characterization, treatment methods, and compliance costs for generators, as it did for TSDFs. The analysis of the economic effects of today's proposed rule on this group used RIA Mail Survey data to develop model plants generating average waste quantities. This allowed EPA to assess possible effects on generating plants.

d. Benefits Methodology. The benefits of today's proposed rule were evaluated by considering the reduction in human health risk that results from using alternative treatment for First Third wastes rather than employing baseline management practices. Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease causing agents. Due to time and budget constraints, risk results were obtained for only selected, potentially high-risk waste streams, which were selected based on previous analyses and professional judgment.

The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the waste stream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and the fate and transport of chemical constituents in environmental media.

EPA estimated human health risk in four steps. The first step was to estimate the concentrations of each of the hazardous constituents of the waste stream in each of the three media (air, surface water, ground water) into which they might be released by a certain waste management technology. These estimates depend on the steady-state (i.e., continuous) release rates calculated for each technology, and on environmental fate and transport characteristics for constituents.

The next step was to estimate the total human intake, or dose, of each of the chemicals through inhalation of air and ingestion of ground water, surface water, and contaminated fish. A 65 kilogram person was assumed to be continuously exposed to contaminated media over a 70-year lifetime.

The Agency next calculated the risk to an individual from the dose derived in the previous step. EPA estimated the relationship of dose to effect (using a "dose-response" curve developed based on toxicity data) and weighted the effect according to severity.

Finally, EPA estimated the population risk by multiplying the average individual risk by the number of people in a given environment. The whole process described above was repeated 2,000 times, using different population sizes and environmental settings drawn from representative distributions, to generate a population risk distribution for each waste-technology combination. The mean of the distribution for the baseline disposal technology was compared with the mean of the distribution for an alternative treatment technology to derive the net benefit of the land disposal restrictions for that waste stream. Risks were not discounted.

Benefits other than reduction in human health risk—such as resource damage avoided and corrective action costs avoided—were not quantified. As a result, the benefits of the land disposal restrictions for First Third wastes are likely to be understated. (Other benefits measures will be addressed in RIAs for subsequent rules.)

5. Results

a. Affected Population. The number of affected facilities is shown in Table 1.

TABLE 1.—NUMBER OF AFFECTED FACILITIES

	Proposed rule	
	Scenario 1	Scenario 2
Commercial TSDFs	84	84
Non-Commercial TSDFs	260	253
Generators	2,47	2,443
SQGs	1,320	1,320
Total	4,111	4,100

b. Costs. The costs of the proposed rule are summarized in Table 2.

TABLE 2.—COSTS OF THE PROPOSED RULE (ANNUALIZED INCREMENTAL COST IN MILLIONS OF 1987 DOLLARS)

	Proposed rule	
	Scenario 1	Scenario 2
Treatment of F and K Wastes	681	681
Soft Hammers on P and U Wastes	0	15
Total	681	696

As shown, the proposed rule is a major rule, with costs of $681–696 million per year. Nearly all of the costs of the proposed rule are due to the treatment of F and K wastes. The F and K wastes are high-volume wastes; large portions of the wastes go to incineration, high temperature metals recovery, and stabilization under the proposed rule. The residuals from the wastes which are incinerated often require solidification due to the metal content of the ash.

The P and U wastes, on the other hand, are generated in relatively small quantities. Their management under the proposed rule depends on which scenario is considered. Under Scenario 1, the wastes continue to be land disposed in units meeting minimum technological requirements. Under Scenario 2, the wastes are mostly incinerated; however, since the P and U wastes are primarily organic with little metal content, the ash from incineration generally does not require solidification.

Under the proposed rule, the two "soft hammer" scenarios result in relatively little difference in cost. Scenario 1—continued land disposal of P and U wastes—results in zero incremental cost over the baseline. Scenario 2—treatment of P and U wastes under "approximate treatment standards"—results in low costs due to the small volume of waste going to treatment. The costs associated with "soft hammers" would be incurred for less than two years, i.e., until "hard hammers" fell, treatment standards

were established, or extensions to the effective date were granted. Since P and U wastes result from spills or are off-spec chemical products, the assumption that quantities reported in EPA's surveys represent annual values may overstate the costs if production occurs sporadically.

Large volumes of wastes stored in surface impoundments dropped out of the analysis because storage in tanks was found to be less expensive than storage in surface impoundments in the baseline. As a result, the costs of the rule associated with treatment of residuals from storage surface impoundments were quite small. Large volumes of wastes treated in surface impoundments remained in the analysis. However, the small quantity of dredged material from these impoundments requiring treatment caused these costs to be low as well.

Most of the costs of the rule are borne by generators and noncommercial TSDFs; generators account for approximately three quarters of compliance costs and non-commercial TSDFs for approximately a quarter. SQGs account for less than one percent of total compliance costs.

c. Economic Impacts. The economic impacts of the proposed rule are summarized in Table 3.

TABLE 3.—NUMBER OF SIGNIFICANTLY IMPACTED FACILITIES

	Proposed rule	
	Scenario 1	Scenario 2
Commercial TSDFs	(1)	(1)
Non-Commercial TSDFs	68	72
Generators	1,040	1,049
SQGs	441	673
Total	1,549	1,794

[1] Commercial TSDFs were assumed to pass all compliance costs through to generators; therefore, the number of significantly affected facilities was not calculated.

Most of the significantly impacted non-commercial TSDFs are from the petroleum refining and primary metals industries (SICs 29 and 33, respectively). Significantly impacted generators are mostly from Primary Metals and Fabricated Metals (SICs 33 and 34, respectively). Commercial TSDFs fall primarily into Electric, Gas, and Sanitary Services (SIC 49); those facilities specializing in land disposal services could be adversely affected. The most significant difference between Scenarios 1 and 2 is in the number of significantly affected SQGs. As discussed above, impacts due to "soft hammer" provisions would be of less than two years duration.

d. Benefits. Table 4 summarizes the estimated benefits of the proposed rule. The annual values were obtained by dividing the total benefit estimates (corresponding to a 70 year lifetime) by 70.

TABLE 4.—BENEFITS OF THE PROPOSED RULE (NUMBER OF ADVERSE HEALTH EFFECTS AVOIDED PER YEAR)

	Proposed rule	
	Scenario 1	Scenario 2
Treatment of F and K Wastes	130	130
Soft Hammers on P and U Wastes	0	78
Total	130	208

The results above are driven primarily by two waste codes; K061 and P070. K061 is emission control dust/sludge from the primary production of steel in electric furnaces; it contains a number of metals. It is mostly landfilled in the baseline and goes to high temperature metals recovery under the proposed rule. P070 is Aldicarb, a pesticide which is land applied in the baseline and incinerated under the proposed rule.

As shown, there is a substantial difference in benefits between Scenarios 1 and 2 under the proposed rule due primarily to the management of P070. Most of the risk associated with land application in the baseline is due to exposure via air. It is likely, in actual practice, that air exposures would be reduced through the use of protective gear by persons involved in land application and the restriction of access by other persons to the site; therefore the difference in benefits between the two scenarios may be overstated. The difference may also be overstated to the extent that the P and U wastes are generated sporadically, rather than annually as reported in the RIA Mail Survey. The benefits under Scenario 2 would be of less than two years duration; i.e., they would continue until "hard hammers" fell, treatment standards were set, or extensions to the effective date were granted.

e. Cost Effectiveness. The cost effectiveness of the proposed rule is illustrated in Table 5. Compliance costs for the regulated community and human health risk reduction are the basis for the comparison; other potentially significant costs (e.g., Agency implementation costs) and benefits (e.g., natural resource damage avoided) were not estimated.

TABLE 5—COST EFFECTIVENESS OF PROPOSED RULE.

	Proposed rule	
	Scenario 1	Scenario 2
Costs (Millions of 1987 Dollars per year)	681	696
Benefits (Adverse Health Effects Avoided per Year)	130	208
Cost Effectiveness (Millions of Dollars per Case Avoided)	5.2	3.3

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibilty Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA evaluated the economic effect of the rule on small entities, here defined as concerns employing fewer than 50 people. Because of data limitations, this small business analysis excluded generators of large quantities of First Third wastes. The small business population therefore included only two groups: All non-commercial treatment, storage and disposal facilities employing fewer than 50 persons, and all small quantity generators which were also small businesses.

According to EPA's guidelines for conducting Regulatory Flexibility Analysis, if over 20% of the population of small businesses is likley to experience financial distress based on the costs of a rule, then the Agency is required to consider that the rule will have a significant effect on a substantial number of small entities and to perform a formal Regulatory Flexibility Analysis. EPA has examined the rule's potential effects on small businesses as required by the Regulatory Flexibility Act and has concluded that today's final rule will not have a significant economic effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal Regulatory Flexibility Analysis document in support of this rule. More detailed information on small business impacts is available

in technical background documents prepared in support of this rulemaking.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1436) and a copy may be obtained from Rick Westlund, Information Policy Branch; EPA; 401 M Street SW. (RM-223); Washington, DC 20460 or by calling (202) 382–2745. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW.; Washington DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments in the information collection requirements.

D. Review of Supporting Documents

The primary source of information on current land disposal practices and industries affected by this rule was EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981" (RIA Mail Survey) (April 1984). EPA's "National Small Quantity Hazardous Waste Generator Survey" (February 1985) was the major source of data on small quantity generators.

Waste stream characterization data and engineering costs of waste management were based on the following EPA documents:

- "Characterization of Waste Streams Listed in 40 CFR Section 261 Waste Profiles," Vols. I and II (August 1985);
- "Characterization of Constituents from Selected Waste Streams Listed in 40 CFR Section 261," Vols. I and II (August 1985);
- RCRA Background and Listing Documents for 40 CFR Section 261;
- RCRA Section 3007 Industry Studies;
- "RCRA Risk-Cost Analysis Model, Appendix A: Waste Stream Data Base" (March 1984); and
- Source Assessment Documents for various industries.

For financial and value of shipment information for the general screening analysis, 1982 Census data were used, adjusted by 1984 Annual Survey of Manufacturers data. Producer price indices were also used to restate 1984 dollars in 1987 terms.

VIII. Implementation of the Part 268 Land Disposal Restrictions Program

As a result of the regulations being proposed under Part 268, several options will be available to the generator or owner or operator of a treatment, storage, and disposal facility for the management of restricted hazardous wastes. This section helps the regulated community determine the appropriate waste management procedures. It provides references to the applicable 40 CFR Parts 264 and 265 requirements as well as Part 268 requirements for implementation of the various waste management options.

All the sequences in the generator's decision-making process must commence with a determination as to whether the hazardous waste is listed in Part 268 Subpart C. If the hazardous waste is not a restricted waste, it is not subject to the land disposal restrictions of Part 268. It must nevertheless be managed in accordance with Parts 264 and 265.

The generator of a restricted waste must determine the appropriate treatment standards (if any) under Part 268 Subpart D. The applicable treatment standards must be determined at the point of initial generation prior to any treatment. At this time, he must determine the effective date of the applicable treatment standard. EPA has the authority to delay the effective dates of the Part 268 treatment standards based on the unavailability of adequate national treatment capacity. Determinations as to the adequacy of treatment capacity are based on the quantity of waste generated and the availability of alternative treatment, recovery or disposal technologies. For those wastes where EPA has determined that alternative capacity is adequate, the treatment standards take effect immediately upon promulgation. The generator must use analysis of his waste (or waste extract, when applicable) or knowledge of his waste (data supporting such knowledge must be kept on-site) to make determinations as to whether his waste may go directly to land disposal or first must be treated.

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) are in compliance with the applicable treatment standards, the waste may go directly to land disposal. The generator must submit a notice and certification statement to the land disposal facility as required under § 268.7. The land disposal facility must verify the records of the generator in accordance with the facility's waste analysis plan. A generator that operates an on-site land disposal facility must put the information contained in the notice (except for the manifest number) in the operating record of the land disposal facility.

If the concentrations of the hazardous constituents in the waste (or waste extract, when applicable) exceeds the treatment standards, placement of the waste in land disposal units as of the effective date specified in Part 268 Subpart C is prohibited (unless the waste is subject to a case-by-case extension under § 268.5, or a "no migration" exemption under § 268.6). The generator must treat the prohibited waste in either an on-site or off-site treatment facility with interim status or a RCRA permit that is allowed to accept the waste.

An off-site treatment facility must obtain a notice from the generator as required in § 268.7. This notice must be placed in the operating record. Generators that are also treatment facilities must keep the information contained in the notice (except for the manifest number) in the facility's operating record.

When shipping the treatment residual to an interim status or RCRA permitted land disposal facility, the treatment facility must certify in accordance with § 268.7 that the treatment residue meets the applicable treatment standards and must also send a notice (§ 268.7) to the land disposal facility.

If the generator's waste is a restricted waste listed in § 268.10 (i.e., a First Third waste) where treatment standards have not been set, and such waste is land disposed off-site by methods other than landfills or surface impoundments, the generator must provide a notice in accordance with § 268.7. The off-site disposal facility is required to keep the generator's notice in its operating record, and is responsible for ensuring that the waste is not disposed in a landfill or surface impoundment. If the generator disposes on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record, and the generator must ensure that such waste is not disposed in a landfill or surface impoundment.

If the generator's waste is a restricted waste listed in § 268.10, where treatment standards have not been set, and are disposed in a landfill or surface impoundment, such waste may only be disposed in landfill or surface impoundment units that meet the minimum technological requirements of RCRA section 3004(o) (double liner, leachate collection system, and groundwater monitoring). Prior to

disposal, the generator must certify in accordance with § 268.8. For off-site disposal, the demonstration and certification required in § 268.8, as well as the notice required in § 268.7 must be provided with the initial waste shipment. The § 268.8 demonstration need not be provided again as long as the conditions of the demonstration have not changed. Thereafter, only the notice required in § 268.7 and the certification required in § 268.8, must be provided with each waste shipment. If such waste is disposed on-site, the demonstration and certification required in § 268.8, as well as the notice (expect for the manifest number) required in § 268.7 must be kept in the operating record.

If the generator's waste is a restricted waste listed in § 268.10 where no treatment standard has been set, and the waste goes off-site for treatment, the generator must send a notice as required in § 268.7. The treatment facility must keep a copy of the notice in its operating record. If treated on-site, the information contained in the notice (except for the manifest number) must be kept in the facility's operating record. After treatment, and no further treatment is practically available (if further treatment is available, the recordkeeping requirements that apply are the same as for the original treatment), the requirements are the same that apply for the generator. If the waste is disposed in a landfill or surface impoundment (which must meet the minimum technological requirements, see section 3004(g)(6)(A)(i)), the original generator or the owner/operator may supply the demonstration and certification required by § 268.8. The generator may supply this information when the waste is sent to the treatment facility, certifying that no further treatment is practically available and therefore, placement in the landfill or surface impoundment is the only practical alternative.

IX. References

Background Documents

(1) U.S. EPA. "Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions Proposed Rule First-Third Waste Volume, Characteristics, and Required and Available Treatment Capacity." U.S. EPA, OSW Washington, DC, 1987.

(2) U.S. EPA. "Best Demonstrated Available Technology (BDAT) Background Document for First Third Waste Codes." U.S. EPA, OSW, Washington, DC, 1987.

Regulatory Impact Analysis

(3) U.S. EPA. "Regulatory Impact Analysis of Proposed Restrictions on Land Disposal of First Third Wastes." U.S. EPA, OSW, Washington, DC, 1987.

List of Subjects in 40 CFR Parts 264, 265, 268, and 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Imports, Indian lands, Insurance, Intergovernmental relations, Labeling, Packaging and container, Penalties, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Surety measures, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 28, 1988.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, it is proposed that Chapter I of Title 40 be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

I. In Part 264:

1. The authority citation for Part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

2. Section 264.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268 Subpart D; or

(B) Where no treatment standards have been established:

(1) Such residues do not meet the applicable prohibition levels in § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(e).

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. Section 264.73 is amended by revising paragraphs (b)(10), (b)(13), and (b)(14) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(10) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, a petition pursuant to § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a);

* * * * *

(13) For an off-site land disposal facility, a copy of the notice and certification (and demonstration, if applicable) required by the generator or the owner or operator of a treatment facility under §§ 268.7 and 268.8, whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under § 268.7, except for the manifest number, and the certification (and demonstration, if applicable) required under § 268.8, whichever is applicable.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In Part 265:

. The authority citation for Part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

2. Section 265.13 is amended by revising paragraph (b)(7)(iii) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(7) * * *

(iii) The annual removal of residues which are not delisted under § 260.22 of this chapter or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Part 268 Subpart D; or

(B) Where no treatment standards have been established:

(1) Such residues do not meet the applicable prohibition levels in § 268.32 or RCRA section 3004(d); or

(2) Such residues are prohibited from land disposal under § 268.33(e).

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

3. Section 265.73 is amended by revising paragraphs (b)(8), (b)(11), and (b)(12) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5, a petition pursuant to § 268.6, or a certification under § 268.8, and the applicable notice required by a generator under § 268.7(a);

* * * * *

(11) For an off-site land disposal facility, a copy of the notice and certification (and demonstration, if applicable) required by the generator or the owner or operator of a treatment facility under § 268.7 and § 268.8, whichever is applicable; and

(12) For an on-site land disposal facility, the information contained in the notice required by the generator or the owner or operator of a treatment facility under § 268.7, except for the manifest number, and the certification (and demonstration, if applicable) required under § 268.8, whichever is applicable.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

III. In Part 268:

1. The authority citation for Part 268 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

2. Section 268.1 is amended by adding paragraph (c)(6) to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(6) Prior to May 8, 1990, in a landfill or surface impoundment unit where all applicable persons are in compliance with the requirements of § 268.8, with respect to wastes that are not subject to Subpart D treatment standards and not subject to the prohibitions in § 268.32 or RCRA section 3004(d).

3. Section 268.4 is amended by revising paragraph (a)(2) to read as follows:

§ 268.4 Treatment surface impoundment exemption.

(a) * * *

(2) The following conditions are met:

(i) *Sampling and testing.* For wastes with treatment standards in Subpart D of this part and/or prohibition levels in Subpart C of this part or RCRA section 3004(d), the residues of the treatment are analyzed, as specified in § 268.7 or § 268.32, to determine if they meet the applicable treatment standards or, where no treatment standards have been established for the waste, the applicable prohibition levels. The sampling method, specified in the waste analysis plan under § 264.13 or § 265.13, must be designed such that representative samples of the sludge and the supernatant are tested separately rather than mixed to form homogeneous samples.

(ii) *Removal.* The following treatment residues (including any liquid waste) must be removed at least annually: residues which do not meet the treatment standards promulgated under Subpart D of this part; residues which do not meet the prohibition levels established under Subpart C of this part or imposed by statute (where no treatment standards have been established); residues which are from the treatment of wastes prohibited from land disposal under Subpart C of this part (where no treatment standards have been established and no prohibition levels apply); or residues from managing listed wastes which are not delisted under § 260.22 of this chapter. However, residues which are the subject of a valid certification under § 268.8 made no later than a year after placement of the wastes in an impoundment are not required to be removed annually. If the volume of liquid flowing through the impoundment or series of impoundments annually is greater than the volume of the impoundment or impoundments, this flow-through constitutes removal of the supernatant for the purpose of this requirement.

(iii) *Subsequent management.* Treatment residues may not be placed in any other surface impoundment for subsequent management unless the residues are the subject of a valid certification under § 268.8 which allows disposal in surface impoundments meeting the requirements of § 268.8(a).

(iv) *Recordkeeping.* The procedures and schedule for the sampling of impoundment contents, the analysis of test data, and the annual removal of residues which do not meet the treatment standards, or prohibition levels (where no treatment standards have been established), or which are from the treatment of wastes prohibited from land disposal under Subpart C (where no treatment standards have been established and no prohibition levels apply), must be specified in the facility's waste analysis plan as required under § 264.13 or § 265.13 of this chapter.

* * * * *

4. Section 268.5 is amended by revising paragraph (h)(2) introductory text to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

* * * * *

(h) * * *

(2) Such hazardous waste may be disposed of in a landfill or surface impoundment unit only if the unit is in compliance with the following requirements:

* * * * *

5. Section 268.6 is amended by revising paragraph (a)(3) and adding new paragraphs (a)(4) and (a)(5), and revising paragraphs (c), (e) and (f) to read as follows:

§ 268.6 Petitions to allow land disposal of a waste prohibited under Subpart C of Part 268.

(a) * * *

(3) A comprehensive characterization of the disposal unit site including an analysis of background air, soil, and water quality.

(4) A monitoring plan which will detect migration at the earliest practicable time;

(5) Sufficient information to assure the Administrator that land disposal of the restricted waste(s) will comply with other applicable Federal, State, and local laws.

* * * * *

(c) Each petition referred to in paragraph (a) of this section must include the following:

(1) A monitoring plan that describes the monitoring program installed at and/or around the unit to verify continued compliance with the conditions of the variance. This monitoring plan must provide information on the monitoring of the unit and/or the environment around the unit, or if monitoring the unit or environment around the unit is technically infeasible or impractical, the rationale supporting the determination of infeasibility or impracticality. The following specific information must be included in the plan:

(i) The media monitored in the cases where monitoring of the environment around the unit is required;

(ii) The type of monitoring conducted at the unit, in the cases where monitoring of the unit is required;

(iii) The location of the monitoring stations;

(iv) The monitoring interval (frequency of monitoring at each station);

(v) The specific hazardous constituents to be monitored;

(vi) The implementation schedule for the monitoring program;

(vii) The equipment used at the monitoring stations;

(viii) The sampling and analytical techniques employed; and

(ix) The data recording/reporting procedures.

(2) Where applicable, the monitoring program described in paragraph (c)(1) must be in place for a period of time specified by the Administrator prior to receipt of restricted waste at the unit, unless an alternate schedule is approved by the Administrator.

(3) The monitoring data collected according to the monitoring plan specified under paragraph (c)(1) of this section must be sent to the Administrator according to a format and schedule specified and approved in the monitoring plan, and

(4) A copy of the monitoring data collected under the monitoring plan specified under paragraph (c)(1) of this section must be kept on-site at the facility in the operating record.

(5) The monitoring program specified under paragraph (c)(1) of this section meet the following criteria:

(i) All sampling, testing, and analytical data must be approved by the Administrator and must provide data that is accurate and reproducible.

(ii) All estimation and modeling techniques must be approved by the Administrator.

(iii) A quality assurance and quality control plan addressing all aspects of the monitoring program must be provided to and approved by the Administrator.

* * * * *

(e) After a petition has been approved, the owner or operator must report any changes in conditions at the unit and/or the environment around the unit that may affect requirements upon which the petition was approved.

(1) If the owner or operator desires to make changes to the unit such as the engineering design, or the compliance monitoring system such a change must be proposed, in writing, and the owner or operator must submit a demonstration to the Administrator at least 30 days prior to making the change. The Administrator will determine whether the proposed change invalidates the terms of the petition and will determine the appropriate response. Any change must be approved by the Administrator prior to being made.

(2) If the owner or operator discovers that a condition at the site which was modeled or predicted in the petition does not occur as predicted, this change must be reported, in writing, to the Administrator within 10 days of discovering the change. The Administrator will determine whether the reported change from the terms of the petition requires further action, which may include revocation of the petition, petition modifications, or other responses.

(f) If the owner or operator determines that there is migration of hazardous constituent(s) from the unit, the owner or operator must:

(1) Immediately suspend receipt of restricted wastes at the unit, and

(2) Notify the Administrator, in writing, within 10 days of the determination that a release has occurred.

(3) Following receipt of the notification the Administrator will determine within 60 days of receiving notification the appropriate response actions that the owner or operator must take to prevent further migration of hazardous constituents out of the unit.

* * * * *

6. Section 268.7 is amended by revising the introductory texts of paragraphs (a)(1) and (a)(2), and by revising (a)(3), by redesignating paragraph (a)(4) as (a)(5), by adding the new paragraph (a)(4), by revising paragraph (b) introductory text, by redesignating paragraph (b)(1) as (b)(4) and (b)(2) as (b)(5), by adding new paragraphs (b)(1), (b)(2), (b)(3), (b)(6), and (b)(7), and by revising paragraph (c) to read as follows:

§ 268.7 Waste analysis.

(a) Except as specified in § 268.32 or § 268.43 of this part, the generator must test his waste, or test an extract developed using the test method described in Appendix I of this part, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part.

(1) If a generator determines that he is managing a restricted waste under this part and the waste does not meet the applicable treatment standards, or where the waste does not comply with the applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d), with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in Subpart D of this part and any applicable prohibitions set forth in § 268.32 of this part or RCRA section 3004(d). The notice must include the following information:

* * * * *

(2) If a generator determines that he is managing a restricted waste under this part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in Subpart D of this part and the applicable prohibitions set forth in § 268.32 of this part of RCRA section 3004(d).

* * * * *

(3) If a generator's waste is subject to a case-by-case extension under § 268.5, an exemption under § 268.6, an extension under § 268.1(c)(3), or a nationwide variance under Subpart C, with each shipment of waste, he must submit a notice to the facility receiving his waste stating that the waste is not prohibited from land disposal.

(4) If a generator determines that he is managing a waste that is subject to the prohibitions under § 268.33(e) of this part and is not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of waste the generator must notify the treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(e). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in § 268.33(e);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data where available.

* * * * *

(b) Treatment facilities must test their wastes according to the frequency specified in their waste analysis plans as required by § 264.13 or § 265.13. Such testing must be performed as provided in paragraphs (b)(1), (b)(2) and (b)(3) of this section.

(1) For wastes with treatment standards expressed as concentrations in the waste extract (§ 268.41), the owner or operator of the treatment facility must test the treatment residues, or an extract of such residues developed using the test method described in Appendix I of this part, to assure that the treatment residues or extract meet the applicable treatment standards.

(2) For wastes that are prohibited under § 268.32 of this part or RCRA section 3004(d) but not subject to any treatment standards under Subpart D of this part, the owner or operator of the

treatment facility must test the treatment residues according to the generator testing requirements specified in § 268.32 to assure that the treatment residues comply with the applicable prohibitions.

(3) For wastes with treatment standards expressed as concentrations in the waste (§ 268.43), the owner or operator of the treatment facility must test the treatment residues (not an extract of such residues) to assure that the treatment residues meet the applicable treatment standards.

* * * * *

(6) If the waste or treatment residue will be further managed at a different treatment or storage facility, the treatment, storage or disposal facility sending the waste or treatment residue off-site must comply with the notice requirements applicable to generators in paragraph (a)(1) of this section.

(7) For wastes that are subject to the prohibitions under § 268.33(e) of this part and are not subject to the prohibitions set forth in § 268.32 of this part, with each shipment of such waste the owner or operator must notify any subsequent treatment, storage, or disposal facility, in writing, of any applicable prohibitions set forth in § 268.33(e). The notice must include the following information:

(i) EPA Hazardous Waste Number;

(ii) The applicable prohibitions set forth in § 268.33(e);

(iii) The manifest number associated with the shipment of waste; and

(iv) Waste analysis data, where available.

(c) The owner or operator of any land disposal facility disposing any waste subject to restrictions under this part must:

(1) Have records of the notice and certifications specified in paragraph (a) or (b) of this section, and the certification specified in § 268.8 if applicable.

(2) Test the waste, or an extract of the waste or treatment residue developed using the test method described in Appendix I of this part or using any methods required by generators under § 268.32 of this part, to assure that the wastes or treatment residues are in compliance with the applicable treatment standards set forth in Subpart D of this part and all applicable prohibitions set forth in § 268.32 of this part or in RCRA section 3004(d). Such testing must be performed according to the frequency specified in the facility's waste analysis plan as required by § 264.13 or § 265.13.

(3) Where the owner or operator is disposing of any waste that is subject to the prohibitions under § 268.33(e) of this part but not subject to the prohibitions set forth in § 268.32, he must ensure that such waste is the subject of a valid certification according to the requirements of § 268.8 prior to disposal in a landfill or surface impoundment unit, and that such disposal is in accordance with the requirments of § 268.5(h)(2).

7. Section 268.8 is added to read as follows:

§ 268.8 Landfill and surface impoundment disposal restrictions.

(a) Prior to May 8, 1990, wastes which are otherwise prohibited from land disposal under § 268.33(e) of this part may be disposed in a landfill or surface impoundment which is in compliance with the requirements of § 268.5(h)(2) provided that the requirements of this section are met.

(1) Prior to such disposal, the person seeking to dispose such wastes (i.e., the generator or owner or operator) has made a good faith effort to locate and contract with treatment and recovery facilities currently available.

(2) Such generator or owner or operator submits to the Regional Administrator a demonstration and certification that the requirements of paragraph (a)(1) of this section have been met. The demonstration must include a list of facilities and facility officials contacted, addresses, telephone numbers, contact dates, and an explanation of why no treatment is practically available. The following certification is required.

I certify under penalty of law that the requirements of 40 CFR 268.8(a)(1) have been met and that disposal in a landfill or surface impoundment is the only practical alternative to treatment currently available. I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false informations, including the possibility of fine and imprisonment.

(3) With the initial shipment of waste, such generator or owner or operator must submit a copy of the demonstration and the certification required in paragraph (a)(2) of this section to the land disposal facility. For each subsequent waste shipment, only the certification is rquired to be submitted provided that the conditions being certified remain unchanged. Such generator or owner or operator must keep copies of the demonstration (if applicable) and certification required for each waste shipment on-site.

(b) After receiving the demonstration and certification, the Regional Administrator may request any additional information which he deems necessary to evaluate the certification.

(1) Any person who has submitted a certification under this section must immediately notify the Regional Administrator when he has knowledge of any change in the conditions which formed the basis of his certification.

(2) If, after review of the certification, the Regional Administrator determines that treatment (or further treatment) that yields reductions in toxicity is practically and currently available, or that some other method of treatment yields greater reductions in toxicity of the waste or residual or greater reductions in the likelihood of migration of hazardous constituents from the waste or residual, the Regional Administrator may invalidate the certification and require such additional treatment.

(c) Once the certification is made, wastes may be disposed in a landfill or surface impoundment unless otherwise prohibited by the Regional Administrator.

Subpart C—Prohibition on Land Disposal

8. Section 268.33 is added to read as follows:

§ 268.33 Waste specific prohibitions—First Third wastes.

(a) Effective August 8, 1988, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K004, K008, K015, K036, K062, K069, K073, and K100 are prohibited from land disposal.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Nos. K016, K018, K019, K020, K024, K030, K037, K048, K049, K050, K051, K052, K061, K071, K103, and K014 are prohibited from land disposal.

(c) Between August 8, 1988, and May 8, 1990, for wastes described in paragraph (b) of this section, disposal in a landfill or surface impoundment is allowed only if the unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraph (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable standards specified in Subpart D of this part; or

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition; or

(3) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with

respect to those wastes covered by the extension.

(e) Between August 8, 1988, and May 8, 1990, the wastes specified in § 268.10 for which treatment standards under Subpart D of this part or prohibitions in § 268.32 or in RCRA section 3004(d) are not applicable are prohibited from disposal in a landfill or, surface impoundment unless the wastes are the subject of a valid demonstration and certification pursuant to § 268.8.

(f) To determine whether a hazardous waste listed in § 268.10 exceeds the applicable treatment standards specified in § 268.43, the initial generator must test a representative sample of the entire waste (not a leach extract). If the waste contains constituents in excess of the applicable Subpart D levels, the waste is prohibited from land disposal and all requirements of Part 268 are applicable, except as otherwise specified in this section.

Subpart D—Treatment Standards

9. Section 268.40 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A restricted waste identified in § 268.41 may be land disposed only if an extract of the waste or of the treatment residue of the waste developed using the test method in Appendix I of this part does not exceed the value shown in Table CCWE of § 268.41 for any hazardous constituent listed in Table CCWE for that waste.

* * * * *

(c) A restricted waste identified in § 268.43 may be land disposed only if the constituent concentrations in the waste or treatment residue of the waste do not exceed the value shown in Table CCWE of § 268.43 for any hazardous constituent listed in Table CCWE for that waste.

10. Section 268.41(a) is amended by adding the following subtables to Table CCWE in alphabetical and numerical order by EPA Hazardous Waste Number:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) * * *

Table CCWE—Constituent Concentrations in Waste Extract

* * * * *

K061 nonwastewater (see also table CCW in § 268.43)	Concentration (in mg/l)
Cadmium	0.19
Chromium (total)	0.33
Lead	0.09
Mercury	0.02
Zinc	0.50

K062 nonwastewater (see also table CCW in § 268.43)	Concentration (in mg/l)
Chromium (total)	0.094
Lead	0.37

K071 nonwastewater (see also table CCW in § 268.43)	Concentration (in mg/l)
Mercury	0.0025

K048, K049, K050, K051, K052 nonwastewater (see also table CCW in § 268.43)	Concentration (in mg/l)
Arsenic	0.006
Chromium (total)	1.68
Copper	0.013
Nickel	0.048
Selenium	0.025
Vanadium	0.18
Zinc	0.141

* * * * *

11. Section 268.43 is amended by adding paragraphs (a) and (b) and Table CCW to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) Table CCW identifies the restricted wastes and the concentrations of their associated hazardous constituents which may not be exceeded by the waste or treatment residual (not an extract of such waste or residual) for the allowable land disposal of such waste or residual.

TABLE CCW—CONSTITUENT CONCENTRATIONS IN WASTES

K061 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Cadmium	44.0
Chromium	1730.0
Lead	20,300.0
Mercury	0.28
Zinc	24,100.0

K062 wastewater (see also table CCWE in § 268.41)	Concentration (in mg/l)
Chromium (total)	0.32
Copper	0.42
Nickel	0.44

K062 wastewater (see also table CCWE in § 268.41)	Concentration (in mg/l)
Lead	0.04

K016 nonwastewater	Concentration (in mg/kg)
Tetrachloroethene	5.96
Hexachlorobenzene	27.2
Hexachlorobutadiene	5.44
Hexachlorocyclopentadiene	5.44
Hexachloroethane	27.2

K016 nonwastewater	Concentration (in mg/l)
Tetrachloroethene	0.007
Hexachlorobenzene	0.033
Hexachlorobutadiene	0.007
Hexachlorocyclopentadiene	0.007
Hexachloroethane	0.033

K018 nonwastewater	Concentration (in mg/kg)
Chloroethane	5.96
1,1-Dichloroethane	5.96
1,2-Dichloroethane	5.96
1,1,1-Trichloroethane	5.96
Hexachlorobenzene	27.2
Hexachloroethane	27.2
Hexachlorobutadiene	5.44
Pentachloroethane	5.44

K018 nonwastewater	Concentration (in mg/l)
Chloroethane	0.007
Chloromethane	0.007
1,1-Dichloroethane	0.007
1,2-Dichloroethane	0.007
1,1,1-Trichloroethane	0.007
Hexachlorobenzene	0.033
Hexachlorobutadiene	0.007
Pentachloroethane	0.007

K019 nonwastewater	Concentration (in mg/kg)
Chloroform	5.96
1,2-Dichloroethane	5.96
Tetrachloroethene	5.96
1,1,1-Trichloroethane	5.96
Bis(2-chloroethyl)ether	5.44
Chlorobenzene	5.66
Hexachloroethane	27.2
Naphthalene	5.44
Phenanthrene	5.44
1,2,4-Trichlorobenzene	18.7

K019 wastewater	Concentration (in mg/l)
Chlorobenzene	0.006
Chloroform	0.007
1,2-Dichloroethane	0.007

K019 wastewater	Concentration (in mg/l)
Tetrachloroethene	0.007
1,1,1-Trichloroethane	0.007
Bis(2-chloroethyl)ether	0.007
p-Dichlorobenzene	0.008
Hexachloroethane	0.033
Naphthalene	0.007
1,2,4,5-Tetrachlorobenzene	0.017
1,2,4-Trichlorobenzene	0.023
Fluorene	0.007
Phenanthrene	0.007

K020 nonwastewater	Concentration (in mg/kg)
1,2-Dichloroethane	5.96
1,1,2,2-Tetrachloroethane	5.44
Tetrachloroethene	5.96

K020 wastewater	Concentration (in mg/l)
1,2-Dichloroethane	0.007
1,1,2,2-Tetrachloroethane	0.007
Tetrachloroethene	0.007

K030 nonwastewater	Concentration (in mg/kg)
Hexachlorobutadiene	5.44
Hexachloroethane	27.2
Hexachloropropene	18.7
Pentachlorobenzene	27.2
Pentachloroethane	5.44
1,2,4,5-Tetrachlorobenzene	13.6
Tetrachloroethene	5.96
1,2,4-Trichlorobenzene	18.7

K030 wastewater	Concentration (in mg/l)
Tetrachloroethene	0.007
Hexachlorobutadiene	0.007
Hexachloroethane	0.007
Pentachloroethane	0.007
1,2,4,5-Tetrachlorobenzene	0.017
1,2,4-Trichlorobenzene	0.023
o-Dichlorobenzene	0.008
p-Dichlorobenzene	0.008

K024 nonwastewater	Concentration (in mg/kg)
Phthalic acid	6.0

K024 wastewater	Concentration (in mg/l)
Phthalic acid	0.08

K103 and K104 nonwastewater	Concentration (in mg/kg)
Aniline	27.2
Benzene	5.96
2,3-Dinitrophenol	5.44
Nitrobenzene	18.7
Phenol	27.2
Total Cyanides (for K104 only)	1.48

K103 and K104 wastewater	Concentration (in mg/l)
Aniline	4.450
Benzene	0.147
2,3-Dinitrophenol	0.613
Nitrobenzene	0.073
Phenol	1.391
Total Cyanides (for K104 only)	2.683

K071 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Mercury	4.6

K071 wastewater	Concentration (in mg/l)
Mercury	0.030

K048 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Bis(2-ethylhexyl)phthalate	4.18
Toluene	3.93
Chrysene	0.84
Xylene	8.54
Di-n-butyl phthalate	4.18
Naphthalene	0.84
Phenanthrene	0.84
Phenol	0.84
Cyanide	1.48

K048 wastewater	Concentration (in mg/l)
Phenol	0.007
Fluorene	0.007
Toluene	0.007
Xylene	0.007
Naphthalene	0.007
Phenanthrene	0.007
Chromium (total)	0.20
Lead	0.037
Zinc	0.40

K049 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Chrysene	0.84
Xylene	8.54
Benzene	3.93
Toluene	3.93

K049 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Naphthalene	0.84
Phenanthrene	0.84
Phenol	0.84
Pyrene	1.06
Cyanaide	1.48

K049 wastewater	Concentration (in mg/l)
Anthracene	0.007
Xylene	0.007
2,4-Dimethylphenol	0.007
Benzene	0.023
Toluene	0.007
Naphthalene	0.007
Phenanthrene	0.007
Phenol	0.007
Chromium (total)	0.20
Lead	0.037
Zinc	0.40

K050 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Benzo(a)pyrene	0.84
Phenol	0.84
Cyanide	1.48

K050 wastewater	Concentration (in mg/l)
Phenol	0.007
Chromium (total)	0.20
Lead	0.037
Zinc	0.40

K051 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Toluene	3.93
Chrysene	0.84
Xylene	8.54
Di-n-butyl phthalate	4.18
Naphthalene	0.84
Phenanthrene	0.84
Phenol	0.84
Pyrene	1.06
Cyanide	1.48

K051 wastewater	Concentration (in mg/l)
Fluorene	0.007
Acenaphthene	0.007
Toluene	0.007
Xylene	0.007
Naphthalene	0.007
Phenanthrene	0.007
Phenol	0.007
Chromium (total)	0.20
Lead	0.037
Zinc	0.40

K052 nonwastewater (see also table CCWE in § 268.41)	Concentration (in mg/kg)
Toluene	3.93
Xylene	8.54
o-Cresol	0.84
p-Cresol	0.84
Naphthalene	0.84
Phenanthrene	0.84
Phenol	0.84
Cyanide	1.48

K052 wastewater	Concentration (in mg/l)
Phenanthrene	0.007
2,4-Dimethylphenol	0.007
Benzene	0.023
Xylene	0.007
o-Cresol	0.007
p-Cresol	0.007
Naphthalene	0.007
Phenol	0.007
Chromium (total)	0.20
Lead	0.037
Zinc	0.40

K015 wastewater	Concentration (in mg/l)
Anthracene	1.02
Benzal chloride	0.28
Benzo(b and/or k) fluoranthene	0.29
Phenanthrene	0.27
Toluene	1.00
Chromium (total)	0.30
Nickel	0.44

K037 nonwastewater	Concentration (in mg/kg)
Disulfoton	0.1
Toluene	28.0

K037 wastewater	Concentration (in mg/l)
Disulfoton	0.003
Toluene	0.028

No Land Disposal for:

K004
K008
K015 nonwastewater
K036
K061 wastewater
K069
K073
K100

(b) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

Subpart E—Prohibitions on Storage

12. Section 268.50 is amended by revising paragraph (d) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

* * * * *

(d) The prohibition in paragraph (a) of this section does not apply to wastes which are the subject of an approved petition under § 268.6, a nationwide variance under Subpart C of this part, an approved case-by-case extension under § 268.5, or a valid certification under § 268.8.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

IV. In Part 271:

1. The authority citation for Part 271 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

2. 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**:

§ 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
•	•	•	•
[Insert date of publication of final rule in the FEDERAL REGISTER].	Land disposal restrictions for First Third wastes	53 FR [insert FEDERAL REGISTER page numbers]	Aug. 8, 1988.
•	•	•	•

3. Section 271.1(j) is amended by adding the date of publication and the **Federal Register** page numbers to the following entry in Table 2.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
•	•	•	•
Aug. 8, 1988	Land disposal restrictions on First Third of listed wastes.	3004(g)	[Insert date of publication], 53 FR [insert FEDERAL REGISTER page numbers].
•	•	•	•

[FR Doc. 88-7379 Filed 4-7-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
April 8, 1988

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 43, 47, and 52
Federal Acquisition Regulation (FAR); Threshold; Cost Comparison; Proposed Rule

Federal Register

Friday
April 8, 1988

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 42, 47, and 52
Federal Acquisition Regulation (FAR);
Three-Month Cost Comparison Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 43, 47, and 52

Federal Acquisition Regulation (FAR); Threshold; Cost Comparison

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) to delete the clause at 52.247–27, Contract Not Affected by Oral Agreement, and its prescription at 47.207–8(b); and to add optional clause 52.243–8, Authorities and Limitations, and its corresponding prescription at 43.106(b).

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before June 7, 1988, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 88–21 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, telephone 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background.

The Authorities and Limitations clause that is introduced into the FAR by this revision was developed by the FAR Councils in recognition of a need for a contract clause that (1) sets forth the appropriate authorities and limitations regarding contract modifications; (2) has a more universal applicability than the clause at FAR 52.247–27, Contract Not Affected by Oral Agreement, which is prescribed for use only in contracts for transportation and transportation related services; and (3) may be used in contracting situations that are less complex than those in which the clause at FAR 52.243–7, Notification of Changes, is appropriate.

B. Regulatory Flexibility Act.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the proposed revisions are merely an administratively less burdensome alternative than the "notification of changes" clause at 52.243–7. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties.

Comments from small entities concerning the affected FAR subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 88–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and OMB approval is not required pursuant to 5 CFR Part 1320, et seq.

List of Subjects in 48 CFR Parts 43, 47, and 52

Government procurement.

Dated: March 28, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 43, 47, and 52 be amended as set forth below:

1. The authority citation for Parts 43, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 43—CONTRACT MODIFICATIONS

2. Section 43.106 is amended by adding paragraph (b) to read as follows:

43.106 Contract clause.

* * * * *

(b) The Contracting officer may insert the clause at 52.243–8, Authorities and Limitations, in solicitations and contracts other than small purchases, when inclusion of the clause at 52.243–7 is not appropriate.

PART 47—TRANSPORTATION

47.207–8 [Amended]

3. Section 47.207–8 is amended by removing and reserving paragraph (b).a

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.243–8 is added to read as follows:

52.243–8 Authorities and Limitations.

As prescribed in 43.106(b), insert the following clause:

Authorities and Limitations (Mar 1988)

(a) Authority to modify this contract on behalf of the Government is expressly limited to authorized persons (see section 43.102 of the Federal Acquisition Regulation (FAR)) who are properly designated as Contracting Officers in accordance with FAR Subpart 1.6.

(b) Except as otherwise may be expressly provided in this contract, the Contractor assumes all risks, liabilities, and consequences of performing this contract in accordance with any written or oral order (including, but not limited to, direction, instruction, interpretation, or determination) of a person not authorized in writing to issue such an order.

52.247–27 [Removed and reserved]

5. Section 52.247–27 is removed and reserved.

[FR Doc. 88–7696 Filed 4–7–88; 8:45 am]

BILLING CODE 6820–61–M

federal register

Friday
April 8, 1988

Part IV

Environmental Protection Agency

Chlordane/Heptachlor Termiticides; Notice of Cancellation and Existing Stocks Determination and Notice of Intent To Suspend

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66137; FRL-3363-5]

Chlordane/Heptachlor Termiticides; Notification of Cancellation and Amendment of Existing Stocks Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation and existing stocks determination.

SUMMARY: This Notice announces the cancellation of various chlordane/heptachlor termiticide product registrations and establishes certain limitations on the sale and use of existing stocks of such products. Most of the product registrations affected by this Notice were voluntarily cancelled in 1987. At the time of cancellation, the Agency established certain provisions for the continued sale and use of existing stocks. The United States District Court for the District of Columbia issued a ruling on February 23, 1988, ordering the Agency to take "whatever action is necessary * * * so that on and after April 15, 1988, sales, commercial use and commercial application of existing stocks of chlordane and heptachlor which have been the subject of voluntary cancellations shall cease * * *" This Notice describes the Agency's implementation of the Court's ruling and provides a mechanism for holders of existing stocks to challenge the existing stocks limitations set forth herein.

DATE: All comments on or challenges to the existing stocks limitations described in this Notice must be received on or before May 9, 1988.

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP 66137," by mail to: Information Services Section, Program Management and Support Division (TS-757C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments submitted in response to this Notice will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460, (703-557-2400).

SUPPLEMENTARY INFORMATION: This Notice is organized in three units. Unit I is the notification of the voluntary cancellation actions and the modified existing stocks determination. Unit II provides a list of product registrations to which the Notification and Existing Stocks Determination apply. Unit III is a copy of the District Court's February 23rd Judgment and Order which provides the basis for the modification of existing stocks determination.

I. Notification of Cancellation of Various Chlordane/Heptachlor Termiticide Registrations and Existing Stocks Determination

In December 1986, EPA issued two documents entitled "Guidance for the Reregistration of Pesticide Products Containing Chlordane [or Heptachlor] as the Active Ingredient." Among other things, these documents identified various scientific studies which EPA required registrants to submit to the Agency under FIFRA section 3(c)(2)(B) in order to support continued registration of their chlordane and heptachlor products. Since the issuance of these documents, a number of registrants holding registrations for chlordane and/or heptachlor termiticide products requested cancellation of their registrations. A list of such product registrations to which this Notification and Existing Stocks Determination applies is provided in Unit II of this Notice. EPA accepted these voluntary cancellations, and in return allowed the registrants to continue to distribute the cancelled products for 12 months after cancellation and placed no limitations upon distribution or use of the products outside of the registants' control (except that all such distribution and use was required to comply with the approved labels for the products).

On February 23, 1988, in the case of *National Coalition Against the Misuse of Pesticides* v. *EPA*, the United States District Court for the District of Columbia ruled that EPA had not acted in accordance with section 6(a)(1) of FIFRA in granting authorization to distribute and use existing stocks of cancelled pesticide products without first determining that such sale and use would not have unreasonable adverse effects on the environment. The Court therefore ruled that the Agency's allowance of continued sale and use of cancelled chlordane products was void, and ordered EPA to take "whatever action is necessary * * * so that on and after April 15, 1988, sales, commercial use and commercial application of existing stocks of chlordane and heptachlor which have been the subject of voluntary cancellations shall cease * * *." The Court's decision is reprinted in Unit III of this Notice.

In order to implement the Court's ruling, EPA is issuing this Notification of Cancellation and Existing Stocks Determination. Pursuant to the Court's ruling, EPA hereby serves notice that the registrations for the products listed in Unit II of this Notice are cancelled, and that pursuant to section 6(a)(1) of FIFRA, 7 U.S.C. 136d(a)(1), it shall be unlawful for any person to distribute, sell, offer for sale, hold for sale, deliver for shipment, or receive (and having so received) deliver or offer to deliver to any person, or to make commercial use or commercial application of such products, after April 14, 1988. Any of the foregoing listed actions involving the cancelled registrations listed in Unit II of this Notice after April 14, 1988 shall be a violatioin of FIFRA section 12(a)(2)(k) which states:

> It shall be unlawful for any person to violate any cancellation of registration of a pesticide under section 6, except as provided in section 6(a)(1).

The prohibition on sale and commercial use of chlordane/heptachlor products affected by the determinations set forth in this Notice is intended to apply to all sale of such products in any situation, and to all use and application of such products with the exception of use and application in accordance with label directions by individuals (as opposed to organizations, government agencies, corporations, etc.) on property owned by those individuals. However, this exception for individuals shall not apply to use or application by individuals on property which is owned by them but which is rented or leased to others and is occupied or intended to be occupied by human beings, nor to use on new structures intended for human occupation which are under construction for sale or lease.

As noted earlier, the basis for the Court's ruling was the Court's determination that EPA had not made the finding required by FIFRA section 6(a)(1) in order to allow continued sale or use of the cancelled chlordane/heptachlor products. The Court ruled

that the finding the Agency had made with respect to the cancelled stocks was not the finding required by the statute, and that in the absence of the proper finding, no further sale or use could lawfully be permitted. This proper finding, according to the Court, must be "* * * a reasoned finding, supported by evidence, as to whether the continued sale and use of existing stocks of non-Velsicol registered, reformulated chlordane and heptachlor 'is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment'* * *."

The Agency has not made the finding the Court ruled was required to support continued sale and use of existing stocks. In the absence of the finding called for the Court's Order, no further sale or commercial use will be allowed. However, the Agency believes it is appropriate under all the facts of this case to provide any person adversely affected by this Notification and Existing Stocks Determination an opportunity to provide the Agency with evidence that would support a finding that continued sale and commercial use of the products listed in Unit II of this Notice would not be inconsistent with the purposes of FIFRA and would not have unreasonable adverse effects on the environment.

Accordingly, any person adversely affected by this Notification and Existing Stocks Determination may petition the Agency on or before May 9, 1988 to make a finding pursuant to section 6(a)(1) that would permit continued sale or commercial use of the listed cancelled products. Such a petition must include sufficient evidence to support the finding urged by the petitioner. If the Agency determines that a properly supported petition has been submitted and that an affirmative finding pursuant to section 6(a)(1) should be made, the Agency will petition the District Court for modification of its February 23rd Order in accordance with its findings.

Any disposal of products of cancelled registrations subject to this Notification and Existing Stocks Determination must be in accordance with the requirements of applicable Federal, state, and local laws and regulations, including the Resource Conservation and Recovery Act.

II. List of Voluntarily Cancelled Registrations of Chlordane and Heptachlor Termiticides

Below are listed, in order of EPA Registration numbers, the voluntarily cancelled registrations for chlordane and heptachlor termiticide products to which this Notice applies. The names of the companies to which these registrations are assigned to EPA's files, and the effective dates of cancellation are also provided. Product names are not listed since these are often changed and no listing would be complete.

Chlordane and heptachlor products registered to Velsicol Chemical Corporation are not affected by the present Notice, but rather by the Agency's Order of October 1, 1987, published in the **Federal Register** of November 3, 1987 (52 FR 42145). However, since the sale, distribution and use of Velsicol's voluntarily cancelled products also terminate on April 15, 1988, these registrations are included in the following list for the convenience of all interested parties.

CHLORDANE CANCELLATIONS

Company	EPA Registration No.	Effective Date
Bonide Chemical	4-96	3/17/88
	4-218	3/17/88
	4-274	3/17/88
	4-275	3/17/88
	4-287	3/17/88
Dragon Chemical Corp	16-96	4/27/87
	16-116	4/27/87
	16-122	4/27/87
	16-124	4/27/87
Rigo Company IncD70-119	4/27/87	
Thompson-Hayward Chemical Co	148-27	6/01/87
	148-139	6/01/87
Dexol Industries	192-42	3/30/88
	192-43	3/30/88
	192-132	3/30/88
	192-133	3/30/88
Tobacco States Chemical Co	226-177	4/27/87
	226-184	4/27/87
Chevron Chemical Co	239-478	3/25/87
	239-1232	3/25/87
FMC Corp	279-383	3/07/87
	279-538	11/01/86
C.J. Martin Co	299-171	3/25/87
Residex Corp	373-26	3/25/87
Imperial Inc	407-269	3/25/87
	407-400	3/25/87
Boyle-Midway Inc	475-192	3/25/87
Rockland Chemical Company Inc	572-65	3/25/87
Haviland Agricultural Chemical Co	595-129	3/25/87
	595-321	3/25/87
Federal Chemical Company Inc	654-12	6/01/87
	654-19	7/01/87
	654-67	7/01/87
	654-110	6/01/87
Prentiss Drug and Chemical Co	655-516	3/25/87
Perk Products and Chemical Co	690-53	7/01/87
Southland Pearson and Co	728-45	3/24/88
	728-47	3/24/88
MFA Oil Co	746-58	3/25/87
	746-76	3/25/87
	746-119	3/25/87
Security Lawn and Garden Products Co	769-90	3/25/87

CHLORDANE CANCELLATIONS—Continued

Company	EPA Registration No.	Effective Date
	769-511	3/25/87
Faesy & Besthoff Inc	779-82	6/02/87
Chas. H. Lilly Co	802-71	9/11/87
Green Light Co	869-14	3/25/87
	869-188	3/25/87
Velsicol Chemical Co	876-63	11/04/87
	876-86	3/25/87
	876-100	3/25/87
	876-104	11/04/87
	876-233	11/04/87
	876-281	9/28/87
	876-303	9/28/87
	876-304	9/28/87
	876-305	9/28/87
	876-306	9/28/87
	876-308	9/28/87
	876-309	4/28/87
	876-310	4/27/87
Miller Chemical and Fertilizer Corp	904-135	3/25/87
	904-223	3/25/87
Cre-O-Tox Chemical Products Co	1066-26	7/01/87
	1066-28	7/01/87
	1066-29	3/19/88
Seacoast Laboratories Inc	1159-102	7/01/87
	1159-178	7/01/87
Cotton States Chemical Co	1339-74	8/20/87
	1339-87	8/20/87
Land O'Lakes	1381-51	3/25/87
	1381-83	3/25/87
Universal Cooperatives Inc	1386-26	3/25/87
	1386-324	8/20/87
	1386-353	8/20/87
Dettlebach Chemical Corp	1421-23	3/21/88
FCX, Inc	1598-145	4/27/87
	1598-244	4/27/87
Griffin Corp	1812-242	7/01/87
	1812-243	7/01/87
Triangle Chemical Co	1842-41	5/14/87
	1842-42	5/14/87
Terminix Division of Cook Industries Inc	1927-5	2/19/87
	1927-20	2/19/87
	1927-21	2/19/87
	1927-49	2/19/87
ELCO Manufacturing Co	1941-66	7/01/87
Farmland Industries Inc	1990-178	3/25/87
	1990-179	3/25/87
W.R. Grace and Co	2124-742	3/28/88
PBI-Gordon Corp	2217-34	5/01/87
	2217-98	5/01/87
Hopkins Agricultural Chemical	2393-350	3/25/87
Colonial Products Inc	3314-73	7/01/87
	3314-74	7/01/87
LaRoche Industries	3442-747	3/25/87
	3442-816	3/25/87
	3442-846	3/25/87
	3442-847	3/25/87
Earl May Seed and Nursery L.P	3772-8	3/25/87
Stephenson Chemical Company Inc	4887-19	3/22/88
	4887-48	3/22/88
	4887-183	3/22/88
Redwood Chemical Inc	4981-5	6/29/87
	4981-6	6/29/87
Coastal Chemical Corp	5549-41	3/17/88
Chacon Chemical Corp	5719-24	7/01/87
GRO Chemical Co	5778-33	6/11/87
Helena Chemical Co	5905-97	3/25/87

CHLORDANE CANCELLATIONS—Continued

Company	EPA Registration No.	Effective Date
	5905-102	3/25/87
Octagon Process Inc.	6820-15	7/01/87
ArChem Corp	7122-3	3/17/88
	7122-34	3/17/88
	7122-121	3/17/88
Forshaw Chemical Co.	7234-5	3/17/88
	7234-6	3/17/88
	7234-10	3/18/88
	7234-100	3/17/88
	7234-101	3/17/88
	7234-20	3/18/88
Voluntary Purchasing Group, Inc	7401-78	6/18/87
	7401-348	6/18/87
B and G Co	8612-86	3/21/88
Sunniland Corp	9404-6	3/23/88
Nationwide Chemical Products, Inc	9591-6	10/01/87
	9591-7	10/01/87
Ross-Daniels, Inc.	9649-2	6/12/87
Cornbelt Chemical Co.	10107-7	3/21/88
	10107-8	3/21/88
Ford's Chemical and Service Inc	10370-40	3/28/88
	10370-116	3/28/88
	10370-144	3/28/88
	10370-145	3/28/88
Hacienda Enterprises	11037-7	4/27/87
Puma Chemical Company	11611-4	7/17/87
Drexel Chemical Company	19713-214	3/24/88
	19713-215	3/24/88
Platte Chemical Co.	34704-1	4/27/87
Falls Chemical Co	40831-5	3/24/88
	40831-24	3/24/88
Kaw Valley, Inc	44215-7	9/08/87
	44215-20	12/12/87
Wilson Laboratories	50383-20	3/24/88
	50383-29	3/24/88
Cameron M. Baird	50415-27	7/01/87
Micro-Flo Co	51036-30	11/13/87
	51036-31	11/13/87
Garden Care by Farmingdale, Ltd	53127-1	3/22/88
	53127-10	3/22/87

HEPTACHLOR CANCELLATIONS

COMPANY	EPA REGISTRATION NO.	EFFECTIVE DATE
Thompson-Hayward Chemical Co.	148-964	6/01/87
Velsicol Chemical Corp.	876-101	4/27/87
	876-85	9/28/87
	876-233	11/04/87
	876-308	9/28/87
	876-309	4/27/87
	876-310	4/27/87
Cre-O-Tox Chemical Products Co.	1066-28	7/01/87
	1066-29	3/19/88
	1066-30	7/01/87
Griffin Corp.	1812-77	7/01/87
Triangle Chemical Co.	1842-183	5/14/87
Terminix Division of Cook Industries, Inc.	1927-50	4/21/87
Stephenson Chemical Company Inc.	4887-59	3/22/88
	4887-85	3/22/88
Redwood Chemical, Inc.	4981-17	7/08/63

HEPTACHLOR CANCELLATIONS—Continued

COMPANY	EPA REGISTRATION NO.	EFFECTIVE DATE
Red Wing Chemical Co.	6723-8	6/07/84
ArChem Corp.	7122-6	3/17/88
Forshaw Chemical Co.	7234-27	3/18/88
	7234-31	3/18/88
	7234-89	3/18/88
Chem-Nut, Inc.	37686-27	5/08/87
Farmco Industries Inc.	46778-1	5/12/87
Micro-Flo Co.	51036-50	4/27/87

III. Judgment and Order of the United States District Court for the District of Columbia

On February 23, 1988, Judge Louis F. Oberdorfer of the United States District Court for the District of Columbia issued the following judgment and Order in the case of National Coalition Against the Misuse of Pesticides, *et al.* plaintiffs, v. United States Environmental Protection Agency, *et al.* defendants, (Civil Action No. 87-2089-LFO).

Judgment and Order

On October 1, 1987, the United States Environmental Protection Agency ("EPA") entered into a supplemental agreement with Velsicol Chemical Corporation ("Velsicol"), the sole manufacturer of chlordane and heptachlor, providing that sale and use of existing stocks of those products registered to Velsicol will cease on or before April 15, 1988. The October 1 agreement did not address existing stocks of Velsicol manufactured chlordane and heptachlor that was registered to others. On January 11, 1988, this Court granted in part plaintiffs' motion for summary judgment, ruling that "EPA's policy of exchanging use authorization on existing stocks for voluntary cancellations from non-Velsicol reformulator registrants does not satisfy the agency's obligation under 7 U.S.C. sec. 136d(a)(1)." Memorandum of January 11, 1988 at 6. The Court ordered EPA to

make and submit to the Court a reasoned finding, supported by evidence, as to whether the continued sale and use of existing stocks of non-Velsicol registered, reformulated chlordane and heptachlor is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment, pursuant to 7 U.S.C. sec. 136d(a)(1) * * *.

Order of January 11, 1988 at 1. Defendant subsequently submitted a response to that Order, plaintiffs responded to defendants' response, and further oral argument was held on February 12, 1988.

The Court has considered the briefs and oral argument of the parties and has reviewed and considered the other submissions of the parties including the administrative record and affidavit testimony. There is no genuine issue of material fact so that plaintiffs are entitled to summary judgment as a matter of law on the issue of the continued sale and use of existing stocks of chlordane and heptachlor termiticide products, which are the subject of voluntary cancellations.

In connection with cancellations of one or more uses of a pesticide, including voluntary cancellations, section 6(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136d(a)(1), requires EPA to permit continued sale or use of existing stocks only "to such extent, under such conditions, and for such uses" which the Administrator determines are "not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment." FIFRA defines "unreasonable adverse effects on the environment" to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." FIFRA sec. 2(bb), 7 U.S.C. 136(bb).

An adequate sec.5(a)(1) determination must analyze the risks and benefits from the sale and use of existing stocks and determine whether or not such sale and use would be consistent with FIFRA and whether or not such sale and use would pose any unreasonable risk to man or the environment. *See* 7 U.S.C. 136(bb). Instead, defendants found only that the settlement agreement permitting the use of existing stocks would result in less use (and therefore less risk) than would a proceeding to cancel the pesticide's registration without a suspension of the registration during the proceeding.[1] This finding does not meet the requirements of sec. 6(a)(1).

What the defendants have done here is indistinguishable in principal from the action of the Secretary of Commerce, recently condemned by our Court of Appeals in *Kokechik Fishermen's Association v. Secretary of Commerce*, No. 87-5239, slip op. (D.C. Cir. Feb. 16, 1988). There, the Secretary issued a permit to Japanese fishermen to take northern fur seals even though he could not make, or had not made, a finding, required by statute, as to whether the particular seal population was within its optimum sustainable level. *Id.* at 12-13. Nonetheless, the Secretary "issued the permit taking the position that as long as it did not *authorize* the taking of

[1] The defendants determined that a suspension was not justified.

northern fur seals he had complied with the [relevant statute]." *Id.* at 13 (emphasis added). Said the Court of Appeals, however, "[t]he result was, in effect, that the permit allowed the Federation to take protected marine mammals for a price—the civil penalties imposed for such takings * * * This is a result that the [relevant statute] does not countenance." *Id.*

So here defendants, without making a required finding that sale and use of existing chlordane stocks will not unreasonably endanger man or the environment, have allowed the continued sale and current use of those stocks for a price—i.e., conditional suspension of production and suspension of some prospective distribution from existing stocks by chlordane registrants. This, FIFRA does not countenance.

Furthermore, defendants have not addressed the appropriate relevant factors, and have not adequately supported or rationally justified a determination that the continued sale or use of existing stocks permitted in the October 1, 1987 Order and the other chlordane and heptachlor voluntary cancellations is consistent with the purposes of FIFRA and would not have unreasonable adverse effects on man or the environment, within the meaning of FIFRA.

The Court has not overlooked EPA's expressed concern about the "possibility" that invalidation of the existing stocks concession for chlordane registrants "could constitute a basis on the part of Velsicol and the other registrants to void the August agreement as well as the voluntary cancellations." Defendants' Response to Plaintiffs' Revised Proposed Judgment and Order (filed Feb. 23, 1988) at 3 n.l. There will be time enough to deal with such a hypothetical situation when, and if, it materializes.

Accordingly, it is this 23rd day of February, 1988, hereby

Adjudged and Declared: That defendants' decision to permit continued sale and use of existing chlordane and heptachlor stocks which are the subject of voluntary cancellation in the absence of the finding required by sec. 6(a)(1) is arbitrary, capricious, and an abuse of discretion; and it is further

Adjudged and Declared: That the provisions of any agreement entered into by defendants (and only such provisions) permitting the continued sale and use of existing chlordane and heptachlor stocks which are the subject of voluntary cancellations including, but not limited to, the provisions of the October 1, 1987 "Order Accepting Voluntary Cancellations and Authorizing Use of Existing Stocks with Limitations," made in accordance with the Supplemental Memorandum of Understanding with Velsicol Chemical Corporation, are contrary to law; and it is further

Adjudged and Declared: That the defendants' decision to permit sale or commerical use and commercial application (as distinguished from household and homeowner use and application) of existing stocks which have been the subject of voluntary cancellations is contrary to law; and it is further

Ordered and Adjudged: That the defendants shall; on or before April 15, 1988, take whatever action is necessary to conform to, and to enforce, the requirements of the law as declared in this Judgment and Order so that on and after April 15, 1988, sales, commercial use and commercial application of existing stocks of chlordane and heptachlor which have been the subject of voluntary cancellations shall cease; and it is further

Ordered: That plaintiffs' motion for partial summary judgment is, to the extent theretofore stated, *Granted;* and it is further

Ordered: That defendants' motion for summary judgment is *Denied;* and it is further

Ordered: That there being no just reason for delay in the entry of this Order as a Judgment, and in order to permit its review by the Court of Appeals, the Clerk of Court shall, pursuant to F.R. Civ. P. 54(b), enter this Judgment and Order forthwith in favor of plaintiffs; and it is further

Ordered: That on March 21, 1988, at 9:00 a.m., there will be a status call to schedule further proceedings on unresolved issues, including the disposition of existing stocks derived from suspended, as distinguished from voluntarily cancelled, registrations.

Louis F. Oberdorfer,

United States District Judge.

The list of voluntarily cancelled registrations in Unit II of this Notice may be incomplete due to additional voluntary cancellations received after the publications of this Notice. Persons who wish to check the status of a particular registration not listed in Unit II of this Notice, should contact Mr. George LaRocca, the designated information contact for this action, at the address and phone number provided at the beginning of this Notice.

Dated: April 5, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-7799 Filed 4-6-88; 10:51 am]

BILLING CODE 6560-50-M

[OPP-38508; FRL 3363-4]

Chlordane/Heptachlor Termiticides; Intent to Suspend Registration and to Place Limitations on Sale and Use of Existing Stocks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to suspend.

SUMMARY: EPA is issuing a Notice of Intent to Suspend various chlordane/heptachlor termiticide product registrations and to place limitations on the sale, distribution, and use of existing stocks of suspended products. All of the products affected by this Notice have previously been suspended for failure to commit to comply with the terms of data-call-in requirements contained in guidance documents published on December 31, 1986. There were no prohibitions placed on the sale and use of existing stocks of suspended products by persons other than the registrant. On February 23, 1988, the United States District Court for the District of Columbia issued a ruling ordering the Agency to place certain limitations on the sale and use of existing stocks of voluntarily cancelled chlordane/heptachlor termiticide products by April 15, 1988. Any suspensions which result from this Notice of Intent to Suspend will include prohibitions on the sale and use of existing stocks of the suspended pesticides similar to the prohibitions imposed by the United States District Court on existing stocks of voluntarily cancelled termiticides.

DATE: Requests for hearings by persons adversely affected by this Notice must be received by the Agency on or before May 9, 1988.

ADDRESS: Three copies of any request for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. George LaRocca, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703-557-2400).

SUPPLEMENTARY INFORMATION: This Notice is organized in three units. Unit I is the Notice of Intent to Suspend various chlordane/heptachlor

termiticide product registrations pursuant to FIFRA section 3(c)(2)(B). Unit II provides a list of the product registrations to which the Notice of Intent to Suspend applies. Unit III is a reprint of the District Court's February 23, 1988 Judgment and Order which serves as the basis for the existing stocks determination contained in this Notice.

I. Notice of Intent to Suspend Pursuant to FIFRA Section 3(c)(2)(B) Various Chlordane/Heptachlor Termiticide Registrations and to Place Limitations on the Sale and Use of Existing Stocks of Suspended Products

The chlordane/heptachlor termiticide product registrations listed in Unit II of this Notice are currently under suspension pursuant to section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") for failure to commit to provide data in response to the Agency's request for data contained either in the "Guidance Document for the Reregistration of Pesticide Products Containing Chlordane" dated December 31, 1986, or in the "Guidance Document for the Reregistration of Pesticide Products Containing Heptachlor" also dated December 31, 1986. After the registrants failed to commit to comply with the requirements for data generation set forth in the relevant guidance documents, the Agency provided registrants with a Notice of Intent to Suspend the affected registrations pursuant to section 3(c)(2)(B) and informed the registrants in the notice that registrants would not be allowed to sell or distribute any suspended product after the suspension became effective. The Agency, at that time, did not indicate that it would place any restrictions on the sale or use of suspended products outside of the registrants' control. No registrant contested the Notice of Intent to Suspend, and the suspensions became effective on the dates listed in Unit II of this Notice.

The registrants holding the product registrations listed in Unit II of this Notice have continued to fail to take appropriate steps to submit the data/information required by the relevant guidance documents in the time periods established in those documents. Thus, the basis for this Notice of Intent to Suspend is the failure of the listed registrants to take appropriate steps to submit the data/information required by the chlordane and heptachlor guidance documents dated December 31, 1986 in the time periods called for in those documents.

Under section 3(c)(2)(B), the Agency "may include in the Notice of Intent to Suspend such provisions as [the Agency] deems appropriate concerning the continued sale and use of existing stocks of [the suspended] pesticide." At the time the previous Notices of Intent to Suspend the product registrations listed in Unit II were issued, the Agency did not find it appropriate to place any restrictions on the existing stocks outside of the registrants' control. In this regard, the existing stocks of the suspended registrations were treated in a manner similar to the stocks of chlordane/heptachlor termiticide registrations that were voluntarily cancelled by registrants; the Agency placed no restrictions on the sale and use of cancelled products outside the registrants' control.

On February 23, 1988, in the case of *National Coalition Against the Misuse of Pesticides* v. *EPA*, the United States District Court for the District of Columbia ruled that EPA had not acted in accordance with section 6(a)(1) of FIFRA in granting authorization to distribute and use existing stocks of the cancelled chlordane/heptachlor termiticide products without first determining that such continued sale and use would not have unreasonable adverse effects on the environment. The Court therefore ruled that the Agency's allowance of continued sale and use of cancelled chlordane/heptachlor products was void, and ordered EPA to take "whatever action is necessary * * * so that on and after April 15, 1988, sales, commercial use, and commercial application of existing stocks of chlordane and heptachlor which have been the subject of voluntary cancellations shall cease * * *" The Court's decision is reprinted in Unit III of this Notice.

The Agency has taken action today to implement the Court's ruling as it affects the voluntarily cancelled chlordane and heptachlor products. The Agency believes it is inequitable to allow greater use of stocks of chlordane/heptachlor termiticide products suspended under section 3(c)(2)(B) than of similar cancelled products. In addition, the Agency believes that implementation of the Court's order will be made more difficult if existing stocks of the suspended products are treated differently than existing stocks of the cancelled products. Accordingly, the Agency finds it appropriate to apply the same standard to continued sale and use of existing stocks of the suspended products as the District Court applied to the cancelled products.

Pursuant to section 3(c)(2)(B), the Agency may include in a Notice of Intent to Suspend such provisions as it deems appropiate concerning the continued sale and use of existing stocks. The Agency hereby provides notice that, unless and until it is demonstrated that continued sale and commerical use and application of chlordane/heptachlor termiticides is consistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment, the Agency considers it inappropriate to allow any continued sale, commercial use, or commercial application of existing stocks of chlordane/heptachlor termiticide products suspended pursuant to this Notice of Intent to Suspend. Unless it is demonstrated that continued sale, distribution and commercial use and application of suspended chlordane/heptachlor termiticides meets the standard set forth in this paragraph, the Agency will not permit any person to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, or permit any person to make a commercial application of existing stocks of chlordane/heptachlor termiticide products suspended pursuant to this Notice after this Notice of Intent to Suspend becomes final and effective.

The prohibition on sale and commercial use of chlordane and heptachlor products subject to the determination set forth in this Notice is intended to apply to all sale of such products in any situation, and to all use and application of such products, with the exception of use and application in accordance with label directions by individuals (as opposed to organizations, government agencies, corporations, etc.) on property owned by those individuals. However, this exception for individuals shall not apply to use or application by individuals on property which is owned by them but which is rented or leased to others and is occupied or intended to be occupied by human beings, nor to use on new structures intended for human occupation which are under construction for sale or lease.

Pursuant to section 3(c)(2)(B), a copy of this Notice is being sent to every registrant identified in Unit II of this Notice. The terms of suspension announced in this Notice shall become final and effective with respect to a product registration listed in Unit II of this Notice within 30 days of the registrant's receipt of this Notice, unless during that time a request for a hearing is made by a person adversely affected by this Notice or the registrant satisfies the Agency that it has complied fully with the data requirements contained in

the guidance documents for chlordane and heptachlor published on December 31, 1986 that serve as the basis for this Notice of Intent to Suspend. Copies of this Notice are being mailed in order to be received by the registrants as close as possible to the publication date of this Notice.

If a registrant or any other person adversely affected by this Notice wishes the Agency to determine that the registrant has complied with the requirements that provide the bases for this Notice, he/she should supply information supporting such a determination to the Agency as quickly as possible for there to be any chance the Agency will be able to make the necessary determination before this Notice otherwise becomes final and effective. If a product registration is suspended pursuant to this Notice, the suspension will not be rescinded until the Agency determines that the registrant has complied fully with the requirements which serve as the basis for this Notice and has so notified the registrant in writing.

Any hearing requested pursuant to this Notice will be conducted in accordance with the requirements of FIFRA section 6(d) and the Agency's procedural regulations set forth in 40 CFR Part 164. Pursuant to section 3(c)(2)(B), the only matters for resolution at such a hearing shall be whether the registrant has failed to take the action that serves as the basis for the Notice of Intent to Suspend and whether the determination with respect to existing stocks is consistent with the Act. In that regard, it should be noted that the basis for this suspension action is the listed registrants' failure to take appropriate steps to comply with the data requirements contained in the guidance documents. This failure includes, *inter alia*, the failure to submit data, progress reports, and protocols as required by the request for data contained in the guidance documents. As to existing stocks, any person requesting a hearing on this issue should take into account the Agency's determination that no person may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive (and having so received) deliver or offer to deliver to any person, or make any commercial application of suspended chlordane/heptachlor products unless it is demonstrated that such actions will not have unreasonable adverse effects on the environment. In order to challenge the existing stocks provisions of this Notice, a party requesting a hearing must demonstrate with evidence that continued sale, distribution and commercial use of the affected product will be consistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment.

Any request for a hearing must (1) state which allowable issues are to be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to the allowable issues for which a hearing is requested. Three copies of the request must be submitted to the Hearing Clerk, as stated at the beginning of this Notice under the heading ADDRESS.

In order to be legally effective, hearing requests must be received by the Hearing Clerk within 30 days of the registrants' receipt of this Notice. The 30-day time limit can not be extended. The terms of suspension set forth in this Notice shall become final and effective if no request for a hearing is filed within the required time period unless the Agency determines, prior to the expiration of the 30-day period, that a registrant has taken appropriate steps to comply with the data requirements set forth in the guidance documents in the time periods called for in those documents.

In the event of a hearing request, the Agency's rules of practice forbid anyone who may take part in deciding the case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of the Agency in any administrative hearing on this Notice of Intent to Suspend: The Office of the Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

Finally, it should be noted that this Notice of Intent to Suspend in no way affects other suspension actions that have already been taken against the registrations subject to this Notice. All terms of this Notice of Intent to Suspend are in addition to any previous conditions from existing suspensions.

Any disposal of chlordane/heptachlor termiticide products subject to this Notice of Intent to Suspend must be in accordance with the requirements of applicable Federal, state, and local laws and regulations, including the Resource Conservation and Recovery Act.

Any questions about the requirements and procedures set forth in this Notice or in the request for data contained in the guidance documents should be directed to the Product Manager, Mr. George LaRocca, at the address and telephone number provided earlier in this Notice.

II. List of Suspended Termiticide Registrations Containing Chlordane and Heptachlor

Below are listed suspended registrations of chlordane/heptachlor products affected by this Notice. The listed registrations were in suspended status as of March 30, 1988. Registrations are listed in order of their EPA Registration Numbers and the name of the company to which the registration is assigned in EPA's files; the date on which suspension became effective is also provided. Product names are not given, because such label names are often changed by registrants, and any listing would be incomplete.

CHLORDANE SUSPENSIONS

Company	EPA Registration No.	Effective Date
Van Waters & Rogers, Inc.	550-106	7/18/87
	550-107	7/18/87
Chapman Chemical Company.	1022-502	7/15/87
Vaccinol Chemical Company Incorporated.	1353-4	7/15/87
AMVAC Chemical Corporation.	5481-223	7/17/87
	5481-226	7/17/87
	5481-50	7/17/87
	5481-315	7/17/87
Carolina Chemical Corporation.	5797-88	7/15/87
Black Leaf Products Company.	5887-67	7/16/87
	5887-127	7/16/87
U.S. Marketing Distributors.	6409-13	10/21/87
Southern Mill Creek Products Company.	6720-2	7/15/87
	6720-71	7/15/87
	6720-138	7/15/87
	6720-176	7/15/87
	6720-280	7/15/87
	6720-361	7/15/87
	6720-363	7/15/87
Dettlebach Pesticide Corporation.	6754-9	7/15/87
	6754-11	7/15/87
	6754-40	7/15/87
	6754-64	7/15/87

CHLORDANE SUSPENSIONS—Continued

Company	EPA Registration No.	Effective Date
Mystic Chemical Products.	36272-3	7/15/87

HEPTACHLOR SUSPENSIONS

Company	EPA Registration No.	Effective Date
Southern Mill Creek Products Company.	6720-279	7/12/87
Dettlebach Pesticide Corporation.	6754-5	7/15/87
	6754-40	7/15/87
	6754-54	7/15/87
	6754-64	7/15/87

III. Judgment and Order of the United States District Court for the District of Columbia

On February 23, 1988, Judge Louis F. Oberdorfer of the United States District Court for the District of Columbia issued the following Judgment and Order in the case of National Coalition Against the Misuse of Pesticides, *et al.*, plaintiffs, v. United States Environmental Protection Agency, *et al.*, defendants, (Civil Action No. 87-2089-LFO).

Judgment and Order

On October 1, 1987, the United States Environmental Protection Agency ("EPA") entered into a supplemental agreement with Velsicol Chemical Corporation ("Velsicol"), the sole manufacturer of chlordane and heptachlor, providing that sale and use of existing stocks of those products registered to Velsicol will cease on or before April 15, 1988. The October 1 agreement did not address existing stocks of Velsicol manufactured chlordane and heptachlor that was registered to others. On January 11, 1988, this court granted in part plaintiffs' motion for summary judgment, ruling that "EPA" policy of exchanging use authorization on existing stocks for voluntary cancellations from non-Velsicol reformulator registrants does not satisfy the agency's obligation under 7 U.S.C. 136d(a)(1)." Memorandum of January 11, 1988 at 6. The Court ordered EPA to make and submit to the Court a reasoned finding, supported by evidence, as to whether the continued sale and use of existing stocks of non-Velsicol registered, reformulated chlordane and heptachlor is not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment,' pursuant to 7 U.S.C. 136d(a)(1) * * *.

Order of January 11, 1988 at 1. Defendant subsequently submitted a response to that Order, plaintiffs responded to defendants' response, and further oral argument was held on February 12, 1988.

The Court has considered the briefs and oral argument of the parties and has reviewed and considered the other submissions of the parties including the administrative record and affidavit testimony. There is no genuine issue of material fact so that plaintiffs are entitled to summary judgment as a matter of law on the issue of the continued sale and use of existing stocks of chlordane and heptachlor termiticide products, which are the subject of voluntary cancellations.

In connection with cancellations of one or more uses of pesticide, including voluntary cancellations, section 6(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. 136d(a)(1), requires EPA to permit continued sale or use of existing stocks only "to such extent, under such conditions, and for such uses" which the Administrator determines are "not inconsistent with the purposes of [FIFRA] and will not have unreasonable adverse effects on the environment." FIFRA defines "unreasonable adverse effects on the environment" to mean "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." FIFRA sec. 2(bb), 7 U.S.C. 136(bb).

An adequate sec. 6(a)(1) determination must analyze the risks and benefits from the sale and use of existing stocks and determine whether or not such sale and use would be consistent with FIFRA and whether or not such sale and use would pose any unreasonable risk to man or the environment. *See* 7 U.S.C. 136(bb). Instead, defendants found only that the settlement agreement permitting the use of existing stocks would result in less use (and therefore less risk) than would a proceeding to cancel the pesticide's registration without a suspension of the registration during the proceeding.[1] This finding does not meet the requirements of sec. 6(a)(1).

What the defendants have done here is indistinguishable in principle from the action of the Secretary of Commerce, recently condemned by our Court of Appeals in *Kokechik Fishermen's Association v. Secretary of Commerce*, No. 87-5239, slip op. (D.C. Cir. Feb. 16, 1988). There, the Secretary issued a permit to Japanese fishermen to take northern fur seals even though he could not make, or had not made, a finding, required by statute, as to whether the particular seal population was within its optimum sustainable level. *Id.* at 12-13. Nonetheless, the Secretary "issued the permit taking the position that as long as it did not *authorize* the taking of northern fur seals he had complied with the [relevant statute]." *Id.* at 13 (emphasis added). Said the Court of Appeals, however, "[t]he result was, in effect, that the permit allowed the Federation to take protected marine mammals for a price—the civil penalties imposed for such takings * * * This is a result that the [relevant statute] does not countenance." *Id.*

So here defendants, without making a required finding that sale and use of existing chlordane stocks will not unreasonably endanger man or the environment, have allowed the continued sale and current use of these stocks for a price—i.e., conditional suspension of production and suspension of some prospective distribution from existing stocks by chlordane registrants. This, FIFRA does not countenance.

Furthermore, defendants have not addressed the appropriate relevant factors, and have not adequately supported or rationally justified a determination that the continued sale or use of existing stocks permitted in the October 1, 1987 and the other chlordane and heptachlor voluntary cancellations is consistent with the purposes of FIFRA and would not have unreasonable adverse effects on man or the environment, within the meaning of FIFRA.

The Court has not overlooked EPA's expressed concern about the "possibility" that invalidation of the existing stocks concession for chlordane registrants "could constitute a basis on the part of Velsicol and the other registrants to void the August agreement as well as the voluntary cancellations." Defendants' Response to Plaintiffs' Revised Proposed Judgment and Order (filed Feb. 23, 1988) at 3 n.l. There will be time enough to deal with such a hypothetical situation when, and if, it materializes.

Accordingly, it is this 23rd day of February, 1988, hereby:

Adjudged and Declared: That defendants' decision to permit continued sale and use of existing chlordane and heptachlor stocks which are the subject of voluntary cancellation in the absence

[1] The defendants determined that a suspension was not justified.

of the finding required by sec. 6(a)(1) is arbitrary, capricious, and an abuse of discretion; and it is further;

Adjudged and Declared: That the provisions of any agreement entered into by defendants (and only such provisions) permitting the continued sale and use of existing chlordane and heptachlor stocks which are the subject of voluntary cancellations including, but not limited to, the provisions of the October 1, 1987 "Order Accepting Voluntary Cancellation and Authorizing Use of Existing Stocks with Limitations," made in accordance with the Supplemental Memorandum of Understanding with Velsicol Chemicals Corporation, are contrary to law; and it is further;

Adjudged and Declared: That the defendants' decision to permit sale or commercial use and commercial application (as distinguished from household and homeowner use and application) of existing stocks which have been the subject of voluntary cancellations is contrary to law; and it is further;

Ordered and Adjudged: That the defendants shall; on or before April 15, 1988, take whatever action is necessary to conform to, and to enforce, the requirements of the law as declared in this Judgment and Order so that on and after April 15, 1988, sales, commercial use and commercial application of existing stocks of chlordane and heptachlor which have been the subject of voluntary cancellations shall cease; and it is further;

Ordered: That plaintiffs' motion for partial summary judgment is, to the extent theretofore stated, *Granted;* and it is further;

Ordered: That defendants' motion for summary judgment is *Denied;* and it is further;

Ordered: That there being no just reason for delay in the entry of this Order as a Judgment, and in order to permit its review by the Court of Appeals, the Clerk of Court shall, pursuant to F.R. Civ. P. 54(b), enter this Judgment and Order forthwith in favor of plantiffs; and it is further;

Ordered: That on March 21, 1988, at 9:00 a.m., there will be a status call to schedule further proceedings on unresolved issues, including the disposition of existing stocks derived from suspended, as distinguished from voluntarily cancelled, registrations.

Louis F. Oberdorfer,

United States District Judge.

Some of the registrations listed in Unit II of this Notice may be voluntarily cancelled subsequent to publication of this Notice in the **Federal Register**. The status of these registrations can be checked by contacting Mr. George LaRocca, the information contact person for this action, at the address and telephone number provided at the outset of this Notice.

Dated: April 5, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-7800 Filed 4-6-88; 10:51 am]

BILLING CODE 6560-50-M

Federal Register

Friday
April 8, 1988

Part V

The President

Proclamation 5789—National Student-Athlete Day, 1988

Proclamation 5790—Dennis Chavez Day, 1988

Proclamation 5791—National Productivity Improvement Week, 1988

Federal Register
Vol. 53, No. 68
Friday, April 8, 1988

Presidential Documents

Title 3—

The President

Proclamation 5789 of April 6, 1988

National Student-Athlete Day, 1988

By the President of the United States of America

A Proclamation

The American people in recent years have recognized the need for a return to solid educational achievement in our schools and colleges. Parents, educators, and students realize the lasting value of an education that imparts thorough skills in reading comprehension, composition, and mathematics and that provides a fundamental understanding of our country's heritage of liberty and of the entire body of wisdom and knowledge to which our civilization is heir. One of the many beneficial results of this focus on sound education is a reemphasis on the role of academic life for our Nation's student athletes.

For decades, we have cheered our high school and college athletes as they have played the sports our country loves. Sometimes lost in "the tumult and the shouting," however, is the realization that, of every 10,000 student athletes, only one ever becomes a professional athlete; that the one who does so can expect a professional career of less than 4 years; and that the other 9,999 must rely for a living not on their athletic skills but on their educational background and a truly worthwhile academic degree.

We rightly support and salute our student athletes for their accomplishments on the diamond, the gridiron, the hardwood, the track, and every sort of playing field; but we must also do the same for athletes and all students for what they accomplish in the classroom as well. Parents, teachers, and coaches fulfill their obligations to student athletes by expecting and by fostering the high academic performance that is everyone's key to a bright, rather than a blighted, future. That is something for all of us to remember and to act upon, on National Student-Athlete Day and always.

The Congress, by House Joint Resolution 513, has designated April 6, 1988, as "National Student-Athlete Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 6, 1988, National Student-Athlete Day, and I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7908
Filed 4-7-88; 11:21 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5790 of April 6, 1988

Dennis Chavez Day, 1988

By the President of the United States of America

A Proclamation

April 8, 1988, is the Centennial Anniversary of the birth of New Mexico's Dennis Chavez, the first native-born Hispanic elected to the United States Senate and for many years the highest-ranking Hispanic in the Federal government. All Americans join the people of the Land of Enchantment and Hispanic Americans throughout our country in saluting the memory of this public servant, who left school as a child to help support his family and went on to become a lawyer, State Representative, U.S. Representative, and U.S. Senator.

Without a high school education, Dennis Chavez served as an interpreter of Spanish during Senator A. A. Jones's successful Senatorial campaign and in 1918 became a Senate clerk. He passed a special entrance examination for Georgetown University Law School and returned to New Mexico to practice law after earning his law degree in 1920. He was a New Mexico State Representative in 1923–24. In 1930 he won a seat in the U.S. House of Representatives, and in 1935 he was appointed to fill a vacancy in the United States Senate. He won election in his own right the next year and was reelected four times; he died in office on November 18, 1962.

As a Senator, Dennis Chavez chaired the Committee on Public Works and served on the Defense Appropriations Subcommittee. He sought the well-being of every American and displayed lasting concern for those in need. Dennis Chavez truly exemplified the dedication of the public servant and won distinction in the service of New Mexico and of his Nation; to this day, his life and career symbolize the countless achievements of Hispanic Americans and demonstrate the opportunity America offers.

The Congress, by Senate Joint Resolution 206, has designated April 8, 1988, as "Dennis Chavez Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 8, 1988, as Dennis Chavez Day. I urge Government agencies and the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7909
Filed 4-7-88; 11:22 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5791 of April 6, 1988

National Productivity Improvement Week, 1988

By the President of the United States of America

A Proclamation

Our Nation has long enjoyed a high standard of living, thanks especially to our high productivity, which has accounted for about half our economic growth over the last century. Productivity affects our total output of goods and services, helps keep inflation low, and is vital to our ability to compete in U.S. and foreign markets.

Until the mid-1960s, overall U.S. labor productivity grew at a commendable average rate of 3.2 percent each year. But it slowed to under 2 percent in the 1970s, and last year increased by just under 1 percent. Fortunately, productivity in manufacturing continued at a robust rate and increased by 3.3 percent in 1987. However, the rate of growth in the service sector, which accounts for more than 70 percent of U.S. employment, was less than 1 percent in 1987.

We must accelerate productivity growth in the service and other sectors. Good performance in productivity is especially necessary now that we are in world markets for most goods and services, and because many of our foreign competitors can target the U.S. market using state-of-the-art technology.

Government's job is to create a healthy climate in which private sector productivity growth can flourish. We have done this. We have adopted sound policies to reform internal laws, to encourage inventors to create better products and processes, to reduce burdensome regulations, to stimulate investment in research and development, and to strengthen private sector access to federally funded science and technology. These achievements provide a solid foundation for the private sector to build upon.

Our businesses and their individual leaders must continue their efforts to increase productivity by adopting new technologies and management innovations and by better strategic planning in the increasingly competitive international context.

Productivity is now intertwined with quality. To encourage U.S. companies to strengthen their quality, I have endorsed a major initiative, the Malcolm Baldrige National Quality Award, that will honor U.S. manufacturing firms, service companies, and small businesses for improving their goods and services. This initiative pays fitting tribute to a great Secretary of Commerce who fostered improvement during every assignment he took on.

To encourage Americans to understand the importance of productivity growth to their economic welfare, the Congress, by Senate Joint Resolution 223, has designated the week of April 10 through April 16, 1988, as National Productivity Improvement Week and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 10 through April 16, 1988, as National Productivity Improvement Week. I call upon the people of the United States and especially our business leaders, educators, workers, and public officials to observe this week with appropriate ceremonies and activities in a spirit of rededication to improving our Nation's productivity.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-7910
Filed 4-7-88; 11:23 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 53, No. 68

Friday, April 8, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

10519-10868.....1
10869-11030.....4
11031-11238.....5
11239-11486.....6
11487-11632.....7
11633-11814.....8

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5784.....10519
5785.....10521
5786.....10523
5787.....11031
5788.....11489
5789.....11809
5790.....11811
5791.....11813

Executive Orders:
12634.....11041

Administrative Orders:
Memorandums:
Mar. 31, 1988.....11039

Presidential Determinations:
No. 88-10 of February 29, 1988.....11487

5 CFR

831.....11633
842.....11633

Proposed Rules:
2431.....10885

7 CFR

2.....11636
300.....10525
400.....10526
910.....10527, 11636
946.....11043
1032.....11637
1064.....11590
1126.....11638
1421.....11239
3600.....11639
3601.....11639

Proposed Rules:
6.....11091
53.....10545
54.....10545
449.....11299
917.....11669
949.....10887
1030.....10894
1106.....11092
1497.....11474
1498.....11474
1530.....11098
1700.....11511
1701.....10545

8 CFR

Proposed Rules:
3.....11300
208.....11300
236.....11300
242.....11300
253.....11300

9 CFR

77.....11491
92.....11043

10 CFR

430.....10869
1010.....11240

Proposed Rules:
2.....11310
50.....11311

12 CFR

202.....11044
205.....11046
226.....11047, 11055
265.....11640
563.....11242, 11243

14 CFR

Ch. III.....11004
39.....11246, 11641-11643
71.....10528, 11020, 11060, 11061
97.....11062

Proposed Rules:
27.....10826, 11162
29.....10826, 11162
39.....11674-11676, 11678
71.....10546, 11100, 11101
73.....11102

16 CFR

13.....11247

17 CFR

30.....11491

18 CFR

157.....11644

20 CFR

10.....11594

Proposed Rules:
10.....11596

21 CFR

184.....11247
340.....11731
510.....11492
520.....11063
522.....11064, 11493
524.....11064
540.....11492
558.....11065, 11251
800.....11251
803.....11251
807.....11251
808.....11251
809.....11251
812.....11251
813.....11251
820.....11251
860.....11251

861 11251
862 11645
864 11251
866 11251
876 11251
895 11251
1002 11251
1005 11251
1010 11251
1020 11251
1030 11251
1040 11251
1050 11251
1308 ..... 10834, 10861, 10869

Proposed Rules:
133 11312
175 11402
176 11402
177 11402
178 11402
561 11313

22 CFR

120 11494
121 11494
122 11494
123 11494
124 11494
125 11494
126 11494
127 11494
128 11494
514 10528
602 10529

23 CFR

650 11065
771 11065
1204 11255
1205 11255

Proposed Rules:
1309 11679

24 CFR

50 11224
200 11270
203 10529
221 11224
236 11224
241 11224
248 11224

Proposed Rules:
35 11164
200 11164
510 11164
511 11164
570 11164
882 11164
886 11164
941 11164
965 11164
968 11164

25 CFR

61 11271

26 CFR

1 ..... 11002, 11066, 11162, 11731
602 ..... 11066, 11162, 11731

Proposed Rules:
1 11103

28 CFR

0 ..... 10870, 10871, 11645
71 11645

29 CFR

102 10872
1910 11414
2610 10530
2622 10530
2644 10531

Proposed Rules:
516 11590
530 11590
1910 11511
1915 11511
1917 11511
1918 11511

30 CFR

75 11395
250 10596
256 10596
773 11606
934 11500

Proposed Rules:
785 11685
823 11685

31 CFR

Proposed Rules:
103 11513

32 CFR

388 10876

33 CFR

84 10532
100 11502
117 ..... 10533, 10534

Proposed Rules:
100 11515
110 ..... 11395, 11515
117 ..... 11516, 11517

34 CFR

600 11208
657 10820
668 11208

Proposed Rules:
105 10808

38 CFR

36 11502

39 CFR

Proposed Rules:
111 11685

40 CFR

52 ..... 11068, 11273, 11655
60 11590
180 ..... 11071, 11274

Proposed Rules:
52 ..... 11314, 11686, 11688
180 10895
264 11742
265 11742
268 11742
271 11742
761 11104
763 10546
796 11104

41 CFR

Proposed Rules:
201-33 11518

42 CFR

405 11504
416 11504
418 11504
442 11504
482 11504

43 CFR

Proposed Rules:
3160 11318

Public Land Order:
6670 10535

44 CFR

67 11510
80 11275
82 11275
83 11275

Proposed Rules:
61 10547

45 CFR

36 11279
79 11656
96 11656

Proposed Rules:
606 10896

46 CFR

572 11072

Proposed Rules:
Ch. I 11440

47 CFR

2 10878
73 11668

Proposed Rules:
Ch. I 10549, 10550
73 ..... 10905, 11690

48 CFR

15 10828
31 10828
52 10828
215 11073
227 10780
242 11073
252 ..... 10780, 11073

Proposed Rules:
43 11795
47 11795
52 11795
916 11318
931 11318
952 11318
1505 11519
1506 11519

49 CFR

533 11074
571 11280
1160 10536

Proposed Rules:
171 11320
173 11320
177 11618
192 10906
571 11105
840 11520

50 CFR

17 ..... 10879, 11609, 11612
285 11510
301 10536
672 11297

Proposed Rules:
644 11321

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 6, 1988